



CONSTITUENT ASSEMBLY DEBATES

Book 3

Volume VIII—16th May to 16th June 1949

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 16th May 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register :—

- (1) The Honourable Shri Binodananda Jha (Bihar : General).
 - (2) Sardar Suchet Singh (Patiala and East Punjab States).
 - (3) Shri Kaka Bhagwant Roy (Patiala and East Punjab States).
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CONDOLENCE ON THE DEATH OF SHRIMATI SAROJINI NAIDU

Mr. President : Honourable Members, this is the first time that we meet in this Assembly since the passing away of Shrimati Sarojini Devi. Her life had been dedicated to the service of the country and her steadfastness during the great struggle through which we had to go was exemplary. She had been one of the makers of the India of today, and the loss which the country has sustained cannot be easily repaired. I wish the Members to show respect to her memory by standing in their places for a moment.

(All the Members stood up in silence.)

PROGRAMME OF BUSINESS

Mr. President : Before taking up the items on the agenda, I desire, to make few preliminary remarks with regard to the programme for this Session.

Honourable Members will recollect that during the last Session we were able to deal upto the 67th article of the Draft Constitution. Some four articles before article 67 were left over for consideration at a later stage. We dealt with two other articles dealing with the question of elections. The Steering Committee of the Constituent Assembly met the other day and decided that we must take up in the first instance those other articles which dealt with elections so that the preparations for the next elections might go on without interruption. I therefore propose to take up those articles, a list of which I believe has been supplied to honourable Members.

We have still a great deal of work to get through in this Session. Out of 315 articles of the Constitution we have dealt only with 65 upto now and then there are eight Schedules. We have therefore to get through the work as quickly as possible. I do not wish in any way to curtail discussion, wherever discussion is considered necessary, and on questions of vital importance. But I would expect the Members to confine their remarks to the important points and not to repeat themselves. If we proceed in a business like way I hope we shall be able to complete this work before the Anniversary of our Independence on 15th August next. My attempt will be to complete the work before then.

[Mr. President]

A question has been raised about the time of the sitting during this Session. There have been two suggestions made to me: one, that we should sit in the morning and the other that we should sit in the afternoon. It is for the House to decide this. Personally I have no choice in the matter. Whatever the House decides I shall accept. We shall sit for about 4 hours every day. If we sit in the mornings it will be from 8 to 12 noon and if we sit in the afternoon, it will be from half past three to half past seven. I will make the announcement at the end of the day after knowing the views of honourable Members.

We shall now take up the agenda. The first item is the Resolution of which notice has been given by the Honourable Pandit Jawaharlal Nehru.

Seth Govind Das (C.P. & Berar: General) : *[Mr. President, before you begin the proceedings of the final session today, I would like to remind you of what you have said before and ask what you are going to do in this connection, as this is the only occasion for that.]

Mr. President : I do not think that question arises at this stage. We shall take it up when the time comes.

RESOLUTION *RE* RATIFICATION OF COMMONWEALTH DECISION

The Honourable Shri Jawaharlal Nehru (United Provinces : General): Mr. President, Sir, I have the honour to move the following motion:—

“Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the Conference of the Commonwealth Prime Ministers in London on April 27, 1949.”

All honourable Members have been supplied with copies of this Declaration† and so I shall not read it over again. I shall merely point out very briefly some salient features of this Declaration. It is a short and simple document in four paragraphs. The first paragraph, it will be noticed, deals with the present position in law. It refers to the British Commonwealth of Nations and to the fact that the people in the Commonwealth owe a common allegiance to the Crown. That in law is the present position.

*[] Translation of Hindustani Speech.

†“The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, whose countries are united as Members of the British Commonwealth of Nations and owe a common allegiance to the Crown, which is also the symbol of their free association, have considered the impending constitutional changes in India.

“The Government of India have informed the other Governments of the Commonwealth of the intention of the Indian people that under the new constitution which is about to be adopted India shall become a sovereign independent Republic. The Government of India have however declared and affirmed India’s desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such as the Head of the Commonwealth.

“The Governments of other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise India’s continuing membership in accordance with the terms of this Declaration.

“Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress.”

The next paragraph of this Declaration states that the Government of India have informed the Governments of the other Commonwealth countries that India is soon going to be a sovereign independent Republic; further that they desire to continue her full membership of the Commonwealth of Nations, accepting the King as a symbol of the free association, etc.

The third paragraph says that the other Commonwealth countries accept this and the fourth paragraph ends by saying that all these countries remain united as free and equal members of the Commonwealth of Nations. You will notice that while in the first paragraph that is referred to as the British Commonwealth of Nations, in the subsequent paragraphs that is referred to only as the Commonwealth of Nations. Further you will notice that while in the first paragraph there is the question of allegiance to the Crown which exists at present, later of course this question does not arise because India becoming a Republic goes outside the Crown area completely. There is reference, in connection with the Commonwealth, to the King as the symbol of that association. Observe that the reference is to the King and not to the Crown. It is a small matter but it has certain small significance. But the point is this, that so far as the Republic of India is concerned, her constitution and her working are concerned, she has nothing to do with any external authority, with any King, and none of her subjects owe any allegiance to the King or any other external authority. That Republic may however agree to associate itself with certain other countries that happen to be monarchies or whatever they choose to be. This Declaration therefore states that this new Republic of India, completely sovereign and owing no allegiance to the King, as the other Commonwealth countries do owe, will nevertheless be a full member of this Commonwealth and it agrees that as a symbol of this free partnership or association rather, the King will be recognised as such.

Now, I am placing this Declaration before this honourable House for their approval. Beyond this approval, there is no question of any law being framed in accordance with it. There is no law beyond the Commonwealth. It has not even the formality which normally accompanies treaties. It is an agreement by free will, to be terminated by free will. Therefore there will be no further legislation or law if this House approves of this. In this particular Declaration nothing very much is said about the position of the King except that he will be a symbol, but it has been made perfectly clear—it was made perfectly clear—that the King has no functions at all. He has a certain status. The Commonwealth itself, as such, is no body, if I may say so; it has no organisation to function and the King also can have no functions.

Now, some consequences flow from this. Apart from certain friendly approaches to each other, apart from a desire to co-operate, which will always be conditioned by each party deciding on the measure of co-operation and following its own policy, there is no obligation. There is hardly any obligation in the nature of commitments that flow. But an attempt has been made to produce something which is entirely novel, and I can very well understand lawyers on the one hand feeling somewhat uncomfortable at a thing for which they can find no precedent or parallel. There may also be others feeling that behind this there might be something which they cannot quite understand, something risky, something dangerous, because the thing is so simple on the face of it. That kind of difficulty may arise in people's minds. What I have stated elsewhere I should like to repeat that there is absolutely nothing behind this except what is placed before this House.

One or two matters I may clear up, which are not mentioned in this Declaration. One of these, as I have said, is that the King has no functions at all. This was cleared up in the course of our proceedings; it has no doubt

[The Honourable Shri Jawaharlal Nehru]

been recorded in the minutes of the Conference in London. Another point was that one of the objects of this kind of Commonwealth association is now to create a status which is something between being completely foreign and being of one nationality. Obviously the Commonwealth countries belong to different nations. There are different nationalities. Normally either you have a common nationality or you are foreign. There is no intermediate stage. Up till now in this Commonwealth or the British Commonwealth of Nations, there was a binding link, which was allegiance to the King. With that link, therefore in a sense there was common nationality in a broad way. That snaps, that ends when we become a Republic, and if we should desire to give a certain preference or a certain privilege to any one of these countries, we would normally be precluded from doing so because of what is called the "most favoured nation clause" that every country would be as much foreign as any other country. Now, we want to take away that foreignness, keeping in our own hands what, if any, privileges or preference we can give to another country. That is a matter entirely for two countries to decide by treaty or arrangement, so that we create a new state of affairs—or we try to create it—that the other countries, although in a sense foreign, are nevertheless not completely foreign. I do not quite know how we shall proceed to deal with this matter at a later stage. That is for the House to decide—that is to say, to take the right, only the right to deal with Commonwealth countries, should we so choose, in regard to certain preferences or privileges. What they are to be, all that, of course, we shall in each case be the judge ourselves. Apart from these facts there has nothing been decided in secret or otherwise which has not been put before the public.

The House will remember that there was some talk at one stage of a Commonwealth citizenship. Now it was difficult to understand what the contents of a Commonwealth citizenship might be, except that it meant that they were not completely foreign to one another. That un-foreignness remains, but I think it is as well that we left off talking about something vague, which could not be surely defined, but the other fact remains, as I have just stated: the fact that we should take the right to ourselves, if we so chose to exercise it at any time, to enter into treaties or arrangements with Commonwealth countries assuring certain mutual privileges and preferences.

I have briefly placed before this House this document. It is a simple document and yet the House is fully aware that it is a highly important document or rather what it contains is of great and historical significance. I went some weeks ago as the representative of India to this Conference. I had consulted my colleagues here, of course previously, because it was a great responsibility and no man is big enough to shoulder that responsibility by himself when the future of India is at stake. During the past many months we had often consulted each other, consulted great and representative organizations, consulted many Members of this House. Nevertheless when I went, I carried this great responsibility and I felt the burden of it. I had able colleagues to advice me, but I was the sole representative of India and in a sense that future of India for the moment was in my keeping. I was alone in that sense and yet not quite alone because, as I travelled through the air and as I sat there at that Conference table the ghosts of many yesterdays of my life surrounded me and brought up picture after picture before me, sentinels and guardians keeping watch over me, telling me perhaps not to trip and not to forget them. I remembered, as many honourable Members might remember, that day nineteen years ago when we took a pledge on a bank of the River Ravi, at the midnight hour, and I remembered the 26th of January the first time and that oft-repeated

Pledge year after year in spite of difficulty and obstruction, and finally, I remembered that day when standing at this very place, I placed a resolution before this House. That was one of the earliest resolutions placed before this honourable House, a Resolution that is known as the Objectives Resolution. Two years and five months have elapsed since that happened. In that Resolution we defined more or less the type of free Government or Republic that we were going to have. Later in another place and on a famous occasion, this subject also came up, that was at the Jaipur Session of the Congress, because not only my mind, but many minds were struggling with this problem, trying to find a way out that was in keeping with the honour and dignity and independence of India, and yet also in keeping with the changing world and with the facts as they were, something that would advance the cause of India, would help us, something that would advance the cause of peace in the world, and yet something which would be strictly and absolutely true to every single pledge that we have taken. It was clear to me that what ever the advantages might be of any association with the Commonwealth or with any other group, no single advantage, however great, could be purchased by a single iota of our pledges being given up, because no country can make progress by playing fast and loose with the principles which it has declared. So, during these months we have thought and we had discussed amongst ourselves and I carried all this advice with me. May I read to you, perhaps just to refresh your minds the Resolution passed at the Jaipur Session of the Congress? It might be of interest to you and I would beg of you to consider the very wording of this Resolution:

“In view of the attainment of complete independence and the establishment of the Republic of India which will symbolise with Independence and give to India the status among the nations of the world that is her rightful due, her present association with the United Kingdom and the Commonwealth of Nations will necessarily have to change. India, however, desires to maintain all such links with other countries as do not come in the way of her freedom of action and independence and the Congress would welcome her free association with the independent nations of the Commonwealth for their common weal and the promotion of world peace.”

You will observe that the last few lines of this Resolution are almost identical with the lines of the Declaration of London.

I went there guided and controlled by all our past pledges, ultimately guided and controlled by the Resolution of this honourable House, by the Objectives Resolution and all that has subsequently happened; also by the mandate given to me by the All-India Congress Committee in that Resolution, and I stand before you to say with all humanity that I have fulfilled that mandate to the letter (*Loud Cheers*). All of us have been during these past many years through the valley of the Shadow; we have passed our lives in opposition, in struggle and sometimes in failure and sometimes success and most of us are haunted by those dreams and visions of old days and these hopes that filled us and the frustrations that often followed those hopes; yet we have seen that even out of that prickly thorn of frustration and despair, we have been able to pick out the rose of fulfilment.

Let us not be led away by considering the situation in terms of events which are no longer here. You will see in the resolution of the Congress that I have read out, it says that necessarily because India becomes a Republic, the association of India with the Commonwealth must change. Of course. Further it says that free association may continue subject only to our complete freedom being assured. Now, that is exactly what has been tried to be done in this Declaration of London. I ask you or any honourable Member to point out in what way the freedom, the independence of India has been limited in the slightest. I do not think it has been. In fact, the greatest stress has been laid not only on the independence of India, but on the independence of each individual nation in the Commonwealth.

[The Honourable Shri Jawaharlal Nehru]

I am asked often, how can you join a Commonwealth in which there is racial discrimination, in which there are other things happening to which we object. That, I think, is a fair question and it is a matter which necessarily must cause us some trouble in our thinking. Nevertheless it is a question which does not really arise. That is to say, when we have entered into an alliance with a nation or a group of nations, it does not mean that we accept their other policies, etc.; it does not mean that we commit ourselves in any way to something that they may do. In fact, this House knows that we are carrying on at the present moment a struggle, or our countrymen are carrying on a struggle in regard to racial discrimination in various parts of the world.

This House knows that in the last few years one of the major questions before the United Nations, at the instance of India, has been the position of Indians in South Africa. May I, if the House will permit me, for a moment refer to an event which took place yesterday, that is, the passing of the resolution at the General Assembly of the United Nations, and express my appreciation and my Government's appreciation of the way our delegation have functioned in this matter and our appreciation of all those nations of the United Nations, almost all, in fact, all barring South Africa, which finally supported this attitude of India? One of the pillars of our foreign policy, repeatedly stated, is to fight against racial discrimination, is to fight for the freedom of suppressed nationalities. Are you compromising on that issue by remaining in the Commonwealth? We have been fighting on the South African Indian issue and on other issues even though we have been thus for a dominion of the Commonwealth. It was a dangerous thing for us to bring that matter within the purview of the Commonwealth. Because, then, that very thing to which you and I object might have taken place. That is, the Commonwealth might have been considered as some kind of a superior body which sometimes acts as a tribunal or judges, or in a sense supervises the activities of its member nations. That certainly would have meant a diminution in our independence and sovereignty, if we had once accepted that principle. Therefore we were not prepared and we are not prepared to treat the Commonwealth as such or even to bring disputes between member nations of the Commonwealth before the Commonwealth body. We may of course, in a friendly way discuss this matter; that is a different matter. We are anxious to maintain the position of our countrymen in other country in the Commonwealth. So far as we are concerned, we could not bring their domestic policies in dispute there; nor can we say in regard to any country that we are not going to associate ourselves with that country because we disapprove of certain policies of that country.

I am afraid if we adopted that attitude, then, there would be hardly any association for us with any country, because we have disapproved of some thing or other that that country does. Sometimes, it so happens that the difference is so great that you cut off relations with that country or there is a big conflict. Some years ago, the United Nations General Assembly decided to recommend to its member States to withdraw diplomatic representatives from Spain because Spain was supposed to be a Fascist country. I am not going into the merits of the question. Sometimes, the question comes up in that way. The question has come up again and they have reversed that decision and left it to each member State to do as it likes. If you proceed in this way, take any great country or a small country; you do not agree with every thing that the Soviet Union does; therefore, why should we have representation there or why should we have a treaty of alliance in regard to commercial or trade matters with them? You may not agree with some policies of the United States of America; therefore, you cannot have a treaty with them. That is not the way nations carry on their foreign work or any work. The first thing to realise I think in this world is that there are different ways of

thinking, different ways of living and different approaches to life in different parts of the world. Most of our troubles arise by one country imposing its will and its way of living on other countries. It is true that each country cannot live in isolation, because, the world as constituted today is progressively becoming an organic whole. If one country living in isolation does something which is dangerous to the other countries, the other countries have to intervene. To give a rather obvious example, if one country allows itself to become the breeding ground of all kinds of dangerous diseases, the world will have to come in and clear it up because it cannot afford to allow this disease to spread all over the world. The only safe principle to follow is that, subject to certain limitations, each country should be allowed to live its own life in its own way.

There are at present in the world several ideologies and major conflicts flowing from these ideologies. What is right or what is wrong, we can consider at a later stage, or may be something else is right. Either you want a major conflict, a great war which might result in the victory for this nation or that, or else you allow them to live at peace in their respective territories and to carry on their way of thinking, their way of life, their structure of State, etc., allowing the facts to prove which is right ultimately. I have no doubt at all that ultimately, it will be the system that delivers the goods—the goods being the advancement and the betterment of the human race or the people of the individual countries—that will survive and no amount of theorising and no amount of warfare can make the system that does not deliver the goods survive. I refer to this because of the argument that was raised that India cannot join the Commonwealth because it disapproves of certain policies of certain Commonwealth nations. I think we should keep these two matters completely apart.

We join the Commonwealth obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain there because they think it is beneficial to them. It is mutually understood that it is to the advantage of the nations in the Commonwealth and therefore they join. At the same time, it is made perfectly clear that each country is completely free to go its own way; it may be that they may go, sometimes go so far as to break away from the Commonwealth. In the world today where there are so many disruptive forces at work, where we are often at the verge of war, I think it is not a safe thing to encourage to break up any association that one has. Break up the evil parts of this; break up anything that may come in the way of your growth, because nobody dare agree to anything which comes in the way of a nation's growth. Otherwise, apart from breaking the evil parts of the association, it is better to keep a co-operative association going which may do good in this world rather than break it.

Now this declaration that is placed before you is not a new move and yet it is a complete reorientation of something that has existed in an entirely different way. Suppose we had been cut off from England completely and we have then desired to join the Commonwealth of Nations, it would have been a new move. Suppose a new group of nations wants us to join them and we join them in this way, that would have been a new move from which various consequences would have flown. In the present instance what is happening is that a certain association has been existing for a considerable time past. A very great change came in the way of that association about a year and eight or nine months ago, from August 15, 1947. Now another major change is contemplated. Gradually the conception is changing. Yet that certain link remains in a different form. Now politically we are completely independent. Economically we are as independent as independent nations

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can be. Nobody can be 100 per cent independent in the sense of absolute lack of interdependence, but nevertheless India has to depend on the rest of the world for her trade, for her commerce and for many supplies that she needs, today for her food unfortunately, and so many other things. We cannot be absolutely cut off from the world. Now the House knows that inevitably during the past century and more all kinds of contacts have arisen between England and this country, many of them were bad, very bad and we have struggled throughout our lives to put an end to them. Many of them were not so bad, many of them may be good and many of them good or bad whatever they may be, are there. Here I am, the patent example of these contacts, speaking in this honourable House in the English language. No doubt we are going to change that language for our use but the fact remains that I am doing so and the fact remains that most other Members who will speak will also do so. The fact remains that we are functioning here under certain rules and regulations for which the model has been the British Constitution. Those laws existing today have been largely forged by them. Therefore we have developed these things inevitably. Gradually, laws which are good we will keep and those that are bad we will throw away. Any marked change in this without something to follow creates a hiatus which may be harmful. Largely our educational apparatus has been influenced. Largely our military apparatus has been influenced by these considerations and we have grown up naturally as something rather like the British Army. I am placing before the House certain entirely practical considerations. If we break away completely, the result is that without making sufficient provision for carrying on in a different way we have a gap period; of course if we have to pay a price, we may choose to do so. If we do not want to pay the price, we should not pay it and face the consequences.

But in the present instance we have to consider not only these minor gains, which I have mentioned to you, to us and to others but if I may say so, the larger approach to world problems. I felt as I was conferring there in London with the representatives of other Governments that I had necessarily to stick completely and absolutely to the sovereignty and independence of the Indian Republic. I could not possibly compromise on any allegiance to any foreign authority. I did that. I also felt that in the state of the world today and in the state of India and Asia, it would be a good thing if we approached this question in a friendly spirit there which would solve the problems in Asia and elsewhere. I am afraid I am a bad bargainer. I am not used to the ways of the market place. I hope I am a good fighter and I hope I am a good friend. I am not anything in between and so when you have to bargain hard for anything, do not send me. When you want to fight, I hope I shall fight and then when you are decided about a certain thing, then you must hold to it and hold to it to the death, but about other minor things I think it is far better to gain the goodwill of the other party. It is far more precious to come to a decision in friendship and goodwill than to gain a word here and there at the cost of ill-will. So I approached this problem and may I say how I felt about others. I would like to pay a tribute to the Prime Minister of the United Kingdom and to others also there because they approached this in that spirit also, not so much to get some debating point or a change of a word here and there in this Declaration. It was possible that if I had tried my hardest I might have got a word here and there changed in this Declaration but the essence could not have been changed because there was nothing more for us to get out of that Declaration. I preferred not to do so because I preferred creating an impression, and I hope a right impression, that the approach of India to these and the other problems of the world was not a narrow-minded approach. It was

an approach based on faith and confidence in her own strength and in her own future and therefore it was not afraid of any country coming in the way of that faith, it was not afraid of any word or phrase in any document but it was based essentially on this that if you approach another country in a friendly way, with goodwill and generosity, you will be paid back in the same coin and probably the payment will be in even larger measure. I am quite convinced that in treatment of nations to one another, as in the case of individuals, only out of goodwill will you get goodwill and no amount of intrigues and cleverness will get you good result out of evil ways. Therefore, I thought that that was an occasion not only to impress England but others also, in fact to some extent the world, because this matter that was being discussed at No. 10 Downing Street in London was something that drew the attention of the entire world. It drew the attention of the world, partly because India is a very important country, potentially so, and actually so too. And the world was interested to see how this very complicated and difficult problem which appeared insoluble, could be solved. It could not be solved if we had left it to eminent lawyers. Lawyers have been their use in life; but they should not be spread out everywhere. It could not have been solved by these extreme, narrow-minded nationalists who cannot see to the right or to the left, but live in a narrow sphere of their own, and therefore forget that the world is going ahead. It could not be solved by people who live in the past and cannot realise that the present is different from the past and that the future is going to be still more different. It could not be solved by any person who lacked faith in India and in India's destiny.

I wanted the world to see that India does not lack faith in herself, and that India is prepared to co-operate even with those with whom she had been fighting in the past; provided the basis of co-operation today is honourable that it is a free basis, a basis which would lead to the good not only of ourselves, but of the world also. That is to say, we would not deny that co-operation simply because in the past we have had a fight, and thus carry on the trail of our past "karma" along with us. We have to wash out the past with all its evil. I wanted if I may say so in all humility, to help in letting the world look at things in a slightly different perspective, or rather try to see how vital questions can be approached and dealt with. We have seen too often in the arguments that go on in the assemblies of the world, this bitter approach, this cursing of each other, this desire not, in the least, to understand the other, but deliberately to misunderstand the other, and to make clever points about it. Now, it may be a satisfying performance for any of us, on occasions to make clever points and be applauded by our people or by some other people. But in the state of the world today, it is a poor thing for any responsible person to do when we live on the verge of catastrophic wars, when national passions are roused, and when even a casually spoken word might make all the difference.

Some people have thought that by our joining or continuing to remain in the Commonwealth of Nations we are drifting away from our neighbours in Asia, or that it has become more difficult for us to co-operate with other countries, great countries in the world. But I think it is easier for us to develop closer relations with other countries while we are in the Commonwealth than it might have been otherwise. That is rather a peculiar thing to say. Nevertheless I say it, and I have given a great deal of thought to this matter. The Commonwealth does not come in the way of our co-operation and friendship with other countries. Ultimately we shall have to decide, and ultimately the decision will depend on our own strength. If we are completely dissociated from the Commonwealth, for the moment we are completely isolated. We cannot remain completely isolated, and so inevitably by stress of circumstances, we have to incline in some direction or other. But that inclination in some direction or other will necessarily

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be a give-and-take affair. It may be in the nature of alliances, you give something yourself and get something in return. In other words, it many involve commitments, far more than at present. There are no commitments today. In that sense, I say we are freer today to come to friendly understandings with other countries and to play the part, if you like, of a bridge for mutual understanding between other countries. I do not wish to place this too high; nevertheless, it is no good placing it too low either. I should like you to look round at the world today and look more especially during the last two years or so, at the relative position of India and the rest of the world. I think you will find that during this period of two years or even slightly less, India has gone up in the scale of nations in its influence and in its prestige. It is a little difficult for me to tell you exactly what India has done or has not done. It would be absurd for anyone to expect that India can become the crusader for all causes in the world and bring forth results. Even in cases that have borne fruit, it is not a thing to be proclaimed from the housetops. But something which does not require any proclamation is the fact of India's present prestige and influence in world affairs. Considering that she came on the scene as an independent nation only a year and a half or a little more ago, it is astonishing—the part that India has played today.

One thing I should like to say, and it is this. Obviously a declaration of this type, or the Resolution that I have placed before the House is not capable of amendment. It is either accepted or rejected. I am surprised to see that some honourable Members have sent notices of amendments. Any treaty with any foreign power can be accepted or rejected. It is a joint Declaration of eight, or is it nine, countries—and it cannot be amended in this House or in any House. It can be accepted or rejected. I would therefore, beg of you to consider this business in all its aspects. First of all, make sure that it is in conformity with our old pledges, that it does violence to none. If it is proved to me that it does violence to any pledge that we have undertaken, that it limits India's freedom in any way, then I certainly shall be no party to it. Secondly, you should see whether it does good to ourselves and to the rest of the world. I think there can be little doubt that it does us good, that this continuing association at the present moment is beneficial for us, and it is beneficial in the larger sense, to certain world causes that we represent. And lastly, if I may put it in a negative way, not to have had this agreement would certainly have been detrimental to those world causes as well as to ourselves.

And finally, about the value I should like this House to attach to this Declaration and to the whole business of those talks resulting in this Declaration. It is a method, a desirable method, and a method which brings a touch of healing with it. In this world which is today sick and which has not recovered from so many wounds during the last decade or more, it is necessary that we touch upon the world problems, not with passion and prejudice and with too much repetition of what has ceased to be, but in a friendly way and with a touch of healing, and I think the chief value of this Declaration and of what preceded it was that it did bring a touch of healing in our relations with certain countries. We are in no way subordinate to them, and they are in no way subordinate to us. We shall go our way and they shall go their way. But our ways, unless something happens, will be friendly ways; at any rate, attempts will be made to understand each other, to be friends with each other and to co-operate with each other. And the fact that we have begun this new type of association with a touch of healing will be good for us, good for them, and I think, good for the world (*Cheers*).

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move the following amendment to the motion:—

“(1) That in the motion, for the words ‘do hereby ratify’ the words ‘has carefully considered’ be substituted:

(2) That the following be added at the end of the motion:-

“and is of opinion that membership of the Commonwealth is incompatible with India’s new status of a Sovereign Independent Republic. Besides, the terms of membership are derogatory to India’s dignity and her new status, and as such are bound to circumscribe and limit her freedom of action in international affairs and tie her down to the chariot-wheel of Anglo-American power bloc. India with a population of 350 millions out of a total population of about 500 millions of the whole of the Commonwealth cannot accept the King of England as the Head of the Commonwealth in any shape or form. Also, India cannot become the member of a Commonwealth, many members of which still regard Indians as an inferior race and enforce colour bar against them and deny them even the most elementary rights of citizenship. The recent anti-Indian riots in South Africa, the assertion of the all White policy in Australia and the execution of Ganapathy and the refusal to commute the death sentence on Sambasivan in Malaya in spite of the representations of the Indian Government clearly show that India cannot derive any advantage from the membership of the Commonwealth and the Britain and other members of the Commonwealth cannot give up their Imperialist and racial policies.

Considering all these facts, and also considering the fact that the Congress Party, which is in an absolute majority in the Constituent Assembly and in other provincial legislatures in the country, has had the complete independence of India with the severance of the British connection as its declared goal at the time of the last general elections, any new relationship in contravention of that policy with the British Commonwealth can only be properly decided by the new Parliament of the Indian Republic, which will be elected under the new constitution on the basis of adult suffrage.

This Assembly therefore resolves that the question of India’s membership of the Commonwealth be deferred until the new Parliament is elected and the wishes of the people of the country clearly ascertained. The Assembly calls upon the Prime Minister of India to inform the Prime Minister of Great Britain and other members of the Commonwealth accordingly.”

Sir, I have heard with great attention the historic speech of my Leader, the Prime Minister. He himself said that this is a historic occasion and the Declaration he has asked us to ratify is also a historic Declaration. In the recent past there have not been many such occasions when we have been called upon to decide issues of such great moment; perhaps the most recent occasion comparable to it was that when the country was called upon to decide the issue of India’s partition. That issue was not discussed by this House but was decided by the All-India Congress Committee. We know the fruits of the decision that was taken on that occasion have not been very good. I was one of the most bitter opponents of the partition plan. Today also I have to voice my disagreement with my leader on this London Declaration to which he has agreed already and which he wants us to ratify.

Pandit Balkrishna Sharma (United Provinces: General): Sir, on a point of order, I should like to know whether in view of the almost negative character of the amendment it is in order.

Mr. President : The honourable Member himself said that it is “almost a negative” and not “a negative”; so I have therefore allowed it.

The Honourable Shri Jawaharlal Nehru : Sir, I should like to have your ruling regarding international treaties and whether such an amendment would be in order when a treaty of this type by the Government of the day has been concluded. I do not know a treaty can be accepted or rejected; amendment cannot be made to a treaty.

Mr. President : Here we go by the rules and I have to see whether under the rules the amendment is in order. What the effect of that on the treaty will be I do not know but I think under the rules the amendment is in order

[Mr. President]

and therefore I have allowed it. Of course it is for the House to reject it if it thinks it should not be passed.

Mr. Z. H. Lari (United Provinces: Muslim): May I know whether the ratification of this Declaration is within the province of his House as a constitution-making body?

Mr. President : Yes, I think it is.

Prof. Shibban Lal Saksena : I am asking this House neither to accept this Declaration nor to reject it but only to postpone its consideration until the country has given its verdict upon this momentous issue. The Prime Minister himself said just now that when he was negotiating this Declaration alone in London, he felt the burden of a heavy responsibility on his shoulders, but the feeling that he had consulted his colleagues here before he went helped him to shoulder the burden. I think this Declaration is a violation of the election pledges contained in the election manifesto of the Congress Party on which the overwhelming majority in this House was elected and this House is therefore not competent to ratify this declaration. My amendment only embodies what my Leader the Prime Minister has himself taught us all his life. I shall quote from his address to the All India Convention held in Delhi on March 19, 1937 where all the legislators elected on Congress ticket had assembled and he reminded us of our election manifesto. This is what he said then:

“I would have them remember the Election Manifesto and the Congress resolutions on the basis of which they sought the suffrage of the people. Let no one forge that we have entered the legislatures not to co-operate in any way with British imperialism but to fight and end this Act which enslaves and binds us. Let no one forget we fight for independence.

“What is this Independence? A clear, definite, ringing word, which all the world understands, with no possibility of ambiguity. And yet, to our misfortune, even that word has become an object of interpretation and misinterpretation. Let us be clear about it. Independence means national freedom in the fullest sense of the word; it means, as our pledge has stated, a severance of the British connection. It means anti-imperialism and no compromise with empire. Words are hurled at us, - dominion status, Status of Westminster, British Commonwealth of Nations, and we quibble about their meaning. I see no real commonwealth anywhere, only an empire exploiting the Indian people and numerous other peoples in different parts of the world. I want my country to have nothing to do with this enormous engine of exploitation in Asia and Africa. If this engine goes, we have nothing but good-will for England, and in any event we wish to be friends with the mass of the British people.

“Dominion status is a term which arose under peculiar circumstances and it changed its significance as time passed. In the British group of nations, it signified a certain European dominating group exploiting numerous subject peoples. That distinction continues whatever change the Status of Westminster might have brought about in the relations *inter se* of the members of that European dominating group. That group represents British imperialism and it stands in the world today for the very order and forces of reaction against which we struggle. How then can we associate ourselves willingly with this order and these forces? Or is it conceived that we might, in the course of time and if we behave ourselves, be promoted from the subject group to the dominating group, and yet the imperialist structure and basis of the whole will remain more or less as it is? This is a vain conception having no relation to reality, and even if it were within the realms of possibility, we should have none of it, for we would then become partners in imperialism and in the exploitation of others. And among these others would probably be large numbers of our own people.

“It is said, and I believe Gandhiji holds this view, that if we achieved national freedom, this would mean the end of British imperialism itself. Under such conditions there is no reason why we should not continue our connection with Britain. There is force in the argument for our quarrel

is not with Britain or the British people but with British imperialism. But when we think in these terms, a larger and a different world comes into our ken, and dominion status and the Statute of Westminster pass away from the present to the historical past. That larger world does not think of a British group of nations, but of a world group based on political and social freedom."

Mr. President : Is the honourable Member going to read out the whole speech?

Prof. Shibban Lal Saksena : No. I have only one more paragraph.

"To talk, therefore, of dominion status in its widest significance, even including the right to separate, is to confine ourselves to one group, which of necessity will oppose and be opposed by other groups, and which will essentially be based on the present decaying social order. Therefore, we cannot entertain this idea of dominion status in any shape or form; it is independence we want not any particular status. Under cover of that phrase, the tentacles of imperialism will creep up and hold us in their grip, though the outer structure might be good to look at."

"And so our pledge must hold and we must labour for the severance of the British connection. But let us repeat again that we favour no policy of isolation or aggressive nationalism, as the word is understood in the Central European countries today. We shall have the closest of contacts, we hope, with all progressive countries, including England, if she has shed her imperialism."

This was in 1937. I will now quote a small paragraph from the declaration of the 10th August 1940. This is the conclusion of a long article that Panditji wrote on "The Parting of the Ways." He said:

"That is the goal of India—a united, free, democratic country, closely associated in a world federation with other free nations. We want independence, but not the old type of narrow, exclusive independence. We believe that the day of separate warring national States is over."

"We want independence and not dominion or any other status. Every thinking person knows that the whole conception of dominion status belongs to past history: it has no future. It cannot survive this War, whatever the result of this War. But whether it survives or not we want none of it. We do not want to be bound down to a group of nations which has dominated and exploited over us: we will not be in an empire in some parts of which we are treated as helots and where racialism runs riot. We want to cut adrift from the financial domination of the City of London. We want to be completely free with no reservations of exceptions, except such as we ourselves approve, in common with others, in order to join a Federation of Nations, or a new World Order. If this new World Order or Federation does not come in the near future we should like to be closely associated in a federation with our neighbours—China, Burma, Ceylon, Afghanistan, Persia. We are prepared to take risks and face dangers. We do not want the so-called protection of the British army or navy. We shall shift for ourselves."

"If the past had not been there to bear witness, the present would have made us come to this final decision. For even in this present of war and peril, there is no change in the manner of treatment accorded to our people by British imperialism. Let those who seek the favour and protection of this imperialism go its way. We go ours. The parting of the ways has come."

Sir, it is a most serious thing to oppose a Resolution moved by no less a person than Panditji, but I have felt that the occasion is such that I must voice what I feel. I feel from the innermost depths of my being that we are committing a mistake, a mistake as great as that which took place on the occasion of accepting the Mountbatten plan accepting the partition of the country. There are occasions in history when men must voice what they feel without care for consequences. I feel that this amendment which I have placed before you should be considered calmly and coolly.

Sir, since our leader signed the Declaration on the 27th April, I have carefully read and studied, every speech that he has delivered in party meetings and in public, and heard every talk of his that has been radio-ed. I have read all

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the comments in the papers on this Declaration. I have also read what Sardarji has had to say upon it. I have very seriously considered whether we were really gaining something for our country, but I feel that the gains are so little compared to the losses that a ratification of the Declaration would be suicidal.

Our leader has just now told us that critics like me are living in the past, that they are not living in the present and that they cannot see the future. That is the charge he made against some of the leaders for whom we and he both have great respect and I have deliberated upon it very coolly. I have tried to see that the extracts I have quoted were only meant for the past and do not hold true for the present. But I find they enunciate principles which do not change. Also I feel that the present has not changed. Almost as soon as the Prime Minister had signed the Declaration, that brave Indian leader of Malayan Trade Unions, Ganapathy, was executed, and today when we are going to pass this resolution, Sambasivam, another brave Indian in Malaya, may have been either already executed this morning or may probably be waiting to be hanged today. I feel that British imperialism goes its own way and it will not be deflected no matter what we do to try to cajole it or to win it over. It has its own purpose. I am surprised that our Prime Minister, who is respected all over the world for his idealism sometimes forgets these simple things. See what is happening in South Africa where Indians are being bounded out like an enemy. We can forget the past, but how can we shut our eyes to the present? True, we must not allow sentiment to come in our way in deciding great issues. And even though the whole country is sentimentally against the ratification of this declaration, I will now look at it from the point of view of the concrete advantages that we are told we shall get from it. Personally speaking, I could not find any advantages. Suppose we cut ourselves away from the Commonwealth. Suppose we say that we are an Independent Republic, and a Republic is completely incompatible with monarchy. What will happen? It may be that there will be certain difficulties in the beginning but have we not pledged ourselves to overcome all difficulties incidental to freedom? Therefore, these temporary difficulties will have to be overcome: but our great nation must not continue to be bound down to a small country like England for ever. I feel Sir, that when India cuts herself away from the Commonwealth, she shall have the respect of the world which is due to a completely free nation and she shall inspire confidence in the world when it knows that she is really unattached to any bloc. By aligning ourselves with the Commonwealth we certainly join one power bloc. We cannot get rid of this fact. We are joining the Anglo-American power bloc. We cannot take any decision which is against the decision of this power bloc.

Pandit Balkrishna Sharma : May I know, if the honourable Member is aware that even Members of the Commonwealth differ in the United Nations Organization on international questions?

Prof. Shibban Lal Saksena : I fully know that they differ but only on unimportant details. But I say that being in the Commonwealth we shall have to go with them on major issues. We cannot oppose them unless we want to break with them. Therefore by being in the Commonwealth, we will have to follow them and to that extent our independence will be circumscribed. Already Russia feels that we have joined the Anglo-American power bloc. Observer M. Marinin, writing in Monday's *Pravda* of Moscow, on the 30 April declared "that however Constitutional Forms are altered, the relations between Britain and India remained unchanged except for the introduction of a new military political basis. India's reform as a republic was being used to strike a new bargain between the British and Indian leaders involving the transformation of this "Republic" into an "Anglo-American lever in Southeast Asia." British observers regarded India as the 'Key to Asia which is the

Eastern Front in the present cold war' and naturally the United States and Britain wished to own this key. For this purpose they were employing economic pressure through loans and frank intimidation.

“The Basic purpose of the London meeting is the Labour Government’s desire to bind the Dominions with a chain of new far-reaching military obligations including them in the system of aggressive policy of the Anglo-American bloc thus striving to weaken the action of centrifugal forces now destroying the British Empire.”

Sir, communist China has also declared that by signing this declaration, our country has joined the Anglo-American power bloc. We have always hoped and imagined that India and China will work together. That hope is now shattered. Indo-China, Siam, Malaya and Burma are already under communist influence. What then becomes of India’s leadership of Asia? One-third of Asia is part of Russia. China forms another one-third of Asia, and it is going communist. Of the remaining one-third, only India and Pakistan and some middle-east countries remain outside the communist away. By joining the Commonwealth, India becomes hostile to this major part of Asia which is under communist influence. So our leadership of Asia goes with our membership of the Commonwealth. If we sever connection with the Commonwealth and remain really unattached, we earn the respect of Russia and other countries under communist influence also and then the countries in the Anglo-American bloc will also woo our friendship.

By joining the Commonwealth we lose our bargaining power with all the countries in the world. We sell our hard-won freedom and do not get even the proverbial mess of pottage in return. In fact, India becomes the last bastion of Anglo-American Imperialism in its fight against Russia. So far China was the frontier of Soviet influence in the east, and was the battle-ground where American forces were fighting communism behind the Kuomintang. China is now lost to America. India is therefore best fitted to be the new battle-ground from where Anglo-American forces can fight the advancing tide of communism. By joining the Commonwealth therefore, we are joining the third world war on the Anglo-American side against Russia. That is why I am so strongly opposed to this motion and desire my amendment to be accepted.

Sir, I agree with Acharya Narendra Dev that Russia does not want war and we would be in a much better position to promote world peace and maintain world peace if we say that we will not be in the Commonwealth. I have said that I honestly feel. I feel that if I did not say this I would not have done my duty. From the 26th January 1931 I have been taking the Independence Pledge—our leader made a reference to it—and that Pledge says that this British Empire has ruined India economically and politically and spiritually and therefore severance of the British connection is essential for our independence. I, therefore feel that as one who has taken that Pledge I cannot with a clean conscience support this Resolution. I therefore wish that this amendment of mine be accepted and a decision on this issue be deferred and the country be called upon to give its decision on this momentous issue.

Shri Lakshminarain Sahu (Orissa: General): *[Mr. President, I only wish to move that the following be added to the Resolution moved by Pandit Jawaharlal Ji.

“Provided the Commonwealth does not allow discrimination of Indians in South Africa and Australia and also metes out equal justice to all the component units of Commonwealth in social and economic matters.”

*[] Translation of Hindustani Speech.

[Shri Lakshminarain Sahu]

While moving this, I am already feeling a bit apprehensive, because Pandit Nehru has just told us that it would not be proper to change what has been decided upon in an international gathering. I therefore wish to draw his attention to the fact that the proviso moved by me does not alter the implications of the international decision. But I wish to insert this provision in order to avoid the doubts that have arisen in our minds.

First of all, I want to say that it has always been the view of the society to which I belong, the Servants of India Society, that the association between India and Britain is due to some deep mystery. I personally believe it is due to Divine Providence, and with this idea, Mr. President, I wish to say, that the former anarchists have now become moderates. But I have, and many people have, misgivings in their minds on account of the change that has come about in the views of Pandit Jawaharlal Nehru who used to be till recently an anarchist. When I think of the Resolution moved just now, I am reminded of a function called Phool Sabha (Entertainment Function) which is held at the time of marriage celebrations. In this Phool Sabha every one talks of nice things and each and all are lost in mirth. I feel that the recent Commonwealth Conference was like that Phool Sabha. I wish that the Constituent Assembly should complete the Constitution first and after that we should go out of the Dominion Status for a day and the next day we should join it again. If that happens, we can consider ourselves to be independent, and later on join the Commonwealth of our own will. It appears to us that we have been caught unawares in the meshes of the trap that the British have so cleverly and secretly laid for us. Such a doubt, in any case, does arise at times in our mind. My own fear is that all this has been done to break into pieces the United India with which we had been so far familiar. It was for the first time in the viceroyalty of Lord Curzon that it had been decided to partition Bengal into two fragments. That partition gave birth to a genuine Indian national movement. Long after that, Burma was separated from us—Burma which had been an integral part of our State. Again we have witnessed the partition of India itself at the time when the British found themselves compelled to give *Swaraj* to India. In a way this partition was effected by exploiting our intense eagerness for *Swaraj*. The country came to be divided into two parts, and millions were ruined as a consequence of that division. It is my feeling that only a few have yet had a consciousness of the freedom that has come to us. But the common people, those whom we term as the masses, have not their life affected in the least by this advent of freedom.]

Mr. President : *[Please excuse me. Are you speaking on the amendment or on some other subject?]

Shri Lakshminarain Sahu : *[This is my amendment :

“Provided that Commonwealth does not allow discrimination of Indians in South Africa and Australia and also metes out equal justice to all the component units of the commonwealth in social and economic matters.”

Mr. President : *[I know that.]

Shri Lakshminarain Sahu : *[I want equal justice. When we remain in the Commonwealth I must say that we should receive equal justice. If we do not get equal justice, what is the advantage of remaining in the Phool Sabha? Phool Sabhas are held during marriages and people chew betel leaves and enjoy it. It is said that after attaining independence we have attained a very high prestige. But I do not understand in what way we have attained a high prestige. I do not want that we may become superiors and others may go

*[] Translation of Hindustani Speech.

down but I do want that justice should be done to us. Unless this is done, nothing would have been gained. We do not get civil rights in Africa; we cannot purchase land: colour bar is prevailing there. Pakistan too, which was with us a few days back and rather belonged to us, has also joined the Commonwealth. We know how we have been treated in the Kashmir affair. We know that we joined the U.N.O. but gained nothing thereby. That is a very big organisation. The Commonwealth is comparatively a smaller one. If we gain anything out of it, I can understand that we have gained independence. I only want that while we remain in the Commonwealth, we should surely demand that we should not be ill-treated in any way anywhere. When there is no such machinery in the Commonwealth which can compel South Africa to behave, there appears to me to be no reason why we should remain in it. We should try to create such a machinery and should raise this point again and again there, otherwise there can be no gain out of it.

I do not want to speak at length, Mr. President, for want of time; but I would like to know whether we have joined the Commonwealth because England wanted us to do so or because we desired to do so. I understand England desired it since long and Mr. Churchill desired the same from the year 1944. He stated in his speech in 1944:—

“The vast development of air transport makes a new bond of union, and there are new facilities of meeting, which will make the councils of the British Commonwealth of Nations a unity much greater than ever was possible before, when the war is over and when the genius of the air is turned from the most horrible forms of destruction to the glories of peace.”

“When peace returns, and we should pray to God it soon may, the conference of Prime Ministers of the Dominions, among whom we trust India will be reckoned and with whom the colonies will be associated, will, we hope, become frequent and regular facts and festivities of our annual life.”

I would like that instead of remaining festivities of our annual life, these should be of some advantage to us and we should get our due rights. Until we create such an atmosphere, there is no difference between remaining in or out of the Commonwealth. It appears that we are afraid of Russia's advent. Uptill now we had been saying that we will not join any bloc of the U.N.O. and had spirited discussion over this question, but today it appears to have been decided that we are against Russia and in favour of the Anglo-American bloc. There can be no doubt about it. Whatever it may be, I am neither a supporter of Russia nor am I a supporter of Anglo-American bloc. I want that my country should be in line with others, but by the British policy we lost Pakistan, we lost even Ceylon which had remained with us since the days of Shri Ramachandra and we lost Burma. This is my amendment and to gain this end I have moved it. I do not want to say anything more but I want that our Prime Minister should certainly bear it in mind that our representative, joining the international conferences, should not be deluded by feast and festivity, but he should try to raise the prestige of our country.]

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, referring to the second supplementary list of amendments, I am not moving Nos. 1, 2 and 3. As regards No. 4, I find that Mr. Sahu's amendment is on the same lines. So I am not moving that amendment also, but by your leave, Sir, I will speak on the motion.

Mr. President : As there are no other amendments, Mr. Kamath may continue the discussion.

Shri H.V. Kamath : Mr. President, let me at the outset felicitate the Honourable Shri Jawaharlal Nehru on the energy of body and mind that he has expanded during the last month, may, during the last year or more, as a result of which the London decision has emerged into light and reality. His

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achievement at this conference has been referred to or criticised by various people in various ways. The truth or the quality of the achievement to my mind lies between the description given to it by Sardar Vallabhbhai Patel referring to it more or less as a personal triumph and the reference to it made by the Congress President, Dr. Pattabhi Sitaramayya as nothing new. The truth or the equality of it lies somewhere between these two opinions or views of the London achievement.

The declaration which is referred to in this motion has three concrete aspects. Firstly, if we cast a glance at paragraph 1 and the subsequent paragraph, we find that the Commonwealth is described as the British Commonwealth of Nations in paragraph 1. It is later referred to as merely the Commonwealth of Nations. That is to say that the first aspect of this London decision or formula is the dropping or the deletion of the word "British" from the designation of this group of nations. Secondly, the formula has attempted in a subtle manner, perhaps not very easy to understand for a lay man, to reconcile the sovereign independent Republic, that we are going to be in a short while, with continued association or membership in this Commonwealth of Nations with the King as its Symbolic head.

It is a new development, may I say, in political theory, this association of an independent Republic with the Commonwealth of Nations, which has a king at its head. The last aspect of the Declaration is that this Commonwealth of Nations which we have joined as a full member will co-operate, will strive, will endeavour in the path and in the pursuit of peace, liberty and progress. We have to examine this Declaration in the light of these three aspects to which I have referred. The first one deals with the title which is a formal one, just a change in the facade in the appearance of this group of nations. But I was rather disconcerted to read the other day Mr. Attlee's answer to a question in the House of Commons on the 2nd of May. Hardly was the ink dry on the paper on which this Declaration was drafted and signed, only five days later, Mr. Attlee in answer to a question said that there had not been an official change in the designation of this group of nations. By your leave I would like to quote verbatim this reply given by Mr. Attlee to a conservative Member of the House of Commons, Mr. Walter Fletcher. The Prime Minister, Mr. Attlee, on the 2nd May, five or six days after this Declaration was proclaimed to the world said in a Parliamentary reply:

"There was no agreement to adopt or exclude the use of any other terms, namely Commonwealth, British Commonwealth or even Empire....."

"The terminology, if it is to be useful keeps pace with developments, without becoming rigid or doctrinaire, with constitutional developments in the Commonwealth, the British Commonwealth and the Empire." Again he refers to all these three, the Commonwealth, the British Commonwealth and the Empire. "This has been the subject of consultations between H.M.G. and other Commonwealth countries and there has been no agreement to adopt etc." This is the official reply given by him (Mr. Attlee) to a Member of the House of Commons. "There has been no agreement to adopt or exclude the use of any one of these terms nor any decision in the United Kingdom to do so."

Mr. Fletcher further asked if it was appreciated that the words 'the British Empire' were held in high respect by many throughout the Empire and would the Prime Minister (Mr. Attlee) see that by daily use they were not pushed out of the picture? Mr. Attlee replied that "opinions are different in different parts of the Commonwealth and Empire and it is better to allow people to use what they like best;" that is to say, he said that there had been no official change in the description or the designation of this group of nations, called "the Commonwealth of Nations."

So far as the content of this particular change, namely the deletion of the word "British" in the declaration, is concerned, I am not at all satisfied. Have we by agreeing to drop the word "British" done away with all racial policies in the Commonwealth? If it is going to be a Commonwealth of Nations, where East and West, British, Indian and even others, may be associated, have we guaranteed or have we made sure that all anti-non-white,—I will not say pro-British or pro-white, policies have been completely given up? I was happy to learn from the Honourable Pandit Nehru that our fight against the Apartheid or fight against racial fascism in South Africa continues, but may I ask in all humility, Sir, why this issue, vital as it is, was not broached and why this was not raised at all in this Conference in London, where Mr. Malan and his opposite members in various countries were present? There were no reasons given either by Pandit Nehru or anybody else why this was not pressed at this Conference. Perhaps the only reason given against raising that issue was that we are fighting on other planes and that there was no need to raise this issue in this Conference. I wish that a serious attempt had been made to raise and discuss the racial policies within the Commonwealth countries at this London Conference, but as it is, it has not been done and our only hope is that at an early date this Commonwealth guided or goaded by world events, world developments, will abandon racial policies in favour of a really democratic policy and in favour of a really non-racial policy.

Then, Sir, I come to the second aspect of it. We as a sovereign Independent Republic are going to continue as a Member of this Commonwealth of Nations, a full member. The only change that has been made is a change between the past and the present. I am no prophet and I think nobody can say what the future will bring and so I am talking only of the past and the present. The only change to my mind between the past and the present so far as this aspect is concerned is that we hold no longer any allegiance as such to the Crown, but the King as a symbolic head of this group of nations remains. Now, Sir, as a Republic, we are going to have our own Head; the Head of the Federation, the Head of the Union of India will be our Head. I would not have minded this Declaration if it had merely stated "The Government of India have declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the king as the symbol of the free association of its independent member nations." If that has stopped there, I think it would have been far happier, but to tag on a later clause "and as such as the head of the Commonwealth" was not desirable. What is the position? We are in the Commonwealth, a full member and not a member nation which is bound by close association or a close tie as Eire has done recently. Eire has ceased to be a member and Mr. Costello said when he moved the Republic of Ireland Bill—I am reading Sir, from a copy of the memorandum circulated to the Members of the Assembly in the last session. The Honourable Pandit Nehru referred to this in a speech during that session, and he quoted from Mr. Costello's speech.

Mr. Costello, moving the Bill, said:

"The position of the Irish Government is that while Ireland is not a member of the British Commonwealth of Nations, it recognises and confirms the existence of a specially close relationship arising from traditional and long established economic, social and trade relations, based on common interests with the nations that form the British Commonwealth."

This is the formula that Eire has adopted. I fail to see why a similar formula could not have been evolved for India as well without our being a full member of the Commonwealth, and as such a party, though not directly, but indirectly to all that is going on within this Commonwealth. Pandit Nehru referred to the bad things, evil things, many undesirable distasteful things that are going on in

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this Commonwealth. He said, we are all concerned about this; we are all anxious; we are exercised about these matters; but we will fight them in another way. Sir, was it not possible for us, as Eire has done, to enter into a specially close relationship, without continuing as a full member of the Commonwealth subject to all the limitations and restrictions and various commitments that may be made within the Commonwealth amongst its members? In this connection, Sir, I should like to bring to your notice and to the notice of the House one significant development that took place in the London Commonwealth Premiers Conference of October. We were told, at least in the Press and in other ways, that there were no defence commitments of any sort, neither tacit nor explicit. I would like to place before the House for its consideration an important paragraph in the communique issued at the close of the London Conference. I am reading from an American Paper which published the full text of the communique issued on October 22 at the close of the London Conference which Pandit Nehru attended as the Prime Minister of India. I do not know if this appeared in the Indian papers; I am quoting from an American paper which published the whole of the communique. The relevant paragraph reads thus:

“The United Kingdom Government outlined the nature of its association with other Western European nations under the Brussels treaty as a regional association within the terms of the United Nations Charter. There was general agreement,”—mark the words “there was general agreement”—I do not know if the words “general agreement” mean unanimous or whether our Prime Minister differed on this point—“that this association of the United Kingdom with her European defence neighbours was in accordance with the interests of the other members of the Commonwealth, the United Nations and the promotion of world peace.”

I do not know if this position stands today, whether we approve or we agree with whatever commitments have been entered into by the United Kingdom Government with her European neighbours, whether they are in our own interests or whether we wash our hands clean of them. If we are pursuing an independent positive foreign policy, neither allied to the Western Bloc nor to the Eastern Bloc, how can we say that we approve or we agree that your contract, your defence commitments with your European neighbours are in our own interests also and that this agreement will promote world peace, because this agreement which later resulted in the Atlantic Pact, has been fiercely attacked by some other European nations? The U.S.S.R. went so far as to say that they were not even consulted about this Atlantic Pact and had they been consulted, certainly they would have been a party to it and that they might have guaranteed the collective maintenance of world peace. They were not consulted and it had been concluded behind their back; I do not wish to sit in judgment; but the Soviet Government did say that this pact was aimed at them because it was signed behind their back.....

Pandit Balkrishna Sharma : May I, on a point of information, Sir, know from the honourable Member if we have accepted either the Brussels Treaty or the Atlantic Pact?

Shri H. V. Kamath : If my honourable Friend had followed me aright, I am sure he would not have raised this point.

Pandit Balkrishna Sharma : There is no Atlantic Pact here.

Shri H. V. Kamath : I am not discoursing on the Atlantic Pact. I would request him to follow closely what I say and not keep on writing and now and then get up and make a remark.

The point I am making out is how far we are committed to the maintenance of the *status quo* of the Commonwealth generally, and particularly in Malaya.

in South-East Asia and perhaps in Burma, and also Africa. We read in this morning's papers that in another two years, Britain will transfer Tripolitania to Italian trusteeship. The old mentality, the old outlook of the 19th century persists. As if they are mere chattel, they transfer a country from one trusteeship to another, as if the people are not concerned at all. This is the British policy even today. Colonialism is rampant; imperialism is rampant in most parts of Asia. Are we subscribing to this? Are we going to be a party even impliedly though not explicitly, indirectly if not directly? Are we going to be a party to all that is going on, racialism, colonialism, imperialism, in this Commonwealth, because Attlee has said, "we can call it Empire if you like; it is an Empire, may be a Commonwealth; we have not made any official change at all." Here comes the part that is being played by Britain today in Malaya and also in Burma. Burma is our neighbouring country, and a good neighbour at that. We have had very cordial relations, not merely political—after all these are evanescent and fleeting—but deeper spiritual and cultural relations with Burma. It is natural for us to be interested in Burma, in the welfare of the Burman people and the defence of a Government that will ensure the peace and security in our neighbouring country. So is Pakistan, I can understand; so is perhaps Ceylon. Britain says they have given up imperialism, colonialism, racialism; why on earth then should Britain be interested in this Burma affair? To my mind, there is only one answer to this, and that is, Britain is interested in Burma because Burma borders on Malaya. Malayan tin and Malayan rubber are far more important to Britain than perhaps even Burmese peace or Burmese security or Burmese freedom. Therefore when they see that Burma is threatened, that Burma is going down—God forbid that—then they wake up and tell themselves, "Here we are, if Burma goes under, Malaya is all but lost; and Malaya should not be lost". That is why today Malaya is following a policy of terrorism, suppression and repression of democracy and nationalism, and the entire nationalist movement is being attempted to be suppressed in Malaya. We have no reason to complain that communism is gaining ground in South-East Asia, in Siam and in other parts, because the French, the Dutch, and the British imperialists have not given up their old game. They are still at it. Therefore, when I read in the papers that Britain, India, Pakistan and Ceylon are going to aid Burma, I felt there was something fishy, because Britain to my mind has got ulterior motives because of her interest in Malaya and her brother imperialists of France are concerned in Vietnam Indo-China, and the Dutch in Indonesia. If Britain had washed its hands of Imperialism and Colonialism in Asia, then certainly she could tell the Malayan people to set up their own Government and withdraw as they did from India but they do not say so. They say 'We are sticking on in Malaya' and the French say 'We are sticking on in Indo-China' and the Dutch say 'We are going to stay on in Indonesia'. The development in South East Asia is a portentous development and so long as the U.K. Government is a party to all these that are going on—and the U.K. is a brother member of the Commonwealth, and whatever U.K. may say that the Malayan Government may decide what they like, U.K. cannot wash its hands clean of the blood of Ganapathy who was executed a few days ago and of another Indian who is perhaps being executed today. The U.K., through its Colonial Office, is responsible for what is going on in Malaya. Can we say with our hand on our heart that so long as U.K. Government follows such policy in Malaya, Australia flaunts its "White Australia" policy, and South Africa follows its anti-Indian policy, that we freely and willingly continue to be members of the Commonwealth, because this declaration does not lay down any conditions whatever for our continuance as members of the Commonwealth? It only says that the Government of India have declared and affirmed their desire to continue as a member. Nothing is laid down beyond a bold and blank statement that we will continue as members of the Commonwealth irrespective of what may happen in the Commonwealth. That, Sir, is something which I do not like, and my personal fear is that Britain is anxious that India should pull her chestnuts out of the Asian fire. Britain is interested in this that India

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should help her to maintain *status quo* in Asia. I hope we will not do it but Britain is interested in this, I am sure. I hope we shall not help Britain to pull her chestnuts out of the Eastern fire and that we will follow our own independent foreign policy.

Then I come to the third aspect of it and that is that we have agreed to freely co-operate in the pursuit of peace, liberty and progress. Very fine words but fine words butter no parsnips. Britain has always stated that she stands for progress, liberty and peace and what not. George Bernard Shaw, to whom Pandit Nehru presented a few mangoes the other day, once wrote in one of his plays—it is, I believe, in ‘Man and Super Man’—to the effect that it is amazing how Britain adapts her diplomatic policy. When Britain wants to behead a king, she does it on Republican principles. When Britain wants to restore a king, she does it on Royalist or monarchical principles. When Britain wants to colonise another country, she does it on humanitarian principles and when she wants to commit any outrage or crime, she does it on the eternal principle of justice. I am sure that today Britain can very well say after accommodating Republican India in the Commonwealth that they have done what they have done in Commonwealth principles, on libertarian principles, and on the principles of peace. She may even say on fraternal principles but we have to go deeper into this and search for the content of this formula that has been placed before us. We must see how far this group of Nations will co-operate in the pursuit of peace, liberty and progress. This Commonwealth is a house divided against itself. It is half-slave and half-free. A house divided against itself cannot stand and a group of nations half-slave and half-free cannot endure. Therefore unless these cankers within the Commonwealth are surgically removed or somehow or other put an end to, I am sure in my own mind that this Commonwealth of Nations can never go freely in the pursuit of peace, liberty and progress. I do not want to be a prophet of evil or to forebode evil tidings or evil things to come, but my own misgiving is so long as the Commonwealth remains what it is, so long as Australia follows its all White policy, so long as the Apartheid policy is pursued by South Africa and Britain herself follows her colonial and Imperialist policy in Asia, this heterogeneous body can never work together for the pursuit of world peace and welfare of mankind. It may be that Britain has in mind peace, that is, the *status quo*, for her own territories and her Empire but what we are aiming at is laid down in the Objectives Resolution *viz.*, we will co-operate and we will strive our very best for the promotion of world peace and welfare of mankind. Are we going to do that under the present arrangement? Shall we be able to do it and how far shall we be able to do it? I wish more light is thrown on this matter by the Prime Minister. The crucial test to my mind is how far we will be able to follow our own policy because we are wedded—our India with her ancient heritage—to peace, to world peace, how far we can follow a policy both in foreign affairs and in defence matters which will conduce to the promotion of world peace and welfare of mankind, and how far we will not be tied down to some bloc of nations. We are anxious not to join either the Eastern or Western bloc but we have created a new bloc. I hope this new group or bloc will not work to our detriment nor will come in the way of our evolving a sound foreign policy and a sound defence policy. It has been stated that there are many advantages that may accrue from this union. What advantages they are I want to know, whether in foreign affairs or in defence or in economic matters. Is it because our Sterling balances are lying there that we want to be in the Commonwealth till we recover every pie of it? It is common knowledge, and the whole world knows it that the policy pursued in this matter by the U.K. Government has not been characterised by sterling integrity. I hope the Financial Delegation which is going shortly to London will be able to prevail upon the U.K. Government to follow a more honest policy with regard to our Sterling balances.

Again, it is suggested that India cannot afford to live in isolation. That is one argument put forward. It is seriously suggested that those nations which are not in this group or on that group or the Commonwealth—and there are many like that—are all living in isolation? In the world today, whether you join one group or not, in the world as it is constituted today, no nation can be in isolation. If a country does not join this Commonwealth of Nations, does it mean that it is in isolation? The Commonwealth of Nations needs India far more than we need the Commonwealth. If this psychological fact had been kept in mind, perhaps we might have had a far better deal. If this fact had guided our policy, we might have fared better. We must not forget that little nations like Turkey in the world have at times stood alone. At the close of World War I, Kemal Ataturk with his ragged army stood alone against many of the powerful countries of Europe and beat them back. The Russian army, ill fed and ill-clad, similarly stood alone against England, France and many other countries after the Revolution, and it triumphed. It is the spirit that ultimately counts. This spirit of defeatism that has gripped us, must be shed. It is weakness, it is cowardice in our minds, hearts and in our spirit. I feel that what we need today is the advice which Sri Krishna gave to Arjuna on the field of battle, just before the battle of Kurukshetra began:—

क्लैव्यमास्मगयः पार्थ नैतत्त्वच्युपद्यते ।

क्षुद्रं हृदयदौर्बल्यं व्यक्तवोतिष्ठ परंतप ॥

And lest my Friends should complain that I quote a shloka and do not translate it, let me, Sir with your permission give the gist of this shloka. Shri Krishna here asks Arjuna not to give way to weakness or cowardice. He says, “it does not befit you, Arjun. This weakness of heart is shameful. Give it up at this moment. Stand up and fight.” This should be our outlook, and I hope that at least in future it will guide our policy. We are a nation of at least 300 millions and more and we can fight any evil in the world, alone if need be. I would rather stand alone than surrender my ideals of democracy, and of equality and liberty for which we have stood and fought and sacrificed all these years. If the Commonwealth stands in the way of these ideals, if it stands in the way of these ideas being implemented, I would rather stand alone. Mahatma Gandhi taught us to do so. Lokamanya Tilak taught us this Mahayogi Arabindo taught us this. Netaji Subhas taught us this. You, Sir have always advised us so. We must be strong in our hearts and rely on our own strength, and our leaders Pandit Nehru and Sardar Patel have ever told us that the world can do us no harm. It is only our own inner weakness that can crush us, not any external danger. If we are strong in our own inner strength, nobody can prevail against us. I hope this fact will guide us in the future in our relations with the Commonwealth of Nations. I am not at all happy over the formula, and over the declaration placed before the House. I think it might have been more happily worded. I feel we could have had a better deal. But it is a *fait accompli* with which we are faced. As Pandit Nehru says, it is a treaty which has been concluded. At any rate, I will only say this much, that I accept the Declaration in the hope that the policies of the Commonwealth of Nations will be guided by human considerations in future, and that racialism, colonialism, and imperialism will all be shed and abandoned, and that the Commonwealth of Nations will lead the world on these right lines. I fear it is a distant ideal, but with God all things are possible; and I hope God will guide us aright so that we shall have a real human brotherhood—not a brotherhood of Commonwealth nations only—but a real human brotherhood in this world, in one free world, ere long.

Mr. President : Shri Ananthasayanam Ayyangar.

I would request Members now to confine their speeches to fifteen minutes.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I wish to congratulate the Honourable the Prime Minister for the statesmanlike manner in which he has entered into the arrangement the Declaration of which this House is asked to ratify. It is a natural consequence of our declaring this country as a sovereign, independent Republic. No country in the world can afford today to live isolated. It is necessary for us to get into some kind of arrangement with other free nations of the world, by some pact of friendship by which we can be bound together with those who are trying to establish permanent peace in the world. Therefore, nobody in this country need feel sorry for the arrangement that has been made. On the other hand, if we had not entered into some such arrangement, we would be failing in our duty, to restore and re-establish peace in the world. I felt at one stage when the negotiations were going on, and for some time before that even, when there were some rumours that there would be a common or dual citizenship established, I felt a little nervous. What kind of citizenship would it be, and what commitments and obligations would be put on our country, these we could not envisage. But now I have a sense of relief. There is no such dual citizenship, and no commitment whatsoever. We are absolutely free. It is not a constitutional or political relationship whatsoever. We are friends, and that has been recognised by this arrangement which we are asked to ratify in the form of this Declaration. In the matter of war, and in all other matters also, and in trade relations, we are absolutely free. We may remember that during 1939, all the Dominions passed in their respective parliaments their decision to enter into the War. In South Africa, we all remember, by a narrow majority, Smuts was able to bring South Africa into the War. It was open even to Dominions to stay out of the War. When we declare ourselves to be a Free, Independent Sovereign Republic, it is always open to us to keep ourselves free. We are not tied to one bloc or other. We are not tied to the apron strings of the British Government. We are not longer under the domination of Britain. We are equal partners, if these can be partners without any kind of obligations. It is only a question of friendship. We can choose our relations. This has brought a sense of relief to the whole world. There were war clouds and gradually they are dispersing, and this act of statesmanship makes it more probable and possible that war would recede very much into the background. War is put off by this act of statesmanship. I understand from some persons who have recently come from England, the European continent and from America that they are extremely satisfied with this act of our Prime Minister. Long ago some one said, the East and West can never meet. But by this act of statesmanship, the East and West have met. I am sure this meeting will be permanent, and the chords of friendship will become stronger and stronger.

I do recognise that in the speeches made here, by some Members, there is a touch of suspicion. We have been for a hundred and fifty years under the domination of Great Britain. I am not accusing my friends, but they are not alive to the changed circumstances. They are still staying and thinking in the old state of affairs when we were subjected to the domination of Great Britain. Speeches made here have tended in that direction. They have also some justification in that there is racial discrimination persisting in one of the members of the Commonwealth South Africa. Another member of the Commonwealth, Australia, is insisting upon the white-man policy. A third member, Malaya, is ruthlessly destroying some of our people for trivial things, even for carrying a weapon. These things exist, but the moment we enter into some relationship we cannot expect at these to fade away in a trice. I am sure there will be a change of heart among the other members of the commonwealth and even the so-called anti-Indian propaganda will not here after continue. So long as relations are strained between one country and

another a number of unpleasant things might be said; but there will soon be a change-over. I am sure even in England a volume of sensible opinion is in favour of continuing this relationship. I am confident that no Englishman and no person who is interested in peace in the world will hereafter speak unwisely a word against the interest of India. I was glad to see in this morning's paper that some Resolution was passed in the U.N. Assembly at the instance of Mexico and another country that there must be a kind of arrangement, a round-table conference, to look into the affairs of South Africa. I am sure that before long the affairs of South Africa will be settled amicably. I was told by the Prime Minister on another occasion that Australia and New Zealand were anxious that we should continue as members of the Commonwealth of Nations. If so, I am sure they will change their policy towards India; but we must give them some time. They started in an era of suspicion but that will gradually disappear. Love or affection or friendship is not one-sided; it must be mutual. We have started in the right direction, we have nothing to lose but everything to gain. In regard to defence and many other things we cannot cut ourselves adrift from the many advantages to be gained. Our nationals are strewn over the length and breadth of the world. What is to happen to them the moment we declare ourselves as a sovereign independent Republic and do not enter into an arrangement of this type? In Mauritius and other places there are many of them; they will be turned out as aliens. They are not nationals of those countries and they have not given up their nationality of this country. So this arrangement will be good for our nationals in these other countries.

There is another advantage. If we do not have this, a number, of onerous obligations will be placed on us. America does not easily enter into an arrangement of help with any other country. I still hold that so far as our foreign policy is concerned it should be a policy of strict neutrality. We are entitled to join or not to join any power bloc. I am sure with the help of Providence we will be able to stand between two warring countries and establish permanent peace and avoid war altogether. I say that even those persons who have referred to Malaya, Australia and South Africa are not against this Declaration. They only want that it should be modified to this extent that there must be a change of heart in this matter. But let us not put any conditions; let us trust to the good will and good sense of those persons who wanted us to be members of this Commonwealth along with them. In this Declaration it may appear as if it was India who was anxious to continue this relationship with the Commonwealth. That may be the language but we should not be led away by the language alone. The other side was equally anxious; otherwise there could not be this Conference of Premiers and this Declaration could not be brought out. It may read as if before we became a sovereign republic we were anxious to make this declaration. But they tried out a formula and the British Commonwealth of Nations was changed into the Commonwealth of Nations. Now we cannot deceive ourselves that we have no foes in the world; there are many enemies who are jealous of our position in the world. Our prestige and stature have gone up and in a very short time we have grown very tall. It is up to us not to do anything which will be derogatory to that stature.

Then there is another consideration. Irrespective of anything else, if I am asked on which side I lean I shall surely declare that I shall only lean towards the side of democracy, and will not align myself with any dictatorship. That matter is not coming up before us now; but all the same if there is any reason for entering into a kind of association with the Commonwealth of Nations it is exactly because this Commonwealth is wedded to democracy pure and simple. Look at this democracy that prevails in Great Britain. I wonder at the manner in which they exercise this democracy. There were several

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heroes of the war, Stalin and Churchill, etc. But what happened to Churchill? Overnight they threw him overboard and he is now in the opposition without a following. It is that kind of democracy that we should join; and so we should join hands with Great Britain which has the mother of parliaments, the forerunner of democracies throughout the world.

As for the amendment of my Friend Prof. Shibban Lal Saksena, I do not think there is any need for it. What he says is that soon after the constitution is passed there will be an election on adult franchise and it should be decided then whether we should continue our membership or not of the Commonwealth. To that my answer is that if we say that we continue our membership of the Commonwealth now there is nothing to prevent a future Parliament snapping it. Immediately they take office they can in the very first meeting of the legislature pass a Resolution discontinuing their membership of the Commonwealth. Between now and then there will be enough time to see whether the other members of the Commonwealth change their attitude towards India. If their attitude does not change by that time we will be on firmer ground in telling them that they are not our friends. Therefore, we are not committing ourselves to any course of action which is irrevocable. I therefore appeal to my honourable Friend not to press his amendment. I would have been glad if he had not moved it. Naturally this is born out of suspicion. Hitherto the meaning of Commonwealth was that our wealth was their wealth and their wealth was their own. Hereafter that will change and it will be a Commonwealth for all. I appeal to the House to accept the Prime Minister's motion without any alteration.

Shri Damodar Swarup Seth (United Provinces: General) : *[Mr. President, with your permission, Sir, I would like to oppose the motion moved by the Honourable Prime Minister of India for the ratification of the Declaration made by him at the Commonwealth Prime Ministers Conference in London. Sir, you have just said that the question whether India should remain in the Commonwealth or not has a direct bearing on the Constitution we are going to frame. I, therefore, feel that our Prime Minister in making a commitment that India would continue to remain in the Commonwealth, even before any decision had been taken on this question by the Constituent Assembly, has acted beyond his authority. It was not within his competence, Sir, to do so. If I remember aright, prior to the Commonwealth Premiers Conference our Prime Minister had repeatedly assured us, that the question whether India should remain in the Commonwealth or not would ultimately be decided by the Constituent Assembly. It may be argued, Sir, that this Declaration made there by our Prime Minister is not by itself the last word in the matter and that is why its ratification by this Assembly is sought. I would, most humbly submit Sir, that by agreeing to remain in the Commonwealth the Prime Minister has most adversely affected the sovereign character of this Constituent Assembly and has put it in a situation in which it is forced to ratify the declaration made by him at the Commonwealth Conference. This is so because the refusal of the Assembly to ratify the declaration would amount to a loss of confidence of the Assembly and of the people of India in him. Therefore, the Constituent Assembly has now no alternative but to ratify the agreement made by him. I am fully aware of the condition in which this Assembly was elected. It is almost a one-party body and it can easily be led to do what the Government in power may desire to do. But even then, I would say the Prime Minister should not have agreed to remain in the Commonwealth without the Constituent Assembly having taken a final decision on the question. He could have waited for a few days more. He could have made the Declaration he gave at the London Conference after the Constituent Assembly had formally

*[] Translation of Hindustani Speech

accepted it. But he thought it proper, for reason best known to him, to make that Declaration and thereby he virtually agreed to keep India a member of the Commonwealth.

I would submit to the House, Sir, that the Declaration made by our Prime Minister at the London Conference is not an unimportant or ordinary matter. It is in utter violation of the pledge that our leaders had been repeatedly taking and making the people of this country to take for the last seventeen years on the 26th January under the National Flag.

Sir, today when the Father of the Nation is no more physically amongst us, we see that in his name, in the name of truth and non-violence, every day sermons are given to the people to follow the ideal path shown to us by him, We are not content with that alone. We even give sermons to the other countries of the world and tell them that the only way to establish peace and security in the world is to follow the ideals of truth and non-violence enunciated by Mahatma Gandhi. I fail to understand how, after the pledges reiterated by millions and millions of people for the last seventeen years, we can expect the people of other nations to follow the ideals of the Father of our Nation and with what face we can ask the world to follow the path which we are ourselves giving up so shamelessly.

Sir, the Declaration that India would remain in Commonwealth has been made by our Prime Minister but we are not told what special benefits we are likely to have by remaining in it. We are told that whatever has happened at the Commonwealth Prime Ministers' Conference in no way entails any commitment or imposes any restriction on the Indian people or the Government of India. Most humbly I would submit Sir, that a common person like me is unable to appreciate how we can remain free from obligations and restrictions after having joined a particular bloc. If really we are free from such entanglement I do not see the reason of our joining that particular bloc, nor can I understand why the other members of the bloc want you to be in it. In my opinion the membership of a bloc logically implies certain obligations on the part of any new state which joins it as also on the other members of the bloc which induce a new state to join the bloc. It is another thing that the terms and conditions of joining the bloc may not be placed before us today. It may be argued that it is only two years ago that we secured our independence and as such it is not possible for us to maintain it against the aggression of other countries. It may also be that our leaders have in mind that if any war breaks out, India would not be able to protect herself without the help of the British Navy. If really this idea has influenced us to join the Commonwealth, I would like to submit that no country in the world of today, can rely on another country for securing its protection. Have we forgotten the events that took place during that last War? The British navy could afford to send only two battle ships to protect Singapore and these two had no aircraft carriers with them, and everyone knows that they failed to defend Singapore. The position that the British Navy and the British Government will grow stronger in future and will be in a position to render us more help for the protection of our land is, in my opinion as also in the opinion of my colleagues, an extremely doubtful one.

Besides, all the member countries of the Commonwealth barring India, Pakistan and Ceylon are, members of the bloc known as the Anglo-American bloc. Thus it is not very difficult for us to understand that there can be no other meaning of binding India with the tail of Commonwealth except that of joining the Anglo-American bloc.

It is urged that India can gain many advantages by remaining with England and America She can receive financial aid. She can receive aid for promoting her industrialisation. It can also be said that a powerful country like America

[Shri Damodar Swarup Seth]

can give adequate aid to India in the next war and she will do so. Sir, for the moment I accept that America will give us the aid that we ask for. I admit that American aid in times of peace would be very beneficial to India. But I think that in times of war it would be in a way suicidal for us to depend on American aid. The way American aid has been given to China is a lesson to us. No sooner did the American government see that the power of the government headed by Chiang Kai Shaik was failing, than it left that government to the mercy of the Communists. I can also accept that during a period of war America will strive its best to supply arms and other things to India; but Sir, we should not forget that oceans roll between India on the one side and America and England on the other. It would not be easy matter for aid to flow to India in such troubled times. There would be sub-marines operating on the seas and bombs and atom-bombs would be raining from the skies. Therefore even if America sincerely wants and strives its best to aid us, it can be doubted whether that aid would reach us at all. Then, as I have said, a great distance separates us from these countries and it will be a long time before the aid reaches us. But, Sir, if we take into consideration the present circumstances, we find that we are surrounded by Communist powers and their sympathisers. We see Russia on the border of Pakistan and we see her on the border of Kashmir too. The Chinese Communists are gaining more and more strength every day. We are not blind to what the Communists are doing in Malaya and we are aware that Burma too is not free from the Communist danger. I do not think that any one amongst us can like or entertain the prospect of the Russian troops entering the borders of India within a week of the outbreak of a war at some future date, while we expect aid from U.S.A. as a result of having joined the Anglo-American bloc. Why should we then place ourselves in a situation which may lead the Russian bloc to think that we are setting up ourselves against it? It is the misfortune of our people or in other words I may say that our foreign policy has been such as to create misgiving in my mind. Even today circumstances do exist which make Russia doubt our intentions and consider us to be allied with the bloc opposed to her. It was probably for this reason, if I mistake not, that our Ambassador, who stayed in Russia for about an year and a half, was not even once given the opportunity of having an audience with Mr. Stalin, the highest dignitary of the Russian Government. Now that we have linked ourselves to the Commonwealth it can be said that we have openly declared that we have joined the Anglo-American bloc. We can imagine to some extent the danger that is likely to follow.

Besides, Sir, if we leave aside the countries which I have just now mentioned, that is to say Pakistan and Ceylon, what concern have we with the commonwealth? We have nothing to do with them even from the point of view of culture, civilization, language, colour and race. Still the members of the Commonwealth are desirous of our association. There appears to be something wrong at the bottom. Our Prime Minister may not have told us in clear words the details of the Prime Ministers' Conference but the Prime Minister of South Africa openly said that they needed to retain India in the Commonwealth and that if she had not stayed on, it would have meant damage to the Commonwealth. He added that it would have been to the detriment of everyone of them and that was why they all tried to retain her and now they were all happy about India's staying in the Commonwealth.

Sir, it is not a hidden fact that whatever is happening in China is a two-sided affair. On the one hand, the Communist power wants to bring the whole of China under its authority and on the other, America wants to bring it under its influence by helping Nationalist China. When America saw that Nationalist China was slipping out of its hands she, I believe, felt the necessity of bringing

round India into its bloc through the Commonwealth. The reason for it is that India occupies a strategic position in Asia. We should keep this in mind, Sir, as also every impending danger.

I just now remarked; have we any such relation with the other Commonwealth Countries as may compel us to remain with them, especially when we see that our brethern are being very much ill-treated in South—Africa? We have not forgotten the incidents that occurred in Durban recently. The White Australian policy is still being followed in Australia.

In the lands our brethern reclaimed by their labour—the barren land of Africa, that labour is being paid back to them today by not allowing them even to sit with the whites in hotels, trains, buses etc. There appears to be no reason for that and while maintaining our national dignity and remaining in the Commonwealth it is intolerable to us that such treatment should be meted out to our brethern. It is also intolerable to us that we should associate with those people in the Commonwealth who treat our countrymen worse than dogs. The British Government may be styling itself as a Socialist government but it cannot be denied, that Socialist Government is in no way different from an Imperialist government. No doubt the British Government has quit India but even today fifteen to twenty countries are being exploited by Britain. Sir, for the last fifteen or twenty years, we have been opposed to Imperialism. We have opposed it and we have taken pledges to end Imperialism to help the people who were groaning under the heels of Imperialism. Then how can we bind ourselves to the British Commonwealth with Britain as one of its members? How can we say it to the world that we are the opponents of imperialism and that we will defend the countries which are being exploited by her?

All these things, Mr. President, are such as I think deserve our serious consideration. If the House is able to realise this and feel these dangers, it should never ratify the motion moved by the Prime Minister, but should rather give a mandate that after the adoption of this Constitution, India will have the same Status in the world as an independent Republic has, that is, India would have nothing to do with the British Commonwealth after the adoption of this Constitution.

Mr. President, I know, that in the present context my words are perhaps a cry in the wilderness. But I have to say with regret that after the attainment of India's independence, our view-point itself has undergone a change amongst our leaders,—who used to talk of revolution till yesterday, Every thing revolutionary now seems to be reactionary and all their reactionary acts seems to them as progressive. This fact needs hard thinking, because owing to this, our future seems to be very dark. You will excuse me if I say that our Prime Minister has recently said about the party to which I am proud to belong, that it is a reactionary party, which still has about itself, the bad odour of old things, and is therefore unable to feel the fragrance of the garden of Commonwealth. But I would say that the idea of Commonwealth is not new. It has not been conceived by Mr. Attlee or by our Prime Minister. Our Prime Minister would not have forgotten that in July, 1944, the then Prime Minister of Britain Mr. Churchill, while speaking on the Empire units had drawn a certain picture of Commonwealth, which was not different from the picture that has emerged today. Mr. President, it may be that the view our Prime Minister has expressed about the Socialist party may be correct in his opinion, but what I am saying is that by crying down old things we do not mean that we should given up our beliefs, that we should forget our principles. Principles are always old, beliefs are always old, but to leave them, to be driven away by the current of changing world without caring for principles or beliefs, does not become a living nation. Such a course may suit a people who have no principles but is unbecoming for us. Mr. President, I therefore would like to conclude these

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remarks with an appeal to this House to take a decision on this Resolution in the light of the need of the hour.]

Mr. President : Please stop. Now, we leave only five minutes to one. So we shall have to stop, but before we adjourn I have to communicate to you a sad news which has just been communicated to me. One of our members, Shri F. Kothawala, was travelling yesterday from Bombay and coming to Delhi to attend this meeting. On the way he developed heart trouble and expired in the railway train. I wish Members to stand in their places to show our respect to his memory.

(All the Members stood up in silence)

Mr. President : I take it that the House will permit me to convey our sympathies to the members of his family.

We have now to fix the time for the meeting tomorrow. I mentioned earlier in the day that two suggestions had been made, morning session and afternoon session. I am told that the majority of Members are in favour of the morning session from eight to twelve. Is that correct?

Many Honourable Members : Yes.

Mr. President : If that is so, we shall sit from eight A.M. tomorrow. The House is adjourned till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 17th May 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 17th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

RESOLUTION *RE* RATIFICATION OF COMMONWEALTH DECISION

—*Contd.*

Seth Govind Das (C.P. & Berar : General) : * [Mr. President, I rise to support this motion and to oppose the amendments moved in respect to it. The first question that arises in this connection is whether the agreement accepted by our Honourable Prime Minister in any way restricts our freedom or our democracy, from the political, economic or any other point of view. I wish to say that our country will remain entirely free even after this agreement is accepted. When the question of our Prime Minister's visit to Great Britain was raised, I had asked a question in the Parliament whether any decision could be taken there which would create any obstacle in our country's future republican status. Our Prime Minister had clearly stated in reply thereto that he was not going to accept any such decision there. When Shri Damodar Swarup Seth stated yesterday that our Prime Minister had done something which he had no right to do, I was astonished to hear Shri Damodar Swarup remark that the complete independence, which we were striving for all these twenty-eight years, has ended, and that our Prime Minister had not consulted us on this issue before going to England. I wish to tell Shri Damodar Swarup that the Jaipur Session of the Congress itself, under whose banner we fought our battle for independence for the last twenty eight years, had given its decision in this respect and our Prime Minister has simply given a practical shape to that decision.

The truth is that the world has now become very small. The countries of the world have come very near to each other; such means of transport are now available to us that we can go from one place to another within a few hours, whereas in olden days we used to take a few weeks in doing so. In these circumstances, can we stand aloof, and if we cannot, what should we do? Moreover, we can revoke this agreement at will.

Yesterday, Mr. Damodar Swarup had remarked that the fact of joining a bloc implies that we will have to remain in that bloc in foul as well as in fair weather. I wish to say that if this agreement has any peculiar characteristic, it is this, that while remaining in Commonwealth we are not bound to accept every decision of the Commonwealth. The next question that arises is that if we have to associate with somebody, then with whom should we do so? We have a very old connection with Great Britain. Till the achievement of our independence, we had a different kind of connection with her, but now that we have attained our freedom, another type of relationship has been established. Till the attainment of our independence a sort of struggle had been going on between Great Britain and us for the attainment of that independence, and I admit that there was some bitterness in that struggle According to the philosophy of Mahatma Gandhi, which is now before the

* [] Translation of Hindustani Speech.

[Seth Govind Das]

world, we can have no enmity with anybody. Still there was necessarily some bitterness due to the struggle. Later on the circumstances changed. We became free and achieved an independence due to Mahatma Gandhi's greatness, without any bloodshed. Now there is no friction, no bitterness between Great Britain and ourselves. That bitterness has now given place to friendship. If we look at things from our old angle of vision, we find ourselves faced with difficulties. Yesterday Mr. Kamath had quoted a shloka from the Gita. I wish to remind the members of this Constituent Assembly of another shloka from the Gita itself. If we look at everything from the old angle of vision due to anger, we are reminded of this shloka of Lord Shri Krishna which says:—

क्रोधाद्भवति सम्मोहः, समोहात् स्मृति विभ्रमः।
स्मृति भ्रंशात् बुद्धिनाशो, बुद्धिनाशात् प्रणश्यति॥

*Krodhadbhavati sammohah, sammohat smriti vibhramah
Smiriti bramshat budhinasho budhinashat pranashyati.*

(Anger gives rise to wrong thinking which creates forgetfulness. Forgetfulness destroys wisdom, and by that a man perishes.)

Thus, in these matters, we should not allow anger or resentment to over power us, and we should make our decision after taking into consideration the present circumstances.

I heartily congratulate our Honourable Prime Minister for facing the actual circumstances of today. He is the same leader of ours under whose Presidentship we had adopted for the first time the complete independence resolution at Lahore. He has done what was best for the country in the circumstances.

The Commonwealth that we have joined, I agree, is not yet a real commonwealth. I know that the condition of our nationals in South Africa is undoubtedly a matter of pain to us. But to the people of south Africa is ought to be a matter of shame. I also admit that the White Policy which is being followed in Australia is unbecoming of the Commonwealth. But the question is whether we would be able to bring about any change in all these matters if we do not join the Commonwealth? You are aware of what is being done in U.N.O. about the question of Indians in South Africa. These questions, in fact, have no bearing on our joining the Commonwealth. We will have to solve these problems in a different way. It would not be proper for us to take any decision under the influence of anger. It is the feeling of some people that as a result of this agreement we may have to side with the Anglo-American bloc in the event of any war which may break out in future. But our Prime Minister has repeatedly made it clear that our remaining in the Commonwealth does not imply that we would be under any obligation to join them in any war that may break out in future.

I, however, hope and believe that at some future date we shall be in a position to assume the leadership of the other nations of the Commonwealth by virtue of the balance of power shifting in our favour on account of our philosophy, our approach to life, our man-power and the natural resources available to our country. A dream, the dream of the federation of mankind, is already present in the imagination of people all the world over. It is a dream, a pleasant dream. I know not whether this dream is one that can ever be fulfilled, but if it be possible to translate into concrete reality. I can say, in view of the position we hold today, that our country would be able to

make its contribution to the fulfillment of this dream by bringing about the establishment of the federation of mankind. I would like to congratulate the Prime Minister again, and I conclude with a personal prayer to God that the agreement entered into by our country for the stable peace, freedom and an all-round progress of the people of the world, may prove a blessing not only to us but to the world as a whole.]

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, I support this motion with all the force at my command. On this occasion I offer, without the least trace of hesitation in my mind my congratulations to the Prime Minister. It is not, as put by Sardar Patel, his personal triumph alone, it is also a triumph for that policy of straightforwardness which our country has been following. Our Prime Minister has on many occasions explained the highlights of our national policy. The most fundamental and central factor in it is that India is a sovereign independent Republic. To those who seek to confuse the issue by quoting from the old speeches of Pandit Nehru I would like to say that they should not forget that it was Pandit Nehru who for the first time taught us on the banks of the Ravi to fight for complete independence and that he did so at a time when many people used to consider dominion status as the substance of independence and when many made no distinction whatever between independence and dominion status. They must remember that at that time he had put before our eyes a standard of Independence which could be a matter of pride for any first-rate power. They must also remember that it was he who placed before us the Objectives Resolution which is considered as the very soul of our Constitution. I fail to understand why people should be surprised if he brings forward before us this Resolution which gives us status in the world. Those who give such a weight to his speeches should also have the sense to realize that the same wisdom and idealism with which he had drafted those resolutions are being used by him in seeking to secure our acceptance of this Declaration with a view to advance the interest and glory of our country. Why should they feel hesitant when he asks us to accept it? Speaking for myself I can say that I welcome and support it most heartily because I find it in accordance with the objectives which have been always before us.

The second highlight of our foreign policy is our determination to extend our aid and support to the nations which are comparatively suppressed. The third fundamental principle which we have always kept in our mind is that we should not improperly align ourselves with any political bloc and lastly that we should not be a party to the violation of the rights of any nation. It is our duty not to act contrary to these four principles.

But the agreement, the ratification of which is being sought by this resolution, is not only in complete conformity with all the four principles but is also calculated to promote them. I have not the least doubt that this Resolution is not only quite proper in itself but also reflects correctly the objective dear to our heart. I would like, Sir, to draw your attention on to some past history. It has been asked what advantage we would have by means of this agreement. We have also been asked to keep the debit side of this agreement in our view. Many people here think of weighing in a common scale the advantages and disadvantages that are likely to accrue to us by this agreement, and I agree that this is a valid criterion. I would in this connection like to submit that we should remember that the effects of history are as significant as those of geography and that we cannot escape from these effects, do what we may for the last few centuries, Great Britain had been ruling us not because we liked it but on account of the compulsions of history. So long as we needed them we retained them and they proved useful to us. We may, by the way,

*[] Translation of Hindustani Speech.

[Pandit Thakur Das Bhargava]

cast a glance at our Ordnance factories today which are producing arms and ammunition. We will find that the officers and managers of these factories are English Officers. It cannot be denied that we cannot confidently assert that we have made as much progress during these two years as other countries could make after centuries. I accept that the Government of Nehruji and Sardar Patel has raised us very high in the estimation of the world during these two years and we will achieve an equal status with other countries, which is our due. But this can be achieved only gradually. We should not foresake wisdom. We should no doubt adopt such methods as may enable us to become as free as the other nations of the world. All of us will have to admit that the consequence of their contact for centuries has been that in all aspects of our life, whether it be the composition of our Legislature or the constitution of our state, whether it is the system of our law or the organisation of our army or navy, the character of our industry or the way of our living, the outlook with which we approach life or the culture that we possess, the method of progress adopted by us or the path of advancement chosen by us, all have evolved a new pattern or way of life which is more or less like the one which the great countries of the Commonwealth have adopted. The fact is that even though we want to establish a Republic in our country we follow the Democratic way of life along with Great Britain and other democracies.

If we follow anybody today it is the Parliament of England which is the Mother of Parliaments. The Constitution that we are framing here today is in fact based on the Government of India Act of 1935. I do not suggest that we, who have an ancient civilization and are an independent nation, are seeking to copy anybody. We do not want to copy anyone at all but at the same time we should not forget that we cannot snap the connections of years all at once. At present if we need and part of an aeroplane we have to approach Britain. If at Delhi we purchase any machine, we have to approach Britain for its parts. We are at present dependent upon England for all our machinery. Why do we then ignore the fact that it is necessary for us to maintain, for some time at least, the connections we had with some countries for a very long time? It is true that we have severed our connection from the British Crown. We have done the correct thing. But would it not be wise to continue our connections with that country for some time to come when it is to our advantage to do so? We did a similar thing in 1947 in accepting in our Assembly that Lord Mountbatten would be our Governor General and General Auchinleck our Commander-in-Chief. But so long as it is not so, would it be wise to turn out all those English Officers who are running our factories? So long as it is advantageous to us, it is in our interest to stay in the Commonwealth. No association is always harmful. It is said that the British and the Americans are pleased over our decision to stay in the Commonwealth. I am also very much pleased over it because all associations are for mutual gain. It has been said that it would have been better if we had not accepted the King of England as the symbolic head, if we had solved the South-African problem and if we had put an end to the White Australian policy by entering into some agreement. I humbly submit that such things could not have been included in that agreement. If Pandit Nehru had raised this question the representatives of other countries would have told him that they were not prepared to talk to him about it, because even now there were untouchables in India who had no right even to purchase land, and that so long as such conditions prevailed in India, they were not prepared to talk to him. May I ask whether we had ended in India the evils which we want other countries to remove? It is my assertion that we have not. A number of honourable Members have tried to introduce such things here by tabling amendments. I say that this is altogether irrelevant and that we cannot adopt any new proposal in regard to such matters.

It has been said that we are entering an association which concerns the Anglo-American bloc and therefore we will become members of that bloc and as such we will cause offence to Russia. It has also been said that, if Russia so desires, her troops can reach India within hours. I humbly submit that this is altogether wrong. You will pardon me if I give a commonplace example. It is said that it was bad of such and such a person's mother to have got an husband. But if after that she left him it was all the worse. We had this association for a long time. It was possible that other countries would have cancelled this association as soon as we declared that our country was a republic and would have told us that we might go our own way as we were not associated with the King. Our Pandit Nehru had not gone to England to appeal to the countries concerned somehow to include our country in the association. He went there because these nations wanted to retain their old connections, whether we accepted allegiance to the King or not. Today every Indian can hold his head high. He is not under any other government except the Sovereign Indian Republic. This is of prime importance. Had they said that we could be included on some other condition and not on this condition, then this question could have been raised. So far we had vehemently opposed this Commonwealth democracy because we had no equal status in it. But now that every member is an equal partner in it, why should we hesitate to join it? If today other countries feel it necessary to associate with India, India also has a need to associate with other countries. I cannot accept even for a minute that our Assembly can have any hesitation in ratifying this agreement. In fact it is a great triumph for us that while we would not owe any allegiance to the Crown, the other countries owing such allegiance to the Crown are and would be eager for our association with them. Obviously the ratification of the agreement is to our advantage. Besides, there are other factors which must be kept in view in assessing the value of this agreement today. The political and economic conditions of our nationals in the British possessions will be very adversely affected if this link is broken today.

There is a small council in the UNO which has been formed with a view to raise the standard of living of the countries that have a very poor standard. In the last parliamentary conference which was attended by the representatives of thirty four countries, there was a proposal that the name of the British Commonwealth should be changed into Commonwealth and in fact it was so changed. Dwelling upon the economic conditions of my country I had said in that conference that England did not do justice to India. India has a coastal line of five thousand miles but England had left no ship with us. We have railway tracks extending over forty thousand miles but we have not a single workshop where locomotives may be manufactured. There is absolutely no justification for withholding the sterling balance of seventeen hundred million pound's belonging to a poor country like India, I would like to suggest that a council, as the one in the UNO, should also be formed in the Commonwealth so that it may help to raise the standard of living of the member countries that have a very poor standard of living. May I ask you which country can help us in getting our needs supplied today? Will Russia help us? Can we expect this help from U.S.A.? I feel, Sir it is the duty of England and other member countries of the Commonwealth to do justice in the matter and help a lending hand to India in improving her economic condition. If they desire any benefit from us, we too must gain some benefits from them. The Commonwealth has been recognised in the International Trade Charter and according to this Charter the Commonwealth must give the same privileges to other countries of the world that it receives from them. Therefore it is wrong to say that our joining the Commonwealth will antagonise Russia. There is no question of Russia being antagonised. There is absolutely no occasion to cut off our age-long connections with other countries.

[Pandit Thakur Das Bhargava]

It has been an ancient tradition with India that whenever she has formed friendship with any nation she has always stood true to her friends and fulfilled her obligations honestly. We should not now cut off our old connections with them and thereby give them a chance to feel aggrieved.

There is no doubt that the organisation of the Commonwealth has neither any secretary nor any president. The British King is said to be the head of the organisation. But to be frank, I fail to understand his position. However, he will not preside over the meetings of the Commonwealth, he will not function as its president and will never give his casting vote. There is absolutely no question of veto. He will never have the occasion to use these powers. It is said that the King has no function at all in the Commonwealth. This agreement has less significance than even a treaty and you can scrap it any moment you like. Thus all the members will remain independent in the common family of Commonwealth. It is not a partnership but an association in which we all are as members and therefore it elevates our position. As members of this association we can manage our affairs, in a more effective way. With these words, Sir, I lend my full support to this motion.]

Mr. Tajamul Hussain (Bihar: Muslim): Mr. President, Sir recently Pandit Jawaharlal Nehru went to England and there entered into an agreement with six other independent countries; and now we, the representatives of the people of India, are asked to ratify that agreement. The question before us is whether we are to ratify that agreement or not. At this stage, I do not propose to discuss the merits or demerits of that agreement. It is immaterial for my purpose whether that agreement was good, bad or indifferent. I say, Sir, and I have no doubt the House will agree with me, that we have no option, but to ratify that agreement. My reasons are obvious and simple. Pandit Nehru did not enter into that agreement as Pandit Nehru. He entered into that agreement as our Minister for Foreign Affairs, as our Prime Minister and as our leader, and as the sole representative and spokesman of the people of India, and in the name of the people of India. Therefore we cannot afford to let him down at this stage. I have already said it is a treaty and.....

An Honourable Member: Even if it is bad?

Mr. Tajamul Hussain: He is our representative and as such he went there, and we never asked him not to go, though we knew he was going. Did you ask him to consult the House as to what he was going to do? Such things never happen. Did the Prime Minister of Canada consult his people there? But we are told, and we have listened to the statements of our leaders, and we know that the people here were consulted, and the Deputy Prime Minister told us that he was in entire agreement with what had been done. Is there any sensible man who is not in agreement? When our representative goes and enters into an agreement, it does not matter what agreement it is, we must follow it and ratify it. That is my view, Sir.

Now, let us see what that agreement is. India is an independent country. Now it is absolutely independent. It is under no country, and it is as independent as the United States of America or the United Kingdom, or any other country in the world. It has full sovereign powers. It can make and unmake anything. It can make war with any country. It can negotiate peace with any country. No country can interfere with our internal or external affairs. At present we are a member of an association commonly known as the Commonwealth of Nations. The question before us is: should we continue to be a

member of that Commonwealth of Nations? I say, Sir, if it is to our advantage—and it is to our advantage—we must remain in it. As far as I can see, the only objectionable feature is that the King is our Head at present but that objectionable feature has been very ably removed by our Prime Minister. No longer the King of England is the King of India. He will only remain as the symbolic Head of the Commonwealth of Nations. India under this Agreement or Treaty will owe no allegiance to the King. If our President of the Republic were to go to England or America or Russia or to any country in the world, he will be treated as the Head of our State. If the King of England were to come here, or the President of the United States of America, he will be treated no more than as the Head of a free State. The King of England will not be treated as the King of India anywhere. We will respect him as the Head of his State as they would respect our President as the Head of another independent State.

And what is the Commonwealth of Nations? As I have already said, it is only an association of Prime Ministers of seven different independent countries, and each member can leave that association whenever he likes. To give an illustration. Supposing England were to declare war against Russia, what would India do? There are only three things that India can do. It can side with England as against Russia, which I am sure India will never do, and I am sure Pandit Nehru will never do that. The second is, that India may remain neutral. That will be done. The third alternative is that she might side with Russia as against England. If that happens, then the association of nations known as the Commonwealth of Nations will break up like the League of Nations. It will, *ipso facto*, dissolve. Therefore, I say although we remain a member of the Commonwealth, we will be absolutely free. And I am of opinion and very strongly of opinion that if India remains in it, as she is going to remain, there will be no war in the world. The possibility of war will be removed; and in this way, India would have made a great contribution to the peace of the world. This, in my humble opinion, is sufficient reason for us to remain as a member of the Commonwealth.

Mr. President : Pandit Balkrishna Sharma. But before he begins I would like to make one observation. I have received a number of slips from Members expressing their desire to speak, and slips are pouring in even today. Yesterday a Member raised the objection that I should not go by the slips, and that I should see particular Members standing in their places. I propose to follow that practice, and those Members who have sent in their names in the slips are also expected to stand up in their places, if they wish to speak.

Pandit Balkrishna Sharma (United Provinces: General): Sir, I have very carefully followed the speeches that have been delivered here in opposition to the motion of the Honourable the Prime Minister of India and I have also followed the criticisms of the so called “Left-wingers” in the press regarding this Declaration of the Commonwealth Prime Ministers’ Conference. After having read all those objections I have come to the conclusion that those objections can be put into more or less six categories.

One objection which has been raised is that the Declaration of the Commonwealth Prime Ministers’ Conference to which India has assented is repugnant to our traditions and, in order to prove that our traditions have been anti-British, extensive quotations from the speeches of the Honourable Prime Ministers himself as also from the resolutions of the All India Congress Committee have been given. This is the first objection which has been raised.

The second objection that has been raised is that by so doing we are perhaps entering into an unholy alliance with British Imperialism.

[Pandit Balkrishna Sharma]

The third objection boils down to this that by our so doing we are definitely joining the Anglo-American bloc in international politics and thereby we are losing our independence in international affairs, which is our right by virtue of our being a sovereign independent Republic.

The fourth point which has been made out by the oppositionists is that even though we have become independent we are still continuing to be an appendage of the British Foreign Office, that we tie ourselves to the chariot wheels of British Imperialism and British foreign policy.

The fifth point which has been made out by the oppositionists is that democracy and headship of the King are two incompatibles which go ill together. And the sixth objection is about racialism in the Commonwealth Countries.

These in the main are some of the points which have struck me to be of a fundamental nature as conceived by the oppositionists and I want to take *seriatim* these points.

Let me begin by considering the objection that this association with the Commonwealth countries on our part is repugnant to our traditions....

An Honourable Member : Certainly.

Pandit Balkrishna Sharma : My honourable Friend without understanding the implication of his interruption comes out with a very brave exclamation "Certainly". If he will bear with me for a minute he will find that after all his certainly is not so certain as he considers it to be. We were reminded of the speech which our leader delivered at the Legislators' Convention in 1937; and my Friend Prof. Shibban Lal Saksena said that it was definitely laid down as our policy that we will have no truck with British Imperialism, that in every sense the British connection has to be severed and that in the famous parting of the ways message our leader definitely said that we do not wish to be tied down to the coat tail of the British Foreign Office nor that we wish to be guided in any way in our external affairs by Whitehall.

When we take into consideration all these objections we will clearly see that what this new Declaration contemplates has absolutely nothing to do with what we objected to in the British connection. When we objected to the British connection, we naturally objected to British domination, to British guidance committing us, against our wishes, even to the extent that we could be dragged into a major war without being consulted by the Britishers through a fiat from No. 10 Downing Street or from the Mother of Parliaments. Nothing of that sort is contemplated in this Declaration. Time and again it has been said that we are free to carry on our foreign policy just as we do in our internal affairs and that we are free to do anything we like. In these circumstances I do not know how those declarations made by the Prime Minister in his capacity as the leader of the Indian Nation and how those resolutions of the All India Congress Committee or the Indian National Congress can be quoted in support of the opposition to this Declaration of the Commonwealth Prime Ministers' Conference. Today the situation has altogether changed. British connection today is not what it was during those days and it was to that sort of connection that we took exception and not to the one that is contemplated in this Declaration.

The second objection, namely, that we are entering into an unholy alliance with British Imperialism seems to me to be without any foundation whatsoever. When we think in terms of British Imperialism naturally our friends are under the impression that we shall be allying ourselves with all that Britain is doing in colonial countries. Let me tell you that this is not so. We have noth-

ing to do with that. We can very well oppose what the Britishers are doing in Malaya, what the Dutch are doing in Indonesia or what the French might be doing in Indo-China. Have we not done so? Even when we are a Dominion, which we are till today, when we have not declared ourselves a Sovereign Republic except in our Objectives Resolution (we are still in the midst of our constitution), time and again have we not taken up the cause of the colonial countries and fought out their battles in the United Nations as well as in the world at large? Has this our connection with the British Government come in the way of our fight for those oppressed nations? If that is not so, then to say that by entering into this alliance or this association with the Commonwealth countries, we are trying ourselves to the coat-tail of British foreign policy or that we are playing the role of the henchmen of British Imperialism is absolutely without foundation: I should say it is absolutely untrue.

The third point in that we are joining the Anglo-American bloc. I do not think we are joining any bloc whatsoever. Times without number the Minister for External Affairs, who is also our Prime Minister, has said that so far as our foreign policy is concerned it is yet in a process of evolution and so far as possible we are trying to keep ourselves free from any blocs. We are not joining the Russian bloc; we are not joining the Anglo-American bloc. There have been people who have criticised the Prime Minister's foreign policy. Some of them on the ground that we should have right away joined the Anglo-American bloc; and there are others who have maintained that we should have joined the Russian bloc. But we have steered clear of these power blocs. As a result of that in the U.N.O., even though our voice be feeble, yet it has begun to be heard with a certain amount of respect and even in those quarters where we were looked down upon as an appendage of this or that bloc our view is receiving respectful attention. And, therefore, I say, that this sort of criticism that we are joining this or that bloc is absolutely incorrect. My Friend, Prof. Shibban Lal Saksena said: "Well, one-third of Asia is Russia; then China has gone Communist; Burma, Malaya and Indonesia are going Red. Why then should we have at this hour joined what is called this Anglo-American bloc?" Firstly, his premises are wrong. We have not joined any bloc. And secondly what after all does he mean? Because China has gone Red, because one-third of Asia is already Red, because Indonesia and Malaya and even Burma are on the road to becoming Red, should we therefore also try to become Red? Does he mean that we should try to become Red because our neighbours are going Red? Well, Sir, if I were convinced that our going Red will be in the best interest of the country and of humanity at large, I will be the first man to raise my hand in favour of our going Red. But, unfortunately, from what we have read of the foreign policy as also of the internal policy of Russia we are convinced that it is not ultimately in the interests either of the down-trodden or of the world at large. Why? Because there is some fundamental difference, a difference which arises from the very philosophy of Communism. When we talk of the so-called scientific socialism, I am constrained to say that this scientific socialism is unadulterated, undiluted, pure bunkum, for the year simple reason that the socialistic concepts which were based on the 19th century idea of science are today no more scientific, because science has changed beyond all recognition. The 19th century science did not know what the principle of indeterminacy was. But today science declares from house-top that it cannot know anything and everything even about an electron. The so-called scientific socialism tries to explain away all human activities by certain preconceived notions, the notions of materialism. What after all is this materialism? Materialism is disappearing today in the form of mathematical equations; and yet they talk of this scientific socialism. I say, Sir, that it is neither scientific nor social. I would say it is anti-social, because before the Ogre of the State the individual is being sacrificed every minute of his existence.

[Pandit Balkrishna Sharma]

Therefore, I say that if only we could fundamentally agree with the principles of socialism or communism, we shall be the first to go in for it. But, unfortunately, we find that it is unscientific, that it is unsocial. It is for this reason that we are refusing to join the Russian bloc. Similarly we are refusing to join what is called the Anglo-American Bloc. We are perfectly free to carry on our foreign policy as we like and I see no reason why people should come here and advance all sorts of arguments against the proposition that is before this House.

One thing which I would like to point out to this House is that it will not do today to think in terms of what a philosopher like Herbert Spencer has called traditional bias. There are many kinds of biases; there is the traditional bias, there is the religious bias; there is even the scientific bias. Of course, our whole history—the history of the last 28 years of our struggle against Great Britain—is replete with anti-British feelings. But has not the Father of the Nation given us the message of hating a system, but not hating the individuals behind it? And today we who hated that system are responsible for getting that system changed by the very people who upheld that system and it is for that reason that we are joining hands with them.

As the Prime Minister himself has said there are no commitments. We have not in any way committed ourselves to the foreign policy of the British Commonwealth of Nations. Any country of the Commonwealth is free to take up any line that it likes in the United Nations Organisation. We have done so; even Australia has done so. Then to trot out the argument again and again that we are tying ourselves to the chariot wheel of British Imperialism seems to me to be absolutely futile.

Sir, I was very much impressed by the speech which my Friend, Shri Kamath, made yesterday. He very cogently and very rationally tried to pose certain questions. One of the questions that he posed was whether by entering into this association with the Commonwealth of Nations we shall be deriving any advantage. Well, we gave our consent to this policy not only in this Assembly but even in our great national organisation, the Indian National Congress. With our eyes wide open we authorised the Prime Minister to carry on these negotiations. Did we not take all the *pros* and *cons* into consideration at that time? We did and we knew and we know that it is definitely to our advantage. After all the military science in our country is still in its infancy and there are very many advantages that we can derive from our association with Great Britain in regard to our defence measures. Then again there are so many things that we have to do by way of economic rehabilitation and in these matters we can get expert advice and guidance from Great Britain and from the other Commonwealth countries. Why should we deny ourselves that advantage, especially when it has been made clear that the King does not come in the picture any where, except that he is being recognised only as the Head of the Commonwealth, which again means very little,—very little for the simple reason that he can no more interfere in our internal administration. Our Ambassadors are not to be appointed in his name; they will be appointed in the name of the Head of our State, who will be the President.

With these words Sir, I commend the motion of Honourable our Prime Minister for having brought round the statesmen of the Commonwealth of Nations to agree to a proposition which is in every way to our advantage.

With these words, Sir, I commend the motion of the Honourable Prime Minister for the acceptance of this House.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I am inclined to support my Friend, Prof. Shibban Lal Saksena, and also my Friend,

Damodar Swarup Seth, for the following reasons: I support Mr. Saksena because he has adopted the same plea in his amendment as was adopted by me in the beginning when this Assembly met first. I said then and I say it even now that this House is not competent to frame this Constitution, because this House was elected on a very narrow electorate and that of a communal nature—rank communal nature—and it has resulted in the formation of a single party in this Assembly, and therefore it is ridiculous and absurd to entrust the constitution-making power to it. That party represents only one view and that is the only party in existence. When I say that, when I am of the opinion that this House is incompetent to frame the Constitution, it is obvious that I must support Mr. Saksena who wants the same as myself. He says, postpone the declaration of your ultimate object and your ultimate policy until a new House is elected on the broad principle of joint electorates.

Well, Sir then I support my Friend, Mr. Damodar Swarup, on the ground that I want to meet the excuse brought forward by the Prime Minister in this way. He says: "All right, we will become a Republic, but we cannot remain isolated. We will have to have some sort of relation with some power." I quite see that point. But I can argue, "How is it that you are only going to placate the British Commonwealth people? Why do you not adopt the freer course which is more honest? When you claim that you have become an Independent Socialist Republic, why do you not say that you will enter into separate alliances and agreements with all free countries on the basis of the principle laid down by the political group of late Lokamanya Tilak who said that he will enter into an alliance with all other free countries by means of responsive co-operation and will co-operate with only those free countries who are willing to adopt the same cause in regard to our country?" It is no use making alliances with countries like South Africa. The attitude of that country towards our nationals is well known. Even countries like Canada, Australia and New Zealand do not allow any of us Indians to set foot on their soil. How can we go and have alliances with such people? I cannot understand how a man of such keen intellect as the Honourable the Prime Minister can have alliances with countries like South Africa, Canada, Australia and New Zealand? I think it is beneath our dignity to seek such alliances. We ought to refuse to have anything to do with them. As a matter of fact we once broke off our relations with them. We recalled our representative from South Africa. Now we are reversing that policy and adopting the policy of conciliation. I had to hang my head in shame when I read the other day in the papers that our Prime Minister had now become friends with Dr. Malan and Mr. Churchill. When he went to England he remained in association with such born enemies of Indian independence. I cannot understand what brought about this change of mentality in our Prime Minister. He ought not to have met and spoken to Mr. Churchill at all. He ought not to have mixed with people like Dr. Malan. My misgivings have come true as I find that after these meetings, a real change has come in his attitude. Formerly Mr. Churchill use to abuse the attitude of our Prime Minister. Now a change has come over him. That is a sure sign that we are not on the right path. When a policy of ours is appreciated by people like Mr. Churchill and Dr. Malan, we need no more proof to declare that the whole thing is absurd. Therefore I say that I support both these amendments. At the same time I know it is a futility to propose an amendment to a proposal to ratify the unfortunate Declaration of our Friend the Prime Minister. It is incapable of being amended. It must be ended. There is no possibility of amending it. This Declaration says that India will retain the full partnership of the Commonwealth of Nations and at the same time says also that the King will be the head of that Commonwealth. When you accept full partnership in the Commonwealth, how can you escape accepting the King as the Head of the Commonwealth? Therefore the King is the

[Maulana Hasrat Mohani]

head of the Indian Republic also. I cannot understand this thing. I am not given to hair-splitting and I do not find any reason to try to make a difference between Tweedledum and Tweedledee. Either you belong to the Commonwealth or you do not belong. I do not want any monster of this kind which is at once a Republic and a Dominion. It is absurd on the face of it. Therefore I say that we need not propose any amendment to this Resolution. It is useless to do so. We would throw out this Declaration and the Resolution at once without anything being left to chance. I am rather inclined to say that I am at one with my friend and co-operator Sarat Bose in his description of this Declaration that it is no more and no less than a great betrayal. I am inclined to go a step further and say that it is not only a betrayal of the Independence of India, but it is a betrayal of all the efforts of all Asiatic countries who are struggling to gain their independence. We have before us the examples of Viet-Nam, Indonesia and Burma. The Members of our Delegation are trying to impose the same thing on Indonesia and Burma. Well, it is beyond my comprehension to account for this change of mentality in people like our Prime Minister. How is it that the President of Indonesia who did not believe in this camouflage and therefore said that he would not accept anything less than the re-establishment of the Republic at Jogjakarta and would not have any Pact unless and until it was re-established got the support of Soviet Russia for his proposal and how is it that our representatives intervened and got the motion postponed indefinitely? I suspect that they want to compel the Indonesians to adopt the same course which has been adopted by our Prime Minister here. Holland also is willing to accept Indonesia as a Republic on condition that the Republic remains a part of the Dutch Dominion. The European nations are making fools of us. Holland wants to make fools of the Indonesians. They say, "We will accept your Indonesian Republic provided that the Republic remains in our Empire". The same is said by France to the people of Viet-Nam. They say, "All right, we accept your Republic provided you remain in the French Empire." I find that these imperialists have coined new phrases and new technical terms. What are these terms? Sometimes they say a Republic Dominion. Our Prime Minister is going to accept that. Also in the case of Viet-Nam and the other, they want to have colonial republics. I do not understand these terms. They are beyond my comprehension. I do not find in this resolution and this Declaration anything more than acceptance of these terms. As I said, as regards Burma also, these are willing to intervene and help Burma. The Burmese people were wise enough to reject the whole thing because they suspected that we and the British will go there and ask them to adopt the same policy as we are going to adopt. What it amounts to is that we are willing to support you, we are willing to help you, provided you join the British Empire. Even if you do not say this, the whole thing will come to that. We are trying to postpone a decision in Burma, Malaya and Indonesia. We are not only following a very bad policy. We are betraying the cause of Indian independence. We are betraying the cause of all Asiatic countries who are struggling to gain their freedom. You are indirectly in a way compelling them to adopt the same course as you have adopted.

I have only two questions to put to the Prime Minister and I have done. My first question is this. If you do not want to remain in isolation and if you want to have some connection with the powers in the Commonwealth how is it that you do not impose any condition? If you want to enter into an alliance with any of these Dominions, England or America, you are free to do that but only as a completely free Republic, nothing less than that. If you want to have separate agreements or alliances with other countries, you are free to do that with the condition that the whole thing should be based on the good principle of responsive co-operation.

The other question is this. Our Prime Minister says that we will remain strictly neutral. We will not join the Anglo American bloc or the Russian bloc. If it is possible to remain neutral to the last, I would have nothing to say, but it may become impossible to remain neutral. It may come to your joining one bloc or the other. In that eventuality, what is your position? I am not going to make only negative criticisms. I am going to make a positive suggestion. If things come to that pass. We should refuse to join one group or the other. We should adopt an attitude of benevolent neutrality, but the benevolent neutrality should be in favour of Soviet Russia, because America and England are imperialist and capitalist. I cannot understand how a man of such foresight as our Prime Minister is even willing to hear any proposal of our joining this Anglo-American bloc which is at once imperialist and capitalist. As far as Soviet Russia is concerned, I say that we should favour it because Soviet Russia is neither capitalist nor imperialist. Therefore I say this Resolution should be rejected without any amendment.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, in assessing the value of the agreement entered into by our Prime Minister at the last Prime Ministers' Conference in London, we have to consider whether it is consistent with our self-respect, and beneficial to our national interests. I felt when I read the agreement that it satisfied both these conditions, and I never felt more convinced of this than after listening to the opposition speeches yesterday. Sir, the agreement has been criticised on the ground that it may limit the freedom of action of India in some hidden way or that it may make her an accomplice of the Anglo American bloc in its efforts to accomplish its nefarious ends. The Dominions owe allegiance to the same King. Yet it has been recognised formally since 1926 and legally since 1931 that their status is equal to that of England in all matters, internal and external. That this equality is real is proved conclusively by the neutrality of Eire during the last war. That a small country could exercise the power to arrive at a free decision in respect of matters involving the very existence of England and her daughter countries, shows that the Dominions have really as much of freedom as England herself to arrive, even in a time of crisis, at a decision in conformity with their national interests. Need we have any fear in these circumstances that India which will owe no allegiance to the British King in future will be in a worse position, will have even less freedom to order her internal affairs or to follow her own foreign policy than the Dominions, if she remained associated with the Commonwealth of Nations? I do not think, Sir, that it can be maintained even in theory that India has, because of this agreement, lost an iota of her freedom to decide the most crucial matters in accordance with her best interests.

Now, Sir, let us take the other argument. Will our continued membership of the Commonwealth of Nations in any way, directly or indirectly, make us partners in the crimes of the Anglo-American bloc, should they follow policies contrary to the freedom of small nations and to the maintenance of peace in the world? My Friend, Mr. Kamath, is reported to have said yesterday that he preferred isolation to association with the British Commonwealth of Nations, because this association involved a possible risk of India becoming so entangled in the policies followed by the Anglo-American bloc as to be compelled to fall in line with them even against her own wishes. Does the history of the last thirty years show that isolation is a complete guarantee of our non-entanglement in world affairs? America followed the policy of isolation for a century and a quarter. It was the corner-stone of her foreign policy. It was associated with the great idea of Washington and yet soon after the First World War broke out, America notwithstanding her having remained aloof from European affairs for a century and a quarter, notwithstanding the great distance that separated her from the Western Hemisphere was compelled by events to join the war on the side of the Allies.

[Pandit Hirday Nath Kunzru]

Take again the Second World War. There were a good many Americans who wanted that America should maintain a position of perfect neutrality so that whatever happened in Europe, she might not be regarded as a partner of any bloc and yet, world events, her interests, her cultural and political affinities with the Allies compelled her to throw her weight on the side of the Allies. It is obvious, therefore, that people who think that isolation is a guarantee of our non-entanglement in the policy of the Anglo-American bloc are labouring under a delusion. They are following a chimera and if their advice were followed, India, notwithstanding her keeping aloof from the Commonwealth of Nations would not be able to escape the compulsion of events and in the meanwhile would suffer from all the disadvantages from which those nations do that are unable out of hesitation or pusillanimity to make up their minds and declare their policies courageously.

Again, Sir, Members of the Assembly who think that India till this agreement was arrived at was following a policy of neutrality are completely mistaken. Whatever excuse they might have had for this opinion last year, they have none for it this year. The Prime Minister, in winding up the debate on India's foreign policy during the last Budget discussion, made it clear that his policy was not that of neutrality. He only wanted that India should be free to decide in a crisis what course she should follow. If there are any Members of this House who are so simple as to believe that whatever might happen in the rest of the world, India can shut her eyes to it and that we can live as if we belonged to another planet, they should have questioned the statement of the Prime Minister in March last. Not having questioned it then, indeed, so far as I see, having listened to it with approval, I do not understand how they can maintain now that India should follow a policy of isolation which leads to no advantage, but which is as disadvantageous to us as any policy can be. Sir, if I may just add a word on this subject, I should like to say that the policy followed by the Prime Minister and the Government of India in regard to Indonesia, which has received more moral help from India than from any other member of the United Nations Organisation, has shown that India is not now a tool in the hands of the British or Commonwealth statesmen. India knows what her interests are and has the courage to pursue a policy even in opposition to that of stronger nations.

Sir, it seems to me that the objections that have been urged against the agreement are based on the belief that, by joining the Commonwealth of Nations, we have conferred a favour on England or the Dominions. I think there can be no greater mistake than imagining that because our status is equal to that of any other nation, our stature, our political position in the world is also equal to that of the bigger and more advanced nations. It is obviously to the benefit of the Commonwealth that India should continue to be a member of it; but it is no less obvious that India's economic, defence and scientific interests require that she should remain in the Commonwealth at least for some time. No international agreement, in fact, Sir, no agreement between individuals can have any value unless it is of advantage to all the parties concerned. How can it then be urged against this agreement which is helpful to us that it enables England and the Commonwealth to feel that their position is stronger now than it would have been with India outside the Commonwealth? If we want industrial aid, we go to Britain; if we want to know what are the latest scientific developments in the economic or in the military sphere, we as a rule go to England. If we want weapons, if we want to give higher military training to our officers, we again think of England. What is the good in these circumstances of disregarding the reality and imagining that while other coun-

tries need our help, we can stand aloof from all of them and maintain our national existence in full vigour?

Sir, some speakers who were not for the outright rejection of the agreement urged yesterday that as this Assembly was elected for a particular purpose only, it is not morally entitled to ratify the agreement. They want that the ratification of the agreement should be postponed till a new Assembly elected under the Republican Constitution comes into existence. Frankly speaking, I cannot understand this line of argument. If we feel that the agreement lowers our international position or is opposed to our national interest, let us reject it now. But, if it is to our good in all respects, if we feel that in the present world situation, it will not merely promote our interest but also promote world harmony, establish concord between the East and the West, build a bridge between two civilisations, why should we postpone its ratification till another Assembly is elected? If our ratification now were to deprive the new Assembly of its power to denounce the agreement, such a proposition would have considerable force in it. But, the next Assembly will be as free to arrive at a decision on this matter as the present Assembly is. So far as I can see, India now having entered into a treaty with England, will be free to leave the Commonwealth of Nations even without giving any previous notice. I entirely agree with the Prime Minister that had India left the Commonwealth of Nations and aligned herself with any other nation, her course of action might have led to criticism in international circles. But what India has done now is natural. She is seeking no new alliance; she is only trying to retain old friends because democratic ideals inspire all of them and because, though there may be linguistic differences between us, our outlook in social, cultural and political matters is broadly speaking the same.

Sir, I congratulate the Prime Minister on his decision and unhesitatingly ask the House to ratify this decision because it is in the best interests of India and the Maintenance of peace in the world.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to support the resolution which was moved by the Honourable the Prime Minister yesterday. I also join in the felicitations given to him by the last speaker in achieving not only a great personal triumph, but a triumph for India. By his broad statesmanship, India today is a partner with England in the common venture of the Commonwealth, not a tail of the Commonwealth as was said by one speaker yesterday. We are also, in companionship with other nations with democratic ideals, contributing towards world peace. Therefore, Panditji has not only achieved personal distinction, but invested India with high leadership in the affairs of the world and I think he deserves the congratulations not only of this House but of the whole country.

Sir, the opposition to the agreement which is entered into by Panditji in this matter is based on various grounds not only in this House, but outside. But if we analyse all the arguments put forward, in substance it is the expression of a distrust of Great Britain. For several years—for three-fourths of a century—the attitude of India towards Britain was one of hostility. It has left its legacy behind. Now most of the opposition which comes against this particular agreement arises from nothing else but a relic of the past mental attitude in considering every association with Britain to be prejudicial to India. The mental frontiers of public opinion in India were no doubt built in the past for fighting Britain but now, in the light of the new changes, they require to be readjusted. There is no reason to believe that a time can ever arise when Britain can acquire the same position with regard to India which it had before 15th August. Today it is recognised all the world over that we are

[Shri K. M. Munshi]

completely independent of Great Britain and no more from a part of its Empire. It is recognised all the world over that India is the only stabilising factor in Asia and potentially the guardians of world peace in our part of the world. Any fear, therefore, any distrust of Britain, I submit, is entirely misplaced and most of the arguments which are advanced against the proposition moved by the Honourable the Prime Minister are based upon this distrust.

There is one argument which I would like to deal with. It is that this Commonwealth is nothing but the old British Commonwealth of Nations in another form. This argument is entirely based on a fallacy. The British Commonwealth of Nations was entirely different both in the scope and content to the new Commonwealth which is now envisaged by this Declaration. As the House knows very well the old British Commonwealth or rather the British Commonwealth, which exist and which will disappear on the 15th August next when our Constitution will be passed, was defined by the Balfour Declaration in these terms:—

“Autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations.”

Now part of this is also embodied in the well known Statute of Westminster Nothing of it has been left so far as this declaration is concerned. In the first instance, the Nations which are going to be members of this Commonwealth are to be independent nations. That is the wording of the Declaration here. Secondly they are not united by a common allegiance to the Crown. This is the most important element in the new Commonwealth. The British Commonwealth, as is well-known, depended for its existence on what is called the “Unity of the Crown”. I remember to have read in one of the books of Berriedale Keith, one of the great constitutional lawyers, that the unity of the Crown and the allegiance to the King—I am speaking from memory—are the basis on which the British Commonwealth of Nations is founded and when that goes, the British Commonwealth of Nations will be disintegrated. The fact remains that there is no allegiance to the Crown in the new Commonwealth and there is no unity of the Crown as contemplated by the old constitutional laws of the British Empire. Take for instance the word ‘British Empire’ in the old Balfour Declaration. In composition at that time the free countries—the self-governing Dominions—were mostly British by birth. Today we—the citizens of India—are in a majority in the new Commonwealth. The predominant composition is not British. In the British Empire and the British Commonwealth of Nations, the unity was preserved by the army, predominantly British, which functioned in the name of His Majesty. After the 15th August 1947, the Indian army was the army of an independent dominion but after the 15th August next it will no longer be His Majesty’s forces. There is not British army left in India which would control the country. Therefore, to the extent it is a complete departure from the old British Commonwealth of Nations.

Secondly, there is no unity of the Crown at all in the new Commonwealth. The theoretical basis on which the British Commonwealth was founded was that there was one King and all the different legislatures, different Governments and different courts throughout the British Commonwealth spoke and acted in the name of the King. Hereafter in this Commonwealth so far as India is concerned, its Government, its legislature and its courts will act in the name of the President of the Republic who will be the representative of the sovereign people of India. Take again the other basic theory which underlay the British Commonwealth. That theory was that the King was the sole

depository of power and that no legislation could be enacted unless assent was given by the King or in his name. That will go so far as India is concerned. The fundamental unity of the Crown on which the old Commonwealth was based will disappear under the new Commonwealth. Therefore to say that the old Commonwealth will continue under a new name is not correct.

Another doctrine on which the British Commonwealth was founded was the allegiance of every citizen to the King. In the Statute of Westminster, it is put in the forefront as the basic doctrine on which the British Commonwealth was founded. In the new Commonwealth there is no allegiance to the King. Allegiance would imply personal relation between every citizen of the Commonwealth wherever he may be and the King. So far as citizens of India are concerned, they will owe no allegiance to the King of England. Their allegiance will be to the Republic of India. No basis of the old British Commonwealth is projected into the new Commonwealth. Therefore I submit the argument that this is the same commonwealth in a different form is really not valid at all.

There is no doubt that, as in the old British Commonwealth, the King is the symbolic Head of the Commonwealth. But the Honourable Prime Minister made it clear that in the old Commonwealth the King has the status and function of the Head of the Commonwealth while in the new one he has the status but not the function. To the extent the King continues as a symbol of the free association but without any function whatever and no citizen of India would owe allegiance to him. This new Commonwealth, as I could gather from the Declaration, is a free association of independent nations; each nation member will be free to enter its own regional and international obligations. It will be only united with others by common ideals and interest. Its main advantage will be, as described by the Prime Minister of Great Britain, Mr. Attlee, in the House of Common recently as 'close consultation and mutual support' and the King will only be the symbol of this free association.

I submit, therefore that this Commonwealth is an entirely new conception and no one need be under the impression that the old British Commonwealth is only being projected in another form.

Sir, many of the speakers before me have described this Commonwealth more or less like the old pandits who describe Brahman—"Neti", "Neti", "it is not this," "it is not this," "it is not this." I would humbly submit that the Commonwealth has a positive advantage, and that it is a positive factor. In my opinion, Sir, it is an indispensable alliance which is needed not only in the interest of India, but in the interest of world peace. Sir, India wants nothing more today than world peace. We can only consolidate and enlarge our new-found freedom if for a generation or more, the world is at peace. It is of the highest interest, therefore, for us that we should do our utmost, do everything in our power, by which world peace, could be maintained at any rate, in our region. India cannot, Sir, possibly be helpful in this direction unless she enters into an alliance with other members of the Commonwealth, as it is done in this case. It is very easy to talk about world peace. We have been talking for years about collective security. But collective security is not a *mantra* to charm serpents with, nor is it a kind of opiate to lull people into inactivity. It really implies preparation, defensive preparations, standardisation of weapons, co-ordinated research and planning and industrial co-operation between nations on a very large scale. As I conceive it, one of the greatest merits of the Commonwealth is that it provides these benefits. Strategically India commands the Indian Ocean. But inversely, it is to my mind, the one source of danger, the one direction from which we may get the best support in days of difficulty and again the one direction from which our danger may come. And of this Indian Ocean we must not forget, Australia on the one side and South Africa on the

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other, are the pillars, the two extreme out-posts. And any alliance which enables us to maintain defence preparations in the Indian Ocean will be of the greatest advantage to India. From that point of view I consider this new Commonwealth as of the greatest importance to India and its future.

Sir, the Prime Minister has said on more than one occasion that it is high time we forgot our old distrust of England. Great Britain and India have for a hundred and fifty years been associated closely in culture, in thought many of our political and legal institutions and our democratic ideals, we have shared with England in common. And looking a few years ahead into the future also, I submit that an alliance between Great Britain and India in the interest of world peace will be the most effective instrument of collective security. From this point of view this House ought to congratulate itself on achieving this new alliance, the membership of this Commonwealth of Nations as one of its most important members. From this point of view, I think, this House as well as the country ought to welcome this new Commonwealth, and I have no doubt both the House and the country will fully support it. Sir, this is all I have to say.

Prof. K. T. Shah (Bihar : General). Mr. President, Sir, sponsored as this resolution is by the Leader of the House, and supported as it is by the powerful advocacy of Pandit Kunzru, one feels a natural hesitation in opposing its substance. Nevertheless, I will try to place before this House a few arguments, under three main heads, according to which, in my opinion, this House would do well to reject the motion.

Sir, the form of the motion itself is, to me, objectionable. I mean the word "ratify" is open to objection. This word suggest something previously authorised and now requiring in the final form to be ratified. I am afraid I cannot recall any such authorisation for this step-previous discussion and determination of this House according to which a momentous agreement like this could have been entered into, and the House should now be called upon to ratify that decision. I entirely agree with the Honourable the Prime Minister that the matter is for ratification or rejection; and that there is very little room for amendment. A suggestion was made by some friends for deferring or postponing the matter and eliciting public opinion on it. These suggestions may have their own claims. But I feel that the word "ratification" of a proposition, not previously determined upon by this House considered, discussed, and agreed to in substance, is calling up the House to register a decree entered into by the Head of the Government.

Now, to that, as a mere matter of principle, I feel most reluctant to agree. The tendency to confront the House with a *fait accompli*, and thereby to require the House to accept or reject a proposition like this, is in my opinion not likely to lead to that freedom of discussion, that fulness of ventilation of all shades of opinion, which I think are indispensable for the healthy growth of democratic sentiment in this country.

This, however, is not the only ground on which I would like this House to reject this proposition. There are other, and in my opinion, much more weighty reasons, of a constitutional importance, which incline me to say that the proposition is ill-timed, ill-conceived, and unlikely to result in any substantial benefit to this country.

In the first place, Sir, we are told that there is no change, virtually speaking, in the existing association of the independent nations called hitherto the British Commonwealth of nations, and now re-christened into Commonwealth of Nations. If there is no change, where is the necessity now for us to make this

agreement? If the situation now is as it was, if we are as we were before the Declaration of the Prime Ministers, if we are in the same position of sovereign independence, and absolutely uninfluenced by any outside authority in our domestic or foreign relations, then I fail to understand what could be the necessity for entering into or committing ourselves to this Agreement. If this Agreement does not take us any further, if it does not involve us into new commitments, then I think it is superfluous. If it does involve us into commitments, then it would be dangerous; and we should think before we enter into an agreement like this. That, I think, is a consideration well worth pondering over, before we give our consent to a proposition like this. If there is no substantial change, then I feel it unnecessary to accept this agreement.

Secondly, we are told that the King will be the symbolic head of this loose association or loose union between the various independent nations, previously called the British Commonwealth, or the British Empire, and now called the Commonwealth of Nations. This is also suggestive. I thought when we passed the Objectives Resolution, when we declared our intention to constitute ourselves into a Sovereign, Independent Republic, we had said the last on our connection with the British Empire. Now, in this form and at this stage to bring in the headship of the English King, or even the symbolic headship of the English King, seems to me, to say the least, highly anomalous. We are passing through an age in which we are demolishing, disestablishing, if I may say so, Kings and kingships in our own country, which can claim longer generation and much better record of resistance to the powers of darkness in this very country than the Kingship or Royalty of England can.

I have, Sir, no desire to involve the British Royalty in any kind of party sentiment. But I must point out that in this country there were and have been Kings who claim their descent from Rama, and who could show a record of a thousand years' resistance to the powers of darkness, to aggression and suppression, which was regarded and rightly regarded as some of the most heroic achievement in this country. I have shed no tear on the disappearance of these anachronisms because I do not believe in kingship in this democratic age, I do not regret that those vestiges those descendants of the ancient dynasties of this country have begun or been made to disappear, one after another. I am in fact of the opinion that it is one of the greatest achievements that the present Government has to its credit in bringing about the unification and democratisation of this country. But I cannot help asking:—With this record to our Government's credit, why should we at this stage accept even the symbolic headship of the British King?

We have been told, Sir, that this sentiment is the result of our recent past in which our mentality has been formed and coloured by a constant attitude of hostility, of distrust and suspicion of Britain and the British. I plead guilty to that, but offer no apology for holding such apprehensions. This is a mentality which is still in most of us; and when we are asked to forget and forgive the past I cannot but feel that the forgetting is to be all on their side, and the forgiving is to be all on our side. We must forgive all the record of a century of exploitation, of suppression and oppression, of denial of our rights and liberties, of the sacrifice of our interests and sabotage of our ambitions because we have been made into an independent Republic. We must forgive all that, wipe it clean from our memory, and join hands with those who only the other day were our exploiters, who only the other day involved us in wars which were none of our seeking, and which cost us thousands of lives and crores upon crores of money, and who even today in my opinion, are not free from the suspicion that they are having their own mental reservations in inviting, in almost tempting us to accept this agreement.

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It is not merely of the past that I am thinking of when I ask this House to remember the record that Britain has had in this country. Even at the present time, many of the so called Dominions of Britain, independent nations as they now are, not only flaunt a policy of racial discrimination and distinction against us: but they are proclaiming to the world that they would maintain a "White Australia" or a "White" Africa policy. And, what is more, today they refuse even to agree to any ordinary and peaceful method of seeking settlement of such disputes.

We have, in contradistinction to the amorphous British Commonwealth of Nations, the United Nations Organisation. This is after all a Union of those who pledge themselves to the democratic way of living. There is a definite constitution a regular character. There are institutions: there are legislative and executive organisations. In contrast with that, on the showing of the sponsors of the agreement themselves, in the case of the Commonwealth of Nations (the word "British" is now omitted to manage or humour our sentiments) there is no common constitution, there is no charter, there is no common organisation, there is no machinery for securing justice as between the various members of that organisation or Commonwealth. There is no machinery for registering complaints or making an investigation or adjudication of a dispute.

In preference to the United Nations Organisation, what is there, for us at least in India, in the British Commonwealth of Nations, that we should now, within a year and a half of our independence, become members of that organisation? I repeat I cannot see any necessity, I cannot see any wisdom, I cannot see any advantage in asking this House or this country to accept membership of this Commonwealth: the more so as, on their own showing, there is going to be no change. After all if in the British Commonwealth of Nations we are also an independent sovereign Republic of India, so are we in the United Nations Organisation. By its very framework, by its very narrowness in that it is limited only to the members of the erstwhile British Commonwealth or the British Empire, it is suggestive of a grouping within a larger world group, a grouping within the United Nations which is highly objectionable. The United Nations is a much more world-wide organisation, claiming allegiance of many more nations of the world and actually showing itself more active in redressing wrongs than the British Commonwealth of Nations.....

Mr. Tajamul Husain : On a point of information, may I ask the honourable Members as to what are the disadvantages?

Prof. K.T. Shah : If my honourable Friend will have some patience I will deal with the disadvantages also.

Let me now proceed with my argument and I am trying to examine what advantages you are expecting from such agreement just now to ask me to agree to this proposition. I for one see no advantage so far.

I have so far placed this matter on a purely constitutional ground. Let me now take up the economic side of the matter. The economic side seems to me to be still more formidable against the acceptance of this proposition, because I see no advantage likely to result to us from joining a Commonwealth of this kind. If Britain herself in her present position is dependent for her own national recovery upon outside support, upon American help, it stands to reason that she will not be in a position to assist us on the much more widespread and much more intensive plan of development that we are thinking of. If we have to receive support, if we need in our ambitions of development assistance of any kind, I am afraid Britain is unlikely to give us that assistance.

The Honourable the Prime Minister declared in his speech that he is not a good bargainer. I am afraid perhaps that is true. But I must also remind the House that Britain is a good bargainer, and that British statesmen are such good bargainers who by their appearance, by their suavity and by their diplomacy may seem to suggest that bargaining is the last thing in their mind; and yet all the time make the most effective bargain which the victim may perhaps discover ten years hence. At the time it may not appear as a bargain; and so it may not seem well for us to press for a *quid pro quo*. Britain by its tradition of two hundred years is a nation of shopkeepers, and as such she is best fitted for securing the best bargain. Though other people may forget, the memories that we have of Britain's bargaining ability are only of the other day; and so I cannot overlook that.

From this agreement, therefore, I personally see no economic advantage or benefit likely to result to this country by a closer association with the Commonwealth. If anything, we likely to lose by our association with that country. Here I would invite the attention of my honourable Friend who interrupted me a few minutes ago to see what the disadvantages are. I do not know whether he realise that in man-power we are more than five times the British man-power, perhaps almost seven times the manpower, of Britain and the Dominions combined. I am talking of the white population just now. In resources, and still more in potential resources, we are probably much more important by ourselves than they are. In actual economic situation, notwithstanding our handicaps of the day, which are passing handicaps, the real natural position is far more balanced with us than it is with them. With Britain particularly the national economy is highly unbalanced and with other Dominions also for the time being. In our association with these countries, who are under the necessity of receiving more than they can give us, their whole economy is so organised that they must sell more than they consume of their own material and conversely consume more than they produce of their own requirements. For such people an organisation of this kind can only mean a hope or possibility of securing same advantage for themselves. But for us there can be no hope of advantage by a closer association.

I will be forgiven, I hope, by the House if I remind the Members of the tale of imperial preference during the last fifteen or twenty years to which this country had been subject. If imperial preference is to wear a new appearance now, as the British Commonwealth of Nations is going to wear a new designation, I cannot but warn this House against any snare of that kind. Though it may not today be spread before us, it will in time be laid before us, for inveigling us into accepting an advantageous position to the British trader compared perhaps with our own or at the sacrifice of our own.

Sir, we had the other day an invitation graciously extended to foreign capital for investment in India, in which British capitalists were particularly singled out for so to say, special butterification. I fear I was unable to accept that attitude then nor can I accept this attitude today as regards the advantage at all likely to flow from closer association with the British Commonwealth in an economic sense.

Sir, Britain may not have been played out; I do not think that Britain is at her last gasp. But I certainly think that Britain is no more the workshop, the carrier and the banker of the world that she used to pride herself on being in the last century. And those countries which have means of their own, those countries which have resources of their own, have manpower of their own to rise and achieve that very position, for themselves,—those countries are not likely to benefit from the association of a country which may not be bankrupt. Formally speaking, but which is yet unable to pay off its debt and is compounding with her creditors.

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Further, the gradual association and the closer dependence of Britain's economy on the United States makes you more than ever doubtful as to the propriety, the wisdom, and the necessity of countries like us, just emerging into independence and intent on our own economic development, so associating, so tying themselves up with such other countries, that in matters economic their whole machinery may be also made dependent upon their class system, their vested interests, their methods, their policies of exploitation such as they have been in the past, such as they may quite possibly be hereafter, if you are not strong enough to resist.

Sir, here is a danger which may not be easily perceived by those who only see the surface and no more. We have been advised, Sir, not to look too much into the past. We have been advised also not to think too much of the present, but to have our eye on the future. Sir, I am not a prophet, and cannot, therefore say what the future has in store for us. But judging from current events, judging from the tendencies now quite clear on the surface, judging from developments that have taken place in the four years since the war ended, it seems to me that, economically speaking, this association that we are now called upon to ratify with the other nations of the British Commonwealth has no economic advantages for us, either in the shape of financial help or industrial development, except of course that we will have to pay through our nose. Of course anything can be of advantage if you do not count the cost. If you are prepared to pay anything for it, then I have nothing more to say. But the fact remains that if you balance the advantages and disadvantages properly, if you put the debits and credits together correctly, I do not think any Chartered Accountant would be able to show you a balanced balance-sheet in regard to our relations, present or future with the British Commonwealth of Nations.

One word more and I have done. The political aspect of the situation is no less important than is sought to be made out here. We are told, Sir, that we cannot live in an isolated cell of our own. We certainly cannot. Nor does anybody suggest that we should try and live in an isolated compartment of our own. It would be a folly; it would be impossible in the present setup of things for any country, however large, to follow a policy of isolation. But to say that does not mean that the only association possible for us is with the British Commonwealth of Nations. We have willingly and whole heartedly joined the United Nations Organisation, which, as I said, is a world-wide organisation. We have pledged our co-operation and support to them. We are trying to take advantage of the machinery provided by the UNO for the various kinds of political groupings. But that is not the same thing as becoming closely associated with the British Commonwealth of Nations, which, by the very fact of that association is likely to give rise to suspicion to others; and, as such, likely to convert them into potential enemies which we need not have.

We have been told, Sir, that our education has been moulded on the British precedent; we have been told, Sir, that our whole administration and financial structure is fashioned on the British model. But is that also a reason why we should continue that which might quite conceivably be harmful even? It will be more a signal, in my opinion, of danger and warning rather than an invitation to a greater hospitality and closer association. I have much more to say on this aspect of the matter, but I do not wish to trespass on your patience, and, therefore with these words I invite the House to reject this proposition.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, I have to congratulate, if I may, the Honourable the Prime Minister for having

solved a most knotty problem, a problem which was regarded as somewhat insoluble in certain quarters some months ago. The resolution which we are asked to affirm does not in any way detract from the position which the Constituent Assembly has taken up from the outset. India is to be a Sovereign Independent Republic, both in her internal affairs and external relations. The Crown will have no place whatever either in the internal relations or in the external relations. The President of the Union will represent India both in the internal spheres and in external relations. We do not require any credentials either by or in the name of the British Crown for transacting our business with foreign countries. In matters of war in peace, in trade relations, we will be masters of our household. There will be no economic entanglements of any kind. So far as the Dominions are concerned, both India and the Dominions are at arms length. India will be entitled to pursue a foreign policy which is suited to the best interests of India. The only point that is urged against the acceptance of the Agreement is that there is no reason why the first Part of the Statute of Westminster should be embodied in the Declaration, namely, that the Crown is to be the symbol of the free association of the Members of the British Commonwealth. The second part of the Declaration, found in the preamble of Statute of Westminster *viz.*, the part dealing with allegiance to the Crown has been advisedly omitted. Therefore the only link is that of the King being the symbol of the free association of the members of the Commonwealth of Nations. If there is to be a symbol, it will be very difficult to fit in the President of the Union into the framework. It is not a feasible idea to have alternatively, say, the Prime Ministers of England and the Dominions and the President of India as the heads of the association. As the Crown still continues to be the head of other Dominions, and as we are entering into a kind of voluntary association, the King as the symbol, is perpetuated. But it is necessary to note that it is nothing more than a symbol. The Crown will have no functions, no duties and no rights *vis-a-vis* the various Units of the Commonwealth. That is the position of the Crown.

Now therefore, are there any radical objections to this scheme that has been adopted is the one question before us. In regard to this point, what I would like to invite the attention of the House to is that this association has not even any resemblance to the Atlantic Pact or the UNO. At least in regard to the UNO, though the sovereignty of the different Units is in terms declared in the UNO, taking the various parts of the UNO you may come to the conclusion that to some extent there are provisions which detract from the sovereignty of the individual members of the UNO.

Similarly, there is no question of our involving ourselves in any alliances like the Atlantic Pact, because there are no commitments either in regard to defence or in regard to war or other matters. Therefore it is the least onerous task that has been undertaken by our Prime Minister. The republican status of India is in no way affected at all in the external sphere or in the internal sphere and the position of the President will in no way be affected. In fact the Declaration is silent on this point. Supposing the King of England visits India, he will not get any kind of priority or precedence over our President. Our President would be the representative of India and the King of England will have no sort of precedence over him in spite of the fact that he may be the link of the Commonwealth of Nations within the limits of India or in any other place. In other places, including the Dominions and England, the President will have the rank of an independent sovereign.

Then the only question that has been sometimes debated is, 'Why not we stand aloof altogether? Why not we take up the position which Ireland has

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taken?' The one point which we have to remember in this connection is that Ireland may be in a position to get all the advantages of citizenship everywhere having regard to the fact that her kith and kin are scattered over Canada, Australia and America and they will be in a position to cement the relationship between the Dominions and America. You can easily understand why they are willing to give the go-by to all ideas of citizenship so far as an Irish citizen is concerned even in England. Therefore it is necessary to exactly appreciate the position of Ireland. First, Ireland is a very small country very near Great Britain; and secondly, Irishmen are scattered all over the Dominions. Therefore they will be in a position to get all the advantages of the contact and can have the best of both the worlds without being members of the Commonwealth of Nations. That explains the real position of Ireland and it also to some extent satisfies the sentiments of the Irish people. We will have to consider our own position, not in the setting of what Ireland has done or may do, but in the setting of what is in the best interests of our own country. Though it may not be germane for the purpose of understanding this Resolution, you will have to take into account various factors such as the Army organisation under the existing relations, the various conditions which have to be established in the matter of capital importation and so on. For these purposes a certain degree of contact or perpetuation of contact in an effective form will be an advantage to this country.

These are matters which I have no doubt must have weighed with the Honourable the Prime Minister in coming to this Agreement without in any way sacrificing the independence, the dignity, and the constitutional position of India as per the terms of the Constitution.

One other point which you may take note of is that without the alteration of a comma or putting in any kind of prefix this Constitution can go through without the mention of the Crown in any parts of it. The Preamble will be there. Necessary changes may be made to fit in the different parts of the Constitution with the Preamble. But the Crown will come nowhere in any part of this Constitutional structure. It is a very loose association which has some advantages. Nobody, no country in the present day can live in what may be called splendid isolation. It is one thing to become the slave of another nation and become a victim of its economic policy and it is quite another thing to maintain one's individuality. It is said that if you sever your constitutional relations altogether, there will be independence. That is wrong. It all depends upon the strength which you develop. Look at China. She was for a very long time theoretically independent and had to depend upon other countries. Similarly, our country may be theoretically independent with no connection with Britain or the British Crown. But until you develop your own strength you will be subject to control by other nations. Therefore, the only way in which to approach the problem is to see that there is nothing in the way of developing our strength and if we so desire to break off at any time we choose. If, for example, Britain does not conduct herself properly it will be quite open to the next Government or the next Parliament which will be elected on universal suffrage to snap the tie. Therefore it is a question of expediency. I cannot understand the argument on the one side that it means nothing and on the other side it means everything. You have no right to read between the lines when the Prime Minister makes an open declaration. You will have to take him at his word. There is no reason why, having regard to our knowledge of our Prime Minister, you should think that he has entered into any kind of understanding with somebody else. The understanding is there in the declaration. Are you or are you not willing to abide by the Declaration?

Another point was put forward, *viz*, that this question should have first been ratified. I have never heard it said that before you enter into a pact with other nations you must discuss with others the minute details of that pact. In the past the whole scheme was adumbrated before this House on several occasions. The Congress had agreed to support in principle this alliance or union, it does not matter what you call it. Having done that, to say that every comma, every semi-colon and every sentence of this agreement should be placed before this House before it is entered into is meaningless. The Prime Minister goes there and he carries out in letter and in spirit the mandate of this House and the Congress, and he now comes back and asks you to ratify it. What is wrong in this procedure? Does it conflict with the international procedure adopted by any civilised country in the world? This is a point which I cannot understand. I have never heard it said that all the details of an agreement must be discussed before a Parliament or a Constituent Assembly, that every clause of it should be discussed and approved, and then the other parties to the agreement should either accept it or reject it. The one point that you have to consider is whether the Prime Minister has in any way deviated from the instruction given to him by the Congress or the Constituent Assembly.

Now, I am also quite clear on this point that so far as India is concerned, there is no commitment of any kind. It is entitled to pursue its own foreign policy, domestic policy or industrial policy. Even as a Dominion India is having an independent line of her own without reference to the other Dominions at times even at cross-purposes with England, the latter having remained neutral on difficult occasions when she found that she could not side with one or the other. Even her neutrality is an advantage to us. For example, whenever there is a conflict between one member of the Commonwealth and ourselves, her neutrality will be an advantage to us. The point to note is that we have no commitment to enter into any power bloc. India is the one country which has no kind of commitments. Under those circumstances, I think to have friends with whom you can discuss things without any commitments is a great advantage, unless you want to live in isolation in the complicated world of the present day. When really there are no commitments, any criticism of the decision is merely legalistic, unless the critics want that there should be commitments. Does Professor Shah want that there should be commitments? Do the other people who indulged in a caveat against the agreement want commitments? If you want, then those commitments will have to be bilateral. You cannot have unilateral commitments. Therefore that argument is rather contradictory. On the one side you do not want to enter into any bloc and you do not want to have any commitments. If you want to derive tangible concrete advantages from any particular group of people, then you must be willing to yield to the other side. Even in the economic sphere it is wrong to think that you can be independent only if you stand aloof from other nations. Take America. America is able to dominate the other nations at the world. Is it because she has entered into compacts with those nations? It is because she has got money, she has got wealth, she has got immense resources, she is able to dominate the whole world. Look at the independent nations of Europe. Is it because they are not independent they are being dominated? They are independent republics in every sense of the term, but yet they are being dominated. For a growing country like India to remain in the Commonwealth without any commitments of any kind will be an advantage in the interests of peace and the future good relations of the world, and I do not think there can be any better exponent of world peace than our Prime Minister. I have no doubt whatsoever that if he finds that there are any entanglements under the cover of this free association, with the King as the symbol of that association he will be the first one to advise you to scrap

[Shri Alladi Krishnaswami Ayyar]

that association. Under these circumstances, let us not be afraid of meeting another person because he is going to swallow you. That means you are timid; you have no confidence in yourself. If you have confidence in yourself, in this compact you will be able to assert your individuality. Under these circumstances, having regard to the considerations I have set out, we should accord an enthusiastic and unanimous support to the agreement reached by our Prime Minister. He has shown himself to be taller even though he may be short physically than all the other Ministers from the different parts of the Commonwealth as a result of this Conference. He has achieved what we have fought for and at the same time he has preserved our continued relationship with the Commonwealth.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. President, Sir, I have come forward to support wholeheartedly the Resolution that has been placed before this House by the Honourable Prime Minister. At the outset, I want to congratulate him on his having raised his own status in the international sphere along with that of this country. Sir, I need not say such in support of the Resolution after what Pandit Kunzru, Mr. K. M. Munshi and Shri Alladi Krishnaswami Ayyer and similar other Members have spoken about it. If I want to speak, I want to do so only to demonstrate the fact that it is not one or two groups that are in support of the policy which has been adumbrated by the Prime Minister, but many groups the vast majority of the people of the country are supporting him in the stand that he has taken. It is only for that purpose that I have come forward to speak in support of this Resolution. Firstly, when we are speaking at present about such important matters, we must not always be thinking of the past. We have to leave the past behind and we should not be harping on what happened in the past. We should not be thinking in terms of the past. In the past we were a dependent country struggling for our independence and so any proposal as is now put before us would have then been viewed with suspicion and we would have fought against such proposals. Now the position is altogether different. We are now a free nation. We are free to choose our own course of action. Therefore, when the position is altogether different now, I do not know why we must be spending so much of our time in criticising in this manner the action that has been taken by the Honourable Prime Minister as the spokesman of a free nation. Now Sir, what is our position today? We are a Dominion of the Commonwealth; we have not yet become a sovereign independent Republic according to the Constitution, which has not yet been passed. Even under this position, Sir, what are our rights? We can make our own choice; we are free to do anything we please. It is under that assumption that certain of our friends are advising us to reject the Resolution that is placed before the House. Even when we are under the Crown and even when we are accepting the Crown as the Head of the Commonwealth, of which we are a Member, even now those Members assume and rightly assume that we are free to do as we please and, therefore, what is their objection in continuing in the same position, even when we declare that we are a Republic under the new Constitution? Then, Sir, take the Resolution itself or the Declaration, which was issued in London after the conclusion of the Commonwealth Conference. That Declaration is simple. The Prime Minister has assured us that there is nothing behind it, that there is no secret pact or any private understanding with the other Prime Minister or powers that be in the other dominions of the Commonwealth ; and, therefore, as it is, it is a simple declaration and what it is that we are fighting against in that Declaration, passes my understanding; it only reiterates the present position that though in the near future India may declare itself to be a Republic, the rights we have got and the position which we are enjoying now will not in any way be whittled down is what is assured by that Declaration. Then also, when we accept the King as the symbol of association

instead of the Head of the Commonwealth, we will be free to do whatever we may want to do at that time. Our position in the matter of our internal affairs and also external affairs is not in any way sought to be affected by that Declaration.

Now the amendments that are placed before the House are to this effect: One is that the consideration of this Resolution must be postponed until after the Constitution is passed. For what purpose? Now, if that amendment is accepted, what will be the position? Then, the position will be that we shall still continue to be a member of the Commonwealth. Then that amendment means that our position of being free to make our own choice is not being affected in any way. If so, how it will be affected if we pass the Resolution, I do not understand. Then, the second amendment is that until Africa and Australia agreed to treat Indians on a par with the other citizens of the Commonwealth, we should not ratify this Resolution. But, would we not be in a better position, if we pass this Resolution and continue to be a member of the Commonwealth, to treat with them in that whatever action we please on those questions though we may continue to be a member of the Commonwealth under the arrangement that has been come to by our Prime Minister with the other Ministers.

Sir, I do not want to say much more on this subject and I only want to remind the House that today or tomorrow we cannot as a country or as a nation stand alone. If we have to create or maintain any relationship with any other country of the world, this is the best arrangement, the arrangement that is placed before us now. Under this arrangement there is no commitment whatever for us. If it is a treaty that our friends want us to enter into with other countries, it will put so many conditions and restrictions upon us as it will, of course put upon also the other countries entering into the treaty. But now, as it is, according to this arrangement, there is no commitment whatever. We are as free as the bird of the air can be. Take a treaty; there will at least be time-limit for the continuance of that treaty, but here there is not even that time-limit. Under this London Declaration or under this Resolution, which is placed before this House, we are free to change our position at any time. We please, and therefore, this is the best of arrangements possible under the circumstances and it will serve us both ways: It will give us a favourable position in the comity of nations and at the same time it will maintain our perfect freedom of action, and it is for this purpose, Mr. President, I wholeheartedly support the Resolution.

Shri Khandubhai K. Desai (Bombay : General): Mr. President, Sir, I have not the least hesitation in supporting the motion moved by the Honourable the Prime Minister. I support this motion not as a politician nor as a lawyer nor as a student of international questions. My support to this motion is from the point of view of how that agreement has reacted on the common people of this country. There is no doubt that the handling of the this question by our Prime Minister has raised the prestige and the status of India in the comity of the nations in the world. The opposition to this motion was mainly based on, in my opinion, fear and inferiority complex. I must say to those friends that the people of this country are more buoyant, more cheerful, more courageous and they are not afraid of dealing with any nation in the common interest. The way in which some of the friends who have opposed this motion spoke betrays really no confidence in themselves. It has rightly been pointed out by some speakers here that we must cease to live in the past; we must live in the present with certainly an eye on the future. The present agreement really is a great contribution to changing the hitherto character of the Commonwealth. Our Prime Minister has been instrumental in changing the

[Shri Khandubhai K. Desai]

whole picture of what was upto now called “the British Commonwealth of Nations”. Incidentally he has substantially also helped the other nations who were members of the defunct British Commonwealth of Nations.

The masses of this country look at the status which we have attained as an independent sovereign nation from one point only and that is, how far our present status will contribute to the promotion of world peace. It has been stated that there are commitments implied in this association. The Prime Minister had very clearly pointed out that there are no commitments whatsoever. There is one commitment and that commitment is to promote world peace. I think he has given us a very great lead, a welcome lead in the very first act of the new nation in international politics. The question before us is whether we as an independent nation should take up the attitude of an ostrich. If there are fears, if there are dangers, if there are difficulties, they have to be faced. You cannot simply in an ostrich-like attitude sit aside and say, there is no fear. There is fear to world peace and we as a nation must contribute towards the promotion of that world peace. To these friends who want this motion to be rejected, I say that they are running away from efforts towards the promotion of the world peace. The present agreement does create a forum where our representative can go and discuss and place our points of view with regard to the promotion of world peace. There is absolutely no commitment. Of course, the old hatred against the Britishers, and our fear of them still persists, but we must overcome them. It has also been stated that the Britishers are past masters in bargaining and therefore they will cheat us. That is all old complex. Can world peace be maintained, be promoted by fear complex, by suspicion, by distrust? No. If efforts for world peace are to be made by our nation and I think that our nation has got a definite mission and that definite mission has to be fulfilled—you should have some friends in the world where you can percolate your ideas. Prof. Shah has stated that he has suspicion, distrust, that he has this that and the other. How long are you going to harbour this distrust, suspicion, this year? You have to live in the world. You are affected whether you like it or not by world politics, by world affairs. Let it not be said that when there was occasion, when there was the opportunity to talk with the world statesmen, you have failed. Instead of expressing our gratification at what our Prime Minister has said. Some of the speakers have incoherently attacked this agreement. Some of these friends talk the old language and feel that they are leftists or radicals. In my view they are neither leftists nor radicals. They are conservatives; they are reactionaries; they want to live in a state which is static. Our Prime Minister’s efforts at the Commonwealth were more or less dictated by his progressive outlook on world affairs.

Sir, only the other day, a week back, the representatives of the working classes of this country met at Indore in annual session and the question of this agreement came up for discussion. I was surprised to find that there was unanimous support for this agreement, and on one ground alone and that was this. They state in their resolution: “Without impairing in the least degree India’s status as a completely independent sovereign Republic, it enables it to play an increasingly positive role towards the promotion of world peace. As far as the masses of the country, as well as the masses of other countries are concerned, they are only interested in world peace so that they can progress and live in peace and harmony.

It has been stated that this House is incompetent to deal with this question. One amendment says, let us wait to ratify this convention till the new legislature is elected under our new Constitution. I cannot see any force in this argument. This Assembly can and will pass the Constitution, will decide the future of this country; it has got all that status. But, it cannot, according to

them ratify this small agreement. I think it is wrong thinking and it does not stand on logic. We are well advised to pass the motion placed before us by our Prime Minister without any hesitation whatsoever.

Sir, while entering into this agreement our Prime Minister must have had in his mind the mission which he has been called upon as the heir of Mahatma Gandhi to carry out in this world, and he has given his consent to this agreement with a view to see that a forum is created where he can place his mission of world peace, so that the Commonwealth of Nations may be the beginning of an organisation of nations with Potentiality of further expansion towards world peace:

With these few words, I support the motion.

Shri Kameshwar Singh of Darbhanga (Bihar: General): Mr. President, allow me to avail myself of this opportunity to offer my humble felicitations to the Honourable the Prime Minister on the success of his mission. He has steered clear of the conflicting dogmas and, taking a realistic view of the situation, has placed India in a position from which she can usefully promote the peace of the world.

The status of India as a free and independent country has been recognised. As a sovereign democratic Republic, the people inhabiting this country will not owe allegiance to the Crown as they had hitherto done. She has to vindicate her honour and dignity in the world and she will do so by throwing off all her fetters whether external or internal. Complete sovereignty will vest in the people of India and she will stand with her head erect with the other free nations of the world.

But, as things are, no country can remain in isolation in the present-day world. Specially, for a country like ours, which has thrown off the foreign yoke only recently and is struggling hard to stand on her own feet, it is impossible to think that she will have nothing to do with others. She will be stultifying her growth and even imperilling her freedom if she takes up that attitude. She has therefore, through her able Prime Minister, shown great statesmanship by agreeing to remain a member of the Commonwealth. This Commonwealth has changed its character and assumed a new form. The members of the Commonwealth have according to convention and through agreement changed its structure and pattern. It has been emphasised that allegiance to the Crown is not the essential feature of the Commonwealth organisation. India, on the other hand, has agreed to regard the King of England and dominions as the symbolic Head of the Commonwealth. All this has been done by agreement in pursuance of a very high objective, namely the establishment of peace and prosperity in the world. India like any other country can walk out of the Commonwealth at any moment she feels that her national ideals and aspirations will not be fulfilled by remaining within that organisation. The agreement is for a specific purpose and it can be broken if the parties to that agreement do not act in a manner which may achieve that end. Our Prime minister has categorically said that this does not mean alignment of India with any of the power blocs. As a staunch believer in the tenets of democracy she could not have taken any other step. It would have been the negation of all her cherished ideals if she had lent her support to the forces that are insidiously spreading the totalitarian influence in the world. She cannot see human freedom and human dignity destroyed by the adoption of a cult according to which a human being is treated as a machine.

India has to look to her own national interest and situated as she is today her close association with the Commonwealth is the result of the compulsion of necessity.

[Shri Kameshwar Singh of Darbhanga]

Past events have shown that in this new set up of Commonwealth India can play a decisive role in the affairs of the world. She is by common consent the leading country in South-East Asia. Both history and geography entitle her to ensure the peace of the world. But she can discharge that function only if she is strong both militarily and economically. She can be made so by the co-operation of the Commonwealth countries and America. Therefore, no better alliance could be possible to stem the tide of unrest which is surging in all parts of the world and threatening the fundamental principles of human liberty with extinction.

Some people have charged our Prime Minister with the crime of allying this country with British Imperialism. A greater falsehood could not have been uttered. With the freedom to leave the Commonwealth at will such charges are baseless. Knowing as we do his antecedents we feel sure that by having him in the discussion of Commonwealth countries the whole tenor will be changed and the peace of the world assured.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I come to give my wholehearted support to the motion moved by the Honourable Prime Minister yesterday and I join in the felicitations that have been extended to him on the floor of this House. I am rather surprised at the amount of criticism that has been levelled against the action of the Prime Minister in agreeing that India should remain in the Commonwealth. Since this news was published in the paper the general opinion not only in this country but all over the world has been in favour of the action that has been taken by the Prime Minister and I therefore should have thought that in this House there would have been more unanimous support of what the Prime Minister had done in elevating the position of India in the eyes of the world and raising its prestige. The hearts of Indians have been filled with pride at the very high position that the Prime Minister of India occupied in the deliberations of the Commonwealth Conference and in the Prime Minister Conference, and there is no doubt that today the position that our Prime Minister enjoys amongst the statesmen of the world is far above that enjoyed by any other Prime Minister. They look up to India for leadership of Asia and I make bold to say that the Prime Minister enjoys that leadership not only by the circumstances in which he placed on account of the position of India in Asia, but by the statesmanship he has shown in the Political arena, not only for the last two years since India achieved independence but during the vast number of years that he has been in the political field under the guidance of Mahatma Gandhi. Sir, the main question that is being asked by critics is : What are the advantages the accrue to India by remaining in the Commonwealth? But I ask a counter question what are the disadvantages that accrue to India by remaining in the Commonwealth? Sir, points regarding the political and economic aspects of this country *vis-a-vis* Great Britain have been ably dealt with by Pandit Kunzru, Mr. Munshi and others. We cannot forget that inspite or perhaps on account of British rule in India we have come to think on those lines which are very akin to the lines of thought that are followed by people, in Britain and in the countries of the Commonwealth and it stands to the credit of Great Britain and to the statesmen of Great Britain that in spite of the fact that they ruled India for 150 years, they have been able to achieve the goodwill and friendship of this country after their departure from here. But I think it stands to the Greater credit of India and to its Prime Minister that he has been able to shake away the old ties of suspicion and mistrust that were prevalent in India against Great Britain and has been able to accept the hand of friendship extended to India in order that India may progress on the lines of peace and prosperity. Sir, I believe that criticism and opposition to this is mainly based upon mistrust-not only mistrust but a fear complex.

But I feel that fear complex must be shed and we must realise that conditions now are vastly different to what they were before. India is now a free country, and master of its own destiny, and we who have trust in India's greatness must realise that we cannot go forward unless we do away with small things like suspicion and distrust and accept friendship when it is offered. Sir, I have just said that there are many things akin with British thought in India today. I do not think that we should hesitate in saying that the democratic system as prevalent in India today is exactly on British lines. We are aware that India is the youngest members in the comity of democratic nations. We like the way in which Britain has built up its democratic Institutions and has worked them during the last few centuries—and therefore if we follow the lines of British democracy, we feel that we are going on right lines. Today in India our institutions, our parliamentary life, our local self-Government, our administrative machinery, etc., are more or less based on British lines. Our army and defence organisations have been Built up on British Lines. Therefore remaining in the Commonwealth will certainly be to our advantage.

It has been said that Britain is a poor country and will not be able to help us financially. We do not want Britain's financial help. We certainly can go forward with our own industrial development, and the development of our own resources, and make India rich and prosperous. We do not want any country's financial help. But we want their help and their guidance, their advice and the advice of their technicians, so that India may develop on the lines she desires to develop.

There is also no doubt that Britain and the countries of the Commonwealth are today the greatest factor working for world peace. India has always aligned itself on the side of peace, and it would certainly co-operate with those countries which wish to build up world peace, with countries which have no desire to fight, but which desire only to prosper and let other countries of the world also prosper. Therefore, I think it is in the fitness of things that India should remain in the Commonwealth of Nations. I do not see any disadvantage in it. I feel that it will be to the benefit of India to be associated with countries that are working towards world peace.

We cannot also forget that Indian ideology is opposed to communism. There is no doubt that we do not want communism in our country, and we know that Britain and the countries of the Commonwealth are also opposed to communism. Therefore, that is also a common factor between the two. As has been repeatedly pointed out if at any time there comes a stage when India feels that its association with the nations of the Commonwealth is to its disadvantage, there is nothing to debar it from coming out of it. Therefore, I feel that it is entirely to the advantage of India and consistent with its prestige and dignity to remain in the Commonwealth.

With these few words, Sir, I wholeheartedly support the motion of the Honourable Prime Minister.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, Sir, I wholeheartedly support the Resolution moved by the Honourable the Prime Minister. I find the opposition that has been voiced here is based mostly on suspicion; the argument seems to be that the Declaration contains more than meets the eye. But it has been expressly stated by the honourable Prime Minister that he has not agreed to anything which is not recorded in the Declaration. As a matter of fact, we can easily imagine that there cannot possibly be anything beyond what is there.

[Shri Prabhu Dayal Himatsingka]

It has also been pointed out that India stands to lose by entering into this sort of agreement. But I say there is no disadvantage in continuing to remain a member of the Commonwealth of Nations. On the contrary, there are number of positive advantages, and that is why the agreement that has been arrived at has been welcomed by the people of the country.

Sir, as has been mentioned by previous speakers, India's economy, India's defence, everything that we have in India is more or less based on the model of English economy and business. Our connection with England having been for so many years, our thoughts, our actions, our lines of approach, are all mostly common with those of the nations of the Commonwealth. In our industries, most of the factories, have been supplied by England. Our business connections are with the different Commonwealth countries. We have to realise a very large amount of money from England. These are various factors which go in favour of continuing our alliance, our association with the Commonwealth of Nations which previously were known as the British Commonwealth of Nations. Prof. Shah has said that the Honourable Prime Minister has placed before the House an accomplished fact and this House is now called upon to ratify a thing which he was not authorised to do. I cannot see how that argument can be put forward. This House expressly authorised the Prime Minister to proceed to England and to join in the Conference of Prime Ministers that had been called. I may say that public opinion is overwhelmingly in favour of this agreement and that the Prime Minister has done something which very few people could have imagined was possible to be done in the position that has been accepted by this country. The position of independent sovereign Republic has been made to fit in with the ideas of the other members of the Commonwealth with regard to the Crown who regard the Crown as the Head of their State. The Honourable the Prime Minister has accomplished almost an impossible task and I wholeheartedly support the Declaration and the Resolution moved by him.

Mr. Frank Anthony (C.P. & Berar: General): Mr. President Sir, I am aware that it will be thought, if not said, by certain Members of the House that my views on this particular Resolution are a foregone conclusion, and that I must necessarily have a bias in favour of the Resolution. I feel Sir, that being an Anglo-Indian, with regard to this particular Resolution, I am placed in a fortunate position. I believe I can say that I can appreciate the point of view of my fellow Indians and I can also understand the point of view of many British people.

Sir, before I develop my other arguments, I would like to answer a point raised by Prof. Shah, which was, partially answered by Sir Alladi. In spite of Prof. Shah's professions to the contrary, I could not help feeling that what he said dripped not only with a little vitriol, but certainly with a good deal of past venom. Prof. Shah took exception to the use of the word "ratification". He felt that this word represented something reprehensible, that the Prime Minister had sought to present the House with a fait accompli and force it down its throat. Sir, as a lawyer, I find that thesis not only slender, but utterly untenable. The Prime Minister went to England on behalf of the peoples of India-his chief principals. He went as their agent, as their super-agent, and it is axiomatic in law that when a person goes as the agent with trust and responsibility, and if his principals feel that he has acted not *mala fides*, that he has acted in their best interests, then they are bound to ratify and undertake that he may have entered into on their behalf. Is there any one in this House who will dare say that the Prime Minister was prompted by *mala fides*? Will anyone say that he was not

prompted only by the desire to secure the best interests of India against the present background?

Sir, I can only feel that much of the opposition to this kind of resolution is inspired by a jumble of complexes, inhibitions, and may I say, motives. I feel perhaps one of the reasons which has inspired opposition to it is an ill-concealed-I say it without offence-an ill-concealed slave mentality. It is understandable that a country which has been under political subjection for generations, perhaps for hundreds of years, that people in such a country who belong to the common rut cannot escape the consequences of two hundred years of political subjection overnight. This opposition is inspired. I feel, to some extent by an evident, though not admitted, inferiority complex. There are many public men who cannot envisage any association with European nations without this inferiority complex vitiating their psychology. They feel that an association with a European nation must necessarily imply European hegemony on one side and Asian subordination on the other. Once again I say without offence, it is a concomitant of political subjection of people who have fought political slavery and fought it essentially with the weapon of shibboleths, slogans and propaganda. They have had to use these shibboleths and slogans in place of facts. They induce in themselves a kind of self-hypnosis. We talk glibly and vocally of India being the leader of Asia. We say glibly that it is inconsistent with India's position as the leader of Asia to be political appendage of the Commonwealth of Nations. I am one of those who believe, and believe passionately, that it is India's heritage that she should become the leader of Asia, the India should be looked up to by the nations of Asia as their natural leader. It is a heritage which is yet to be striven for and achieved. We cannot achieve it by living in a world of illusion, by believing that we can substitute realities by shibboleths and slogans.

Prof. Shah asked a rhetorical question: What are the advantages of adopting this resolution, and in a cavalier and airy manner he answered that question to his own satisfaction. He asked, if there are no advantages and no disadvantages, what is the point of adopting and endorsing this resolution. This is political blindness par excellence. It is typical of the kind of attitude that some of our public men wallow in.

But what are the realities—nobody has referred to it—as to what secession from the Commonwealth would have meant? It would have meant one thing. I do not know how many of our people realise it. A person like the Prime Minister can and does realise it. There has always been—let us understand it—a section of British public opinion supported by a reactionary and conservative press fed by British administrators who have spent their administrative lives in this country fighting the Congress, who have identified the Congress with the Hindus and because of that have developed a blind spot of prejudice against the Hindus and the Congress. There has always been that section of British public opinion which is anti-Hindu and anti-Congress. And if India had seceded from the Commonwealth, this section would have seized avidly on this secession to stir up a state of anti-Indian sentiment in the country. We are fortunate in that we have a person of the stature of the Prime Minister. While dealing a blow to this reactionary anti-Indian section he has mobilised and given strength to the new forces which are emerging in England—forces of friendliness towards this country. I am quite confident that secession would have meant in the first place coolness between Britain and India and subsequently an irrevocable estrangement. And it is for my friends who glibly mouth slogans and shibboleths to answer honestly whether India today, is in a position to estrange some of the most powerful countries in the world. And I go further and say

[Mr. Frank Anthony]

secession would have not only led to coolness and subsequent estrangement between this country and Britain, it would have led inevitably to estrangement between India and America. Let us have no illusions about it. I am not advocating chauvinism or Machiavellianism I think it was Macaulay who has said that British diplomacy has been struck midway between moral principle on one side and expediency on the other. I believe that those who are building India cannot ignore expediency. I am not talking of opportunism : I am talking of realism. It is an accepted fact that the building up of all our schemes, our hopes, the building of India economically, industrially and aye, militarily also, all these depend in no small measures on our continuing cordial relations both with Britain and with America.

I am one of those who feel that India cannot, that India dare not, live in an international vacuum. It is all very well for some of our public men to talk in vacuo, to talk of neutrality, which is something absolutely unrelated to realities in the international sphere. Absolute neutrality is not only an academic, it is today an unreal, an unattainable ideal. India trying to live in an international vacuum would have discovered, as Burma perhaps has already discovered, that theoretical independence may mean vacuous inanity. Theoretical independence, in disregard of realities, may well mean in a period of stress and need, helpless and hopeless isolation.

There is another aspect that I want to place before the House. What is the attitude of those who oppose this resolution towards Pakistan? Our relations with Pakistan have not been as cordial or as friendly as many of us would have liked. I was one of India's representatives at the Commonwealth Parliamentary Conference and my colleagues will bear me out when I say that many of the Pakistan representatives definitely tried to create a feeling that India dominated by the Congress is inevitably anti-British, that India has no intention of staying within the Commonwealth. They wanted to work up this feeling in order to mobilise British sentiment on their side, to antagonise it against India. I feel that if we had seceded our secession would have rejoiced the hearts of those people in Pakistan who have no friendly feeling towards India and I feel certain also that the resources and friendliness that are today being given to India by Britain and by America, if we had seceded, would have been diverted from India, diverted increasingly to Pakistan. That is a consideration which I feel many of my friends have not taken account of.

I appreciate as much as anyone else does the bitterness and indignation of every self-respecting Indian at the racial arrogance, the racial tyranny practised by a member of the Commonwealth. But if as a premise or shall we say, as a presupposition, before entering into relations with any nation, we require that nation should in all its dealings measure up to certain perfect moral standards then perhaps we would never be able to enter into relationship with any nation of the world. And because the Commonwealth of Nations, in my opinion, consists of one or two blacklegs, one or two renegades, is that any reason why we should in a mood of petulant frustration, a mood of inferiority, walk out and abjure all the definite advantages that association with democratically minded members of the Commonwealth can and do give us?

Perhaps I am striking a discordant note when I say I do not believe that association with the Commonwealth is going to improve our relations with South Africa. But I do believe that our association will mean that all the influences and the resources—the imponderables exercised in no small degree by America and by England will be thrown in on the side of India and that

matters may not get worse. From my own experience, I believe- I may be wrong-ultimately we will only be able to resolve the South African question according to the measures of our own strength. And that is why I say that our policy must be broad-based, and that India's strength should be built up most rapidly. It may take us five years; it may take us ten years. But any realist, any sober person must realise that the world we are living in today, in the final analysis, one's strength is measured exactly by one's military might, and that is why I feel that ultimately we will only be able to resolve the South African-Indian question when we are in a position to be able to demonstrate militarily-as the Japanese did—at Durban. But that is, as I have said, no reason for leaving the Commonwealth, because it may consist of one or two blacklegs or renegades.

And, finally, Sir, I want to end with this note. As I said, it is fortunate that India has today leaders of the present stature—persons who have been able to rise, as Prof. Shah has not been able to rise, above bitterness and iron of recent political events; that while the dust and din of political battle and political struggle have not subsided, they have the vision to see, without that vision being blurred, to be able to judge without their judgment being clouded, where India's best interests lie. Sir, can any one say to this House that anyone in this country has discharged his duties to the people more selflessly than the Prime Minister? And, if answer that question, as we are bound to answer it, then whatever decision he has taken has been taken against the background of his knowledge, which is perhaps much greater than the knowledge of anyone of us, in the sole interest of India. What then can any Indian do but wholeheartedly to endorse the resolution which has been moved in this House.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, I move that the question be now put.

Mr. President : The question is:

That the question be put.

I think the majority is in favour of closure.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Mr. President, Sir, we have had a fairly full debate since yesterday and many honourable Members have spoken in approval of this motion. In fact, if I may say so, some of them have even gone a little further than I might perhaps have gone. They have drawn some consequences and pointed out some implications which for my part I would not have approved or accepted. However, if it is open to all of us and to each one of us to see the future in a particular way.

So far as this resolution of mine and the Declaration of London are concerned, what we have got to see are these : number one, that it fulfils or at any rate it does not go against any pledges of ours; that is to say, that it takes India forward, or does not come in the way of India going forward to her natural destination of a Sovereign Independent Republic. Secondly, that it helps India, or does not hinder India in making rapid progress in the other domains in the course of the next few years. We have, in a sense, solved the political problem, but the political problem is intimately connected with the economic condition of the country. We are being faced by many economic difficulties. They are our domestic concern, no doubt, but obviously the world can help or hinder any policy that we might adopt. Now, does this proposal which is contained in this Declaration help our speedy progress economically and otherwise or not? That is another test. I am prepared to admit that even without external help, we will go ahead. But obviously it will be a far more difficult task and it will take a much longer time. It is not an easy matter to do that.

[The Honourable Shri Jawaharlal Nehru]

The third test is whether in the world, as it is today, it helps in the promotion of peace and the avoidance of war. Some people talk about encouraging this particular group or that, this bloc or that. We are all, I am afraid, in the habit of considering ourselves or our friends as angel and others the reverse of angels. We are all apt to think that we stand for the forces of progress and democracy and others do not. I must confess that in spite of my own pride in India and her people, I have grown more humble about talking in terms of our being in the vanguard of progress or democracy.

In the last two or three years we have passed through difficult times, humiliating times. We have lived through them. That has been something in our favour. We have survived them. But I hope we have learned our lesson from them. For my part I am a little chary now of condemning this or that person or this or that nation, because the hands of no individual or nation are clean in such matters. And there is far too much of the habit of condemning other nations as being the wrong-doers or the war-mongers, and yet doing exactly the same thing oneself.

If one looks round the world—of course one favours certain policies—one is against some things and thinks that those are dangerous and might lead to war, but others are not. But the most amazing thing that strikes me is this: if you look back during the last thirty years or more which have comprised two wars and the period between these wars, you will find the same cries, changing slightly with changed situation of course, but nevertheless the same cries, the same approaches, the same fears and suspicions and the same arming on all sides and war coming. The same talk of this being the last war, the fight for democracy and all the rest of it is heard on every side. And then the war ends, but the same conflicts continue and again the same preparation for war. Then another war comes. Now that is a very extraordinary thing, because I am convinced that hardly anybody in this wide world wants war, barring a few persons or groups who make profit by war. Nobody and no country wants war. As war becomes more and more terrible they want it still less. Yet some past evil or *Karma* or some destiny goes on pushing people in a particular direction, towards the abyss and they go through the same argument and they perform the same gestures like automatons.

Now are we fated to do that? I do not know, but anyhow I want to fight against that tendency of talking about war and preparation for war. Obviously no country and no Government of any country dare allow its country to be unprepared for contingencies. We have to prepare ourselves unfortunately, unless we are brave enough to follow the policy that Mahatmaji laid down. If we are brave enough, well and good, we take the chance. I do believe that if we are brave enough that policy would be the right policy. But it is not so much a question of my being brave or your being brave, but of the country being brave enough to follow and understand that policy. I do not think we have been brought up to that level of understanding and behaviour. Indeed when we talk about that great level, I should say that in the last year and a half we have sunk to the lowest depths of behaviour in this country. So let us not take the name of the Mahatma in vain in this country. Anyhow we cannot, no Government can, say that it stands for peace and do nothing at all. We have to take precautions and prepare ourselves to the best of our ability. We cannot blame any other Government which does that, because that is an inevitable precaution that one has to take. But, apart from that, it seems to me that some Governments or many Governments go much further. They talk all the time of war. They blame the other party all the time. They try to make out that the other party is completely wrong or is a war-monger and so on and so forth. In fact they create the very conditions which lead to war. In talking of peace and our love of peace we or they create the conditions that in the past

have invariably led to war. The conditions that ultimately generally lead to war are economic conflicts and this and that. But I do not think today it is economic conflict or even political conflict that is going to lead to war, but rather the overmastering fear, the fear that the other party will certainly overwhelm one, the fear that the other party is increasing its strength gradually and would become so strong as to be unassailable and so each party goes on arming and arming with the deadliest weapons. I am sorry I have drifted off in this direction.

How are we to meet this major evil of the day? Some people say, "join up with this group which stands for peace", while others say "join up with the other group" which, according to them, stands for some other kind of peace or progress. But I am quite convinced in my own mind that by joining up in this way, I do not help the cause of peace. That, in fact, only intensifies the atmosphere of fear. Then what am I to do? I do not believe in sitting inactively or practising the policy of escapism. You cannot escape. You have to face the problem and try to beat it and overcome it. Therefore the people who think that our policy is a kind of passive negation or is an inane policy, they are mistaken. That has not been ever my idea on this subject. I think it is and it ought to be our policy, a positive policy, a definite policy, to strive to overcome the general trend towards war in people's minds.

I know that in this huge problem before the world India may not be a strong enough factor. She may be a feeble factor to change it or alter it. That may be so. I cannot claim any necessary results. But nevertheless I say that the only policy that India should pursue in this matter is a positive, definite policy of avoiding this drift to war by other countries also and of avoiding this atmosphere becoming so charged with fear suspicion, etc., and of not acclaiming this country or that, even though they may claim to make the world rational, but rather laying stress on those qualities of those countries which are good, which are acceptable and drawing out the best from them and thereby, in so far as it may be possible, to work to lessen the tensions and work for peace. Whether we succeed or not is another thing. But it is in our hands now to work with might and main in the direction we consider right, not because we are afraid or fear has overwhelmed us. We have gone through many frightful things and I do not think anything is going to happen in India or the world that is going to frighten us any more. Nevertheless we do not want this world to suffer or go through another world disaster from which you and I cannot escape and our country cannot escape. No policy can make us escape from that. Even if war does not spread to this country, even so if the war comes from abroad it will engulf the world and India. We have to face this problem.

This is more a psychological problem than a practical one, although it has practical applications. I think that in a sense India is partly suited to do it, partly suited because in spite of our being feeble and rather unworthy followers of Gandhiji, nevertheless we have imbibed to some small extent what he told us. Secondly, in these world conflicts you will see there is a succession of one action following another; inevitably one leading to another and so the chain of evils spreads; war comes and the evils that follow wars come after that and they themselves lead to another war and that chain of events goes on and each country is caught within this cycle of *Karma* or evil or whatever you call it. Now, so far these evils have brought about wars in the West, because in a sense these evils were concentrated in the Western powers; I do not by any means say that the Eastern powers are virtuous. So far the West or Europe has been the centre of political activity, has dominated the politics of the world. Therefore their disputes and their quarrels and their wars have dominated the world.

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Now, fortunately we in India are not inheritors of these hatreds of Europe. We may like a person or dislike something or an idea, but we have not got that past inheritance on our backs. Therefore it may be slightly easier for us in facing these problems, whether in international assemblies but also with the deal with them not only objectively and dispassionately but also with the goodwill of others who may not suspect us of any fund of ill-will derived from the past. It may be that a country can only function effectively if it has a certain strength behind it. I am not for the moment thinking of material or war strength—that of course counts—but the general strength behind it. A feeble country which cannot look after itself how is it to look after the World and others? All these considerations I should like this House to have before it and then to decide on this relatively minor question which I have placed before the House, because I had all those considerations and I felt first of all that it was my duty to see that Indian freedom and independence was in no way touched.

It was obvious that the Republic that we have decided on will come into existence. I think we have achieved that. We would have achieved that, of course, in any event, but we have achieved that with the goodwill of many others. That, I think is some additional achievement. To achieve it with the goodwill of those who perhaps are hit by it is some achievement. It shows that the manner of doing things—the manner which does not leave any trace of hatred or ill-will behind it, starts a fund of goodwill is important. Goodwill is always precious from any quarter. Therefore I had a feeling when I was considering this matter in London and later, in a small measure perhaps, I had done something that would have met with the approval of Gandhiji. The manner of it I am thinking of, more than the thing itself. I thought that this in itself would raise a fund of goodwill in this world—goodwill which in a smaller sense is to our advantage certainly, and to the advantage of England, but also in a larger sense to the advantage of the world in these psychological conflicts which people try to resolve by blaming each other, by cursing each other and saying that the others are to blame. May be somebody is to blame; may be some politicians or big men are to blame, but nobody can blame those millions of men who will die in these catastrophic wars. In every country the vast masses of human beings do not want wars. They are frightened of wars. Sometimes this very fright is exploited to revive wars because it can always be said that the other party is coming to attack you.

Therefore, I want this House to consider not only that we have achieved something politically—that we would have achieved in any event, nobody would have been able to prevent us—but what has a certain relevancy and importance is that we have achieved it in a way that helps us and helps others, in a way which does not leave evil consequences behind when we think that we have profited at somebody else's expense and that somebody thinks of that always and wants to take revenge later on. That is the way and if the world functions in that way problems will be solved far more easily and wars and the consequences of wars will perhaps be fewer. They would be no more. It is easy to talk about the faults of the British or of the imperialism and the colonialism of other countries. Perfectly true. You can make out a list of the good qualities and the bad qualities of every nation today, including certainly India. Even if you made that list, the question still remains how anyone is going to draw the good from the other parties and yourself and to lay the foundations for good in the future.

I have come to the conclusion that it does not help us very much either in the government plane or in the national plane to lay stress on the evil in the other party. We must not ignore it; we have to fight it occasionally. We should be prepared for that, but with all that, I do not think this business of maintaining our own virtues and blaming the other party is going to help us in

understanding our real problem. It no doubt gives an inner satisfaction that we are virtuous while others are sinners. I am talking in religious phraseology which does not suit me, but the fact is that I do wish to bring this slightly moral aspect of this question before this honourable House. I would not dare to do any injury to the cause of India and then justify it on some high moral ground. No government can do that. But if you can do a profitable business and at the same time it is good on moral grounds, then obviously it is worthy of our understanding and appreciation. I do submit that what we have done in no way, negatively speaking, injures us or can injure us. Positively, we have achieved politically what we wanted to achieve and we are likely to progress, to have more opportunities of progress, in this way than we would otherwise have in the next few years.

Finally, in the world context, it is something that encourages and helps peace, to what extent I do not know; and lastly, of course, it is a thing which in no way binds this country down to any country. It is open to this House or Parliament at any time to break this link, if they so choose, not that I want that link broken. But I am merely pointing out that we have not bound the future down in the slightest. The future is as free as air and this country can go any way it chooses. If it finds this way is a good way, it will stick to it; if not, it will go some other way and we have not bound it down. I do submit that this resolution that I have placed before this House embodying, approval of the Declaration, the decision at the Conference in London, is a motion which deserves the support and approval of this House, not merely, if I may say so, a passive approval and support, but the active appreciation of all that lies behind it and all that it may mean for the future of India that is gradually unrolling before our very eyes. Indeed all of us have hitched our wagons to the Star of India long ago. Our future, our individual future depends on the future of India; and we have thought and dreamt of the future for a long time. Now we have arrived at a stage when we have to mould by our decisions and activities this future at every step. It is no longer good enough for us to talk of that future in terms merely of resolutions, merely in terms of denunciations of others and criticism of others; it is we who have to make it for good or ill; sometimes some of us are too fond of thinking of that future only in negative terms of denouncing others. Some Members of this House who have opposed this motion and some others who are not in this House, who have opposed this motion, I have felt, have been totally unable to come out of that cage of the past in which we all of us have lived, even though the door was open for them to come mentally out. They have reminded us and some of our friends have been good enough to quote my speeches, which I delivered fifteen and twenty years ago. Well if they attach so much value to my speeches, they might listen to my present speech a little more carefully. The world has changed. Evil still remains evil, and good is good; I do not mean to say that it is not; and I think imperialism is an evil thing, and wherever it remains, it has to be rooted out, and colonialism is an evil thing and wherever it remains, it has to be rooted out; and racialism is an evil and has to be fought. All that is true. Nevertheless the world has changed; England has changed; Europe has changed; India has changed; everything has changed and is changing: and look at it now. Look at Europe which for the last three hundred years has a period of magnificent achievement in the arts and sciences and it has built up a new civilization all over the world. It is really a magnificent period of which Europe or some countries of Europe can be greatly proud, but Europe also during those three hundred years or more has gradually spread out its domination over Asia and Africa, has been an Imperialist power and exploited the rest of the world and in a sense dominated the political scene of the world. Well, Europe has still, I believe, a great many fine qualities and those people there who have fine qualities will make good, but Europe can no longer be the centre of the world politically speaking, or exercise that influence

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over other parts of the world, which it has done in the past. From that point of view, Europe belongs to the past and the centre of world history, of political and other activities, shifts elsewhere. I do not mean to say that any other continent, becomes a dominating force, dominates the rest—not in that way. However, we are looking at it in an entirely changed scene. If you talk of British Imperialism and the rest of it, I would say that there is no capacity for imperialism even if the will was there; it cannot be done. The French are, imperialistically, in parts of Asia. But the fact remains that capacity for doing it is past. They may carry on for a year or two years, but it just cannot be done. The Dutch may do it elsewhere and if you look at it in the historical perspective all these things are hangovers of something past and the thing cannot be done. There may be strength behind today; it may last even a few years and therefore, we have to fight it and therefore, we have to be vigilant—I do not deny that—but let us not think as if Europe or England was the same as it was fifteen or twenty years ago. It is not.

I was saying about our friends who have criticised us and taken this rather negative and passive view. I mentioned at another place that view was static. I said that, in this particular context, it was rather reactionary and I am sorry I used that word because I do not wish to use words that hurt and I do not wish to hurt people in this way; I have certainly the capacity to use language, clever language to hurt people, and dialectical language, but I do not wish to use it, because we are up against great problems, and it is poor satisfaction just to say a word against an opponent in an argument and defeat him by a word, and not reach his heart or mind, and I want to reach the hearts and minds of our people (*Loud cheers*) and I feel that whatever our domestic differences might be—let there be differences honestly felt—we do not want a cold regimentation of this country (*Cheers*).

So far as foreign affairs are concerned, there may also be differences, I do not deny that, but fundamental things before any man who is—whatever else he may be—an Indian patriot, who wants India to progress and the world also to progress, must be necessarily Indian freedom, that is, complete freedom, India's progress, economically and the rest, India playing a part in this freedom of the world and the preservation of peace, etc., in the world. These are the fundamental things: India must progress. India must progress internally. We can play no part unless we are strong in our country economically and otherwise. How we should do so internally may be a matter of difference of opinion. Now I think it should be possible for people who differ considerably in regard to our internal policy, it should be possible for us to have more or less unified foreign policy in which they agree or mostly agree. May I make myself clear? I do not wish in the slightest to stop argument or comment or criticism; not that; and I want that; it is a sign of healthy nation, but I do wish that argument to be the argument just of a friend and not of an opponent who sometimes uses that argument, not for argument's sake, but just to injure the opposite party, which often is done in the game of politics. I do not see any major difference for any person. I do see a major difference between those individuals or groups who think in terms of other countries and not of India at all as the primary thing. That is a basic difference and with them it is exceedingly difficult to have any common approach about anything; but where people think in terms of India's independence and progress in the near future and in the distant future and who want peace in the world, of course, there will be no great difference in our foreign policy. And I do not think there is, in fact, although it may be expressed differently. Although a Government can only speak in the language of a Government, others speak a language which we all used to speak, of opposition and agitation. So, I would beg this House, and if I may say so, the country to look upon this problem not in any party spirit, not in the sense of bargaining over this little matter or that.

We have to be careful in any business deal not to lose a thing which is advantageous to the nation. At the same time, we have to look at this problem in a big way. We are a big nation. If we are a big nation in size, that will not bring bigness to us unless we are big in mind, big in heart, big in understanding and big in action also. You may lose perhaps a little here or there with your bargainers and hagglers in the market place. If you act in a big way, the response to you is very big in the world and their reaction is also big. Because, good always brings good and draws good from others and a big action which shows generosity of spirit brings generosity from the other side.

Therefore, may I finish by commending this resolution to you and trusting that the House will not only accept it, but accept it as something, as a harbinger of good relations, of our acting in a generous way towards other countries, towards the world, and thus strengthening ourselves and strengthening the cause of peace.

Mr. President : The House will recollect that there are two amendments to the motion. I would put the motion of Prof. Shibban Lal Saksena; if it is carried, it will obviate the necessity of putting the other amendment to vote.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I beg leave of the House to withdraw my amendment.]

Mr. President : Mr. Lakshminarayan Sahu wants to withdraw his amendment. Does the House permit him to do that?

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

Mr. President : Mr. Shibban Lal Saksena's amendment alone now remains. I now put Mr. Shibban Lal's amendment to vote.

The question is :

That in the motion, for the words "do hereby ratify" the words "has carefully considered" be substituted and

That the following be added at the end of the motion:

"and is of opinion that membership of the Commonwealth is incompatible with India's new status of Sovereign Independent Republic. Besides, the terms of membership are derogatory to India's dignity and her new status, and as such are bound to circumscribe and limit her freedom of action in international affairs and tie her down to the chariot-wheel of Anglo-American power bloc. India with a population of 350 millions out of a total population of about 500 millions of the whole of the Commonwealth cannot accept the King of England as the Head of the Commonwealth in any shape or form. Also, India cannot become the member of a Commonwealth, many members of which still regard Indians as an inferior race and enforce colour bar against them and deny them even the most elementary rights of citizenship. The recent anti-Indian riots in South Africa, the assertion of the all White policy in Australia and the execution of Ganapathy and the refusal to commute the death sentence on Sambasivam in Malaya in spite of the representations of the Indian Government clearly show that India cannot derive any advantage from the membership of the Commonwealth and that Britain and the other members of the Commonwealth cannot give up their Imperialist and racial policies.

"Considering all these facts, and also considering the fact, that the Congress Party, which is in an absolute majority in the Constituent Assembly and in other provincial legislatures in the country, has had the Complete Independence of India with the severance of the British connection as its declared goal at the time of the last general elections, any new relationship in contravention of that policy with the British commonwealth can only be properly decided by the new parliament of the Indian Republic which will be elected under the new Constitution on the basis of adult suffrage."

*[] Translation of Hindustani speech.

[Mr. President]

“This Assembly therefore resolves that the question of India’s membership of the Commonwealth be deferred until the new Parliament is elected and the wishes of the people of the country clearly ascertained. The Assembly calls upon the Prime Minister of India to inform the Prime Minister of Great Britain and other members of the Commonwealth accordingly.”

The amendment was negatived.

Mr. President : I now put the original motion to vote.

The question is:

“Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the conference of the Commonwealth Prime Minister in London on April 27, 1949.”

The motion was adopted.

(Loud Cheers)

Maulana Hasrat Mohani : Sir, I want to know categorically who are in favour of this Resolution, and who are against it. Besides, I want to know who are neutral.

Mr. President : Do you want a division?

Several Honourable Members : It is too late now.

Maulana Hasrat Mohani : My contention is this. Those who are neutral are against this Resolution. I want to Know.....

Mr. President : There is no means of knowing who the neutrals are.

Maulana Hasrat Mohani : This decision of the House will not be final...
(Interruption)

Mr. President : Does the Maulana want a division?

Maulana Hasrat Mohani : Yes, Sir . . . *(Interruption)*.

Mr. Tajamul Hussain : Sir, it is too late now to demand a division. He should have asked for it immediately before you had declared that it had been carried. It is too late now.

Maulana Hasrat Mohani : This is wrong. I at once rose.

Mr. President : I do not think even if the Maulana gets a division, he would get the votes. I do not think it is necessary now to have a division because it is asked for too late.

We adjourn now till 8 o’clock tomorrow morning.

The Assembly, then adjourned till 8 A.M. on Wednesday, the 18th May 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 18th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President : The first item on the agenda is a Bill of which notice had been given by the Honourable Sardar Vallabhbhai Patel. On account of his ill-health, Sardar Vallabhbhai Patel had to leave this place and he has asked me to allow the Honourable Mr. Gadgil to take charge of that Bill. Mr. Gadgil.

The Honourable Shri N.V. Gadgil (Bombay: General): Sir, I beg to move for leave to introduce a Bill further to amend the Government of India Act, 1935.

Mr. President : The question is:

“That leave be granted to introduce the Bill further to amend the Government of India Act, 1935.”

The motion was adopted.

The Honourable Shri N.V. Gadgil : Sir, I introduce the Bill.

Mr. President : The bill is introduced.

The Honourable Shri N.V. Gadgil : Sir, I beg to move:

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

The object of the Bill is to amend the Government of India Act in regard to two provisions. The first provisions is Section 97 under which only a law of the Constituent Assembly can change the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg. At the time European representation in the Provincial Legislatures was abolished, the point was overlooked that in Coorg that representation would still continue. At present there are two Europeans in the Coorg Legislative Council and it is considered in appropriate that this anomaly should be allowed to continue. At the same time, it is unnecessary to promote a Bill for this specified purpose in the Constituent Assembly. Even otherwise it would be convenient to have powers vested in the Governor-General to make changes in the present constitution of Coorg. Provision in the amending Bill would enable Government to do so by an order.

The second provision relates to certain changes in the Federal and Concurrent Legislative Lists. According to item 1 of List I, the Centre has powers of preventive detention for reasons of State connected with defence, external affairs or relations with acceding States; but executive power to deal with actual detenus rests with the Provinces because ‘persons subjected to preventive detention under Dominion authority’ is item 34 of the Concurrent List. On the other hand, item 1 of the Provincial Legislative List gives power to Provinces both for preventive detention for reasons connected with the maintenance of public order and for persons subjected to such detention. There is

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no reason why this differentiation between the powers of the Central Government and of the Provincial Governments to deal with their respective detenus should be maintained. The Bill, therefore, provides for persons subjected to detention under Central authority being subjected also to the executive control of the Centre. This has been done by suitably amending paragraph 1 of the Federal Legislative List.

We have also been experiencing considerable difficulty in inter-Provincial transfer of detenus. The detenus being subject to absolute Provincial control have therefore to be confined within that particular province. Hitherto, wherever in extreme cases of necessity an occasion has arisen for such transfers, the provisions of the Bengal Regulation III of 1818 have been utilised. This is clearly an unsatisfactory procedure. The need for transfer arises from congestion in the particular province or from the desire on the part of the detenu himself to seek transfer to his own Province or, for administrative convenience for the Provincial Government, to transfer him elsewhere. In two recent cases, we had to use Regulation III of 1818. There was a demand from some persons of Punjabi extraction in West Bengal to be transferred to East Punjab. This request cannot be met because there is no power at present vesting in Provinces to transfer their detenus. The amendment to the Concurrent Legislative List, which has been proposed, would, therefore, solve this difficulty in that it would enable the Centre to legislate for such transfers, leaving it to the Provinces to take necessary executive action.

Sir, I move.

Mr. President : There is notice of an amendment to this motion in the name of Mr. Ananthasayanam Ayyangar.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am not moving any of the amendments but I would like to say a few words.

Mr. President : Pandit Thakur Das Bhargava also has given notice of the same amendment.

Pandit Thakur Das Bhargava (East Punjab: General): I am not moving, Sir.

Shri M. Ananthasayanam Ayyangar : Sir, this Bill consists of two portions, one of the provisions relating to Coorg. Under Section 97 of the Government of India Act the existing regulations relating to the Legislative Council, collection of revenues and making of expenditure etc. in relation to Coorg will continue to be in force until laws and regulations are modified by similar rules made by the Constituent Assembly which has been vested with powers under Section 8 of the Independence Act. The amendment that is contemplated is that for 'the Constituent Assembly' the words 'Order of the Governor-General' have to be substituted. My own feeling is that however high a dignitary the Governor-General might be, he represents the Executive and it is not right to vest these powers in the Executive and take them away from the Constituent Assembly. It is said that the Constituent Assembly always retains its power. It may be so but it will have to be done in a circuitous manner when once the powers relating to the Constituent Assembly under Section 97 are taken away from that Section by virtue of this amendment. That is my first objection. But we are passing the Constitution in a couple of months and for the interval of three months we need not object to vesting the Governor-General with this power. If it is a matter of expediency and if it is considered necessary to imme-

diately rectify certain defects like removing the anomaly of having Europeans in the Coorg Legislative Council, an Order-in-council by the Governor-General may be more expeditious than the elaborate procedure of amendment of the Government of India Act. From that point of view no doubt this amendment may be accepted; but it is opposed to the general principle that the executive ought not to have control over or interfere with the Legislature and it must only be the supreme sovereign legislature that must be clothed with the power to interfere with the composition of the Legislature.

The other portion of the amendment relates to giving power to transfer items from the Concurrent List to the Federal List. Today under the Federal List, item No. 1, to detention for purposes of defence, external affairs, or matters relating to acceding States, is exclusively in the Federal List. In the case of persons detained for security purposes, so far as the Provinces are concerned, the power to detain the person is vested exclusively in the Province. The purpose of this Bill is to bring the provisions relating to detention of persons for defence and external affairs purposes also into line with persons detained by Provincial Government for purposes of security. But I have my own doubts as to the propriety or the advisability of this amendment. I say this for the following reasons. There are no special jails maintained or run by the Centre. Whoever is detained whether by the Centre or by a Province, that person has to be detained under orders of the Provincial Government, in a provincial jail. In the case of an emergency, such as an outbreak of cholera or plague in a particular jail, it would not be easy for the Provincial Government to correspond with the Centre, ask for instructions and await orders as to whether a particular prisoner ought to be transferred from one jail in the same unit or province to another jail in that province. This difficulty may arise. So it was considered proper in the Government of India Act, 1935, as also in the Government of India Act, as adapted and continuing in force, and in the Draft Constitution placed before the House which we are considering now, to have provisions for making persons who have been detained by the order of the Dominion Government not an exclusively Federal concern, but a concurrent subject. I do not see the wisdom of transferring the right or transferring this entry from the Concurrent List to the Federal List, and clothe the Federal Government exclusively with this jurisdiction. However, I am not pressing the point. We may consider the matter again when considering the Constitution and when we come to this entry. This Bill is only a temporary measure and I accept it as it has been laid before the House, though I doubt whether this amendment which is sought to be effected by this Bill is at all proper or necessary.

Pandit Thakur Das Bhargava : Mr. President, Sir, though this Bill appears to be harmless and innocuous, yet in my humble opinion, it is not a Bill which should be passed in this House. The first point that emerges for consideration is that as given in the statement of Objects and Reasons, the sole object of clause 2 is that the European representation in Coorg should be taken away. But it appears from clause 3, that this purpose is not achieved by a direct method. I would also rather like that this Bill had been directed to this purpose only. But I feel that this Bill contains more than what is needed for the hour, and the canon of legislation is that you must always bring a Bill to meet the particular situation and it should not be too wide. This Bill, Sir, is too wide.

The second objection that I have to this Bill is that it seeks to substitute the powers of the Governor-General for the powers of the Constituent Assembly. If the Legislature, in its wisdom, has given these powers to the Constituent Assembly, it does not stand to reason that the executive should be armed exclusively with these powers.

[Pandit Thakur Das Bhargava]

About clause 4 also I have my doubts. At present the words in List I are—

“preventive detention for reasons of State connected with defence, external affairs, or relations with the acceding States.”

In List II, the clause reads—

“preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.”

In List III, Concurrent List, the words are—

“Removal of prisoners and accused persons from one unit to another unit.”

But in clause 34, List III we find the words—

“Persons subjected to preventive detention under the authority of the Union.”

If this Bill had been confined to the malady which is sought to be cured, as given in the Statement of Objects and Reasons, no person could take any sort of objection to it. In that statement, we find that because there are difficulties in the transfer of detenus, therefore this Bill is sought to be brought before this House, whereas as a matter of fact the real purpose of this Bill is not expressed in the Statement of Objects and Reasons. The real purpose seems to be that the powers of the Provincial Governments may be taken away in regard to persons who are undergoing preventive detention for reasons of State, connected with defence, external affairs or relations with acceding States. When a Bill of this nature is brought in, it would have been better if the real purpose was expressed expressly. It is different from the one given in the Statement of Objects and Reasons. There seems to be some distrust of Provincial Governments. Their powers are sought to be taken away. I for one would rather like that the present powers which the Dominion Government enjoys and the powers of the Provincial Governments were both enlarged. In my view of things, the Provincial Government also should have powers in regard to persons who are undergoing preventive detention for reasons of State defence, external affairs, etc. and the Dominion Government should be given powers in regard to persons who are undergoing preventive detention in respect of the maintenance of public order, because the Dominion Government has got no jails of its own. All its detenus live in the jails belonging to provincial governments, and if there is distrust of provincial governments when prisoners are sent by the Dominion Government to their jails, they can certainly do whatever they like.

My objection to this is that there should not be any discrimination between detenus of the Central Government and the detenus of the Provincial Governments. I remember in 1942, when certain detenus were sent from Delhi to Lahore, the rules for their interviews and for other matters were quite different. The Delhi detenus were treated in a different manner from the detenus of the Punjab Government. I do not like this discrimination, and I want that the same rules should govern all the detenus, whatever the reasons for their detention may be. After all, the person detained is quite innocent in the eye of law, whatever the reason be, unless brought in for trial in a court of law. Therefore, the same treatment should be accorded to the detenus, whether they belong to the Provincial Governments or to the Dominion Government. If we do not have this provision there is likelihood of discrimination between the detenus of the Dominion Government and the detenus of the Provincial Governments.

Moreover I do not understand the significance of paragraph (b).

It runs :

“Removal from one unit to another unit of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the maintenance of public order.”

According to List No. 1, paragraph 1, there is no power in the Dominion Government with regard to people detained for reasons connected with the maintenance of law and order. So I fail to see how this power can be given to the Dominion Government in regard to their removal when originally it has no right to keep them in custody. It is thus logically necessary that you must arm the Dominion Government with powers relating to the persons of such detenus. Moreover, in the centrally administered areas or in a given set of circumstances it may happen that the Central Government may require these powers. I know that it is only a temporary measure for two months and so I think we should not take any time of the House by moving amendments. At the same time I want that in making the constitution we should guard against these discrepancies coming in. If the principle of the Bill is going to be repeated in the new constitution I for one will be bound to oppose it. I beg the House to keep these principles in view in deciding the matter.

The Honourable Shri N.V. Gadgil : Sir, this is a very simple thing and really does not justify so much discussion. Two things are contemplated : one is to remove certain anomalies in the administration of the Act, and for that the procedure laid down in section 97 is rather complicated and a simpler procedure is therefore suggested. The other is the difficulty of removing persons from one province to another who are prisoners of the Central Government. This difficulty is sought to be removed by making suitable provisions. No big principle is involved, and if any principle is at all involved it is only for a very short period.

Mr. President : The question is:

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

The motion was adopted.

Clauses 1 to 4 were added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Shri N.V. Gadgil : Sir, I move :

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

Mr. President : The question is:

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

The motion was adopted.

ADDITIONS TO CONSTITUENT ASSEMBLY RULES 38-A (3) AND 61-A

Shrimati G. Durgabai (Madras: General): Sir, I beg to move:

“(i) That the following amendment to the Constituent Assembly Rules be taken into consideration :—
After sub-rule (2) of rule 38-A, the following sub-rule be added :

‘(3) In this rule, the reference to the Government of India Act, 1935, includes references to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.’

(ii) that the provision mentioned in the Constituent Assembly Notification No. CA/76/com/RR/48, dated the 2nd August, 1948 be made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :—

In Chapter X of the said rules, after rule 61 the following rule be added:—

‘*Execution of orders as to costs.*—61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced

[Shrimati G. Durgabai]

before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.’”

These motions, Sir, are non-controversial and no elaborate explanation is needed. But I feel it is my duty to offer a few words of explanation as to the need for these amendments. With regard to the first motion the object of the proposed amendment is that sub-rule (1) of rule 38-A of the Constituent Assembly rules, as it stands at present enables the Constituent Assembly to make amendments to the Indian Independence Act or any order, rule, regulation or other instruments made thereunder, or to the Government of India Act, 1935, as adapted. There are, however, certain other parliamentary enactments supplementing or amending the Government of India Act *e.g.*, the India (Central Government and Legislature) Act, 1946; and it is doubtful if the reference to the Government of India Act, 1935, in that sub-rule will include references to those enactments. Our rules thus may be held as making no provision at all with regard to Bills which seek to make amendments to such enactments. The new sub-rule (3) to rule 38-A now proposed seeks to fill in this lacuna.

This is only a formal provision and therefore requires no further detailed explanation.

With regard to the second motion the necessity for the amendment arose in this way that the rules of the Constituent Assembly did not make any provision for a procedure for recovery of costs in cases of election where such costs are not payable out of the security deposit. Hitherto Section 12 of the Indian Elections and Inquiries Act of 1920 which provided for the execution of order as to costs made by the Central or Provincial Government on the Report of Commissioners appointed to hold an inquiry in respect of an election to a chamber of any legislature has been applied to cases of this kind. But there was one difficulty that the said Act was extended only to provinces and not to any Indian State. So the procedure in Section 12 did not apply to cases where the respondent was a subject of an Indian State. Therefore the Honourable the President considered it necessary to make a provision of this kind and now this is sought to be incorporated in the Constituent Assembly Rules as already indicated in the notification issued.

The effects of this amendment are two: that the Constituent Assembly being a sovereign body, such a provision will apply throughout the territories of India. Also they will have the effect of a law passed by the legislature. It would also be binding on all courts situate whether in a province or in an Indian State in the same way. Sir, this is the only object and these are the effects of the amendments proposed by me in this motion. Sir, I move and I commend my motion for the acceptance of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I feel some difficulty about the insertion of the proposed new rule 61-A. I do not object to the principle of the rule: I rather concede that some such provision is necessary. My difficulty is as to the place where this is to be inserted and as to the exact form it should take. This rule is practically an amendment to the Code of Civil Procedure. The President may order costs; and this rule proposes to enact a machinery by which the costs may be realised. It says that the election costs must be realised from the amount already deposited and in

so far as the cost is not realised from the amount deposited, that amount may be realised by presenting the order before an appropriate Court as if it is a decree for money. I submit that this really is an attempt to amend the Code of Civil Procedure. It provides for execution of an order of the President which is not already provided for in that Code and this rule will practically have the effect of amending that Code. I have, however, my doubts as to the efficacy of a rule of this nature.

The question that I would ask the House to consider is whether an amendment of the Rules of Procedure of this House will have the effect of really vesting the Courts with the jurisdiction of executing orders for costs passed by the President. The Code of Civil Procedure can only be amended by an amending Act. We have already decided in this House that this Constituent Assembly will sit in two different capacities—one as a constitution-making body which it is now, and the other as a legislative body in another chamber. We have decided also that amendments to the Government of India Act and the Indian Independence Act can be made in this House, and we have just now passed a Bill to amend the Government of India Act, 1935, in this House. With regard to the proposed amendment of the Code of Civil Procedure the proper procedure would be a real downright amendment of the Code by means of a Bill, and if that course is considered advisable, the proper venue would be this House in its legislative capacity where a proper Bill is to be introduced. If it is considered so urgent that this provision should find a place on the Statute Book at once, the Governor-General may be approached for an Ordinance and in due course this Ordinance may be replaced by a permanent statutory enactment effecting a proper amendment of the Code of Civil Procedure. The difficulty as I submitted, would be whether an amendment of our Procedural Rule would really vest the Courts with the necessary jurisdiction. I await a clarification of the situation by competent authorities.

There are again certain drafting errors of a very serious nature which would make the rule, even if it is binding, ineffective in certain cases. It is provided that where there is no High Court where a person against whom cost is granted resides, the highest Court of original jurisdiction for the area would execute the order for costs, that is the Court of the District Judge will execute the order for costs. With regard to those who live within the jurisdiction of High Courts, the Small Cause Courts having jurisdiction there will execute the order. There is a little confusion of thought here. There are two kinds of High Courts—High Courts situated in the Presidency Towns and those situated in other places. This fundamental distinction has been lost sight of in drafting this new sub-rule. With regard to the Presidency Towns—Bombay, Madras and Calcutta—there are Presidency Small Cause Courts and there will be no difficulty with regard to persons residing within the original jurisdiction of those High Courts and the orders for costs would be executed by the Small Cause Courts situated there. But there are other High Courts which are not situated in presidency towns like Allahabad in the U.P., Nagpur in the Central Provinces, Patna in Bihar and Simla in East Punjab and Shillong in Assam where the Presidency Small Causes Act does not apply and there are no Presidency Small Cause Courts. There are the usual Civil Courts of District Judges but no Small Cause Courts as there are within the jurisdiction of the original side of the High Court situated in the Presidency towns. In section 5 of the Presidency Small Cause Courts Act (Act XV of 1882) it is provided that there shall be, in each of the towns of Calcutta, Madras and Bombay, a Court which would be Small Cause Court. With regard to the other towns, where there are High Courts, there will be no Small Cause Courts. As it is, with regard to the High Courts which are not situated in Presidency towns, there will be no Small Cause Courts which will execute these orders.

[Mr. Naziruddin Ahmad]

In these High Courts which are not situated in Presidency towns, there are no such Small Cause Courts. With regard to Presidency towns, the Small Cause Courts have also some limit to their pecuniary jurisdiction. It may be that the order for costs may be a sum exceeding the pecuniary jurisdiction of these Courts in the Presidency towns. These are the difficulties which strike me and it is for these reasons that I have submitted a motion for deletion which has been properly rejected on the ground that it contravenes the rules. But I desire to point out these difficulties and ask for clarification, and if necessary abandonment of the rule for the time being and approaching His Excellency the Governor-General to promulgate an Ordinance, and thereafter to pass an Act in the appropriate House. There are these procedural difficulties which have not apparently been thought of in drafting these rules. These are matters which require consideration at the hands of competent lawyers in the House and a suitable solution found. That is all I wish to submit.

Shrimati G. Durgabai : Sir, the difficulty pointed out by Mr. Naziruddin Ahmad is not any serious difficulty. I may explain that our legislature cannot make any provision which would be applicable to all Indian States. Since the object of my amendment is to see that the order is binding on all courts and also applicable to Indian States, this object could not be achieved if this amendment is not made. The legislature is not really competent to make any provision which could be applied to all Indian States. This is the only sovereign body that could make an amendment to that rule. Also, there is already a provision in the rules of the Constituent Assembly of India, rule 52, which says that no election could be called in question by any court. This has barred the jurisdiction of the courts. Therefore it is perfectly within the competence of this House to make this amendment. I do not think that the difficulty anticipated by Mr. Naziruddin Ahmad would in any way create any obstacle. I hope he will be satisfied with the explanation I have now given.

Mr. President : I shall now put two suggested amendments separately to vote.

The question is:

“(i) After sub-rule (2) of rule 38-A, the following sub-rule be added :—

‘(3) In this rule, the reference to the Government of India Act, 1935, includes reference to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.’ ”

The motion was adopted.

Mr. President : The question is:

“(ii) The provision mentioned in the Constituent Assembly Notification No. CA/76/Com/RR/48, dated the 2nd August, 1948, be made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :—

In Chapter X of the said rules, after rule 61 the following be added :—

‘*Execution of orders as to costs*—61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.’ ”

The motion was adopted.

DRAFT CONSTITUTION—(*contd.*)

Mr. President : We shall now take up the consideration of the Draft Constitution of India.

Seth Govind Das (C.P. & Berar : General) : * [Mr. President, before you proceed with the consideration of the articles of the Constitution, I wish to place before you a matter for your consideration. I do so because during the last session of the Constituent Assembly, you had made the following announcement in this House on the 2nd May, 1947 :—

“I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original constitution. In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, so that our future judges may have to depend upon our own language and not on foreign language.”

Since then, I have recently toured all the non-Hindi speaking provinces I visited Bombay, Gujarat, Maharashtra, Assam, Bengal, Orissa, Kerala, Andhra, Tamil Nad, Karnatak, Mysore, Travancore, and Hyderabad. Every where I found that the people were of the opinion that our original constitution should be in our national language. We already know the views of the Hindi speaking people. I am also aware that the Committee appointed by you in this connection recently has translated into Hindi all the articles adopted by us here.

I request you that in order to avoid any difficulty in future, it would be proper that along with draft articles in English, the articles in our national language should also be taken up, so that the Constitution should also be ready in the national language, and that it may be—as stated by you—the original and main document. We should decide this question just now, otherwise there will be a lot of difficulty later on. I therefore request that some decision should be taken on this question.]

Mr. President : It is true that at one stage of the proceedings, I made that statement to which reference has been made. In pursuance of that I appointed Committees to prepare translations of the Draft which was made originally in the English language. Three translations were prepared by certain gentlemen, one in Hindi, another in what is called Hindustani and the third in what is called Urdu. All these three translations were printed and I believe copies have been circulated to the Members. I understood, however, that none of these drafts was acceptable to a large body of Members, and the Steering Committee passed a resolution asking me to appoint a Committee of experts to prepare another translation which would be as accurate as possible but at the same time also intelligible to the public at large. I have appointed that Committee and that Committee is doing the work at the present moment. I am not sure if that Committee has been able to complete in final form the translation even of those article which have been already accepted and adopted by this House. The other day I attended one of the

*[] Translation of Hindustani speech.

[Mr. President]

meetings of that Committee and I found that they were still struggling with one of the articles which come rather early. Some progress must have been made since then but I am not sure how far they have gone upto now. I still stick to my opinion—I do not know if that is shared by all the Members of this House—but I still stick to my opinion that it would be in keeping with our nation dignity and honour if we can pass our Constitution in original form in our own language, (*Cheers*) but I do find that this difficulty has faced us all these months, and I can only hope that the Committee which has been appointed will be able to give us a satisfactory translation in time for being placed before this House and accepted by it. I am not in a position to say that today, but as soon as I can get that translation, I shall place the matter before the House.

Shri M. Thirumala Rao (Madras: General): On a point of clarification, Sir, in the event of a satisfactory translation in Hindi being available, is it proposed to give up the adoption of this constitution in English?

Mr. President : I do not think so, because the original has been prepared in the English language and it has to be adopted, but we can also adopt it in our own language if the translation is satisfactorily prepared.

The Honourable Shri K. Santhanam (Madras: General): I take it that even then it will be duly debated because many of us may have amendments to suggest to the Hindi translation.

Mr. President : Of course, it will be open to any member of the House to move any amendments to the translation, so far as the language is concerned, but not with regard to the substance because the substance will have been accepted in the English language.

We shall now proceed to the consideration of the Draft Constitution. The House dealt with articles upto 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of this House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment. *i.e.*, 67-A. It will be taken up first.

New Article 67-A

The Honourable Dr. B.R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

“That after article 67, the following new article be inserted :—

‘67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.

(2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter.’”

Sir, the necessity for this article being inserted in the Constitution is this: The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter, Sir, B.N. Rau, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, *viz.* to endow the President with the authority to nominate fifteen persons the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this Draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, *viz.*, that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution Committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular Bill in relation to which they are nominated by the President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

Pandit Thakur Das Bhargava : Sir, with your permission, I wish to bring to your notice that so far as this new provision is concerned, no notice of it was given before and we did not know if such a provision was going to be brought before the House. In the printed book which has been circulated to us, this does not appear there. This is the first time that we are informed of its existence. I beg of you under these circumstances to kindly hold this section over, so that we may be able to table proper amendments to this article. So far as the provision of article 67-A go, they appear, on a cursory examination, to be extremely wide. We have just heard that the powers of these persons who will be nominated will be co-terminous with the proceedings of a particular Bill, but there is nothing in this section to indicate that. Similarly I understand that the words "In relation to the said Bill" are too wide. I can understand if the House agrees to the appointment of experts and then their powers should be limited to the time when the Bill is on the anvil of the Legislature and only in so far as the Bill is being considered. These words "in relation go to the said Bill" might mean that whenever a provision of this kind is taken up any of those matters in regard to.....

Pandit Hirday Nath Kunzru (United Provinces: General): The honourable Member is not audible.

Mr. President : Does the honourable Member want that the discussion of this article be held over?

Pandit Thakur Das Bhargava : Exactly.

Mr. President : Is that the wish of the House that it should be held over?

Shri T.T. Krishnamachari (Madras: General): We may go on with the discussion now and if the Drafting Committee want to reconsider it, we can do so later on.

Mr. President : The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B.R. Ambedkar : I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President : We shall postpone it today and we shall take it up later.

Article 68

Mr. President : The motion is:

"That article 68 form part of the Constitution."

We shall now take up the amendments to this article.

(Amendment Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

The Honourable Dr. B. R. Ambedkar : The Drafting Committee may be very glad to follow that procedure.

Mr. President : It will save a lot of time and I will leave out all these verbal amendments or amendments which are of a drafting nature, and which do not touch the substance of the article.

Amendment No. 1456 stands in the name of Mr. Naziruddin Ahmad. It is also of a drafting nature.

Mr. Naziruddin Ahmad : No, Sir. It is not of a drafting nature.

Mr. President : The amendment is for substituting the word "third" for the word "second".

Mr. Naziruddin Ahmad : Sir, I do not move it.

(Amendment Nos. 1457, 1458, 1460 and 1461 were not moved.)

Mr. President : Amendment No. 1459 is more or less of a drafting nature. Amendment No. 1462 is verbal. Amendment No. 1463 is of a drafting nature.

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

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

(The amendment to Amendment No. 1460 was not moved.)

Mr. President : Amendment No. 1465: that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

Prof. K.T. Shah (Bihar: General): Mr. President, I move:

"That in the proviso to clause (2) of article 68, the full-stop at the end of the sentence be substituted by a semi-colon and the following be added :—

'provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.' "

In suggesting this amendment, I want to emphasise two principles: one that any Parliament elected after or immediately after a great national emergency is likely to be influenced very much by the very fact of that emergency. If, therefore it is elected for the full period and not for the balance of the period that would then be remaining, it is likely that such a Parliament may be called upon to deal with issues that may never have figured, or figured in a minor key at the general election which elected that Parliament. I think, if Parliament is to represent and reflect the popular sentiments of the issues that come before it from time to time, its length should be not so long that it might cease to be in full harmony with popular sentiment that may be changing under changing circumstances from time to time. It is therefore, of the utmost importance that the life of the Parliament should not be too long.

By a previous amendment, I had tried to make the life four years. That however being merely a matter of relatively small importance, I did not choose to move that amendment. But, here, I should like to emphasise that the fact that Parliament has to be elected after the Proclamation has

[Prof. K. T. Shah]

ceased, but the effect of the emergency has not passed away, is of importance, and that we should elect that Parliament only for the balance of the period for which its predecessor had been elected, and a balance still remains unexpired.

My reason, as I have already stated is that a Parliament elected under the stress of a grave emergency, influenced by the effect of that emergency sufficient to cause a Proclamation or even a suspension of the Constitution, would not be reflecting the normal sentiment of the people. It is, therefore, best that, in order to secure continued representation of the people properly and the popular opinion fully Parliament should be elected only for the balance of the period.

If that principle is accepted, then, I think the next clause follows as a mere corollary. That is to say, in every case, after a Proclamation of a state of emergency, any Parliament elected should be elected only for the balance of the period and not for the full period that would normally be prescribed under the Constitution.

It would also serve, I think, though I do not attach much magic to that, the purpose of maintaining a certain symmetry in our constitutional development, a period of five years being selected as the normal life of a popular legislature, and as such that quinquennial period should go on repeating from time to time in regular series, any interruption caused by the occurrence of an emergency such as has been provided for in this section being guarded against by permitting the new Parliament to be elected only for the balance of the period remaining unexpired at the time of the emergency.

I think this is a very simple matter, and if accepted, it would make Parliament always more fully in accord with the popular sentiment than it would be if you allow it to be elected for a full period even though elected under the stress of a great national emergency which has passed, but whose effects are not over.

I commend the motion to the House.

Mr. President : There is one difficulty. You have not moved the other amendment which stood in your name fixing the period to four years.

Prof. K.T. Shah : I am quite willing to make that five.

Mr. President : Could you do that at this stage!

Prof. K.T. Shah : I am in your hands. I deliberately did not move it.

Mr. President : We shall consider that later. Mr. Mihir Lal Chattopadhyaya.

Mr. Mihir Lal Chattopadhyaya (West Bengal: General): I am not moving my amendment.

Mr. President : Two amendments have been moved, one by Dr. Ambedkar and the other by Prof. K. T. Shah. Both of them and the article are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, I rise to oppose the amendment moved by the Honourable Dr. Ambedkar. My reason for opposing it is this. His amendment is that after the word 'President' the words 'with the consent of the Parliament' be inserted. Article 68 says:

"That the period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year, etc."

Supposing the Parliament is not in session, then what are we to do in that case? After all the President represents the whole of India. He must have some very wide powers and this power should, in my opinion, be left in the hands of the President specially when the Parliament may not be in session and it is a matter of emergency. Therefore I oppose the amendment and I want the proviso to remain as it is in the Draft Constitution.

The next is the amendment of Professor Shah. I have two objections to it. It may be a verbal objection. After, all, this is an amendment and if it is passed, it will go down in the Statute Book. So every word must be correct. Here he uses the words 'People's House.' There is no such thing as 'People's House' in the Draft Constitution. It is the House of the People. Another thing is as you yourself have pointed out to my Friend Mr. K.T. Shah that the period he mentions is 4 years while we have already accepted that the period should be five years. With these two objections to this amendment, I trust the House will agree with me and not accept either of these two amendments and let the words as mentioned in the Draft Constitution remain.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, with regard to my Friend Professor Shah's amendment, he desires that in the event of an emergency when the House is dissolved, the term of the Parliament should be not five years but the remaining period from which the original House was dissolved. To me it seems peculiar. If the House is to be dissolved, it will be dissolved, under extraordinary conditions and the House is not going to be dissolved on a mere petty issue. When there is a deadlock in the House, when the Ministry is not stable or the House is not functioning alright, then somebody would step in to dissolve so that a new House could be formed, and for that purpose surely the electorate has to be told that the members who have been returned have not functioned well and therefore there had been a deadlock and the proceedings of the House could not be carried out and therefore the full period of five years should be given to that new House. Professor Shah has not quoted any instance whereby he could have told the House that in the event of dissolution there have been instances of this nature that he desired that had been introduced. I know of an instance in India when an Assembly was dissolved after the election within one year when there was a deadlock and the electorates returned absolutely 50 percent new members, and the House functioned for the full period. It should be so because if in the past members had not behaved well, it was no reason why the new members should be deprived of the full period. I therefore contend that the full period should be allowed to the new House as is prevalent everywhere in the world and the right of the new members should not be deprived because of the mistake or misbehaviour of the previous members. I therefore oppose this amendment.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am thankful to Dr. Ambedkar for the amendment which he has moved. But I personally felt that the proviso itself should go. It will mean that under some emergencies the House which is elected for five years may last even up to ten years. Suppose a war intervenes and an emergency is declared, and there are no elections. The war may be prolonged one—such a thing occurred in England only recently and the Parliament then continued for nine years. America even in the midst of war had her elections and after four years they had a new House of representatives as well as a New Senate at the very height of war. I feel that the people must have an opportunity of electing their representatives every five years and no emergency should be permitted to take away this right of the people. If in certain circumstances the life of the Parliament has to be extended, some limit should be placed on the period upto which its life may be increased. This limit should not exceed one year.

Mr. President : The honourable Member has given no notice of any amendment for omitting the proviso.

Prof. Shibban Lal Saksena : I am speaking on the motion.

Mr. President : You are opposing the whole proviso. That is your speech. Dr. Ambedkar could not move an amendment to that effect even at this stage. I do not think that question arises.

Prof. Shibban Lal Saksena : This is a lacuna in the Constitution and it will deprive the people of the right to elect their representatives after every five years.

Shri T.T. Krishnamachari : Mr. President, Sir, so far as the amendment No. 1464 is concerned, I think the House will pass it without demur, but in regard to Professor Shah's amendment I must say that I perfectly sympathise with him in that he has taken considerable pains to visualise a contingency that might occur; but there are certain aspects of the matter which defeat the very purpose that he has in mind. Actually his amendment has not been very carefully worded to suit contingencies where the period of emergency might be say for four and a half years. If the period of emergency is for four and a half years, is the new House to be elected only for six months and if the emergency continues for five years, for how long is the new House to be elected? These are the absurdities that arise if the amendment is accepted, because when we meticulously look for contingencies which will arise in the future we are apt to overlook certain other contingencies which will make our ideas perhaps infructuous as we are not able to provide for all possible things that might arise. So while I perfectly sympathise with Professor Shah's idea that elections like a Khaki election should be avoided if possible and the House that has been elected on that basis should not be perpetuated, I think human ingenuity is powerless against such things happening. So I would appeal to him not to press his amendment because it contains in itself germs which defeat the purpose for which he has tabled his amendment. So I think, barring Dr. Ambedkar's amendment which I hope the House will accept, the article can go in as it is.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir I do not think that anything has been said in the course of the debate on my amendment No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties which arise from it have already been pointed out by my Friend Mr. T.T. Krishnamachari. Election after all, is not a simple matter. It involves a tremendous amount of cost, and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I, quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

Mr. President : I will now put the amendment No. 1464.

The question is:

“That in the proviso to clause (2) of article 68, for the words ‘by the President’ the words ‘by Parliament by law’ be substituted.”

The amendment was adopted.

Mr. President : Then there is the further proviso suggested by Prof. Shah in his amendment No. 1466.

The question is:

“That in the proviso to clause (2) of article 68, the full-stop at the end be substituted by a semi-colon and the following be added :—

‘Provided further that the People’s House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.’ ”

The amendment was negatived.

Mr. President : Then I put the whole article as amendment by Dr. Ambedkar’s amendment.

The question is :

“That article 68, as amended, stand part of the Constitution.”

The motion was adopted.

Article 68 as amended, was added to the Constitution.

Article 68-A

Mr. President : Now I come to the new article sought to be put in article 68-A Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I beg to move:

“That the following new article be inserted after article 68 :—

‘68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.’ ”

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

Mr. President : There are certain amendments to this: No. 80 in the list of amendments to amendments, by Mr. Naziruddin Ahmad. This also seems to be a drafting amendment, and I would leave it to the Drafting Committee to settle it, in consultation with the mover.

Then No. 81 also looks like a drafting amendment. It seeks to add the words “and voter” at the end. I leave it also because it is more or less of a drafting nature.

(Amendments No. 82, No. 83 and No. 84 were not moved.)

Then we come to the other list which has been circulated today. Amendment No. 4 of that list, by Sardar Hukam Singh and Mr. Lakshminarayan Sahu.

(The amendment was not moved.)

(Amendment Nos. 5 and 6 were also not moved.)

I have got notice today of another amendment by Shrimati Durgabai.

Shrimati G. Durgabai : Sir, I beg to move :

“That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word ‘thirty-five’ the word ‘thirty’ be substituted.

The object of this is to lower the age to 30 from 35 for a seat in the Council of States. It was held for some time that greater age confers greater wisdom on men and women, but in the new conditions we find our boys and girls more precocious and more alive to their sense of responsibilities. Wisdom does not depend on age. It was also held that the upper House consisted of elders who should be of a higher age as it was a revising chamber which would act as a check on hasty legislation. But that is an old story and the old order has been replaced by the new. As I said our boys and girls are now more precocious and the educational curriculum is now so broad-based that it will educate them very well in respect of their civic rights and duties. I therefore think we should give a chance to these younger people to be trained in the affairs of State. I said wisdom does not depend on age. Our present Prime Minister became President of the Congress before he was 40 and Pitt was 24 when he became Prime Minister of England. Therefore we have no reason to fear that because a man is only 30 he will not be able to perform his functions in relation to the State. I hope the House will accept this amendment. Sir, I move.

Mr. President : The amendment and the original proposition are both open to discussion now.

Shri H.V. Kamath (C.P. & Berar: General): Sir, I was happy to hear my honourable friend Shrimati Durgabai say that wisdom does not depend on age; I hope she will agree that it is irrespective of sex as well. (Several honourable Members: “Question”.) Those friends who question this will answer their own question by coming here and convincing this House. This constitution does not discriminate against sex and I hope that with our traditions of philosopher women like Gargi, Maitreyi and Ubhayabharati, wisdom will not discriminate against sex. Our greatest epic, the Mahabharata—has recognised this in a well-known shloka which runs as follow :—

न तेन वृद्धो भवति मेनास्य पलितं शिरः
यो वै युवाप्यधीयानस्तं देवाः स्थिविरं विःदु

*Na tena Vriddho bhavati Yenasya palitam shirah
Yo Vai yuvapyadhiyanastam devah sthaviram vidhu.*

It means

A person is not old or wise, merely because his hair has turned white.

I have therefore no hesitation in supporting Shrimati Durgabai's amendment lowering the age limit for membership of the Council of States. I would have gone further and made the age limit the same for both Houses and reduced it to 21. It was said that Pitt became Prime Minister of England at an early age. I think he entered Parliament at 21 or a little over 21, and became Prime Minister at 24. These are of course exceptions and we cannot legislate on the basis of exceptions. But on the whole I think it is wise to lower it from 35 to 30. There may, however be one difficulty about this. I shall invite your attention to article 152, under which, in the case of the legislature of a State, the age is 35 for membership of the upper House. I hope that when we come to that article this amendment will be borne in mind, and what we have done for the upper House in the Centre will apply to the upper Houses of the provinces or States, and the age limit there also will be lowered to 30 years. When a person below 35 can fill a seat in the upper House in the Centre there is no reason why he cannot do it in the States. Another difficulty, which perhaps is not of much moment, is article 55(3) which we have passed already and cannot now amend, wherein it is laid down that in order to be Vice-President a person must have completed 35 years. Now the Council of States will be presided over by a person who is a member of the Council. In Shrimati Durgabai's amendment the age limit is proposed to be lowered from 35 to 30. It means that we are reduced to this position, that every member of the Council of State will not be qualified to contest or stand for the election of the Vice-President of the Council of State, because if a person is between 30 and 35 he will not be eligible for election. Merely because he is below 35 he will not be able to fill the office of Vice-President. This is an anomaly which is rather distasteful to me. The person is elected to the Council of State, and the Council of State can elect a Vice-President from among themselves but this age bar comes in the way, which is to my mind unfortunate. If this article is adopted I see no way of getting over this difficulty unless the article already passed is amended suitably. A person who is a member of the House must be *ipso facto* eligible for any election that may be held by the House. But under the amendment of Shrimati Durgabai this is made an impossibility simply because a man happens to be between 30 and 35. If a man is fit to occupy a seat in the upper House. I see no reason why he should not be competent to fill the office of the Vice-President of the Council of State, but should be debarred merely because of age. I hope the wise men of the Drafting Committee will into this anomaly and try to rectify it as far as their wisdom permits them to do so.

Mr. President : I do not think there is any inconsistency or contradiction between the two. This question may be considered by the Drafting Committee.

Prof. Shibban Lal Saksena : Sir, I frankly confess that I am not happy over the amendment of Dr. Ambedkar. I do not think it improves the constitution. As has been pointed out there have been cases in the world where younger men than 25 years of age have occupied the highest positions. The case of the younger Pitt was just cited: Shankaracharya became a world teacher when he was 22 and died when he was only 32. Alexander had become a world conqueror when less than 25 years of age and died when he was 32. Our country of 300 millions may produce precocious young men fit to occupy the highest positions at an age younger than 25 and they should not be deprived of the opportunity.

Part (2) of this amendment unnecessarily restricts young voters from becoming candidates. This clause will disqualify persons for election who state their age as being less than 35. This question of age should have no connection with the qualification of a man to become a candidate for election.

The third part is even more dangerous. A Parliament of today may impose such restrictions as might enable the party in power to defeat its opponents.

[Prof. Shibban Lal Saksena]

The party in power by their majority may pass laws and prescribe qualifications for candidates which might help the party against their opponents. This power which is being given to the parliament to prescribe qualifications for candidates by a simple majority is dangerous. I therefore think that the whole amendment is not very happy and I would urge Dr. Ambedkar to see whether he cannot withdraw it.

Mr. Tajamul Husain : Sir, I rise to support the amendment to the amendment moved by my honourable Friend Shrimati Durgabai. The amendment which Dr. Ambedkar has moved is that the age of a person who wants to be a candidate for a seat in the Council of State must be at least 35. The amendment to that amendment is that the age should be 30. In fact I am of opinion that it should be less than 30. When a person has attained his majority he should be eligible. As there is no amendment to this effect I have no alternative but to support the amendment moved by Shrimati Durgabai.

Sir, I am reminded of a Persian couplet which says:

Bazurgi ba aql ast na ba sal. Kawangri ba dil ast na ba mal.

The first part means that seniority is not according to age but according to wisdom. I shall not translate the second part. If a person is a genius, why prevent him from entering the Council of State though he may be under 30? Mr. Kamath mentioned the example of the younger Pitt. There was the case of Shankaracharya who died at the age of 33 but before that he had attained the position of a world teacher. There were the instances of Rama, Krishna and Buddha, who attained enlightenment when very young. There are many other instances in history. Sir, I strongly support the amendment moved by Shrimati Durgabai.

As regards the amendment of Dr. Ambedkar I do not see eye to eye with it. There are three qualifications mentioned. I am of opinion that the qualification of a person to fill a seat in the Parliament is that he should be a voter on the list. The moment a man's name is on the voters' list you cannot prevent him from either standing for election or voting. The election Officer will be there and after the identification is completed nobody can prevent him from voting. If he is not 35 but 25 why prevent him from standing as a candidate? The ordinary principle of law is that if a person can vote he can also stand for election. This amendment will go against a well recognised principle as it will mean that a voter cannot stand for election. This should be withdrawn by Dr. Ambedkar. Once a man is a voter he should be eligible for election and therefore Sir, I oppose the amendment of Dr. Ambedkar with the request that he should make a suitable change in it.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, the amendment moved by my Friend Dr. Ambedkar is not an innocent one. It is a dangerous one and is opposed to democratic principles.

In the previous article, No. 67, clause (6), the qualification for a person to become a voter are mentioned. It is definitely stated there under what circumstances he can be a voter and under what circumstances he cannot be a voter. You have clearly stated that he must be a man of 21 years of age. Such a person not otherwise disqualified under this constitution or any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practices shall be entitled to be registered as a voter at such elections. So, Sir, in this clause you have definitely laid down the principles on which this Constitution or any Act of Parliament might disqualify a person from becoming a voter. But what do we find in this amendment now? In this amendment, clause (3) is an omnibus clause which gives power to the future Parliament to disqualify a person from becoming a

member of Parliament for any reason whatsoever. You have not circumscribed the circumstances with regard to which a disqualification may be legislated for, as we have done in the case of a voter. So, a reactionary Parliament, a capitalist Parliament might legislate saying that in order that a person may be enabled to stand for election he must own 5,000 acres of land or pay one lakh of rupees as income-tax. You can imagine, Sir, how a reactionary Parliament in future might restrict the membership of Parliament to such persons as they consider fit in their own view. Sir, what we have provided for in this Parliament, that is adult suffrage, might be taken away later. What is given by one hand might be taken away by the other by prescribing impossible proprietary qualifications, for instance. Thus a citizen may be deprived of his right to stand for election in these circumstances.

Further it is a recognised principle that when you are making a Constitution you should leave the future legislature to lay down the qualifications of persons who want to stand for election. It is surprising that while unnecessary provisions have been introduced in the Constitution, the most important provision which qualifies or disqualifies a man from becoming a member of this Parliament is sought to be left to the future Parliament. That is against principle; as Dr. Ambedkar himself has said, you are now preparing a machinery for qualifying a person to be a citizen and who, under certain circumstances, becomes a voter and a member of Parliament or a Minister or President or Vice-President. While you prescribed qualifications for a voter, while you prescribed qualifications for a man to become a President or Vice-President and so on and so forth, there is no reason why you should, in the case of a person who should be made eligible to stand for election, leave the matter to a future Parliament. It is dangerous and it is opposed to principle. That is the most important and dangerous provision in the first part of this amendment. As for clause (b) I am one with those who consider that when once you have been declared as a voter you must be entitled to stand for election. The very fact that you are broad-basing representation to Parliament by giving suffrage to persons of a certain age with certain qualifications must enable every voter to stand for election. I know there are Constitutions which provide different qualifications for persons to become members of Parliament. That is true. It is true more in the case of the Council of States than in the case of the House of the People. Whatever that might be, I might even consent to raising the age-limit for a member who seeks election, but I am opposed to the future Parliament being given the right to legislate with regard to the qualifications or disqualifications for a man becoming a Member of Parliament. I humbly submit that Dr. Ambedkar will take into consideration this serious objection and withdraw his amendment and bring it forward if necessary with suitable amendments.

Shri T. T. Krishnamachari : Mr. President, Sir, I have only to say a few words, about the amendment of Shrimati Durgabai to the amendment moved by Dr. Ambedkar. Objection has been taken to this amendment by my honourable friend Shri Kamath on the ground that while the qualifying age for a Vice-President who is Chairman of the Council of State happens to be 35, there is no point in reducing the age of the members of that body. I am afraid my honourable Friend has found an inconsistency in this particular amendment without really examining why the age of the Vice-President has been fixed 35. I would ask him to look into article 47 which fixes the age of the President at 35. Naturally, since the Vice-President is expected to take the place of the President when there is a vacancy, article 55 has fixed the age of Vice-President also at 35. This has no relation at all to the age of the members of the Council of State. So there is no anomaly at all, I would point out, in fixing a definite age as qualifying age for membership of the Council of State which is lower than the age fixed for its Chairman. I hope

[Shri T. T. Krishnamachari]

the House will appreciate that there is no anomaly and that the age of the Vice-President has been fixed at 35 for altogether different reasons. It has nothing to do with the qualifying age of the members of the Council of State. So far as the other points raised against Dr. Ambedkar's amendment are concerned, I think Dr. Ambedkar will adequately answer them, though I feel that the objections are trifling and beside the mark, for the reason that it does not necessarily mean that the qualifications of a candidate should also be the qualifications of the voter. They have in the past even in our own legislature been different and it is so in very many other countries. So there is no very great sin in having one set of qualifications for candidates and another set of qualifications less rigid for the voters. Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amendment by Shrimati Durgabai's amendment.

The Honourable Dr. B.R. Ambedkar : I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President : Do you wish to reply?

The Honourable Dr. B.R. Ambedkar : I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further it is still open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President : I will now put the amendment to vote, and also the article if the amendment is accepted as amended. Before doing so, I desire to make an observation but not with a view to influencing the vote of the House. In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges are required to possess very high qualifications, for helping the Judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all, and legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is nonsensical and the wisdom of all the lawyers and all the Judges will be required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it, would have to put up with it.

The question is:

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 68-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 68-A, as amended, was added to the Constitution.

Article 69

Mr. President : There are certain amendments. No. 1469 by Shri Brajeshwar Prasad.
(The amendment was not moved.)

Prof. K. T. Shah : Mr. President, Sir, I beg to move :

“That in clause (1) of article 69 for words the ‘twice at least in every year, and six’ the words ‘once at least in every year at the beginning thereof, and more than three’ be substituted.”

With this change, the amended article would read :—

“The Houses of Parliament shall be summoned to meet once at least in every year at the beginning thereof, and more than three months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.”

May I point out, Sir, before commending this motion to the House, that there is a later amendment of mine which is complementary to this, and, if read together, might save the time of the House, and also make the point I am going to make more intelligible. So, if you will permit me to move the later one now (No. 1474), it would be better.

Mr. President : Yes.

Prof. K. T. Shah: Sir, I move:

“That after clause (1) of article 69 the following proviso be inserted :—

‘Provided that Parliament or either House, thereof, once summoned and in session, shall continue to remain so during the year; and each sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogations.’ ”

Sir, this clause seems to me to have been provided in conformity with the prevailing practice under which the legislature sits at two sessions during the year, the budget, session, and the legislative session usually held in the autumn. Now, to my mind, this practice has arisen out of the convenience of the then Government, and also because the functions of the Parliament in those days were very limited. The powers and authority, and therefore, the work coming to the share of the then Legislature was of an extremely limited nature, and therefore limited sittings were naturally deemed to be sufficient to cope with the work then coming before Parliament. With the increase in the work of Parliament, and with the greater responsibility following upon that work, with the increase also in the number of members, from about 150 to 500 at least under this Constitution when it comes into operation, it seems to me that the sittings cannot be and should not be interrupted in the manner in which they used to be interrupted by something like six months; and the business of the House should not be allowed to be broken up in the manner that was customary in the past.

It is the practice in England, also, to regard the Parliament’s sessions as a continuous one for the whole Parliamentary year, not withstanding holidays for Christmas, Easter and other occasions. The British Parliament works for something like two hundred days in the year, as against less than 100 days’ work by our Legislature. Our Parliament does, if I may say so without any disrespect, a very limited amount of work, at least as measured by the hours we put in. We work five days a week of $4\frac{3}{4}$ hours each or less than 24 hours per week, half a normal worker’s week. Naturally, therefore, the work of the Parliament, whether in regard to the supervision of administration or in regard to acting as the financial watch-dog, or any matters of policy, let alone all the details of legislation, has to be very hurriedly and sketchily done. It cannot be done within the limited time, and the very short hours during which the Indian legislature had been accustomed to sit all this time.

As illustration of my arguments, may I mention, that is within the experience of most of us, for instance, that during question time, a majority of the questions put down for the day remain unanswered on the floor of the House. This is the one method for criticising, scrutinising supervising,

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controlling and checking the acts of the administration. But under the limited time available to do other business, this duty cannot really be discharged in the manner that it should be discharged. There are numerous restrictions or conditions to guard against the right of interpellation being abused, about notice, the form of the question, and the manner in which supplementaries can be put. The entire province of keeping the general administration of the country under check cannot, by this means of questions, be satisfactorily carried out, simply because the time at our disposal is so limited to get through all the work that comes before the House.

There are other aspects of Parliamentary duties, which suffer similarly and for the same reason. Consider, for instance the Budget. We have now a Budget of some 350 crores; votes for crores upon crores are passed with hardly more than two or three hours discussion, of which the Minister proposing the demand for grant takes away more than half the time, in either proposing or replying. For a total Defence Budget of Rs. 160 crores in round terms we could give only $3\frac{3}{4}$ hours, so that the actual suggestions made by the House have to be limited to a very, very small fraction of the time available. Our discussion can hardly get time for constructive, helpful suggestion. I consider this incompatible with the full discharge of parliamentary duties, and with the full working of the democratic machine, if the popular sentiment is to be properly and fully expressed in Parliament on matters of such momentous importance.

When the present practice was laid down, it was quite possible, because more than half the budget of the country was outside our competence to discuss. A good portion of the administrative activities was also barred from discussion or review by the Assembly. The limited time, therefore, may have sufficed at that time. But with the new Constitution, with the new powers and with the increased responsibility as also with the increased membership, I think the restriction of the House by the Constitution to something like 100 days session in the year at most is, to say the least, not allowing sufficient scope for the discharge of parliamentary responsibility.

I am aware that the word "at least" is there. I realise, therefore, that there is nothing to bar parliamentary being called into session for a longer period, and its remaining in session for a longer period. But the very fact that such a term has to be introduced in the Constitution, that such a provision has to be made in so many words, that the maximum permissible interval is six months, and that it is not left to Parliament to regulate its own procedure, its own sittings, its own timings, seem to me indicative that the mind of the draftsman is still obsessed with the practice we have been hitherto following. I consider it objectionable; and if we are to get away from that practice, it is important that an amendment of the kind that I am suggesting should be accepted.

It is all the more important because large issues of policy, large matters, not only of voting funds, but determining the country's future growth, that is to shape the future of this country for years to come, have to be very scantily treated; and the 'Parliament's response to it, the discussion in Parliament about it, becomes, to say the least, perfunctory. Time is an important element in allowing a proper consideration. I am, therefore, suggesting that between any two sessions of Parliament in a year not more than three months should elapse; and that the year's session should be regarded as a continuous single annual session, during which the work of Parliament should be performed, should be carried out with the utmost possible sense of responsibility that the representatives of the people feel they owe to the electors.

The details of the sittings, the details of procedure, etc., should naturally be left to the House, as they are provided for in this Constitution. I have nothing more to say about that. I do think that judging from the experience

we have had so far, and judging from the fact that provision has had to be expressly inserted regarding the number of sittings that the Parliament should make in a year, or the frequency with which Parliament should be called into session during the year, it is imperative that we must amend the provisions by some such manner as I am suggesting. I do hope that the reason I have adduced would commend itself to the House and that my amendments will be accepted.

(Amendment No. 7 in the names of Shri Lakshminarayan Sahu and Sardar Hukum Singh was not moved.)

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

“That in clause (1) or article 69, for the word ‘twice’ the word ‘thrice’ be substituted.”

I am afraid that when this article 69 was framed by the Drafting Committee, they were not able to shake off the incubus of the Government of India Act. Dr. Ambedkar when he moved the resolution for the consideration of the Draft Constitution admitted that much of this Constitution has been influenced by the Government of India Act, and wisely, too, but here I think that this provision about summoning the Parliament at least twice during the year was more or less copied bodily, copied verbatim from the Government of India Act without any consideration as to what additional duties and responsibilities have devolved or are going to develop upon the Parliament of Free India. It is well-known that the American Congress and the British Parliament meet for nearly 8 or 9 months every year. The business of the State in modern times has become so intricate and elaborate of course, I am talking of Parliament in a democracy and not under dictatorship and I hope we are going to have democracy in this country and not dictatorship—that no Parliament in a democracy can fulfil its obligations to the people and fulfil its duties and responsibilities unless the Parliament sat every year for over six months to say the least. During the last Budget session of the Assembly there was a flagrant instance of a Minister of Government confessing to the Assembly that certain expenditure was incurred in a supplementary manner in anticipation of the approval of sanction of the Assembly. Dr. Matthai, the Finance Minister for the Government, when he presented his supplementary demands got them passed through—I would have said rushed through, but after all we are all members trusting one another, having full confidence in one another—in half a day or perhaps less than two hours. He was constrained to admit to the House “I have no explanation to offer why sufficient time was not given to the Assembly to discuss or why so much expenditure was incurred without the sanction of the House.” My honourable Friend Prof. K.T. Shah said that the figure ran into crores of rupees and such a huge amount of expenditure was incurred without the approval or sanction of the Parliament. Dr. Matthai contented himself with saying that it was incurred in anticipation of the approval or the sanction of the House, and the House just tittered, laughed and passed the supplementary demands. This irregularity, Sir, would have been obviated if Parliament had sat and assembled during the year from time to time, not merely during those prescribed period, prescribed during the British regime—Summer session and Autumn session—had Parliament met more often, and various items of expenditure had been presented to the Assembly on various occasions—then this sort of confession by a Minister of a Government, which is to say the least, not very happy, would not have been made and there would have been no cause for Minister of Government to make such a confession. The honourable the Speaker of the Assembly Mr. Mavalankar in an informal talk with some of us during the last session said: “We cannot get through the business if we go on like this. If we want to do justice to ourselves and to the country, it is imperative and obligatory that the Parliament sits for not less than seven or eight months in the year.”

[Shri H. V. Kamath]

I hope Dr. Ambedkar, on behalf of the Government, visualises such a position and is convinced of the necessity for Parliament meeting more often and for longer periods than it does at present. I would not have pressed this amendment but for the fact that in human affairs the minimum prescribed tends to become the maximum. In economic matters we have the classic instance of the minimum wage; the minimum wage tends in most industries to become the maximum wage. Here, in a similar manner, I am afraid the minimum prescribed will tend to become maximum. We have had the experience during the British regime. The Government of India Act laid down that Parliament shall assemble at least twice every year; there has hardly been any year in which Parliament met more than twice a year. Therefore, I move that the Constitution should lay down that Parliament should meet at least thrice a year: the budget session which is a long session, a session in the middle of the year, say July or August for two months, and again in the autumn or winter, October or November. then only, we shall be able to discharge our responsibility to the people and to the country. I move, Sir.

Mr. President : Amendment No. 1472 is more or less of a drafting nature.

(Amendment No. 1473 was not moved.)

Amendment No. 1475 is also of a drafting nature. Amendment No. 1476 is also of a drafting nature. Prof. Shah, amendment No. 1477 also appears to me to be of a drafting nature. If you agree, we may leave it there.

Prof. K. T. Shah : I think there is a question of substance in it.

Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 69, the words ‘the Houses or either House of’ be deleted.”

The amended clause would read:

“(2) Subject to the provisions of this article, the President may from time to time—

(a) summon Parliament to meet at such time and place as he thinks fit.”

That is to say, the authority of the President is not required for summoning either House as I conceive it here. Normally, the Upper House is, according to the theory of this Constitution, a continuous body, not liable to dissolution. Therefore, it is always there: If this provision ever should apply, it would apply only to the House of the People, so far as summoning is concerned.

I am not quite clear myself whether, at the beginning of any year, the Upper House also would have to be summoned; or whether, in continuous existence, it may be taken to be sitting; or its own procedure may regulate its being called into session.

In order to get round that difficulty, I have simply suggested the omission of these words, particularising either House of Parliament, and confining the wording only to the summoning of Parliament. There is a difference, I submit, in using the term Parliament, and particularising either House of Parliament, as it suggests the authority of the President even for the other body which is continuously in session. If it is considered that notwithstanding the Upper House being continuously in session, at each occasion it has to be summoned,—at least each year it has to be summoned,—apart from a joint session, of course, I think that is a way of looking at this provision which seems to me to be somewhat anomalous. I am therefore suggesting that

that purpose, whatever that purpose may be, would be served by keeping the term Parliament instead of particularising 'either House of Parliament.' I therefore commend this amendment to the House.

Mr. President : No. 1478.

Prof. K.T. Shah : Sir, I beg to move:

"That at the end of sub-clause (a) of clause (2) of article 69 the following be added :—

'Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People for a period of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.'

This, Sir, is a serious matter, implying that in case the President does not summon the House of Parliament for a period longer than permitted under the Constitution, we must have some machinery to counteract such an eventuality. Power is, therefore, given, under this amendment, to the Speaker or the Chairman of the Upper House to convene each his own respective House, without waiting for the authority of the President to do so, and without the President doing so himself.

It may be suggested that this is an attitude suspicion; or lack of confidence in the President: and therefore it is a point which ought not to be provided for in this Constitution. Written Constitutions, particularly of the kind that we are drafting for India ought to provide against such contingencies as have either occurred in our own history, or have occurred elsewhere. We must learn from our own as well as from other people's experience. It is necessary for us to guard against their recurrence if you consider such developments undesirable. Presidents there have been in the history of other countries, if not our own, who have taken the law into their own hands; and have by the very power of the Constitution so to say subverted utterly, and undone the intent and purpose of the Constitution. In case such a contingency should occur there must be provision in the Constitution itself to remedy it; and we should not wait for an amendment of the Constitution when such difficulty actually occurs to help us to guard against the consequences of such difficulties.

I am therefore suggesting that if at any time, for any reason, the President does not convene—it may never happen, but it is a possibility which is worthwhile guarding against— either House of Parliament, does not convene the House of the People for more than 90 days after its last adjournment, power must be available to the presiding authority of either House to take action, to call the House into session and continue the work of that House. The feeling of suspicion, if it is so alleged, is an outcome of the knowledge of past history of other countries. There is besides no guarantee that such a thing will not happen at all in this country. If you really are of opinion that there is no reason for us either to anticipate or fear that such a thing should ever occur on this soil, why have any written constitution at all? A few minutes ago, an amendment was moved by the Chairman of the Drafting Committee himself to a previous article which transferred power originally vested in the President, from the President to Parliament itself for extending the life of Parliament in the case of emergency.

Now, if you yourself are aware that such a power may be liable to be abused, and if you want to guard against such an abuse by providing that action may be taken by Parliament only, I see nothing wrong in my suggesting that, in the event of contingencies of the kind I am apprehending occurring, there must be machinery available in the Constitution itself to

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meet the situation. We should not wait for a later change or amendment of the Constitution whereby automatically and with the minimum of friction, we may be able to achieve our objective.

As I said before the history of the world is full of incidents of that character by which Constitutions have been subverted. It is, therefore, only a mark of prudence that we should at this time take heed of such a contingency or possibility and make provision accordingly. I accordingly commend this amendment also to the House.

Mr. President : The next is also yours, 1479.

Prof. K.T. Shah : Sir, I move:

“That in sub-clause (b) of clause (2) of article 69, after the words ‘the Houses’ the words ‘over a period not exceeding three months’ be added.”

This I think is consequential on my previous suggestions and therefore if the previous one is accepted, I hope this also will be accepted.

(Amendments Nos. 1480 and 1481 were not moved.)

Prof. K.T. Shah : Sir, I beg to move:

“That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added:—

‘on the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.’”

I also move:

“That after clause (2) of article 69, the following be inserted :—

‘(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course:

Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.’”

Sir, this amendment follows the same logic that I tried to put before the House a little while ago. In the first of these amendments I am trying to say, that, in the event of Parliament having to be dissolved earlier than its normal period, i.e. before five years, there must be some special reasons why such a dissolution is deemed necessary. My amendment does not seek to place any bar upon such dissolution being made. I only suggest that it shall be on the advice of the Prime Minister, as it will of course be in the normal course; and not on the authority of the President. I only require that the Prime Minister shall record his reasons in writing. For those reasons may constitute, in my opinion, valuable Constitutional, precedents for future, and may be of immense value in subsequent generations.

On that basis, therefore, the first amendment is, I hope, utterly innocuous, and would be acceptable to the House. It is doing no more than giving constitutional authority and mandate for reasons to be recorded by the Prime Minister every time that he requires the dissolution of the House of the People earlier than its normal term.

In regard to the second amendment the matter is a little more serious. It contemplates the possibility of the President being unable or unwilling to call Parliament together. That is a contingency that cannot be utterly ignored at all. It may not happen frequently—let us hope it will not happen at all. In that contingency I suggest that the Prime Minister should be entitled to request the presiding authority of either House to convene each its own House, and to continue with such business of Parliament as may be impending or may be necessary. In the second proviso I further contemplate the possibility of the Prime Minister refusing or unwilling to make such a request, and the President being also unable or unwilling to convene Parliament together. In that case, on the assumption that the two principal authorities, the two Chief Executive authorities of the country, are either unable or unwilling to make such a request, or to carry out their own constitutional duty, power should be reserved to the presiding authority of the House—of either House—to convene its own body into session, and continue the business of the country as in normal course.

Mr. President : Will you please say how No. 1483 differs from No. 1478?

Prof. K.T. Shah : In the case of No. 1478 it is only the President that is thought of, and the Prime Minister is not interposed with a request to summon either, House. The proviso makes it clear further that if the President and the Prime Minister be both unwilling to do so, then the presiding authority of either House should call the meeting. In No. 1483 power is given to the presiding authority of either House to do so, irrespective of those two conditions which are inserted later on in No. 1483. That I think is the difference between the two amendments.

Mr. President : I thought one was covered by the other.

Prof. K.T. Shah : To some extent. The later one is more specific. The Prime Minister is the moving authority in the first case. But if he is not willing to move, then the power operates. But the power can operate also independently of any question of the ability or willingness of the executive.

Mr. President : Supposing No. 1478 is carried, do you think No. 1483 is necessary?

Prof. K.T. Shah : No. That is the difficulty of moving these together before vote is taken on any. If No. 1478 is carried, then I myself would say it is unnecessary to move these. But I am putting the various things in my name, as I have thought of several contingencies, and if one is not carried another might be acceptable. With my experience of these amendments, I thought perhaps it might be as well to guard against such responsibilities. That is why I am commending these motions to the House. I hope they will be accepted.

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

Shri R.K. Sidhwa : Mr. President, Sir, article 69 relates to the summoning of the sessions of the Houses of Parliament. It says that the Houses of Parliament shall meet compulsory twice a year, and leaves it to the choice of the President, if he feels it necessary, to summon it from time to time. That proviso exists in the 1935 Act also. I think in the 1935 Act, instead of “twice” it is only “once”. From experience I have seen that generally Ministers are reluctant to face the legislature and therefore, they avoid calling the sessions of the legislature, except in some cases when the session is to be held under the law. Under the new set-up, when we are framing our Constitution on the British Parliamentary system, I fail to understand why for the purpose of procedure of our business, we shall also not follow the same

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procedure. I have seen from my experience of the last two years that important official business even has been held over for want of time. Several Ministers have got according to them, other important work to perform and they have no time for legislative business. As an illustration, I may mention that during the last session of the Parliament, eleven important official Bills had to be held over, not to speak of many important non-official Bills and Resolutions. Now, these important Bills could have been disposed of if we had continued sitting, until the beginning of this session of the Constitution making body and thus we would have saved from waste of one full month in between. But the Ministers were busy with their ordinary routine work. I therefore, say that some new procedure has to be found out, as is done in Parliament in England where they do not require their Ministers to come up every time to pilot the business, but entrust the work to their deputies. It cannot be advanced as an excuse by the Minister that they had not the necessary time, and therefore they could not complete the work. There should be a rule, as in England that Parliament should sit continuously throughout the year. Under the rules we have a question-hour and it is a very crucial hour for the honourable Ministers, because that is the hour when the Members are supposed to get information from the Government, and I know in some cases the Ministers wanted to do away with this question-hour on certain days in order to cope with the accumulation of other work. It did actually happen so, although it is compulsory under rules. In the British Parliament also this question-hour is considered very important. There they have night sittings also. Some of our Members here, I know are averse to sitting longer hours. But I humbly submit that the Members themselves, should feel that under the new conditions they will have to give more time to this work. If we cannot devote more time, we certainly will not be discharging our duty towards our constituencies, and we will have no place in the new set-up. In the new set-up, when there will be six hundred members in our Parliament, I want to know how the work will be disposed of if there is going to be only two sittings in a year : I feel more sittings will have to be called, by law. Sir, the argument is advanced that when legislative business has got to be brought before Parliament, the Parliament will be summoned. But I have given you an illustration of important official business being held over, for want of time. It has been held over to the autumn session. I am sure it will not be finished in that session also, and will have to go to the next year's Budget Session. And in the Budget Session, we know crores and crores of rupees and Supplementary Demands up to about Rs. 80 crores were disposed of in three hours, despite protests from members. No more time was given, and the excuse was that we have no other time available. This method we have to change, if we really want to represent the people, and if we really want to scrutinise important items of the budget affecting our finances. And therefore, I contend that the four days that had been allowed to the Budget discussion, which of course by our agitation was increased to five days, is quite insufficient to dispose of a budget of about three hundred crores and also the Railway Budget. In all we took only three weeks as against three to four months in the British Parliament. Of course, under the rules, before 31st March, we have to pass the expenditure. But why not adopt the procedure of the British Parliament where payment to the services is made by a particular date? After that the discussions on various items of the budget can continue. If in the new People's Parliament of ours, we are not allowed full time for discussion of the budget, then, I submit in all humility, that it will be a mockery of democracy. We are told that we follow no other system of government except the British Parliament. But why do not you follow it in all respects, and not merely mistake it up when it suits you and leave it out when it does not? I am very strongly of the opinion that a

House of six hundred members, the real representatives of the people, will have no opportunity to serve the people if you have only two sessions. At present budget session lasts from February to about tenth of April, it is only 53 days, deducting Saturdays and Sundays. The Autumn session is only three weeks, which minus Saturdays and Sundays comes to only about 16 or 17 days. My point, therefore, is that the session should last continuously for the year, except for a month or two months' intervening for recess, as it exists in Parliament. I hope Dr. Ambedkar will examine my arguments and, if he finds they are just, and reasonable see that the necessary provisions are made in the Act. It will smoothen the procedure and disposal will be much quicker. We are complaining of delays in correspondence etc. in the offices. But are we ourselves quick enough in the disposal of legislative business? It is disgraceful for us that during the last few months for want of time important official business had to be held over to the next session. If the Ministers feel that legislative business requires more sittings, then the Members have no business to say "no." But members also have become lukewarm and when they find Ministers unwilling to continue they also agree to the adjournment of the House. I therefore think that for the better disposal of business in future a suitable amendment should be made.

Mr. President : I desire to point out to honourable Members that at the rate at which we are going we may have to follow Mr. Sidhva's advice and sit throughout the year; and I hope Members will consent not only to longer sessions but to longer sittings every day and, instead of one sitting only, have two or three sittings every day if necessary. Personally, I have no objection to that, because I want the Constitution to be finished as soon as possible. I hope honourable Members will bear Mr. Sidhva's remarks in mind whenever the question comes up of increasing the number of sittings or the number of hours.

Mr. Tajamul Husain : Sir, I will first deal with the amendment of Mr. Kamath which wants there should be three sessions of Parliament instead of two as is mentioned in the Draft Constitution. I support this amendment, because it is common experience that in the budget session which is generally for two months we are not able to do anything except pass the budget and a few Bills. Therefore, I support the proposal for three sessions *viz.*, the budget session the summer session and the autumn session. There is a similar amendment by Prof. Shah (No. 1470) which wants that Parliament should be called at the beginning of the year and should continue throughout the year with intervals in between. This also appears to be reasonable, and it does not matter to me which one of these two is accepted.

Another amendment has been moved by Prof. Shah with which I agree, that if the President of the Republic is unable to summon the legislature either the Chairman of the Council of States or the Speaker of the lower House should have power to summon it. If they also do not do that the Prime Minister should in writing make a request to these two gentlemen to summon it. But supposing they refuse what will happen? In such case I think the Prime Minister himself should have power to call the Houses of Parliament. This is only to provide for an emergency and the Prime Minister is surely more important than anybody else. If he thinks there is an emergency to justify calling the Parliament, he should have power to do so. Sir, I support this amendment also.

Prof. Shibban Lal Saksena : Sir, this article has been criticised from two points of view,—*viz.*, that the sittings of Parliament should be continuous and the President should not have the power to stultify the legislature by refusing

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to summon it. On the first point, I agree with Mr. Kamath and Mr. Sidhva. The meetings of our present Parliament are too few and even Ministers complain that they have no time to be able to give an account of their actions throughout the year during the budget discussions. In fact they have resented only one or two hours being given to them for this purpose. I am sure my honourable Friend Dr. Ambedkar himself must have felt that the House has not been sitting long enough. We should follow the House of Commons in this respect and I hope the example left by the foreign rulers who had set up a mock Parliament in India will not be continued any longer, and our Parliament will be a Parliament in the real sense of the term. It will have the opportunity to scrutinise every pie of expenditure and taxation. We should have very much longer sittings of the Parliament to enable it to discharge its duties properly. As regards the amendment of Prof. Shah about the summoning of Parliament by the Speaker etc., I think under our constitution which is modelled on the British system, the President is only a substitute for the King and as such he has not much power. Therefore, I do not think Prof. Shah's fears are justified and therefore these provisions are unnecessary. It would have been proper under the American type of constitution because there the President has very great powers and can defeat the purpose of the legislature, but in our constitution where he is merely a symbolic head he can do no harm. After all there are provisions to remove him by impeachment, though I hope such occasions will not arise. I therefore think Prof. Shah's amendment is not proper. But as regards the sittings of Parliament I agree we should have continuous sessions of the Parliament.

The Honourable Dr. B.R. Ambedkar : Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently, I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the

name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that?

The Honourable Dr. B.R. Ambedkar : As I was going to explain the same, mentality which prevailed in the past of the executive not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it?

The Honourable Dr. B.R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by questions or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason which may compel the executive to summon the legislature more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shah wants to omit the words "either House" from clause 67(2) (a). I could not understand his argument. He seemed to convey the impression—he will correct me if I am wrong—that because the upper chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years : but the summoning of that House for transacting business is a matter that still remains. The House is not going

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to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the legislature where the President has failed to perform his duty must be vested either in the Speaker of the lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if I have understood it correctly, the proposition of Prof. K.T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reasons does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment, No. 1482 moved by Prof. K.T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the House should be dissolved and a case where the Prime Minister writes a letter stating that the House should be dissolved. Professor K.T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K.T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the

advice of the Prime Minister, but at one time, certainly at the time when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this : it was agreed by all politicians that, according to the convention then understood, the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the House may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the House if he has prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be unless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for *bona fide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the House as a whole. Therefore I do not think that this amendment should be accepted.

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

The question is :

“That in clause (1) of article 69, for the words ‘twice at least in every year, and six’ the words ‘once at least in every year at the beginning thereof, and more than three’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 69, for the word ‘twice’ the word ‘thrice’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That after clause (1) of article 69, the following proviso be inserted :—

‘Provided that Parliament or either House thereof, once summoned and in session, shall continue to remain so during the year; and such sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogation.’”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (a) of clause (2) of article 69, the words ‘the Houses or either House of’ be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That at the end of sub-clause (a) of clause (2) of article 69, the following be added :—

“Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People, or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.”

The amendment was negatived.

Mr. President : The question is :

“That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :—

“On the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.”

The amendment was negatived.

Mr. President : The question is :

“That after clause (2) of article 69, the following be inserted :

‘(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course :

‘Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.’ ”

The amendment was negatived.

Mr. President : The question is :

“That is sub-clause (b) of clause (2) of article 69, after the words ‘the Houses’ the words ‘over a period not exceeding three months’ be added.”

The amendment was negatived.

Mr. President : All the amendments have been rejected.

The question is :

“That article 69 stand part of the Constitution.”

The motion was adopted.

Article 69 was added to the Constitution.

New Article 69-A

Mr. President : There is notice of a fresh article given by several Members. No. 1484 Mr. Ramalingam Chettiar.

Shri T.A. Ramalingam Chettiar : (Madras : General) : Sir, I will move it at a more convenient stage. It is not necessary at this stage to move it.

Article 70

Mr. President : Then we come to article 70. There are two amendments of a drafting nature by Mr. Kamath, Nos. 1485 and 1486.

Shri H. V. Kamath : They are not of a drafting nature. If however you hold they are, I shall not insist on moving them.

Mr. President : There is no other amendment.

The question is :

“That article 70 stand part of the Constitution.”

The motion was adopted.

Article 70 was added to the Constitution.

Article 71

Mr. President : There is one amendment No. 1487 of which notice has been given. It is negative in character and so I do not allow it to be moved.

Amendment No. 1488 by Prof. Shah. This is covered by article 70 which we have already adopted.

Prof. K. T. Shah : I am not moving it, Sir.

(Amendment No. 1489 was not moved.)

Mr. President : Amendment No. 1490 by Prof. Shah.

Prof. K. T. Shah : Mr. President, Sir, I move :

“That in clause (1) of article 71, for the words ‘and inform Parliament of the cause of its summons’ the words ‘on the general state of the Union including financial proposals and other particular issues of policy he deems suitable for such address be substituted.”

The amended article would read :

“At the commencement of every session the President shall address both Houses of Parliament assembled together on the general state of the Union, including financial proposals and other particular issues of policy he deems suitable for such address.”

There is a difference in the wording here and the way I have suggested. I should like the President’s address to concern itself mainly with the general issues of policy, or the prospects before the country, rather than with the specific causes of the summons. It is the practice in the British Parliament for the King, at the opening of the Parliament, to deliver the Address from the Throne. In that, generally, the issues are mentioned. The main proposals for legislation that the Government proposes to bring forward are mentioned, and specific mention is also made of the demands and the supplies that may be expected. Now, if you say merely the “causes of the summons”, it will mean the immediate necessity of the day; whereas if freedom is left to the President to review the general state of affairs, and also to indicate the broad lines of proposed legislation and the policy that may be placed before the House, I think the latitude would be much greater. The officials review, so to say, of the country’s situation would go a long way to help the people to realise the way their Government is functioning; and also to be aware from time to time of the tasks that their Government is undertaking, and how far these tasks are being discharged.

I think that, as a non-party head of the State, for the time at any rate, representing the Republic, the President should give a general review, and not merely confine himself to the causes for which the House is being summoned and hence this amendment. I place it before the House.

Mr. President : The other three amendment Nos. 1491, 1492 and 1493 are of a drafting nature and are disallowed. The article and the amendment moved are now open to discussion.

Dr. P. S. Deshmukh (C.P. & Berar : General) : You have ruled, Sir, that amendment No. 1487 is not admissible since it is purely a negation of the clause. I submit, Sir, that I do not feel convinced as to the necessity of the clause itself, much less of the amendment that has been moved by Professor K.T. Shah. Sir, we have already passed a clause by which it shall be open to the President to address either House of Parliament. Now by this clause we are trying to make it absolutely binding on the President that at the commencement of every session he shall address both the Houses of Parliament assembled together and the purpose also has been stated. We have also just had a lengthy debate on the necessity of calling Parliament frequently and some of the honourable Members were insistent that it would be desirable if the Parliament were to meet all the year round, excepting during certain recesses that it may enjoy. I feel, Sir, that nowhere, not even in the British Constitution, it is compulsory upon the King to send an address every time the Parliament meets. So I am really at pains to understand a deliberate provision for compelling our President, whose place and office is more akin to that of King of England. He is the Constitutional Head of India and to compel him that he must give an address and he must also inform the causes which have led him to call the Parliament does not appeal to me. I feel, Sir, that there is no necessity, nor any very useful purpose will be served by having this compelling clause passed by the House. Of course Prof. K.T. Shah's amendment goes much too far. He also wants that the clause should include the subject on which he will deliver his address. This will be binding the President's discretion too much. There is also no necessity for a provision in the Constitution by which time for discussion of the President's speech would have compulsorily to be allotted. I think, Sir, what we have provided for is more than enough and there is no necessity for compelling him that he must address every session and that he must address the session on a particular list of subjects. I think there is no necessity for this clause and I would be glad if Dr. Ambedkar could agree to the omission of it.

The Honourable Dr. B. R. Ambedkar : Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly, what in my judgment is implicit in the phrase 'causes of its summons'. I think this phrase is wide enough to include everything that Prof. K.T. Shah wants and if I may say so, this phraseology, namely "shall address and inform Parliament of the causes of its summons" is a phrase which we find used in British Parliament. If Prof. Shah were to refer to Campion's book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K.T. Shah wants. Prof. K.T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is required than what is contained in Article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

Mr. President : The question is :

“That in clause (1) of article 71, for the words ‘and inform Parliament of the cause of its summons’ the words ‘on the general state of the Union including financial proposals, and other particular issues of policy he deems suitable for such address’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 71 stand part of the Constitution.”

The motion was adopted.

Article 71 was added to the Constitution.

Article 72

Mr. President : The motion is :

“That Article 72 form part of the Constitution.”

(Amendment No. 1494 was not moved.)

Prof. K. T. Shah : Sir, I beg to move :

“That in article 72, after the word ‘India’ the words ‘if elected member of Parliament’ be inserted.”

and the amended article would read as follows :—

“Every Minister and the Attorney-General of India, if elected member of Parliament, shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.”

My amendment, Sir, seeks to make only such ministers as are elected members of Parliament to have this right. I think it is a part of the theory on which this Constitution seems to be based that ministers should be responsible to the legislature. That responsibility could be exercised only if they are able to answer for themselves, so to say, as members of Parliament and sitting in Parliament.

The right extended to those who are not members of Parliament, and yet are allowed to speak or take part in the proceedings in either Houses of Parliament, or of any committee thereof, of which such a person may be named a member, appears to me to be an anomaly, if after allowing the right to speak, you do not grant him the right to vote. It is at the same time true that a person who is not a member of a body can have no right to vote in that body. The idea is that the Minister or the Attorney-General, who is in possession of material information and reasoning that may very well influence the judgment of the House, necessitates that such a party should be in a position to place his point of view before the body of which he is a member and where he is speaking. But if he is not a member of that body, the position becomes very difficult, in as much as those who are there are also aware that he has no right to vote and has no place, therefore, as one of them in the House.

The doctrine of ministerial responsibility requires in my opinion that all the principal Ministers should also be members of the legislature; and if they are members of the Legislature, then, as a matter of right they will be entitled to speak as well as vote in the House of which they are members. If you wish to extend this facility to Ministers to ‘either House’, even if one is not a member of that ‘either House’, then I think it would be better to word this a little differently. I suggest that if you are an elected member of either House, you may nevertheless be entitled to speak in the other House, just to make known your point of view and explain any particular problem that may be before the other House of which you are not a member when that other House comes to discuss it. But the position in this article as I see is this:

[Prof. K. T. Shah]

A minister who is entitled to speak and take part in the proceedings, or be member of a committee, and who has the right to speak but has not the right to vote, is liable to feel the sense of responsibility much less. Apart from being an anomaly in the Constitution itself, of a Minister being allowed to speak, but not to vote, it would undermine the sense of Ministerial responsibility that is essential.

I therefore suggest that the right of speaking and taking part in the proceedings, as well as becoming members of any committee, should also go with the right to vote; provided that the party is an elected member of the House. I say definitely "elected member" because these experts, for instance, who are, under the provisions of the article adopted earlier by this House, permitted to be nominated by the President for any specific purpose as experts to advise and assist in the passage of any Bill or any other measure, they naturally not being elected, are not representatives of the people; and as such may rightly be confined to giving their expert opinion on the matters before the House, and advising on which they are specifically nominated, but not voting on the question. I can understand therefore that such people may be excluded from the right of voting. But, Ministers in a Constitution based on the principle of Ministerial responsibility should, I think, be not only entitled to take part in the proceedings of any House, but should be members of that House with right of voting as well. Accordingly I commend this amendment to the House.

(Amendment No. 1496 was not moved.)

Mr. President : Amendment No. 1497 is of a drafting nature.

The article and the amendment are now for consideration.

Shri H. V. Kamath : Mr. President, I regret I have not been able to follow the import of Professor K.T. Shah's amendment and therefore I rise to oppose it.

The article as it stands is to my mind quite clear. The article conveys the meaning that any Minister or Attorney-General shall have the right to participate in the debate, but by virtue of this article itself will not be entitled to vote. My friend Professor Shah wants to insert a provision that a Minister or Attorney-General if an elected member of Parliament shall have the right to speak etc., but shall not be, by virtue of this article, entitled to vote. Does he wish to tell the House that a Minister or the Attorney-General even after being an elected member of Parliament shall not have the right to vote? It comes to this : that he wants to provide that a Minister or the Attorney General even after being an elected member of Parliament shall have the right to speak in, or otherwise participate in the proceedings of the House, but shall not be entitled to vote. Then, I ask my learned Friend Professor Shah, who is entitled to vote? If you want to debar even elected members of Parliament from exercising their vote in Parliament, I fail to see to whom he wants to give the right of voting. Does he want to confer this right on those members of Parliament who are nominated. Who are not elected? I really fail to see what purpose is being served by the amendment which he has moved. The article as a matter of fact provides for two distinctive categories, as it stands, so far as I have been able to understand it. One is, Minister pending their election and the Attorney-General who may be nominated. Because a Minister under article 61 (5) may hold his office for six months without being an elected member of the House and under article 63 the Attorney-General need not be an elected member of the House. The President can appoint any person who

is qualified to be appointed as a Judge of the Supreme Court to be the Attorney-General. For either contingency we have to provide for. This, to my mind, is what this article does. Therefore, clear as I am in my mind that this article 72 debars only nominated members of Parliament from necessarily exercising their vote and does not take away that right of voting from elected members of the House whether a Minister or otherwise, I fail to see with what purpose Professor Shah has moved his amendment and I therefore appeal to the House to reject his amendment.

Mr. Tajamul Hussain : Sir, there are only five minutes at my disposal and I propose to finish my speech in those five minutes.

Now, Professor Shah has moved two amendments. His first amendment is to delete the words "Every Minister and". Therefore, he does not want a Minister to participate in the debate. The result would be this. Supposing in a Province or the Indian Union, there are....

Mr. President : That amendment has not been moved. You are referring to amendment No. 1494. Only amendment No. 1495 has been moved.

Mr. Tajamul Hussain : I am sorry I made a mistake. I am now dealing with amendment No. 1495 that has been moved by Professor Shah in which he says that the words "if elected member of Parliament" be inserted after the words "Attorney-General of India". He means that the Attorney-General of India shall be an elected member of Parliament. My objection to this is this. Suppose there is no qualified member of the Bar elected, you cannot guarantee that of the person elected, one must be a qualified member from the Bar-how are you going to have an elected member as the Attorney-General? My Friend Mr. Kamath has already dealt with article 63 which provides that the President can appoint as the Attorney-General for India from amongst the Judges of the Supreme Court. Therefore, I submit that the amendment moved by Professor Shah that the Attorney-General must be an elected member has no sense at all. I do not understand why he has moved that amendment. With these words, I oppose the amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear, I might begin by stating some simple fundamental propositions. Every House is an autonomous House; that is to say, that it will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to take part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the Constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being enacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the

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right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through. It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House, he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person'. That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

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

The question is :

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

The motion was negatived.

Mr. President : I put the article to vote.

The question is :

"That Article 72 stand part of the Constitution."

The motion was adopted.

Article 72 was added to the Constitution.

Mr. President : The House stands adjourned till Eight O'clock tomorrow morning.

The House then adjourned till Eight of the Clock on Thursday the 19th May, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 19th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad in the Chair.)

DRAFT CONSTITUTION—(contd.)

New Articles 72-A, B and C

Mr. President : We have now to proceed with the discussion of the articles of the Draft Constitution. The next thing to take up is amendment No. 1498 of Prof. K.T. Shah.

Prof. K.T. Shah : (Bihar : General) : Sir, I do not wish to move the new article 72-A, I shall move only 72-B and 72-C. There is, I find a small misprint in the amendment as printed here. The word cannot be “Minister” of Parliament, but “Member” of Parliament. With your permission I am making the correction.

Sir, I beg to move :

“That after article 72, the following new articles be inserted :—

‘72-B. A Member of Parliament may vacate his seat by resignation in writing addressed to the Speaker of the People’s House, or to the Chairman of the Council of States, as the case may be. Any Member of Parliament who accepts any office or post carrying a salary, shall be deemed forthwith to vacate his seat, and cease to be a Member of Parliament. No one shall continue to be a Member of either House who is convicted of any offence of—

- (a) treason against the sovereignty, security, or integrity of the State,
- (b) of bribery and corruption,
- (c) of any offence involving moral turpitude, and liable to a maximum punishment of two years rigorous imprisonment.

72-C. All expenses in connection with Election to Parliament of all candidates, whether at the time of a General-Election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitled to claim such expenses.’ ”

Sir, these two additions that I am suggesting lay down in the first place the manner in which Members of Parliament can resign their office or be relieved of it. Particularly, importance should attach to the disqualification for sitting and voting in Parliament even after a member is once elected, if guilty of any of the offences mentioned. Anybody convicted of treason, bribery or corruption or of any offence involving moral turpitude, would obviously be unfit to sit in Parliament. I think some machinery should be provided to allow automatically such persons to be excluded from membership of Parliament, even though they might have been elected in the regular way.

The second proposition is more important from the point of view of expenses. I suggest that all election expenses should be paid out of the public treasury, in accordance with a certain prescribed scale; and that anyone who fails to secure a given percentage of votes should not be entitled to claim such expenses. My purpose in laying down this is that one of the handicaps which makes

[Prof. K. T. Shah]

democracy in actual practice a failure is the heavy cost of seeking representation, seeking election, to public bodies like the Central Parliament for a large country like this. The ordinary expenses may run to such amounts that only large Parties with large Party funds can alone carry on election campaigns, extending over months perhaps, and involving hundreds of workers to canvas votes. Private individuals who can afford to stand on their own must have very large bank balances to be able to do so. Now, it does not necessarily mean that persons who have considerable means of their own, or who are able to command influence in large well organised Parties with large funds at their disposal would be the best representatives of the people. I, therefore, suggest—that is the practice elsewhere too—that election expenses should be met from the public treasury, so that there may be no unfair or improper advantage to the richer candidates as against the poorer candidates.

I also suggest that the scale of expenditure should also be laid down so that there is no abuse of this privilege. I have suggested that election expenses be met out of the public treasury both at the general election and at the bye election. I have also added the safeguard that any candidate who secures less than 10 per cent. of the votes cast cannot claim such expenses. This is some guarantee, that the facility, the help will not be abused by any candidate. The provision I suggest would be of substantial help to candidates who for lack of funds would otherwise not be able to come forward for such public service.

I think the principle is sufficiently sound for me to commend it to the House.

Mr. President : Does any Member wish to speak on this amendment of Prof. K. T. Shah?

Shri H. V. Kamath (C.P. & Berar : General) : Mr. President, I take it, Sir, that Professor Shah has not moved 72-A and that he has moved only 72-B and 72-C.

I submit, Sir, that as regards 72-B there is no need for a new article at the present stage. If Professor Shah would take the trouble of referring to an article which will come up before us shortly, namely, article 83, he will find that it provides for disqualifications of Members—either for being, chosen as Members of Parliament, or for continuing as Members. The various disqualifications have been laid down in sub-clauses (a), (b), (c), (d) and (e). sub-clause (e) is comprehensive in this sense, that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament. It is true enough that sub-clauses (a), (b), (c) and (d) do not envisage the contingencies visualised by Professor Shah. But the new Parliament which will be elected under this Constitution will, I hope, Sir—in spite of the misgivings which you expressed yesterday as regards the dangers inherent in the adult franchise and the wider rights and privileges that are being conferred under the Constitution—be composed of persons imbued with wisdom and public spirit, and that in spite of all those handicaps and disadvantages we shall be able to elect persons to this Parliament who will discharge their duties to the electorate and the country with wisdom and sagacity. I am sure that this new Parliament under the new Constitution will frame such rules as will debar such Members from sitting or continuing in either House of Parliament as have been convicted of any of the offences which are mentioned by Prof. Shah in this new article 72-B. The case mentioned in the amendment is so obvious that nobody who is imbued with the right public spirit will say that a member convicted of treason, bribery or corruption or any other offence involving moral

turpitude should be allowed to continue as a Member of either House of Parliament. It is derogatory not merely to the dignity of the Houses of Parliament but also derogatory to the good sense and wisdom of the people who elected them as members of Parliament. I therefore feel that the amendment of Prof. Shah 72-B is unnecessary at this stage and out of place here. As regards 72-C I think it is a mere matter of procedure which can be regulated later on when the procedure for the elections to Parliament and bye-elections comes up before Parliament. I therefore feel that both the amendments are out of place and need not be considered at this stage. I appeal to the House to reject both the amendments.

Mr. Tajamul Husain (Bihar : Muslim) : My honourable Friend Prof. Shah has moved two amendments 72-B and 72-C. I find that I am not prepared to agree with my honourable Friend and I therefore oppose both the amendments. Under 72-B my honourable Friend wants that if any member of Parliament is guilty of moral turpitude he should cease to be a member. As has been pointed out by Mr. Kamath, this is already mentioned in article 83. So this is absolutely redundant here. Apart from that, if he wishes to move this amendment he should move it at the proper place when we are discussing article 83, and so at this stage it should be thrown out.

As regards 72-C the point of my honourable Friend Prof. Shah is that Government and the public treasury should meet the expenses of all the candidates who stand for Parliament. I oppose this also because this is not the practice in any civilised country in the world where there is a parliamentary system on democratic lines. We may have to spend crores of rupees. Also look at the number of people who will stand when they know that they will not have to spend out of their pockets for their elections. If Prof. Shah thinks that individual candidates should not spend money from their pockets let the party which sponsors their candidature spend the money and not the government. I oppose this amendment because at present our country is not rich enough to meet the individual expenses of a candidate.

Prof. K. T. Shah : I should like to withdraw my amendment 72-B, if I may.

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

Mr. President : The question is :

“That after article 72 the following new article be inserted :—

‘All expenses in connection with Election, to Parliament of all candidates whether at the time of a General-election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitled to claim such expense.’ ”

The amendment was negatived.

Article 73

Mr. Tajamul Husain : Sir, before we proceed I would like to know whether you could now take up article 73 as we were given to understand that only those articles will be taken up for discussion which relate to election matters, so that the electoral rolls may be prepared as soon as possible. I submit that article 73 does not deal with election matters : it deals with the offices of the President, Vice-President and so on.

Mr. President : We wanted to take up the articles dealing with election matters but I was told that honourable Members were not yet quite ready

[Mr. President]

and wanted a day or two before those articles could be taken up. That is why I have accommodated them and we shall go on with those articles from Monday next.

The motion is :

“The article 73 form part of the Constitution.”

(Amendments Nos. 1499, 1500 and 1501 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I would like to move Amendment No. 1502. It is not a formal amendment.

Sir, I beg to move :

“That in clause (2) of article 73, for the words ‘another member’ the words ‘a member’ be substituted.”

The text as it stands rather favours the election of ‘another member’ and not the member who has ceased to be the Deputy Chairman. According to article 74, a Deputy Chairman shall vacate his office if he ceases to be a member or he may resign. When an election of a Deputy Chairman takes place he would be debarred from contesting for no fault of his. I submit that for the words ‘another member’ the words ‘a member’ be substituted, leaving it open to the outgoing Deputy Chairman to contest the seat if he has meanwhile been re-elected.

There is however one contingency in sub-clause (c) of article 74 where the Deputy Chairman may be removed for want of confidence. I do not know whether it is desired to allow him also to contest. At any rate, this is a matter which requires consideration and I shall be content if it is considered by the Drafting Committee, because there is a complication in sub-clause (c). It may be desired that he may not be allowed to contest, but in the other case there is no reason why he should not be allowed to be a candidate.

There is one other thing which I would suggest here, if I am permitted. Clause (1) of article 73 is a repetition of what we have already accepted and it is a mere duplication. Clause (1) says : “The Vice-President shall be the *ex-officio* Chairman of the Council of State,” I beg to draw the attention of the House to article 53. This is identical with clause (1) of article 73.

Article 53 also runs to the same effect. It says : “The Vice-President shall be *ex-officio* Chairman of the Council of States”. There are certain conditions and there is a proviso. I submit that the same provision, word for word, has already been accepted in article 53 which is fuller and more complete. At any rate we have made the same provision in identical terms in article 53. Therefore sub-clause (1) is a mere duplication. We certainly do not desire to have two Chairmen of the Council of States. Therefore clause (1) should be deleted or the two clauses may be put separately and clause (1) ruled out. I hope that the Honourable Dr. Ambedkar will consider this and see whether we should provide for the same thing twice.

Mr. Tajamul Husain : Sir, Mr. Naziruddin Ahmad wants that instead of the words ‘another Member’ there should be the words ‘a Member’. I oppose it. My reason is this: clause (2) of article 73 runs thus :

“The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.”

The point is this. Supposing a Deputy Chairman has been removed from office for certain reasons, if the word ‘another’ is there the Council cannot choose him, but some other member. That is why the word ‘another’ is put in. When a

Deputy Chairman resigns or if he is not wanted again—if he is removed we cannot have him again—another member will have to be chosen. If you have the words ‘a member’ there, the Council may choose the same member again. Therefore the words ‘another member’ are more appropriate and more correct and better than the words ‘a member’. I oppose the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House, and obviously, that person having ceased to be a member of the House, you cannot say that they may elect ‘a member’ which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is ‘another member’, because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is ‘another member’.

Mr. President : The question is :

“That in clause (2) of article 73, for the words ‘another member’ the words ‘a member’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 73 stand part of the Constitution.”

The motion was adopted.

Article 73 was added to the Constitution.

Article 74

Mr. President : Article 74 is for consideration. Amendment No. 1503 is covered by another already passed.

(Amendments Nos. 1504 to 1508 were not moved.)

Mr. President : As there are no amendments to article 74 I will put it to the House.

The question is :

“That article 74 stand part of the Constitution.”

The motion was adopted.

Article 74 was added to the Constitution.

Article 75

Mr. President : Article 75 is for consideration.

(Amendments Nos. 1509, 1510 and 1511 were not moved.)

[Mr. President]

There is an amendment to amendment No. 1511. As amendment No. 1511 is not moved, it does not arise.

The question is :

“That article 75 stand part of the Constitution.”

The motion was adopted.

Article 75 was added to the Constitution.

Mr. President : There is notice of a new article 75-A—amendment No. 28 of List II.

New Article 75-A

Shri T. T. Krishnamachari (Madras : General) : Sir, I beg to move :

“That after article 75, the following new article be inserted :—

‘75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting, from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

Sir, the reason for this new article is that in the event of proceedings being taken against the Chairman or the Deputy Chairman for their removal, the Chairman or the Deputy Chairman might be present in the House to answer the charges against him; and if he is present, unless it is expressly stated that he will not preside, the Chairman or, when he is absent, the Deputy Chairman, will have to preside. In order to obviate this particular difficulty, this new article is being moved.

Dr. P. S. Deshmukh (C.P. & Berar : General) : I cannot hear anything.

Shri T. T. Krishnamachari : This amendment is being moved to overcome the technical difficulty that will arise in the case of proceedings against the Chairman, or the Deputy Chairman, as the case may be, of the Council of States. The article is self-explanatory and the difficulty that it seeks to overcome will be clear to any member who reads the article.

Shri H. V. Kamath : Mr. President, Sir, I feel that the article as has been moved before the House suffers from a slight lacuna. The lacuna has arisen because the article merely says that the Chairman or the Deputy Chairman shall not preside on any occasion when the question of his removal from office is under consideration. So long as the article does not provide specifically, does not lay down explicitly in so many words that somebody else from the House or outside the House shall preside on such occasions, the article as it stands, cannot to my mind be clear in its significance or its import. The article must at the same time state that the House shall elect somebody from within the House or appoint somebody else to preside on such occasions. Otherwise, it will mean that when the question of removal of the Chairman is under consideration, the Chairman shall not preside; but who will preside?

I feel that this lacuna must be removed before the article is passed by the House. The article as it stands cannot be accepted by the House.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this : If the Chairman is being tried, so to say—I am using the popular phrase—then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that “During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council shall act as Chairman.” Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President : The question is :—

“That after article 75, the following new article be inserted :—

‘75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

The motion was adopted.

Article 75-A was added to the Constitution.

Article 76

Mr. President : The motion is :

“That article 76 stand part of the Constitution.”

(Amendment No. 1512 was not moved.)

Mr. President : Amendment Nos. 1513, 1514, 1515 are all verbal and therefore disallowed.

Amendment No. 1516 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit, Sir, my amendment was not absurd. There is yet time to reconsider the matter in the Drafting Committee. What I wanted to submit to the House was that if the Deputy Chairman loses his seat by resignation or by losing his membership, and if he is re-elected as a member, he should not be debarred from contesting. The only difficulty was in clause (c) of article 74. I think it is a very substantial matter that if a Deputy Chairman loses his seat but is re-elected, then he should not be debarred from contesting. That was the point I wanted to bring to the notice of the House. The House has already declared itself against the amendment, and so I do not wish to move it. I only submit that the amendment is not at all absurd but rather very reasonable.

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar amendment was moved by my honourable Friend to article 73.

Mr. President : That has already been disposed of. As regards article 76 there is no amendment.

(Amendments Nos. 1517 and 1518 were not moved.)

Mr. President : The question is :

“That article 77 form part of the Constitution.”

The motion was adopted.

Article 76 was added to the Constitution.

Article 77

Mr. President : The motion is :

“That article 77 form part of the Constitution.”

(Amendments Nos. 1519, 1520 and 1521 were not moved.)

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

“That in clause (b) of article 77, for the words ‘to the Deputy Speaker’ the words ‘to the President’ be substituted.”

This amendment of mine relates merely to a matter of procedure. I feel that when the Speaker of the House of the People resigns his office, it will be far better if he addresses his resignation to the President and not to the Deputy Speaker, because the Deputy Speaker holds an office subordinate to him.

I am not suffering from any false sense of dignity, but procedure in these matters, as in others, must be regulated by what I may call decorum and the proprieties of the particular occasion and, therefore, it seems to me that when you have provided that when the Deputy Speaker resigns, he addresses the Speaker and sends his resignation to him, I feel that it is proper that the Speaker should address it, not to the Deputy Speaker, but to the President of the Union of India. I hope and trust that Dr. Ambedkar will see the propriety of a procedure like this and will accept this amendment of mine which provides that in the event of resignation by the Speaker, his resignation will be addressed to the President and not to the Deputy Speaker Sir, I therefore, move my amendment No. 1522 standing in my name and commend it to the acceptance of the House.

(Amendments Nos. 1523 and 1524 were not moved.)

Mr. Naziruddin Ahmad : Amendment No. 1525 is verbal.

Mr. President : I also thought so.

(Amendments Nos. 1526, 1527 and 1528 were not moved.)

I think these are all the amendments to article 77. There is only one amendment moved to this article.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I wish to oppose the amendment moved by Mr. Kamath. I feel that he has forgotten that the President is the Executive head and we want that the Speaker and the Deputy Speaker should be completely independent of the Executive and when, therefore, it is provided that the Speaker should send in his resignation to the Deputy Speaker, it only means that the independence of the Speaker

and the House over which he presides should be maintained. If we send it to the President, it means we send it to the Executive. It is a very healthy principle that the Speaker and the Deputy Speaker should be completely independent of the Executive. I therefore hope that Mr. Kamath will not press his amendment.

Mr. Tajamul Husain : Mr. President, Sir, I support the amendment moved by my honourable Friend Mr. Kamath and I think that when the Speaker wishes to resign, he should send his letter of resignation not to an officer who has been working under him, but to someone higher in authority, *i.e.*, the President of the Republic. This would be better, Sir, I think, for the dignity of the House. My honourable Friend Prof. Saksena said that he wants to keep the dignity of the House. The House of the People is intermingled with the President in many ways and you cannot separate one from the other; it is impossible; and the President of the Republic, after all, Sir *de jure* is the head of the House of the People. These are the two heads and it is really right and proper that when he wishes to resign, the letter should go to the highest tribunal that is the President, than to his subordinate. With these words, I support the amendment moved by my honourable Friend Mr. Kamath.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. Now the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently, these two people, if they want to resign, must tender their resignations to the House which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the Speaker to tender their resignations to the President who has nothing to do with the House and who should have nothing to do with the House in order that the House may be independent of the executive authority exercised either through the President or through the Government of the day.

Shri H.V. Kamath : On a point of information may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today?

The Honourable Dr. B.R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H.V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly?

The Honourable Dr. B.R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor-General.

Shri H.V. Kamath : I beg leave to withdraw the amendment, Sir.

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

Mr. President : The question is :

“That article 77 stand part of the Constitution.”

The motion was adopted.

Article 77 was added to the Constitution.

Article 78

Mr. President : The motion is :

“That article 78 form part of the Constitution.”

(Amendments Nos. 1529 and 1530 were not moved.)

The amendment to amendment No. 1530 does not arise because the amendment itself is not moved.

(Amendment No. 1531 was not moved.)

There is no amendment that has been moved to article 78.

The question is :

“That article 78 stand part of the Constitution.”

The motion was adopted.

Article 78 was added to the Constitution.

New Article 78-A

Mr. President : There is notice of an amendment by Mr. T. T. Krishnamachari to add a new article 78-A.

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“That after article 78, the following new article be inserted :—

‘78-A. At any sitting of the House of the people, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.’ ”

Sir, this new article is exactly the same in content as article 75-A which the House was good enough to accept. The need for this article has been explained fully by the Honourable Dr. Ambedkar. I hope the House will have no difficulty in accepting this new article as it relates to the House of the People in the same way as the previous article 75-A relates to the Council of States. Sir, I move.

Mr. President : I desire to put this amendment straightaway as this is the same as a previous article adopted, with this difference that this relates to the House of the People whereas the previous article relates to the Council of States. I take it that no further discussion is necessary.

The question is :

“That after article 78, the following new article be inserted :—

‘78-A. At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of

the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.’ ”

The motion was adopted.

Article 78-A was added to the Constitution.

Article 79

Mr. President : The motion is :

“That article 79 form part of the Constitution.”

(Amendments Nos. 1532, 1533 and 1534 were not moved.)

Mr. President : There is no amendment moved to article 79.

The question is :

“That article 79 stand part of the Constitution.”

The motion was adopted.

Article 79 was added to the Constitution.

New Article 79-A

Mr. President : There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B.R. Ambedkar : I would like to stand over.

Mr. President : Article 79-A stands over. There is another article 79-A given notice of by Mr. Naziruddin Ahmad.

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

“That after article 79, the following new article be inserted :—

‘79-A. (1) The Chairman shall preside at a meeting of the Council of States, and in his absence, the Deputy Chairman shall preside; and in his absence, any one of the panel of Chairmen appointed by the Chairman and selected by him for the purpose, shall preside; and in their absence any member of the Council of States elected by the Council shall preside.

(2) At a meeting of the House of the People the Speaker shall preside, and in his absence, the Deputy Speaker shall preside, and in his absence a member of the panel of Chairmen appointed by the Speaker and selected by him for the purpose, and in their absence, any member elected by the House shall preside.

(3) At a joint.....’ ”

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this is already provided in article 75.

Mr. President : Clauses (1) and (2) are already covered by articles 75 and 78.

Mr. Naziruddin Ahmad : In that case, I shall move clause (3).

The Honourable Shri K. Santhanam : Even clause (3) has been provided for.

Mr. President : Clause (3) is covered by article 98 (4). If you want to move your amendment, you can take it up then. That would be the proper stage.

Mr. Naziruddin Ahmad : But a duplicate provision has today already been accepted by the House.

Article 80

Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80.

The motion is :

“That article 80 form part of the Constitution.”

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

“That in clause (1) of article 80, for the words ‘Save as provided in this Constitution’ the words ‘Save as otherwise provided in this Constitution’ be substituted.”

Sir, this is just a slip and it has to be corrected.

Mr. President : Amendment No. 1537. I take it this amendment is of a drafting nature. Amendment No. 1538. Mr. Kamath, this is covered by the amendment which has just been moved.

Shri H.V. Kamath : The second part is new, Sir.

Mr. President : You may move the second part.

Shri H.V. Kamath : Sir, may I at the very outset bring to your notice that I had sent five amendments separately, but they have been brought together, three in one amendment No. 1538 and two as amendment 1541. I do not wish to blame the office in any way; the office is working very hard and it is quite possible that on account of pressure of work this has happened. I would only crave your indulgence to move these amendments separately.

Mr. President : Yes.

Shri H.V. Kamath : I shall move only the last two portions in 1538, and, also by your leave, 1541 because that relates to the same clause.

Mr. President : Yes.

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

“That in clause (1) of article 80, after the words ‘at any sitting’ the words ‘of either House’ be inserted and the words ‘other than the Chairman or Speaker or person acting as such’ be deleted.”

and further

“That in the second paragraph of clause (1) of article 80 before the words ‘The Chairman’ the words ‘Provided that’ be inserted.”

I am not moving the second half of the amendment 1541.

Shri T.T. Krishnamachari : May I point out that House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath?

The Honourable Dr. B.R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T.T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus—

“Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting.

Provided that the Chairman or Speaker, etc.”

I do not wish to expatiate upon this amendment. I think these amendments are fairly obvious because the first amendment seeks to insert the words 'of either House'. It stands to reason that we must make everything clear. There is the other clause subsequent to that which refers to joint sitting of the Houses.

As regards the other two amendments which in my view must be taken together or rejected together, I would only say that at times I feel that this Draft Constitution has been encumbered with needless verbiage, words which might have been reduced in number, words which might have been omitted. I am aware that the elephant is one of our emblems but I am sure the House does not agree we should make the Constitution an elephantine one. Our sages and wise men have written sciences and philosophy in brief Sutras and one of our greatest men—I think it was Vyasa himself who took pride in his sloka when he said—

“श्लोकार्धेन प्रवक्ष्यामि यदुक्तं ग्रंथकोटिभिः”
(*Shlokardhena pravakshyami yaduktam granthakotibhih.*)

[What crores of Granthas have said I will say in half a verse.]

But have we are repeating words which are absolutely unnecessary and which might have been easily, without any detraction of meaning or derogation to the propriety of the article, omitted. I wish we had a Constitution much less bulky. The other day some friends of mine who were students in a college wrote to me after they had persued the Draft Constitution—they are students of politics—they said half in jest and half in earnest that the future generation of students will curse many of us who have presented the country with such a bulky document.

Mr. President : Is all this necessary for this amendment?

Shri H. V. Kamath : I only wanted to make my point clear. I will come straight to the point, as you have been pleased to remark that it is not necessary for the amendment. I only wish to say that here in clause (1) of article 80 we find that these words 'Chairman or Speaker or person acting as such' has been repeated in the first para as well as the second para. In the first para the meaning is quite clear without the incorporation of these words 'other than the Chairman or Speaker etc.' If they just add a proviso like 'Provided that' the meaning that the draftsmen have in mind will be clearly brought out and we will be saved the burden of at least 8 or 9 words in this one article. If we proceed in this fashion with many articles, I am sure that at least a thousand words might be omitted from this Constitution.

I therefore move the latter two-third portions of No. 1538 and the first half of No. 1541 and commend these for the acceptance of the House.

(Amendments Nos. 1542, 1543, 1544, 1545, 1546, 1547 and 1548 were not moved.)

Mr. President : No. 87 of Amendment to Amendments.

Acharya Jugal Kishore (United Provinces : General) : Sir, I move :

“That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word 'sitting' where it occurs for the first time, the words 'of either House' be inserted.”

This is only a verbal change and I hope the House will accept the amendment.

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

Mr. Naziruddin Ahmad : Mr. President, Sir, with regard to article 80, I have to point out one drafting lacuna for the consideration of the Drafting Committee. After clause (1) there is a complete paragraph which should bear a clause number. I think this is an isolated instance where a paragraph has not been numbered. This paragraph should be numbered 1(a) and the subsequent clauses re-numbered.

With regard to another aspect of drafting, I would suggest for the consideration of the Drafting Committee this : In certain places in articles 78, 79, 80, 81 and 82, the word "the" has been treated with considerable amount of affection. It has been used rather very freely. But in other places there is considerable amount of antipathy to the word "the"; as for instance in article 79, there is the expression "the Chairman", "the Deputy Chairman", "the Speaker", "the Deputy Speaker" etc. But in articles 78, 80 and 81, the word "the" in similar context does not appear. But the word again appears in article 82.

Shri M. Ananthasayanam Ayyangar (Madras : General) : On a point of order Sir, you have ruled out verbal amendments. Is it open to my Friend to speak on these verbal amendments? It is for the purpose of enabling us to get along with the substantial portion of the work and to confine ourselves to the substance and in order not to spend away time that you have ruled out verbal amendments. Then what is the use of taking up our time in another form by speaking on them?

Mr. President : I only wanted to know on which side the Member's sympathies lay, whether in favour of or against the word "the". That apart, I would request the honourable Member to discuss it with the Members of the Drafting Committee.

Mr. Naziruddin Ahmad : Sir, I have already finished. But let me point out that my honourable friend in taking up this point of order has taken up more time than I would have done. I have simply pointed out these two points for the kind consideration of the Drafting Committee and I have finished.

Prof. Shibban Lal Saksena : Mr. President, Sir, my objection to this article is with regard to the words "joint sitting of the Houses". In this Draft Constitution, it is article 88 that deals with joint sittings of both Houses. That is a question of principle, and I am one of those who think that there should be no joint sittings of the two Houses. Therefore, I hope that even if this article is passed just now as it is, and if article 88 is amended or dropped, I hope this portion of article 80 also will be dropped.

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H.V. Kamath : Which of my amendments? I moved three amendments, separately.

The Honourable Dr. B.R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendments as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out. Firstly, adding “of either House” after the words “at any sitting”. Secondly deletion of the words “other than the Chairman or Speaker or person acting as such”. Thirdly inserting the words “provided that” at the commencement of the second para. I would like to know which of these three the honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourable Dr. B. R. Ambedkar : I am referring to the honourable Member’s amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

“Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be...”

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

Mr. President : That covers the first part of your amendment. Then there is the second part of the amendment. I would rather begin with amendment No. 1536.

The question is :

“That in clause (1) of article 80, for the words ‘Save as provided in this Constitution’ the words ‘Save as otherwise provided in this Constitution’ be substituted.”

The amendment was adopted.

Mr. President : Then we come to No. 87 on the List of Amendments to amendments, moved by Acharya Jugal Kishore.

The question is :

“That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word ‘sitting’, where it occurs for the first time, the words ‘of either House’ be inserted.”

The amendment was adopted.

Mr. President : Then we come to the third amendment which is Mr. Kamath’s amendment. It is to this effect.

“That the words in the first paragraph of clause (1) ‘otherwise than the Chairman or Speaker or person acting as such’ be deleted, and at the beginning of the second paragraph ‘provided that’ be added, with of course, necessary changes in the punctuation.”

The amendment was negatived.

Mr. President : Then I put the article, as amended to vote.

The question is :

“That article 80, as amended, stand part of the Constitution.”

The article, as amended, was adopted.

Article 80, as amended, was added to the Constitution.

Article 81

Mr. President : Then we come to the next article, article 81.

The motion is :

“That article 81 form part of the Constitution.”

There is an amendment of which notice was given by Mr. Tahir and Mr. Jafar Imam. But they are not here and so it is not moved. Then there is amendment No. 1550, standing in the name of Mr. Kamath.

Shri H.V. Kamath : That does not arise now, in view of article 68-A adopted yesterday; and so I do not move it, Sir.

Prof. K. T. Shah : Mr. President, Sir, I beg to move :

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States’ be substituted.”

The amended article would then read that :

“Every member of either House of Parliament shall, before taking his seat, make and subscribe before the Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States, a declaration according to the form set out for the purpose in the Third Schedule.”

Sir, my purpose in submitting this amendment is to keep out the President of the Republic from taking part in what I regard to be a purely internal concern of the House. The President of the Republic should have no concern with such matters. I think it is a very simple matter relating to the internal autonomy of the House and as such ought to find no objection.

Sir, I commend the motion to the House.

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

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

Mr. President : All the amendments have been moved. They are open to discussion now. Does anyone wish to speak?

Mr. Tajamul Husain : Mr. President, Sir, I rise to oppose the amendment No. 1551 moved by my honourable Friend, Prof. K. T. Shah. At present the procedure is this. When the House is elected, one from amongst the Members of the House is appointed by the Governor-General to preside at their meetings and then the election of the Speaker and the Deputy Speaker takes place. Now, Sir, article 81 says that the affirmation or oath should be taken before the President or some person appointed in that behalf by him. The amendment is that it should not be taken before the President, but should be taken before the Speaker of the House of People or Chairman of the Council of States, or some person appointed by the Speaker or Chairman.

Now, Sir, I think, this has no meaning. I think the practice as it stands now is more reasonable than what is proposed in this amendment because before the oath there is no Speaker. With these words, Sir, I oppose the amendment moved by Professor Shah.

Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words “a declaration”, the words “an affirmation or oath”. May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the

President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should before he enters upon his office take the oath or affirmation in the following form :—

“I, A, B, in the name of God, do swear”, or “I, A, B, do solemnly affirm”...

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause.

There is a notice of an amendment to the Schedule also to bring it into conformity with the article. There is one difficulty which has struck me. Under article 81 every member of either House of Parliament has to affirm or take the oath before the President or some person appointed by him in that behalf. That will happen on the very first sitting of the Parliament when the members will take the oath or make the affirmation. Supposing a member joins in the middle of the session after a bye-election. Will he be able to take the oath or make the affirmation before the Speaker or the Deputy Speaker as the case may be?

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my Friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading “Disqualifications of Members” the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,—election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is in whom this power to administer the oath shall be vested. Obviously it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath? Has he to go to the President or can he take the oath before the Speaker? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently in the case of a newly elected person it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the Speaker to derive his authority to administer the oath from the President?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.....

Mr. President : I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President : Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President : The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

Maulana Hasrat Mohani : Unless and until all the members take the oath I should like to know how the Speaker can delegate his authority to any other person :

Mr. President : I will now put the amendments one by one to vote. The question is—

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of State’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 81, as amended, stand part of the Constitution.”

The motion was adopted.

Article 81, as amended, was added to Constitution.

Article 82

Mr. President : The motion is :

“That article 82 form part of the Constitution.”

(Amendment No. 1555 was not moved.)

Mr. President : I suggest that 1556 and 1557 are covered by 1558. If it is moved and if Prof. Shah is not satisfied, he can move Amendment No. 1556.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move :

“That after clause (1) of article 82, the following new clause be inserted :—

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

Sir, it requires no comment. It is the ordinary rule.

Mr. President : I think that covers amendments Nos. 1556 and 1557. Mr. Naziruddin Ahmad may move his amendment No. 1559 if he thinks that it is not of a drafting nature.

Mr. Naziruddin Ahmad : Sir, I move :

“That in sub-clause (a) of clause (2) of article 82, for the words ‘becomes subject to any disqualifications mentioned in’, the words ‘is disqualified under’ be substituted.”

Article 82(2) says :

“If a member of either House of Parliament—(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article;”

For these, I would substitute the words ‘is disqualified under clause (1) of the next succeeding article’. The next succeeding article is to this effect that

[Mr. Naziruddin Ahmad]

a person "shall be disqualified" under certain contingencies. If those contingencies really happen the disqualification is automatic and absolutely complete. The text says; if a member becomes "subject to any of the disqualifications." I say, "if he is disqualified under sub-clause (1)" of the next succeeding article, the expression 'subject to any disqualification' implies that the event is likely to happen and therefore I suggest 'is disqualified' which indicates a completed fact. The real clause which deals with disqualification is very absolute and deals with this matter as a completed fact. I suggest therefore that my amendment be accepted. I do not deny that the amendment is somewhat of a drafting nature. But I submit that the implications would be different. If you do not think that this should be considered by the Drafting Committee, I desire that it should be put to vote.

Shri H. V. Kamath : Mr. President, I move :

"That in clause (2) of article 82, the following new sub-clause be added :—

- '(c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties,
- (d) or if he dies.' "

As regards (d) I do not think much need be said. I fail to see why this contingency was not provided for in this article. It may be that Dr. Ambedkar may say that when a member dies, it naturally follows that his seat will be vacant. But you may remember that this Constituent Assembly laid down in rule 2 or 3 that a seat will be declared vacant either on account of resignation, death or otherwise of a member. Therefore I feel that nothing would be lost if we provide in this article that upon a member's death his seat will fall vacant.

As regards the first part of my amendment, I may say that all democracies, at least in theory, and some of them in actual practice, have provided for the recall of members or perhaps Ministers, in the event of their failing to discharge their duties to the constituency concerned. I think the Swiss Federal Constitution has incorporated a provision to this effect and some of the American States have also a similar provision. This provision, Sir, goes a long way to fulfil what, to my mind, an ideal democracy should be. I am not sure that we in this country will have an ideal democracy and you, Sir, yesterday rightly observed that there are many dangers inherent under the new dispensation. I feel and I am sure the House will agree that since adult franchise is being introduced by this Constitution, we should take early steps, vigorous steps, towards adult education also, because, to my mind, adult franchise without adult education will not work efficiently—I will not say it will be a failure—but it will not be in the best interests of the country. If it is visualised that there will be adult franchise with a duly and properly educated electorate, then it is desirable that a member of Parliament should fulfil his duties to the satisfaction of his constituents, and the electorate must have the right, must have the feeling, must have the satisfaction, the conviction that, if their elected member does not so fulfil his duties, they have the right to recall him. It is common knowledge that in modern Parliamentary democracies, a member once elected has no responsibility to his constituents and he continues to sit in Parliament till the next election arrives and then he goes to the electorate asking for their votes. This is hardly a satisfactory state of affairs and I feel that there is no harm if an educated electorate is invested with the power to recall a member elected by them. I perfectly agree that as long as the electorate is not properly educated, there is every danger that the electorate, on consideration other than the right ones, out of pique or ignorance or malice or some such motive, might decide to recall him; but

on the whole, by and large, the electorate that we are going to create is a huge electorate and if this principle is accepted, we might devise some sort of machinery to implement it, and we might also fix the proportion, whether two-thirds, three-fourths or four-fifths of the electors should be necessary before a member is recalled. This is a matter of detail which can be decided later on. I move this amendment and commend it for the acceptance of the House.

Mr. President : Amendment Nos. 1561 and 1562 are covered by the amendment moved by Mr. Kamath.

(Amendment No. 1563 was not moved.)

Amendment No. 1564 is of a drafting nature and therefore disallowed.

(Amendment No. 1565 was not moved.)

Prof. K. T. Shah : Sir, I do not wish to move Amendment Nos. 1566 and 1567, but if you would permit me, I would like to move the latter part of Amendment No. 1568.

Mr. President : Yes.

Prof. K.T. Shah : I move :

“That after clause (3) of article 82, the following new clause be inserted :—

‘(4) No one who is unable to read or write or speak the National Language of India after ten years from the day this Constitution comes into operation shall be entitled to be a candidate for, or offer himself to be elected to, a seat in either House of Parliament.’ ”

This, I think, is very important from the point of view of developing and universalising the use of the national language. Whatever our professions with regard to the need for building up and popularising the national language at the present time, for such technical purposes as law or the constitution, we have yet to develop it. That cannot be developed unless we introduce some form of compulsion, at least in the Legislatures; so that no one who is unable to understand or speak or write in the national language should be entitled to be a candidate or be elected to the national legislature. I realise that all at once such a thing would be difficult and therefore I am suggesting that only within a period of ten years, or after ten years from the day on which the Constitution comes into operation, everyone who offers himself as a candidate for election to either House of Parliament shall be expected to know the national language sufficiently to read and write that language. I think that in the situation in which we are, it is important and necessary that some such provision should be introduced in the Constitution and hence my proposal. I hope it will prove acceptable to the House.

Mr. President : There is notice of an amendment No. 89 by Mr. Lakshminarayan Sahu to amendment No. 1568. But that does not arise since 1568 has not been moved. Amendment No. 1569 by Mr. Sahu is covered by the amendment moved by Mr. Kamath, and it is not necessary to move it separately. Now the amendments and the original proposition are open to discussion.

Mr. Tajamul Husain : Mr. President, Sir, I first take up the amendment of Dr. Ambedkar. His amendment says that no one shall be a member of two legislatures at the same time. That is a very sound principle. If a member is elected to two legislatures, he must resign his seat in one or the other. That is what has happened now. Some Members of this House are also members of provincial legislatures. That is an anomaly which this amendment seeks to remove. Therefore I support it.

[Mr. Tajamul Husain]

Then amendment No. 1559 by Mr. Naziruddin Ahmad. I support that also. The words used by the Drafting Committee are "subject to any disqualifications". Now, "subject to any disqualification" is quite different from "is disqualified". "Is disqualified" is a definite thing that a member has become disqualified. "Subject to any disqualifications" is an indefinite thing. I think that this amendment should be supported. Now comes Amendment No. 1560 of my honourable Friend, Mr. Kamath, which I oppose, Sir. He says that the seat shall be declared vacant if the member is recalled by the constituency for failure to properly discharge his duties. Now, Sir, what happens in politics? Supposing there is an election and there are three candidates for one seat and supposing there are 1,000 voters. Two candidates, who have not succeeded, secure 300 votes each and the person who has succeeded has secured 400 votes, although 600 voters are against him, and in spite of that, he has succeeded. Now when he becomes a member of the House those 600 voters may join against him and say : "Well, you have failed to properly discharge your duty and we recall you." I think it is a very dangerous provision, Sir, and I think it should not be accepted. The second provision is that the seat should be declared vacant if the member dies. Naturally if he dies, the seat must be declared vacant; it cannot but remain vacant when the member is dead and my honourable Friend will pardon me if I think his amendment is absurd.

Shri H.V. Kamath : May I remind my honourable Friend that he was himself a party to the rule which we passed in this Assembly?

Mr. President : He remembers all that. We need not remind him.

Mr. Tajamul Husain : With these words, I resume my seat.

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. President, Sir, with regard to Mr. Kamath's amendment, it is neither workable nor practicable. He says : "or if he is called by the electors in his constituency for failure to properly discharge his duties". Now who is to decide? 'Electors' means that a referendum has to be actually taken by some authority just as he is elected by an authority through the ballot box. I know, Sir, some constituencies disapproving the actions of a member have passed resolutions against a member in a public meeting. 5,000 or 10,000 or 500 can make a declaration that a member has lost the confidence of the electorate and he should be recalled. May I ask whether it is the view of the electorate? Out of that 4,000 or 5,000 three-fourth members may not be voters. They may be simply other as public men. It is therefore not possible unless it is stated that it must be by the same process by which he is elected, by the regular process of voting in a ballot-box; if such a system is adopted, I can understand, but that is not possible, that is nowhere workable and, therefore, Sir, I contend on the face of it, this amendment should not be accepted. As for the member dying, even today if a member dies, under the present Act, new elections take place. The office knows that. I, therefore, feel that this amendment should not be accepted.

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr. Naziruddin Ahmad or of Mr. Kamath either.

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

The question is :

"That after clause (1) of article 82, the following new clause be inserted :—

'1.(a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of

Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.' "

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause(a) of clause (2) of article 82, for the words 'becomes subject to any disqualifications mentioned in', the words 'is disqualified under' be substituted."

The amendment was negatived.

Mr. President : As regards Mr. Kamath's amendment, I shall put the clauses separately because there is another amendment which I did not allow to be moved.

The question is :

"That in clause (2) of article 82, the following new sub-clause be added :—

'(c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties.' "

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of article 82, the following new sub-clause be added :—

'(d) or if he dies.' "

The amendment was negatived.

Mr. President : Then we come to Amendment No. 1568, the second paragraph.

The question is :

"That after clause (3) of article 82, the following new clause be inserted :—

'No one who is unable to read or write or speak the National Language of India after 10 years from the day this Constitution comes into operation shall be entitled to be a candidate for or offer himself to be elected to, a seat in either House of Parliament.' "

The amendment was negatived.

Mr. President : The question is :

"That article 82, as amended, stand part of the Constitution."

The motion was adopted.

Article 82, as amended, was added to the Constitution.

New Article 82-A

Mr. President : There is Amendment No. 1570 in the name of Prof. Shah and Mr. Jhunjhunwalla. That relates to the qualification of candidates and I think we have already dealt with this question. It is covered by a decision already taken.

Prof. K. T. Shah : I do not move, Sir.

Article 83

Mr. President : The motion is :

"That article 83 form part of the Constitution."

[Mr. President]

We have a number of amendments to this article.

(Amendments Nos. 1571, 1572, 1573 and 1574 were not moved.)

Amendment 1575—This is already covered by an article already adopted and relates to qualification of candidates. This need not be moved.

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

“That in sub-clause (b) of clause (1) of article 83, for the words ‘is of unsound mind and’, the words ‘is declared by a competent court to be of unsound mind’ be substituted.”

Sir, the original text lays down the test of the qualifications if a man is of unsound mind. No test is indicated. Who is to find whether a man is of unsound mind or not? Under these circumstances, it is usual to lay down an objective test. That is the test of a finding of a court of law. It will be extremely dangerous to leave it as vague as this. I beg to submit that there is unsoundness of mind or less almost in every man. It depends on a question of degree or it depends upon the context. If a man is highly sound, he may say.....

Mr. President : If the honourable Member will refer to clause (b) of article 83, he will find : “if he is of unsound mind and stands so declared by a competent court;”

Mr. Naziruddin Ahmad : I need not press it.

(Amendments Nos. 1577, 1578, 1579 and 1580 were not moved.)

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

“That for sub-clause (d) of clause (1) of article 83, the following be substituted :—

‘(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.’ ”

(Amendment to Amendment No. 1581 was not moved.)

(Amendments Nos. 1582, 1583 and 1584 were not moved.)

Mr. President : Amendment No. 1585, I think that is covered by amendment No. 1581. Do you think it is anything different from 1581?

Shri H. V. Kamath : I am asking for the deletion of some words, Sir. I move :

“That in sub-clause (d) of clause (1) of article 83, the words ‘or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power’ be deleted.’ ”

Sir, I am following the sound maxim which I laid down a few minutes ago that as far as possible, we might dispense with needless verbiage and try to be as brief as possible, of course, without sacrificing the meaning or significance or importance of an article, and to compress it into as few words as possible. Brevity is not merely the soul of wit; it is also the soul of truth. Here, I feel that in sub-clause (d) of article 83, the first part is adequate to cover any circumstance arising out of the second part of sub-clause (d). A person who is under any acknowledgment of allegiance or adherence to a foreign power, if he is disqualified, it stands to reason, it follows *ipso facto* that a person who is a subject or a citizen, which is a matter of graver moment than merely owing allegiance or adherence to a foreign power, must be disqualified. A subject or a citizen or one who is entitled to the rights or privileges of a subject or a citizen of a foreign power, certainly stands in

a category which in comparison with the first part of the sub-clause of this article, is of more serious import. If we disqualify a person who merely owes allegiance or adherence to a foreign power, we need not explicitly say that a subject or a citizen is disqualified. If one category is disqualified, in my humble judgment it must follow as the night doth the day, that a citizen or a subject must also be disqualified. I therefore move, in the interests of brevity and elimination of unnecessary verbiage, that this amendment be accepted.

(Amendment No. 1586 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Amendment No. 1587 is merely of a drafting nature.

Mr. President : I would ask Dr. Ambedkar to consider this, because it might create some difficulty. The existence of the word 'and' at the end would mean that all the disqualifications should concur.

The Honourable Shri Ghanshyam Singh Gupta : That is what I fear, Sir.

Mr. President : Any one of them should be a sufficient disqualification. If you add the word 'and', it means that all the disqualifications must concur. In that sense, it is not merely verbal.

The Honourable Shri K. Santhanam : The word 'and' must be changed into 'or'.

The Honourable Shri Ghanshyam Singh Gupta : I considered that to be a verbal slip only. It becomes substantial if it is changed into 'or'.

Mr. President : If you add 'or', it would be clear.

The Honourable Shri Ghanshyam Singh Gupta : May I move it formally, Sir?

Mr. President : Yes.

The Honourable Shri Ghanshyam Singh Gupta : Sir, I move :

"That the word 'and' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

Sir, the meaning is quite clear and you have so well expressed it that, if we keep the word 'and', it may mean that all the disqualifications contained in sub-clauses (a), (b), (c), (d) and (e) may be necessary. It may just mean that if one suffers from one of these disqualifications, it may not be enough to disqualify him. Therefore, it is necessary that the word 'and' should be removed and it should be replaced by the word 'or'. Or, even if we do not keep the word 'or', then, too, it would be all right.

The Honourable Shri K. Santhanam : Mr. President, I think another verbal change is needed. The clause, as it is, says, "subject or citizen of a foreign power". I think it must be, "foreign State". I think there is some incoherence.

Mr. President : Dr. Ambedkar has moved amendment No. 1581. That alters the wording.

(Amendment No. 1588 was not moved.)

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

"That sub-clause (e) of clause (1) of article 83 be omitted."

[Mr. Naziruddin Ahmad]

Clause (1) of article 83 deals with various disqualifications for being a member of either House. Sub-clause (b) deals with the ordinary well-known classes of disqualifications. Sub-clause (e) which I seek to delete is to this effect :

“If he is so disqualified by or under any law made by Parliament.”

I submit this delegates to the Parliament the power to disqualify a lot of people. Instead of this being clearly defined in the Constitution, it leaves the future Parliament to prescribe or invent new kinds of disqualifications. I submit that it may in certain circumstances be extremely dangerous and a political party may ban its opponents by a disqualification imposed by Parliamentary legislation. It may, in certain circumstances be dangerous to allow such a thing. Disqualifications should be very clearly defined in the Constitution itself and should not be left to be determined or invented by legislature. That is why I seek to delete this sub-clause.

Mr. President : No. 1590.

Shri R. K. Sidhva : Sir, he has referred to convictions, moral turpitude etc. in (e), (f) and (g), they will only form part of rules. Return of election expenses does not come in the Constitution. All these points have been discussed and covered.

Prof. Shibban Lal Saksena : Sir, I move :

“That sub-clause (e) of clause (1) of article 83 be omitted and the following sub-clauses (e), (f), (g) and clauses (2) and (3) be substituted in its place and existing clause (2) be re-numbered as clause (4) :—

‘(e) if after the commencement of this Constitution, he has been convicted or has in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by an Act of Parliament to be an offence or practice entailing disqualification for membership of this Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Act.

‘(f) if after the commencement of this Constitution he has been convicted of any criminal offence involving moral turpitude by a court and sentenced to transportation or to imprisonment for more than two years unless a period of five years has elapsed since his release.

‘(g) if after the commencement of this Constitution having been nominated as a candidate for the Union and State Legislatures or having acted as an election agent of any person so nominated he has failed to lodge a return of election expenses within the time and in the manner required by any Act of Parliament or of any State Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification :

Provided that a disqualification under paragraph (g) of this sub-section shall not take effect until the expiration of month from the date by which the return ought to have been lodged.

“(2) A person shall not be capable of being a member of Parliament while he is serving a sentence of transportation or of imprisonment for a criminal offence involving moral turpitude.”

“(3) When a person who, by virtue of a conviction or a conviction and a sentence becomes disqualified by virtue of paragraph (e) or (f) of sub-section (1) of this article is at the date of the disqualification a member of Parliament, his seat shall, notwithstanding anything in this article, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.”

As I stated yesterday, the Parliament should not be given power to lay down conditions which will disqualify men from being candidates. In fact even the

Government of India Act did not give this power to the Federal Parliament and there they had laid down certain definite conditions which disqualified a candidate. I think this provision is liable to be abused by any party in power which may like its opponents to be disqualified. I have therefore suggested this amendment. As was suggested by another Friend here yesterday the new Parliament may say 'Nobody can stand for election unless he pays income-tax or unless a high revenue is paid by him'. It is not quite impossible that sometimes reactionaries may come into power and they may not want any of their opponents to be elected. So I feel that this power of laying down qualifications and disqualifications of candidates should not be given to Parliament but the Constitution should provide these qualifications and disqualifications. The Constitution should definitely lay down the disqualifications of candidates. I hope that Dr. Ambedkar will include this in the draft.

(Amendments Nos. 1591 to 1608 were not moved.)

Mr. President : There is one point which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

All amendments have been moved. If anyone wishes to speak on these, he may do so.

Dr. P. S. Deshmukh : Mr. President, I wish to oppose the two amendments moved by my Friend Mr. Kamath and another by Professor Saksena. One refers to article 92, clause 1 (d) and the other to (e). Mr. Kamath has objected to the enumeration of the various categories of the connection of an individual citizen or resident of India with foreign powers and foreign States. He thinks and rightly so that the whole includes the part. Although that may be correct, I think so far as connection with foreign powers and States are concerned, it would be safer to define all the categories and to make the definition of this connection as exhaustive as possible. I agree with him that brevity should be our utmost concern and just as the Sanskrit Poets considered the omission of a single superfluous word as equivalent to the birth of a son, we might keep this high ideal before us. But so far as this particular sub-section is concerned, I think it should stand as it is. The second amendment moved by Prof. Saksena which has been supported by another honourable Friend refers to the clause 1 (e). The honourable Members are apprehensive that the Parliaments to come may, somewhat frivolously or to suit the party in power, introduce disqualifications which are unreasonable. I am sure no Parliament will act in a spirit which is not supported by the Constitution. These disqualifications again in their very nature are likely to be of an emergent character and I do not feel apprehensive that there is any likelihood of its being abused. In fact if there is no such provision, the hands of the Parliament would be tied and even if it is necessary to prevent a body of persons from interfering with the Indian Republic they will be powerless to do so. So it is very necessary that such a provision should be there and I have no fear that it is likely to be abused at any time. After all the party in power, if it has really the support of the people, should have perfect liberty to act in any particular manner and pass an enactment which would be necessary under the circumstances. If at any time the Parliament acts frivolously it shall be answerable to the people. So I feel, Sir, that both these amendments may be rejected by House.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, I only wish to draw the attention of the House to one provision namely sub-clause (b) under article 83 (1) "if he is of unsound mind and stands so declared by a competent court," and I hope the soundness of my mind will not be questioned if I say that this clause is not so happily worded as it should be. Sir, I presume that it is the desire of the authors of the Draft Constitution that no person of unsound mind should be allowed to be a member of this House, and I believe that the present House has been so selected, and that no person of unsound mind has been able to creep into this House. Sir, if you allow this clause to stand as it does, it will mean that there will be a large number of persons of unsound minds coming in, because the qualification is there that the man must be declared to be of unsound mind, by a competent court. This question was also raised on the last day of the previous session, and after that, I had tried to find out through the agency of the Government of India, that is to say, by putting questions in the Legislative section of the Constituent Assembly to find out how many of the lunatics who are actually in the different asylums in India have been declared by a competent court to be persons of unsound mind. If you make further investigations into this matter, you will find that not even ten per cent of all the persons who are now undergoing treatment in the different asylums and mental hospitals in India have been declared to be persons of unsound mind, by a competent court. My question is whether you will allow such persons who are actually in the asylums and mental hospitals to be enrolled as voters and also to stand for election. We know that in every village and in every town, there are a certain number of persons who go about like lunatics, and who are actual lunatics, and whom everybody, even the child who pelts stones at them, knows to be a lunatic. It is quite possible, and generally it is true that nobody has taken the trouble to declare them as persons of unsound mind, or to get them so declared by a competent court. Will you allow them all to be enrolled? Every villager, every citizen in a town knows that such and such person is of unsound mind, that he is a raving lunatic. Will there be any agency to prevent him from being enrolled as a voter, or standing for election?

Mr. President : But is there any chance of such a person being elected unless the whole electorate is of unsound mind?

Shri Rohini Kumar Chaudhuri : But, Sir, I can enrol him if I can get his vote. Unless a competent court declares him to be of unsound mind, he can enrol himself. This declaration is obtained only if the person is a moneyed man and has property and his relatives have to deal with his property. In other cases where do we find a person going in for such a declaration? There is no occasion to do so. It may also be that the person is so violent that he has got to be controlled by a court, but even in that case, he is only sent for observation for a few days and afterwards no such declaration is obtained. If you want to leave a loop-hole for persons of unsound mind to come in and have a voice in the selection of the members of the future House, you may leave the clause as it is. If you want to shut out such persons, the words "declared by a competent court" should be deleted. I say this because from my own experience, I know a vast majority of persons of unsound mind have not been so declared by any competent court.

Mr. President : Does anyone else want to speak? Has Dr. Ambedkar to say anything?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

Mr. President : I will put the amendments, one by one, to vote.

The question is :

“That for sub-clause (d) of clause (1) of article 83, the following be substituted :—

‘(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.’”

The amendment was adopted.

Mr. President : Then there is the amendment of Mr. Kamath No. 1585. But that does not arise now after accepting Dr. Ambedkar’s amendment.

There is then Mr. Gupta’s amendment No. 1587, that the word “and” should be deleted. Or has it to be substituted by “or”?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted “and” or substitute ‘or’ for ‘and’.

Mr. President : The question is :

“That the word ‘and’ occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted.”

The amendment was adopted.

Mr. President : Then there is Prof. Saksena’s amendment No. 1590.

Prof. Shibban Lal Saksena : Sir, I request leave of the House to withdraw it.

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

Mr. President : There is then No. 1589, in the name of Mr. Naziruddin Ahmad.

The question is :

“That sub-clause (e) of clause (1) of article 83 be omitted.”

The amendment was negatived.

Mr. President : These are all the amendments. I will not put the article.

The question is :

“That article 83, as amended, stand part of the Constitution.”

The motion was adopted.

Article 83, as amended, was added to the Constitution.

Article 84

(Amendments Nos. 1609 to 1618 were not moved.)

Mr. President : The question is :

“That article 84 stand part of the Constitution.”

The motion was adopted.

Article 84 was added to the Constitution.

(Amendment No. 1619 was not moved.)

Article 85

Mr. President : The motion is :

“That article 85 form part of the Constitution.”

(Amendments Nos. 1620-1624 were not moved.)

Shri H.V. Kamath : Mr. President, I move :

“That in clause (3) of article 85, for the words ‘as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution the words ‘as were enjoyed by the members of the Dominion Legislature of India immediately before the commencement of this Constitution’ be substituted.”

Sir, my knowledge of the various Constitutions is not as vast or as profound as that of Dr. Ambedkar, but relying on my meagre knowledge of these constitutions, I venture to state that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the constitution of another State. I see no valid reason why this should be done. It may be that the rights and privileges which we are going to confer upon the Member of Parliament of free India will be identical with, or more or less similar to, those enjoyed by the Members of the House of Commons in the United Kingdom. But may I ask, Sir, in all humility, “Is it necessary or is it desirable when we are drafting our own Constitution, that we should lay down explicitly in an article that the provisions as regards this matter will be like those of the House of Commons in England?”

It may be argued in support of this proposition that there is nothing derogatory to the dignity of our Constitution or of our State in making reference to the United Kingdom. It may be further reinforced by the argument that now that we have declared India as a full member of the Commonwealth, certainly there should be no objection, or any sort of compunction in referring to the House of Commons in England. But may I suggest for the serious consideration of the House as to whether it adds—it may not be derogatory, or detract from the dignity of the Constitution—but does it add to the dignity of the Constitution? We say that such and such thing should be what it is in the United Kingdom or in America. Will it not be far better, far happier for us to rely upon our own precedents, or our own traditions here in India than to import something from elsewhere and incorporate it by reference in the Constitution? It is not sufficient to say that the rights and privileges and immunities of Members shall be such as have been enjoyed by the Members of the Constituent Assembly or Dominion Legislature just before the commencement of this Constitution? Personally, I think, Sir, this would be far better. I venture to hope that my honourable Friends in this House will be inclined to the same view that instead of quoting or citing the example of the United Kingdom it would be far better for us to rely upon the tradition we have built up here. Surely, nobody will dispute the fact that the privileges and immunities enjoyed by us here today are in no way inferior to, or worse than, those enjoyed by members of the House of Commons in the United Kingdom.

As a matter of fact, I think most of us do not know what are the privileges of the member of the House of Commons. We know very well what our privileges at present are. Therefore, Sir, it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries.

With these words, I commend this amendment for the consideration and acceptance of the House.

(Amendment No. 1626 was not moved.)

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, I beg to move :

“That in clause (4) of article 85 after the words ‘a House of Parliament’ the words ‘or any committee thereof’ be inserted.”

After the insertion of these words clause (4) will read thus :

“The provision of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

The object of any amendment is to bring clause (4) in conformity with clause (2) of this article. According to clause (2) a member of Parliament is immune from any proceedings in a court of law in respect of anything which he may speak on the floor of the House and also in respect of whatever he may say in a committee of the Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a committee of the Parliament. I see no reason why this privilege should be restricted in the case of a non-member of Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. Generally I think we shall be calling in the assistance of experts to give us the benefit of their experience and knowledge on technical subjects. Often members of the learned professions and technical experts would be invited by sub-committees of the Parliament to give evidence before it, so that right decisions on important subjects may be reached. That being so, I think it is very necessary that whatever is said either in evidence or otherwise by persons who are invited by the sub-committees of Parliament to speak before them, whatever they say, must also be privileged. This is an important omission and hence my amendment which I hope would be readily accepted by the House.

(Amendments Nos. 1628 to 1630 were not moved.)

Prof. K. T. Shah : Sir, I move :

“That after clause (4) of article 85, the following new clause be inserted :—

- (5) In all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.’ ”

Sir, this is a simple proposition well known in constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority.

I am enunciating no new proposition that, by virtue of this Constitution, every House of Parliament should be the sole judge of its collective privileges as well as the privileges of its members, whatever they are; and that any breach of such privileges should be dealt with by the House concerned similarly, any sentence passed also shall be executed by its own officers or under its authority. Sir, I commend the amendment to the House.

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

Prof. Shibban Lal Saksena : Sir, I wish to oppose the amendment moved by my honourable Friend Mr. Kamath. He said that instead of the privileges of the members of the House of Commons in the British Parliament we should enjoy the privileges of this Dominion legislature of India. So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted. Yet I do feel that

[Prof. Shibban Lal Saksena]

reference to the privileges enjoyed by the members of the House of Commons in our Constitution would not be desirable. Many members do not know what those privileges are. I, therefore, suggest that the learned Doctor who is in charge of the Draft Constitution should append some appendix containing the privileges of members of the House of Commons and those should be our privileges too. It may be a long appendix no doubt, but many Members are not aware of these privileges. Also it will not be proper for us to refer in our constitution to privileges of members of House of Commons which are liable to change. We can give ourselves these privileges as they exist at a particular point of time. The Parliament will of course have the power to frame its privileges but until it frames these privileges, Members should enjoy the privileges enumerated in the proposed appendix. We must therefore define the privileges enjoyed by the members of the House of Commons and put them as an appendix to our constitution, so that Members will know what these privileges are. I hope Mr. Kamath will not press his amendment in the present form which will only mean the nullification of all privileges of the members of this House for several years to come.

I want to draw attention to one other aspect of clause (2) of article 85, which says :

“No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.”

The privilege is given only in respect of publication “under the authority of either House of Parliament.” This is a very important thing. About ten or fifteen years ago an honourable Member of the Central Assembly, Pandit Krishna Kant Malaviya, had made a speech in the House which was suppressed by the papers but he published his speech in his paper at Allahabad. Prosecution was launched on the ground of this publication. If I make a speech and the Government sees that it is not published in the press and I publish it in my own paper I may become liable to prosecution. Whatever I speak in the House should be privileged. If the public is not to know what I said here, I cannot discharge my duties to the electorate which has chosen me. I want the privilege which is qualified in this clause to be absolute so that whatever is spoken in this House may be published in any paper and people may know what has been said here. In fact all that is said here will be published in Government publications and will be available to the public but very few people can read them. It is very important that journals and newspapers should have the privilege of publishing all that is said here. Sir, if any member of the House abuse his privileges as a member, the House has the power to remove him from the House. I do not think that any fear of abuse of such privileges need prevent us from granting such rights to members. If the President finds that any member is abusing his rights and privileges he will check him and expunge objectionable passages from his speech. I hope the learned Doctor Ambedkar will see that the privileges of the members are made absolute with reference to publication of their speeches both inside and outside and not confined to publications by or under the authority of Parliament. This is a matter of great importance to the Members.

Shri H.V. Kamath : A word of personal explanation, Sir. I may tell my honourable Friend Prof. Shibban Lal that the acceptance of my amendment will not be tantamount to no privileges. I may remind him that under the rules of procedure which this House sitting as the Legislature has tentatively adopted, there will be a Committee of Privileges which will go into the matter and define the various privileges of Members of the House.

Mr. Naziruddin Ahmad : I wish to draw the attention of the House to certain aspects of article 85. It deals with the privileges and immunities of Members. The first clause says that there shall be freedom of speech in Parliament. The second clause says that publication is also privileged provided it is a publication by or under the authority of either House of Parliament. It does not cover publication of speeches by the press outside. I think the right of a Member to speak anything in the House must be guaranteed—subject of course to the rules of procedure and the ruling of the President or the Speaker. It is very desirable that the speeches made in any of the Houses which are not objectionable and are not ruled out by the Speaker or the Chairman should also be fully published outside also without the authority of the Houses of Parliament. I submit that the freedom of the Press is a very important item among the rights of the people. If anything could be published by or under the authority of the House, the Press should have freedom to publish it. It is essential that the Press should be able to publish the proceedings of the House and also offer fair comments on them. It is somewhat anomalous that the Press could not publish what can be published by the authority of the House. This is a lacuna in the Draft Constitution which requires careful consideration.

With regard to clause (3) of the article I may say that the provision is vague. The privileges and immunities it provides for are of the vaguest description possible or imaginable. This clause has been bodily lifted from the existing Government of India Act enacted in England where the rights and privileges of the Members of the House of Commons are known and they have quite properly referred to them. I submit that, after Independence, we cannot relate our rights to those available to the members of the House of Commons. We should have our rights clearly and specially defined. In fact, the privileges of the Members of the House of Commons are not statutory. They are embedded in the Common Law to be found in the text-books which are many and also in case law which are scattered in many places. No one can tell us what the privileges are. Sir, to give Members here privileges similar to those enjoyed by the Members of the House of Commons is to give the Members practically no privileges at all. If a Member who wants to move about in his constituency desires to know his rights, he will have to take the help of an English attorney or Counsel to enlighten him. The Members of the House of Commons have freedom from arrest while going to or from Parliament and while doing work connected with Parliament. What about the many other undefined rights? These should all be defined and not left vague as at present. I suggest that at the end there should be added a Schedule defining the rights pending the House of Parliament making adequate laws in this respect. I submit we cannot leave the matter like this here.

As regards the amendment moved by Mr. Jaspat Roy Kapoor, I think it should be accepted. He wants to insert the words 'or' any committee thereof in clause (4) after the words 'a House of Parliament'. These words are there in clause (2). This is a vital clause. The rights and privileges of Members should not be left to be ascertained from next-books on English law. They are no longer applicable to us. These should be specially and clearly defined as suggested by me.

Dr. P. S. Deshmukh : Sir, I am constrained to express considerable sympathy with the point of view that the privileges should not be left vague as is now being done. The privileges of the Members of Commons are well understood and well defined and so there should be no difficulty in enumerating them in a Schedule. I think it is not very satisfactory to say that the privileges shall be that of such and such a person in such and such a place either the privileges are definite or they are vague. If they are well-defined

[Dr. P. S. Deshmukh]

and definite there should be no difficulty in stating them *in extenso*. If they are vague and indefinite it is wrong to console ourselves with a mere reference to such a thing. To say that the privileges shall be those of the members of the House of Commons in England is certainly vague. There is no use merely referring to some exterior body and the privileges enjoyed by that body or its members. It is better to make an effort to specify and define those privileges. Moreover, Sir, there should not be any difficulty in saying "as defined in the Schedule" and then set out the privileges actually in that schedule. I think, Sir, this point of view has considerable force and I hope my honourable Friend, Dr. Ambedkar, will oblige the House by finding a suitable solution for this. This article is most important and I am sure we will not allow it to be passed in a hurry because it embodies the privileges and rights of the members of Parliament.

So, far as the publication of the reports is concerned, I would like to support the point of view that has been raised by my Friend, Professor Saksena. We know the efficiency with which our printing office prints the official reports. If the members were entirely to depend or even the press were entirely to depend upon the speeches being published in the official reports, there would be nothing known outside the House of the happenings inside the House for months to come. That is the situation which actually obtains now. In spite of all efforts, we have not been able to rectify or remedy this state of things. So, I think that the privilege ought to be embodied somewhere, so that so long as a particular speech has been made in the House, there is no offence committed if it happens to be published in the papers.

These are two points of view which deserve consideration and I hope Dr. Ambedkar will feel inclined to agree with me.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges, unless they

went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no *infra dig* in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a bodge of sefdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

Shri H.V. Kamath : On a point of clarification, Sir, may I ask my honourable jurist Friend Mr. Alladi Krishnaswami Ayyar whether the Constitutions of Canada and Australia to which he has referred, whether those constitutions in providing for this matter which is under discussion make direct reference to the Constitution of the U.K. and the House of Commons in the U.K.?

Honourable Members : They do.

Shri Alladi Krishnaswami Ayyar : I said both in the Canadian and in the Australian Constitutions. The Canadian was earlier and the Australian was later. With regard to the Canadian constitution it was felt that there might be a lacuna and they had to pass special legislation in regard to committee procedure there.

Shri H.V. Kamath : I could not hear, but I suppose that does not matters.

Mr. President : In the Australian Constitution there is a direct reference to the House of Commons of the United Kingdom :

Section 49.—The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the Committee of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Practically the same words are used here.

Shri Jagat Narain Lal (Bihar : General) : Sir, I want to speak with regard to clause (2) as I have not been able to share the point of view expressed by Mr. Naziruddin Ahmad and some other friends. I feel that so far as the members of parliament are concerned, clause (2) seeks to give them two privileges or immunities. One is with regard to vote and the other is with regard to the speech which they may deliver in the Parliament and which might be published under the authority of the Parliament. My friends want further immunity. They want that the member who has delivered a speech in the parliament should have a further immunity, should have the right and privilege of publishing their speech outside in the Press. That may relate to the freedom of the Press, but that does not pertain to the freedom of the member so far as his speech or his vote in the parliament is concerned. I think that is stretching a point too far and it is neither fair nor proper. If a member, for example wants to deliver a speech in the parliament, not for the purpose simply of making an honest speech, but for the purpose of maligning some body or some institution and he starts straightaway by delivering a speech and publishing the same in so many other papers outside, I should say, that is not an honest expression of opinion and that is not a *bona fide* expression of opinion either. Therefore, I would like honourable Members to confine the privileges which are given and the immunity which is sought to be given to members of parliament only to those two which are contained in clause (2). I have nothing further to add.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, my first impression on this section was that it was rather restrictive of the privileges of a member of a parliament or legislature, but on second consideration...

An honourable Member : You are not audible.

Shri Rohini Kumar Chaudhuri : I advise you to go to the doctor. Sir, I am very sorry to learn that I am not audible. There may be some defect in my voice. If there is no defect in my voice. I would ask my honourable Friends who complain about it to go immediately and consult a ear specialist.

Sir, as I said my first impression of this article 85 was that it was rather restrictive, restrictive of the privileges of a member of a parliament or a legislature. But on second thought I found that my honourable Friend Dr. Ambedkar has been very wise. I think he has been wiser by experience because I know that in future there will be more women Members of the legislature than there are now. The strategy which they have played by the non-reservation of special seats in the future legislature only goes to prove that they will get more seats when they do not ask for it. That is the ordinary human experience. If a woman does not ask for anything you give her more. If she asks, you may sometimes refuse. So in future, I am sure, Sir, partly on account of the Hindu Code which is in the air, there will be more women Members of the legislature and when you are convinced of that and when my

honourable Friend Dr. Ambedkar is convinced of that, it is only a measure of caution that the privileges of members should be hereafter more curtailed than is now, but there is a one thing, Sir, which I am rather apprehensive about and it is this. Sir, while you are alive people are eager to find defects in you; your defects are sometimes exaggerated; sometimes defects which do you not possess are attributed to you; but when you are dead and gone, when, for instance, I am not in this House, when the condolence resolution is passed, qualities which I may not possess are spoken of as my own and paraded in the House. So you are more admired when you are dead than when you are alive. So I believe is all right that our speeches which are delivered here are published in the ordinary proceedings; that is all right and there is no fault in that. Nobody can find fault with that, but you may have a relation, you may have a friend, you may have your own son who would like to publish your speech, who would like to publish your speech in a book form, but supposing those speeches contain certain objectionable points, then he would be prosecuted. There may be various speeches, Sir, which are worthy of publication and you publish it because the ordinary Government proceedings are not available to every body. You publish it or some friend of yours publishes it and then he has not that privilege and he will be prosecuted. That is a danger which this cause as it stands will bring about. So I would say that *bona fide* proceedings which the Speaker or the President has not expunged, which the Speaker or the President has not stopped should be allowed to be published. The President or the Speaker has the right to stop any speech which incites people to violence, to stop any speech which contains defamatory remarks, and the Speaker and the President have the inherent right always to do so. Why should you like the Speaker or the President will allow a member to make defamatory remarks against any member in the House or any member who is not in the House? Why should you presume that the President will allow a speech to remain which incites people to violence. Once a speech is made and the Speaker does not think it fit to be expunged, why should you stop its publication by other papers than the government publications? I do not find any reason except one which might have prompted Dr. Ambedkar to consider that there would be more women Members and loose talk and therefore it would be better to stop that. If he has adopted that reason, I am entirely at one with him. Otherwise, I find no Justification for this clause.

There is another aspect. It has been seriously object to by some Members of the House about the reference to the House of Commons of the United Kingdom. Of course, it would have been much better if it was possible to avoid such a reference. It has been pointed out that even in countries like Canada and Ireland, these provisions are incorporated in their constitutions. After all, the Canadians are merely people of England; most of them have gone from England. Blood is thicker than water. There is no harm in the Canadians adopting entirely the Constitutions of England. In the case of Ireland also the same remarks apply. But that does not apply to the Indians. We cannot claim that the same blood runs in our veins or that we came originally from England and settled here. Of course matters have changed considerably. So long as we are in the Commonwealth, we might also flatter ourselves and think that the same blood flows in our veins also. For the present, so long as we are in the Commonwealth, there should be no objection in retaining these words.

Mr. President : I think we have had a fair discussion on this; I would request Members to be short.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Mr. President, Sir, article 85 is apparently innocent but in my opinion there are certain features which should attract more than a mere passing notice of honourable Members of this House.

[Pandit Lakshmi Kanta Maitra]

Two points have so far been discussed. One is that the right and privileges that accrue to the members of Parliament shall be the same as prescribed for the member of the House of commons of the Parliament of the United Kingdom at the commencement of this Constitution. My honourable Friend Shri Alladi Krishnaswami Ayyar has explained the reason why this has been put in that way. Speaking personally, I feel that this sort of legislation by reference, that is to say, making certain legislative provisions, not in the form of substantive provisions, but by reference to the constitutions of foreign countries should, in my opinion, not be acceptable to the house. We are framing a constitution for a free, independent sovereign republic. In the body of that Constitution itself, we are going out of our way to prescribe the rights and privileges for the interim period by reference to what is contained for the members of the House of Commons of the Parliament of the United Kingdom, though there also there is no exhaustive list of the rights and privileges which the Members enjoy. It is a matter of deep sentiment that these words should not have found a place here. I would much rather go without any privileges for the next few months or a year for which we shall be functioning—I would much rather go without any specified privileges than make provision therefore by reference to foreign legislation. That disposes of one part.

The other part relates to the immunity with regard to publication of the proceeding of the House, which bears on the freedom of speech. Here, Mr. President, with your indulgence, I would like to place certain historical facts which should be carefully considered by every single Members of this House. You are going to provide that whatever you do in this House, your speeches or your conduct inside the House is absolutely privileged, and that immunity attaches only to the publication made by the Government of India or by the authority of the House. That means that any speech we make here, if it is printed and published in the official debates, is absolutely immune and the court has no jurisdiction to take cognisance of any case arising out of that, be it slander, or libel or whatever it be. Mr. Jagat Narain Lal has placed a point of view which is of course worthy of our consideration. It is quite possible that the privilege can be abused in that way, but there is also the other side of the shield. Let me tell you how this question arose in our Parliament.

The House may perhaps recall that one Miss Bina Das shot at the Governor of Bengal, Mr. Stanley Jackson. She was arrested; the Governor was not killed. In the course of her trial, she made a statement in the court. This statement could not be available anywhere in the country. It so happened that one member of the Central legislature, at that time, in the course of his speech on the repressive policy of the Government in Bengal read out the entire statement given by Miss Bina Das in the course of her trial. That was a revealing document. She gave the entire history of the genesis of the terroristic outrages in Bengal and particularly the circumstances that compelled her to take to that drastic step against the Governor of Bengal. Not a single line of that was allowed to come out in the Press on the ground of security by the British Government. The question arose when the speech of the honourable Member of the Central legislature which contained that statement came to be published. The Government said could be not be published. Sir B.L. Mitter the Law Member of the Government of India stoutly resisted its publication—a speech in the course of which he simply narrated the full text of the statement made by the accused Miss Bina Das in connection with her trial. That was in 1934. In 1935 or 1936—I do not exactly recollect, probably it was in 1935—we has been discussing the Criminal Law Amendment Bill in Simla. In the course of the general debate on the Criminal Law Amendment Bill, a speech was delivered by my late lamented Friend, Pandit Krishna Kanta Malaviya in which he gave a resume of the so-called terroristic outrages in the country and tried to explain

how the policy of the British Government had been mainly responsible for the morbid psychology which compelled young men and women to take to the cult of the bomb and the revolver. It was a magnificent speech. We were surprised that the next morning, none of the papers did publish a single sentence of the two-hour speech, a written speech which was delivered by my Friend Pandit Krishna Kanta Malaviya. The Government of the day, the Home Minister, I think it was Sir Henry Craik, took jolly good care to see that not a single line of that speech came out in the Press. He could only print and publish it on pain of penalty. Thereafter, my Friend Mr. Malaviya published the entire text of that speech—the speech as it is—in his own paper, *Abhyudaya*. At once the Government of the day came down upon him, he was not prosecuted but a security was demanded from his paper. Now when this was done, we on the floor of the House of the Legislative Assembly in 1936 raised a debate and brought a censure motion. We took the stand that the privilege of the house was infringed in-as-much as when a member made a speech on the floor of the House which was printed and published in the Government publication or assembly Debates and when he made a verbatim transcript of the whole thing in his own paper, immunity should also be extended to it. There were elaborate arguments by honourable Member on either side. The then Law Member Sir Nripendra Nath Sircar came out with a statement—at that time surprising—that the House had no privileges thought all time the House had been acting in the belief that it had certain rights and privileges. He said ‘This House has no privilege’. Be that as it may owing to our pressure the matter was settled then. This raises a very important point. I am surprised today at this change of attitude of those my friends and colleagues, who were with us in those days and who condemned the stand of the Government of those days and stoutly maintained that a published report of the proceedings, if honestly made by any private agency should also be entitled to protection. In those days they were the people who were all of the same opinion. Today we conveniently forget that and we do not allow that same privilege to be extended to non-Government publication. I realise that it is quit possible that in the course of the debate a member might be making references which if made outside will not give him immunity in a Court of law; but frivolous charges are not allowed to be made by the Speaker in the House. As a matter of fact the Standing Orders also provide that you cannot digress and make all manner of scurrilous or objectionable speeches. If you make libellous or slanderous speeches, the Speaker pulls you up. A member cannot say things unless he is sure about them and can substantiate them. Whenever references like that are made, by any particular member, the Speaker or President of the Chamber at once calls him to order. If in spite of that, the Member is firm and makes a speech with certain objectionable remarks what happens? When the government publishes that in the shape of records of Debates, there is no harm. If the Government prints them in large numbers, one can buy and distribute them as he likes with impunity. Put if at a later stage for instance an honourable Member wants to publish his own speeches or some of his relations wants to publish them and they make a verbatim transcript of these very speeches delivered by him which are published in the Official Debates, if they publish them in their own books, then no immunity is attached to that. It is preposterous, whatever the excuse may be for that. I ask the House to carefully consider this.

Shri M. Ananthasayanam Ayyangar : Sir, I am not a little surprised at the manner in which my honourable Friend Pandit Lakshmi Kanta Maitra wants to claim what according to me, is not a privilege but a licence. We are not trying to claim any thing more than what in the Mother of Parliaments those members in England who have striven for liberty of speech inside and outside the House have claimed and are claiming. Now let him consider one or two aspects. Outside this House Members are not entitled to either speak seditious

[Shri M. Ananthasayanam Ayyangar]

or make defamatory statements, but inside the House itself one many make any statement whatsoever, either attacking the Government or preach violence so overthrow the State or even defamatory statements, If you think it is on the public interest. In the Government of India Act, 1919, seditious statements and libellous defamatory statements were tabooed and were not allowed to be made.

Pandit Lakshmi Kanta Maitra: Subject to the permission of the Speaker you can make any speech.

Shri M. Ananthasayanam Ayyangar: It has been removed in the Act of 1935.

Pandit Lakshmi Kanta Maitra: Standing orders are not made under that Act.

Shri M. Ananthasayanam Ayyangar: Under the 1919 Act no seditious words could be uttered even inside the House. If they were made, the Speaker will pull up the member who was making any seditious or defamatory statement. That was the time when the foreign bureaucracy was trying to have its stranglehold upon us and did not allow us any freedom. But under the 1935 act Adaptation laws we had been given freedom of speech in the House. There, any member of the House can utter any statement which he may not be able to make outside. Whatever he is not able to say outside, merely because he becomes a member and he makes any statement,—is that not to the confined? He is given the privilege for a particular purpose. Here members can say what they like with a view to convert the other Members of the House to their own view. They may even advocate violence. A Member when making speeches in the House cannot be looking round here and there, afraid of Criminal Laws. It is very dangerous and it is impossible for the country to progress towards democracy if he has to make speeches under those limitations. So, absolute freedom is given inside the House. My Friend wants that even if he makes an absolutely improper statement for which, if he makes it outside, he will be liable under the sedition section,—merely because he makes a statement here, he wants to go out and print them. My Friend, Mr. Rohini Kumar Chaudhuri, wants to ask his son to publish a lakh of copies and broadcast to the whole world the world that have been uttered by his father. What my Friend, Pandit Maitra, wants is this. He wants to make all kinds of defamatory statements, leaving alone for the time being seditious statement. Some of us are so left-wingers as to want to make all sports of against Government, whether it is our own Government or any foreign Government. We have not yet got out of the rut. In the House we can make any kinds of statement against anybody. If we utter them outside, the Courts of law will not give you redress. In the House it is open to me to say that Pandit Maitra is a dishonest man. Outside, if I say that, I will be liable to be proceeded against.

Pandit Lakshmi Kanta Maitra : I perfectly allow you to do it.

Shri M. Ananthasayanam Ayyangar : In the public interest, if it is necessary, I ought not to be afraid of saying it in the House.

Pandit Lakshmi Kanta Maitra: The moment you say Maitra is a dishonest person, the Speaker will call you to order.

Shri M. Ananthasayanam Ayyangar : The President is not entitled to do it under the existing law.

Pandit Lakshmi Kanta Maitra : Absolutely, if you make any personal aspersion.

Shri M. Ananthasayanam Ayyangar : If it is necessary in the public interest for me to say anything against the personal conduct of an individual, I am entitled to say so. I feel that under the present Government of India Act—and this article is only a copy of it—I am entitled to say that, if it is in the public interest. After all it privilege and it is an exception, as ordinarily you ought not to make any defamatory statement against private individuals, or make violent statements that will overthrow the State. So any exception so made is a privilege and we should not grudge its limitation. If at all those statements are to be printed, they can be only in those reports. Even copies of those reports ought not to be made outside. If a man goes to the extent of buying a copy of the official Report, let him do it. As the member might know making defamatory statement alone is not liable to punishment but any person who published it also is liable. Why should a person print a million copies and publish it? It is a different offence altogether. It is an offence in itself. The maker of a defamatory statement is liable to punishment, as also the person who publishes it. To say that you have got it here printed, and so you can reproduce it, any number of copies of it, is not correct. It is not a privilege, but a licence. The honourable Member says there is no opportunity for explanation, but explanation or no explanation, a defamatory statement is a defamatory statement.

Shri Lakshmi Kanta Maitra: It is an astounding proposition.

Shri M. Ananthasayanam Ayyangar : My Friend says it is an astounding proposition. He referred to a statement made by a girl and to its not being allowed to be published. Complaints were made against the government of those days. But if it had been this present government even, I would say that the statement should not be allowed to see the light of day. It is an abuse of a privilege. It is a license. For what purpose is such a statement to be published? To destroy the established order of society, to destroy the feeling between man and man, and to throw the whole community into confusion. I repeat such a things is an abuse of a privilege in such circumstances, it is an exception made to the ordinary rule. In facts, it is a special weapon given into our hands and that weapon has to be used carefully. Members must be able to speak freely in the House without constant fear of any one dragging them into a court of law; otherwise to that extent they will not be discharging their duty to the country properly. It is for that purpose that this privilege is given, but is must be restricted to free speech inside the House. Repetition outside cannot be allowed. Merely because a person is a Member, he cannot do anything he likes; that is the positions. That it is the positions in the British Parliament, and we want to be in line with them in this. I am opposed to any amendment, and I want the clause as it stands to be accepted. As regards the reference to the House of Commons, I see no harm, especially as recently we have becomes a member of the Commonwealth of Nations. This is in tune with what we have been doing, and we can do so, till we give up the English language altogether, as you yourselves suggested yesterday.

Mr. President : We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything.

The Honourable Dr. B.R. Ambedkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : No. 1625, Mr. Kamath's amendment.

The question is:

"That in clause (3) of article 85, for the words 'as are enjoyed by the members of the house of commons of the Parliament of the United Kingdom at the commencement of the Constitution' the words 'as were enjoyed by the Dominion Legislature of India immediately' before the commencement of this Constitution be substituted."

The amendment was negatived.

Mr. President : Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is:

"That in clause (4) of article 85, after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President : Then Prof. Shah's amendment No. 1631.

The question is:

"That after clause (4) of article 85, the following new clause be inserted:—

- (5) In all matters of the privileges of the House of Parliament or of members thereof the house concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof."

The amendment was negatived.

Mr. President : Now I put article 85, as amended by Shri Jaspat Roy Kapoor's amendment No. 1627, to vote.

The question is:

"The article 85, as amended, stand part of the Constitution."

The motion was adopted.

Article 85, as amended, was added to the Constitution.

Mr. President : Before we adjourn, I desire to make one suggest to the House. Members are probably aware that there is going to be a meeting of the All-India Congress Committee at Dehra Dun on Saturday and Sunday next. The suggestion has been made that we might adjourn for one day; but I do not think we should stop the proceedings of this House because of this meeting. I suggest that on Monday instead of meeting in the morning, we may meet in the afternoon, if that is acceptable to the Members. On Monday we may meet in the afternoon instead of the morning, to enable those who return from Dehra Dun to attend our session. I suggest five to eight o'clock in the evening on Monday next.

Honourable Members: Yes.

Mr. President : The House now stand adjourned till tomorrow at 8 o'clock.

The Assembly then adjourned till Eight of the Clock on Friday, the 20th May 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 20th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Maulana Hasrat Mohani (United Provinces: Muslim): Mr. President, Sir, I beg to bring to your notice a very serious matter about the suppression of a major portion of the proceedings of this House as published in the Constituent Assembly Debates of the 5th January 1949 (page 1267). The proceedings say that the Honourable Sardar Vallabhbhai Patel moved that the Bill to amend the Government of India Act be taken in to consideration. As a matter of fact, he moved for leave to introduce the Bill I wanted to oppose that motion and urged that I had a right to do so at that stage. But the Vice-President did not allow me to speak. He declared that if I wanted to say anything he would put it to the vote; it was rejected. None of these is in the printed Report. Who is responsible for suppressing these things? I want that all these things should be placed in the printed proceedings, so that people may know that the Vice-President did not wish to hear anybody whom he did not like.

This is a very serious matter and I would invite your attention to it.

Mr. President : I understand the honourable Member's point to be that certain things happened in the last Assembly which do not appear in the printed proceedings, and his complaint is that a correct report should have been given of all that happened there. I am not aware of what happened at that stage and I cannot say anything without looking into the matter. If the honourable Member has got any complaint he may kindly give it to me in writing so that I may have it investigated.

DRAFT CONSTITUTION—(Contd.)

Article 86

Mr. President : Article 86.

(Amendments Nos. 1632 and 1633 were not moved.)

Mr. Z. H. Lari (United Provinces: Muslim): Sir, I move :

“That in article 86 the words ‘and until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the legislature of the ‘Dominion of India’ be deleted and the following new proviso be inserted:—

‘Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister:

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.’ ”

Sir, this amendment consists of three parts, but it is the third part which is the soul of the amendment and I will take it first. It is that a salary be fixed for the Leader of the Opposition. The House knows well, and it may take it

[Mr. Z. H. Lari]

from me as gospel truth, that I have not in me the germs of a future Leader of the Opposition. But I move it for four weighty reasons. Firstly, I feel that it is necessary to promote parliamentary opposition which along with the rule of law and a strong press constitutes the bulwark of democracy. Secondly, I want to give statutory recognition to the institution of parliamentary opposition, which unfortunately has come to be regarded in certain circles as tantamount to sedition, and thereby dispel a misconception. Thirdly, I want to create conditions in which a dead chamber may revive into a lively legislature. And lastly, I want to complete the edifice of parliamentary democracy which is being transplanted from the surroundings of England to Indian environments. With your permission, Sir, I will elucidate these four points I have mentioned.

In spite of strenuous efforts made by some Members, this House rejected the conception of Presidential Cabinet that prevails in America. Even the solution of a coalition cabinet that is in vogue in Switzerland did not find favour with the House which has approved the system of party government as obtains in England. This Party government means that the powers of the state for the time being are vested in a party and through that party in a number of individuals. Every one knows that power corrupts and absolute power corrupts absolutely. It is also a truism to say that every party that comes into power tries to make its hold permanent. The only check on degeneration of party government into a despotism is the existence of another party which keeps a strict eye on the doings of the cabinet and the party and thereby prevents degeneration of a party government into a dictatorship. Besides, there cannot be a proper functioning of any party government unless there is constant criticism of the doings of that party. There is always discussion and at least correction of various policies that are pursued by that party. Apart from that I feel that in the absence of an alternative party the very party which is in power begins to disrupt and cliques grow thereunder. If you look, not beyond the seas, but within all the party governments as they obtained in India during the last ten years, in all those legislatures where there was no effective opposition, not only have Cabinet members begun to resent criticism but in the parties themselves there have grown factions which have led to the downfall of one ministry after another. There have been challenges, counter-challenges, and there have been attacks even on the ground of misappropriation of public money and the like. The reason is that the party government is not brought face to face with a strong opposition to make them feel that they have to face public opinion. And who is to create public opinion? Who is to make the public aware and take interest in the doings of Government, unless there is opposition in the House to bring all the actions of Government into the lime-light? Everyone knows that in these days the functions of Government have grown and any party which wants to be wide-awake and effective must be a whole-time opposition. You can not have a whole-time opposition unless there is a leader who devotes all his time and energy to fostering responsible opposition throughout the country. It is not necessary only to have an opposition in the House, but that opposition must be broad-based; it must have public opinion throughout the country to back it. I therefore feel that you can not have a vigorous and wide-awake opposition working in the legislature and outside unless it has a leader who is a whole-time worker and is paid, as is done in England and other countries.

You know that so long as the conservatives or the other rich people were one party or the other in Opposition in England, there was no necessity of paying the Leader of the Opposition. But, the moment Labour formed the Opposition in England—I dare say that in India it is only either the Socialists or the Communists that can form the opposition—they fixed salaries for the Leader. In India, as I said, you can have Opposition of only middle class people. You can not expect that class to throw up a man who will devote all his time and all his

energy to create a party unless he paid. Therefore I feel that in the interests of creating an effective opposition as soon as possible it is necessary that we should have a provision like that which I have placed before you.

But, besides this, as I suggested at the outset, during the last ten years there has not been any effective Opposition at all either in the Dominion Parliament or in the Provincial Assemblies. The result is that there have been utterances from certain responsible persons which have gone to suggest as if the party and the State are same. I know of them, but I do not want to place before the House those utterances and create misunderstandings. But everybody must be aware that there have been utterances by responsible Prime Ministers, not of the Dominion, but of the Provinces, which have given rise to misgivings as if to criticise the Government in power is something like sedition. But the moment you accept the amendment I have placed before you, you give statutory recognition to the existence of the Opposition, this misconception that has grown in the country, that if you criticise the Government it means you want to create disaffection, will disappear.

There is second reason why I want that this provision should find a place in our Constitution and it is that that at the very outset of parliamentary democracy, we must not create a condition in the country wherein one-party Government becomes permanent and a party thinks that it has come into power and it has to remain in power for all time to come. It is necessary to create a psychological change. I can not point to so many utterances which have made the public at large feel that the Party and the State are convertible terms, that if you criticise the Party you necessarily try to weaken the foundations of the State. In England that is why the Opposition is called His Majesty's Opposition. Those words are enough to create the impression in the minds of the electorate that the Leader of the Opposition has also a role to play and function to discharge and that therefore when he does anything in his capacity as Leader of the Opposition he is doing nothing but his duty. The same impression I want to create here by having this amendment inserted. If this is inserted the public at large and everybody will feel that the Constitution itself recognises the existence of the Leader of the Opposition and that when he criticises or attacks the Government and carries on agitation in the countryside and rouses public opinion against the party's misdeeds, really he is doing a duty assigned to him by the Constitution. This is my second reason.

My third reason, as I said, is that if there is no effective Opposition we will have dull Chambers; not only dull Chambers but, as is said in some papers, the legislature becomes 'docile, meek and submissive'. Does that not create a bad impression in the public mind that the legislature is a mere sham, that it does not do any work, that members get up to criticise simply for the sake of appearing in print, that the amendments are all withdrawn and that whatever comes from the Treasury Benches is accepted without the change of a comma or a full-stop. It is not an interesting, but a dull Chamber. The result is that the public loses interest in all parliamentary work. Democracy cannot function unless the public evinces interest therein. What is the way to create interest in the public? How is it possible to make the public feel that its destiny is being moulded in the legislature by means of frank and open criticism and after due deliberation? Who is to create that interest? I find that in all the legislatures in the Provinces the Opposition has been dwindling. In our own Dominion legislature there is no Opposition whatsoever and the result has been only tall talk somewhere at some places by certain individuals. There has been no well-informed criticism. Neither has there been any effective Opposition.

Therefore the third reason which I placed before you for consideration is that if you want to avoid becoming a dead Chamber, if you want to avoid loss of all

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interest by the public in parliamentary activities, and ultimately in democracy itself, it is necessary to have an institution like the one which is there in other countries.

At every stage you say you prefer British Institutions. You say at every stage the everything that is good is to be found in British institutions, in party Government. If that is so,—and I feel there is a great deal of truth in that—then it is necessary that you should have all the component parts of that parliamentary democracy so that it may not fail in India. The moment the British people felt that they must pay the Leader of the Opposition so as to keep the Opposition going, they accepted such an amendment as the one I have placed before you. The latest to accept this principle is South Africa. For all these reasons I feel that this amendment deserves consideration at your hands.

I have heard of two criticisms: one is, where is the Opposition party—where is the Leader of the Opposition, whom you are going to pay? My submission is this: you have to create conditions. The dangerous part in India is that we have begun this democracy by having one party and one party alone and that party is determined to keep others out. There is the case in the United Provinces where a man of the stature of Acharya Narendra Deo was not allowed to come in. The party in power did not think it necessary to have an Opposition. Therefore I say it is your duty as Constitution-making Body to create conditions in which a party may grow into an Opposition. If you say “let the party grow and then I will fix the salary,” it means that you do not want an Opposition. You have to create conditions so that the public may feel that the Opposition has also a duty and is of service to the country. Unless that feeling is created, you cannot have a proper Opposition.

The second criticism is that, what will happen if there is more than one party, what will happen if there are three parties? Whom are you going to pay? It is a curious criticism. Everybody knows that in parliamentary practice the biggest party constitutes the Opposition. All other parties, if there are more than two, are mere parties. The privilege of the Opposition goes to the largest party after the party occupying the Treasury Benches which is the biggest party. Therefore these two criticisms are absolutely unfounded.

As I said before, this amendment is the soul of all these amendments. But there are two other parts which I will take up now. Article 86 says that the members of Parliament shall receive such salary as may be determined by Parliament from time to time. It goes on to say that until other provisions are made, they will be paid according to the rules previously prevailing. Sir, you are framing a Constitution. Why encumber it with provisions like this? Is it not possible for Parliament, the moment it meets, to pass a Salary Bill? When in 1936 responsible legislatures came into existence was there any difficulty in enacting an Act for that purpose? When the Constituent Assembly came into existence was it difficult to decide what will be our remuneration?

The second thing is that in many new Constitutions the pay is laid down in the Constitution itself. It is not desirable to leave it to the Parliament to determine the pay from time to time, but if you are doing this, then you must fix the proportion between the member's salary and the pay of the Ministers. Why? For two reasons. In India unfortunately the gap between the classes is very wide. On the one side you find multi-millionaires, on the other side you find the poorest of the poor. The same disparity should not be there between the pay of the Members of the legislature and of the Ministers. I do not want that there should be a great disparity between the of a Member of Parliament and the Minister, so that the member of Parliament may feel that he will always have to please the honourable Ministers to get

some more remuneration. There must be some relation between the pay of the members of Parliament and the Ministers' salary for another reason. Once you have determined the pay of the Members of Parliament in relation to the pay of the Ministers, naturally you have to be careful what salary you fix for the Ministers so that the burden on the exchequer may not be very heavy. Therefore this serves two purposes. Firstly, it serves as a check on the great disparity between the salaries of the Members of Parliament and of the Ministers. No doubt it is true that the Minister work for twelve months and the members of Parliament work only for about four or five months. Even if you take that into consideration, the proportion comes to the same proportion that I have indicated. It is this proportion which is to be found in Australia and New Zealand. Therefore, what I want is this, that there must be some relation between the pay of the Members of Parliament and Ministers so that no inferiority complex may develop. The first two amendments are of very great significance, but you may or may not accept them. But the third raises a point of vital importance. I hope that the House will, irrespective of party decisions, take into consideration the reasons which I have placed before the House and consider how far it is desirable that they should recognise the principle of party opposition. It is very easy to say that we accept the principle, and say that when the Parliament comes into being, it will fix the salaries of members of Parliament. When you have such a voluminous Constitution running into hundreds of pages and sections, when you are not leaving even minor things to be determined afterwards, why leave such a provision to be determined afterwards, a provision which is really of vital importance, in the interests of democracy and in the interests of the proper functioning of party governments in this country? In India during the last several centuries we had despotism. We are just beginning with democracy. It is necessary that we must create conditions in which democracy may not prove a failure. We must take steps to ensure its success and one of the essential things is that we must ensure that when the new legislatures meet after the enactment of the present Constitution there is a full-fledged and vigorous opposition to make party governments a success.

(Amendment No. 1635 was not moved.)

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

“That in article 86, for the words ‘Legislature of the Dominion of India’ the words ‘Constituent Assembly’ be substituted.”

Sir, the present words are inappropriate. There is no body existing today which may be called the Legislature of the Dominion of India. Under the adapted Government of India Act as well as under the Parliament Act, the Constituent Assembly functions as the legislature of the Dominion of India for certain purposes. The only body that exists today is the Constituent Assembly, and the new Members of the Parliament of India would prefer to derive their succession from the Constituent Assembly rather than from the non-existing Legislature of the Dominion of India. At one time there was some difference between the allowances between the members of the Constituent Assembly sitting as a Constitution-making body and the members of the Constituent Assembly in the legislative section, but now all have been brought on the same scale. Therefore there is no practical difficulty whatsoever. I commend the amendment for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in Mr. Santhanam's amendment the wording should be “Constituent Assembly of India” and not merely the “Constituent Assembly”.

The Honourable Shri K. Santhanam : I have no objection.

Mr. President : Amendment No. 1637 is the same as 1636. All amendments have been moved, and now the amendments and the original proposition are open for discussion.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, the object of my standing before the House is to say a few words on the amendment of Mr. Lari. Mr. Lari's complaint about the omission of any mention of the salaries of members in the constitution and also his suggestion that the Leader of the Opposition should be paid a salary are suggestions which are intrinsically worth considering, but I do not think it is necessary that we should enumerate in the Constitution details such as these so long as there is no embargo in the Constitution on the payment of a salary to the Leader of the Opposition, and salaries to members of Parliament. At the same time I am afraid Mr. Lari used the occasion for riding a hobby horse by projecting into the discussion those matters which perhaps concern him immediately, *viz.*, those relating to the United Provinces politics. I wonder whether in considering the Draft Constitution it is possible for us to devise ways and means of creating an opposition such as he wants by, putting the provision in the Constitution which Mr. Lari desires. After all we are not placing any embargo on any opposition party coming into power. I am afraid, Sir, that for a long time I have been hearing, almost from 1937, ever since the 1935 Act came into operation in the provinces, of the cry made by people who unfortunately are without any chance of coming into office or power that there is no opposition, that the Congress Party is doing its best to see that an opposition does not arise, and that where an opposition exists it does not function. In fact I wonder how Congress Party or any other party that might take its place in the future can create an opposition as such. How can an opposition be created by paying salaries to the members of the opposition party or the Leader of the Opposition? Are you going to insert in the Constitution a Provision by means of which we set apart a particular amount in the budget for the purpose of creating an opposition? I would like members here who are not satisfied with the type of government obtaining in this country to tell us exactly what they want. Do they want that in the Central budget a sum should be set apart in order to create an opposition? Sir, a cry like, this in a House which is functioning in a business-like manner is something of a diversion and my honourable Friend Mr. Lari has provided such a diversion so that the proceedings of the House need not be considered very dull by people who read the papers. So far Mr. Lari has done a service by his speech but I think somebody has to say that this is hardly the time and the place to make complaints the existence of which cannot be helped by the party who is in power. Nor is it the place to provide anything statutorily because I do not think that an Opposition can be created merely by accepting the amendment of Mr. Lari. Supposing this amendment of Mr. Lari is accepted, which I think we should not, will an opposition be created? Will a Leader of the Opposition who is paid a salary be able to organise a party? Even granting that the Leader of the Opposition is paid the same salary, allowances and emoluments as the Prime Minister of India, does that mean that he would be able to create a party? I think the very eloquent arguments put forward by Mr. Lari are likely to mislead the House into believing that there is something lacking in the state of affairs at present, conditions which are not existing by means of accepting Mr. Lari's amendment, an amendment which ordinarily could have no place in the Constitution.

Reference was made by the honourable Member to the Opposition in the House of Commons, and in regard to British practice. Yes: I have followed the progress of payment of salaries to Members in the British Parliament

and also the creation of a status to the Leader of the Opposition and the payment of the salary to the Leader of the Opposition. All these have developed over several decades. I do not think there is anything to prevent the Indian Parliament of the future to provide for a salary for the Leader of the Opposition if it so chooses and if it is thought desirable and wise. I do not see the need to put in a provision like this in the Constitution here in respect of an article which merely is a permissive article; it merely gives permission for Parliament to legislate in future in regard to salaries and allowances of members and, between the time that the Parliament does legislate and the time that it meets, to allow the *status quo* to continue.

He also objected to the provision for *status quo* to be prolonged. I do not see what sense there is in objecting to a thing which is very reasonable. After all the Parliament of the future will have such a lot of work to do in the initial months of its existence and the payment of salaries to members or allowances to members will be, in comparison to the other important matters that it will have to face, comparatively unimportant and in fact, I would rather that the House had enable Mr. Ananthasayanam Ayyangar to moved his amendment which gives power to the President to vary salaries and allowances, if it is necessary, until the time, Parliament enacts a legislation, which would have made the *status quo*, the position as it is in the Government of India Act as adapted to remain in operation. Sir, I think the charge that Mr. Lari made that a provision for continuance of the *status quo* is wrong is absolutely baseless, because it would not be possible for Parliament of the future to attend to all and sundry and the hundred and one matters immediately and it might probably take two or three years before it might settle down to do something on the lines that Mr. Lari wants. I have no doubt the future Parliament and those who are going to be in charge of the destinies of this country would bear in mind the suggestion of Mr. Lari to pay a salary to the Leader of the Opposition, if that would encourage the creation of an Opposition, of a healthy Opposition Party. By all means let it, but to put a provision of the nature that he has suggested in the Constitution, I think is wrong, and the arguments he has adduced in favour of his amendment are far beside the point and completely beyond the knowledge and concern of this particular House. Sir, I oppose Mr. Lari's amendment and support the amendment moved by Mr. Santhanam and the article as it would be amended by that amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I oppose the amendment of Mr. Lari, not that I am against having a healthy Opposition. The Article, as it stands, is sufficiently wide to make a provision and it makes a provision for giving salaries to members of Parliament and also when providing for a salary for members of the Parliament, it does not say it must be uniform. It may take into note if there is a healthy Opposition and there is a Leader of the Opposition, and make a provision for giving him a special salary or a salary in a higher degree than the salary that is given to the other members. As I said the provision is wide, and there is no similar provision in any Act, in any Constitution in any part of the world saying that you must make provision for the Leader of the Opposition in the body of the Constitution itself. Rules and regulations have to be made by Parliament and there is nothing to prevent Parliament from making a law giving a salary to the Leader of the Opposition. Now, let us read the amendment that has been tabled by Mr. Lari. It says: "Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister". His Assessment of the worth of his members is that a Cabinet Minister is equal to three or four members of the House and it will be very wholesome incentive in the hands of the members of the House, for constantly agitating for increasing their allowances, so that the Ministers'

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allowances also may go on increasing. If the member's allowance must not be less than one-fourth and if it is Rs. 500, the Minister's salary must be four times that is, Rs. 2000 and if they claim Rs. 1000, the Minister's salary must be Rs. 4000 and so on. I do not see why it ought to be not less than one-fourth or more than one third; it becomes too rigid; you can say one-fourth or one-third or one-half, but there is a no meaning in fixing a proportion here, and I do not see there ought to be a definite proportion between a member's salary and the Minister's salary.

The amendment further says: "And provided further that the Leader of the Opposition shall be entitled to get salary payable to minister without Cabinet rank." If Government recommend that we may abolish ministers with cabinet rank, then the amendment of Mr. Lari goes to the wall. The moment our minister are made ministers without cabinet rank, than there is absolutely no provision for what Mr. Lari suggests, in so far as the wording in concerned. As regards the substance, since the 15th August 1947 the Constituent Assembly has been functioning as a Legislature to this day for nearly two years, but is there a healthy Opposition? I have noticed some keen opposition was there when a debate took place with respect to Hyderabad. On no other occasion was there an Opposition at all. Is there a policy, is there a programme? If there was an Opposition on communal matters, do we want to perpetuate that? If there is any section strongly opposed to Government which want to make this country an absolutely Socialist State here and now, I can understand it. You have no policy or programme. Are you therefore to go on as the Irishman said when he was ship-wrecked? He landed on an island and the first question he put was "Is there a Government"? And somebody said that there was and he promptly said that he was in the Opposition. Mr. Lari wants to create an Opposition. May I ask him whether there is an Opposition and what kind of Opposition, communal or healthy Opposition? I agree there ought to be a healthy Opposition. Perhaps they are wanting communal factions. Is there a communal party which will go as an Opposition? Are we to pander to communal bickerings and say to those who create them "You can carry on in the manner in which you have been carrying on, vertically, horizontally and diametrically and them I will pay in addition a salary"? I am really surprised to see this day the very protagonist of this healthy Opposition had an ample opportunity and I do not know why he did not start an Opposition. What is their policy or programme? Are they interested in the welfare of the country? Are their action calculated to improve the welfare of the country much better than what the Congress Party has stated in its manifesto? I therefore think that to say in the Constitution itself that there must be an Opposition is not necessary. You may leave this matter to the Parliament. If there is a healthy Opposition and for want of separate provision for his maintenance the Leader of the Opposition is not able to devote all the time and attention that is necessary in the interests of public welfare and democracy, in the interests of parliamentary administration and in the interest of bringing to the notice of the public the defects in the administration, then there is time enough to make such a provision. The article as it is does not prevent any such provision being made. But, from now on just to dangle an opportunity or temptation in the way of a number of members is not proper. Four or five members may join and say, "we will have an opposition and an opposition leader, let him be paid a salary of Rs. 4,000 and let us divide it among ourselves". If a healthy opposition grows, certainly, there will be provision made. So long as there is no healthy opposition, a salary ought not to be placed on the Statute Book by way of temptation. I oppose Mr. Lari's amendment both in its form as impracticable and in substance, because there is no opposition and it not intended to create an opposition willy-nilly.

My honourable Friend Mr. T.T. Krishnamachari said that he approved of my amendment. I only wanted to say that during the transitional period, the question of salary may be modified by the President as there is a similar provision in the Government of India act giving power to the Governor-General to modify the rules regarding the allowances from time to time until provision is made by Parliament. Mr. Santhanam thinks that it is not necessary to clothe the President with such a power. I also agree that the President ought not to override the legislature. But, I think so far as allowances are concerned, nothing prevents Parliament from bringing an enactment to remedy any defects and we need not clothe the President with any extraordinary powers of this kind. I therefore advisedly did not move the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, article 86 says that Members shall get salaries fixed by Parliament and that till Parliament meets and fixes the salary, they should be paid the amount as members of the Dominion Legislature or the Constituent Assembly are paid at present. An amendment had been moved by my honourable Friend Mr. Lari to the effect (i) that members should get their salaries which should be one-fourth of what a Minister of Cabinet rank would get, that is, he had fixed that whatever salary is fixed for a Cabinet Minister, one-fourth of that should be the salary of each individual members, and (ii) that there should be a Leader of the Opposition and that Leader of the Opposition should get the same salary as a Minister of State, that is not of Cabinet rank. I have very carefully listened to the speeches of my honourable Friend Mr. Lari and of the two preceding speakers. The argument of Mr. Lari appears to be very sound that a salary has to be fixed. There has to be a Leader of the Opposition. The argument of Mr. Ananthasayanam Ayyangar is that there should be no Leader of Opposition at present on account of communal groups. But, there will be no communal groups in the future, because, there is not going to be any reservation of seats and even if there is going to be reservation of seats, there are not going to be separate electorates. Everybody feels that there should be a Leader of the Opposition.

On the other hand, there is a flaw in the argument of Mr. Lari and it is this. You will find that wherever there is a Parliament on democratic lines, there are leaders of the opposition and there are members of Parliament and all of them get their salaries. But, their salaries were never fixed by the Constitution. The salary of the Leader of the Opposition and of the members in every country has been fixed by an act of Parliament. Whether it is the Dominion of South Africa, Canada, Australia or New Zealand or any other Dominion, you will find that this is the case. While this is the case everywhere, why should we create a new thing and include this in our Constitution? After all, in a Constitution, we need not go into the details. We must fix the principle. There is the article which says that salary shall be paid to the members. What that amount will be, will be decided by Parliament and not by this House. For this reason, I am not in agreement with the amendment. If you will permit me, Sir, I would make the task of Mr. Lari easy and obviate all difficulties by proposing an oral amendment. I would suggest that instead of putting it as one-fourth of the salary of a Minister, the salary of the members and the Ministers should be equal. Then, I think everybody would be happy.

With these words, I oppose the amendment.

Shri Biswanath Das (Orissa: General): Sir, I believe that Mr. Lari has proposed an amendment which is unfair to the country and unfortunate in itself.

Let me first take the provision in article 86 of the Draft Constitution. It lays down that Parliament shall provide for such allowances as were being

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given to the members before the operation of the Constitution and afterwards that the Parliament will determine, by law, the salary and allowances that are to be given to members. If Mr. Lari had wanted to agitate in the way he has proposed to do, the proper course for him was to come before the Assembly when a law was proposed to be enacted after the elections in terms of the Constitution that we are going to pass.

Sir, the Constitution provides for salaries and allowances for myself, I do not believe nor do I go with those who profess to advocate Parliamentary democracy that members should be paid salaries for the work that they have to do in their constituencies or in the Assembly here. I believe, Sir, that allowances, without pay, is the desirable course. However, we have to submit to the joint wisdom of the honourable Members of this House and we agree to the scale of pay and allowances to be fixed hereafter by law by Parliament. That being the position, I for myself and some friends like me feel that no pay is called for under the circumstances but we have to submit to the joint wisdom of the Members. However, that does not make one feel to say that parliamentary democracy that is going to be installed in this country should give a statutory recognition to the Opposition, not only give recognition to the Opposition, but also provide a scale of pay for the Leader of the Opposition. I plead with Mr. Lari to point me out any Constitution in the world which is in operation today wherein a fixed salary has been provided for in the Constitution for the Leader of the Opposition. True it is that the Leader of Opposition in British Parliament gets his scale of pay and status equal to that of a Minister but that has nothing to do with a specific provision in the Constitution. Sir, parliamentary democracy needs the existence of two parties *viz.*, the majority party in charge of office and the minority party to play the functions of Opposition so as to give it full work. Therefore Opposition is a necessary evil. An Opposition party is also a necessary evil in the operation of Parliamentary democracy that is however in itself and by itself no justification why a specific provision should be made as it is sought in the amendment in the Constitution of this country. After all, many things have to be done by precedents for course of events that have to come in the future. I do not find any justification whatsoever for giving a statutory recognition to the Opposition and to the Leader and also to his status and pay.

Having said so much about the Opposition Leader, I come to his proposals regarding the scale of salary he proposes for the members of the House. I feel it is unfair to the country, a country wherein the differences in the earning capacity of the top man and the people who are down trodden is so wide that the scale of pay that he proposes for members merely perpetuates the existing order and is therefore far beyond my conception. The scale of pay that he proposes is to range between one-fourth and one-third of the pay of a Minister. If the existing pay of Ministers is going to be Rs. 3,000 as has been fixed by Statute by the honourable Members of this House, then his one-third and one fourth fixes the scale of pay of members is to range from Rs. 750 to Rs. 1,000/- a month. I put it straight to him whether it is fair to himself and to his country to propose to fix a scale of salary to range between Rs. 750 and Rs. 1,000/- for each member of the House.

Mr. Z. H. Lari : We are getting Rs. 1,300 a month now.

Shri Biswanath Das : He may be getting Rs.1,300 if he is a member of too many committees and if he is a member who attends the Assembly regularly. Even then I would plead with him that his facts are far from being correct. Because no member to my knowledge draws Rs. 1,300 a month as allowance.

I am one of those members who choose to draw only Rs. 30 feeling that Rs. 45 a day is too much for a member and I for myself, an ordinary worker. I do not need Rs. 45. I know there are members in my province who draw their monthly salaries as members of the Assembly and straightaway hand over to the Secretary of their District Congress Committee and receive a scale as fixed by the Congress Committee in preference to the pay that they draw and they go on as whole-time workers. That being the position I think he has been very unfair to his constituents and to his country in bringing a proposal such as this before the House.

Sir, for myself I feel that I can have absolutely no truck with any point covered in his amendment and I feel that it is unnecessary, unfortunate and undesirable. Therefore I support clause 86 as it is, however much I would desire that there should be no scale of salary fixed for the honourable Members of this House who ought to agree to work and serve the country being satisfied with the allowances that the Assembly would fix for themselves.

Kazi Syed Karimuddin (C.P. & Berar: Muslim) : Mr. President, the amendment moved by Mr. Lari is a very important amendment and all those speakers who have spoken in opposition to Mr. Lari have given two grounds: Firstly, that in no Constitution in the world there is such a mention or provision: Secondly, that such a salary of the Opposition Leader is based on conventions. I have heard with great interest the speech of Mr. Das who thinks that opposition is a necessary evil. If there were any doubts as to the importance of the amendment, after listening to his speech I am now convinced that in this country there are people who think that it is a necessary evil and it is very necessary that such a thing should be embodied in the Constitution itself. Sir, Mr. Krishnamachari said that this is not a question of principle but it is a question of detail. My submission is that in this country when we find that Opposition is not tolerated, it is neglected and generally it is punished, it is very necessary that the Constitution should create a Statutory Opposition. There is no democracy in the world which can function efficiently without opposition. The mistakes and failures of the Party have to be pointed out by the Opposition and the party in power has to be vigilant because of the Opposition in the House. India is a new-born democracy, where we find in every province, even in the Centre in this Dominion Parliament, the Opposition is not tolerated and is treated with scant courtesy. What is happening in the provinces? Because of the Public Safety Act, because of other measures, the Opposition Leaders or those who are in opposition are threatened, not only threatened but the Opposition parties in the provinces are dwindling. The only reason is that if a Muslim opposes, the Government says that he was a believer in the two-nation theory and that he does not give up his opposition and his opposition is not to be tolerated at all. If a socialist opposes, it is said that he is an enemy of the Government and if a Communist-opposes, he is of course a dangerous character. This is the state of affairs that is prevailing in the provinces and in the Dominion Parliament. Therefore this is the greatest occasion to create a Statutory Opposition. Mr. Lari has said that this is a question of principle. This is not a question of salary, My submission is that if the Leader of the Opposition is granted a salary, he will be able to devote all his time in criticising the Government and in carrying on campaign against Government in power if there are mistake and failures. Therefore, my submission is that this is an occasion when there should be Statutory opposition and by accepting the amendment of Mr. Lari you will be accepting that a healthy Opposition in the country is very necessary. Mr. Ayyangar has said that a healthy Opposition is to be tolerated. In my opinion, if it is to be left to the party in power to decide what is healthy criticism, and what is unhealthy criticism, then, in my opinion, every criticism of the party in power

[Kazi Syed Karimuddin]

will be treated as unhealthy, and every opposition against the party in power will be treated with scant courtesy. Therefore, I support Mr. Lari's amendment and I commend it to the House for its acceptance.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I beg to support Mr. Lari's amendment so far as the second proviso is concerned. I support the amendment on principle; but I should request the House also to consider the amount of the pay. I support the amendment as it has raised a very important constitutional principle. I should, first of all, ask the House to consider the principle itself. It is not the pay that matters. It is rather a statutory recognition of an opposition. It is rather giving the Opposition a recognised place in the Constitution. It is this important principle that is involved in the amendment. The question of pay and other things dwindles into insignificance in the face to this important consideration. I would there, draw the attention of the House to this important aspect of the question.

Three very important and sober Members of the House, namely, Mr. T.T. Krishnamachari, Mr. Ananthasayanam Ayyanagar and Mr. Biswanath Das were at great pains to oppose the amendment. They were labouring under a great difficulty in explaining away this important proposition. Mr. Krishnamachari who is a great economist tried to play the part of a lawyer, in finding out legal argument against this proposition. Mr. Ayyanagar, of course, is a great lawyer, but I am sorry to find that he did not rise above a mere lawyer. Sir, opposition in a democratic House is a great necessity. It is an indispensable condition of all democratic institutions. We propose to call ourselves, and we propose to make our country, a "democratic sovereign republic". If we cannot ensure any opposition, we should rather call the constitution that of an "undemocratic, sovereign republic". It is the essence of democracy that there should be effective Opposition. Mr. Krishnamachari has said that pay "does not create" an opposition, and he is of opinion that the opposition must "grow up" and it is something that cannot be "created". But he failed to notice that pay gives the opposition a status and it also recognises the Opposition. The difficulties which are felt by Members of the Constituent Assembly sitting in the Legislative side and who want to oppose Government measures are very great. For the absence of an effective Opposition, I submit, the House gets spoilt. The very tolerance which an effective Opposition will engender among the majority Party, is lost. As soon as some criticism is made, some Members of the majority Party get impatient. As soon as arguments are advanced, the so-called prestige of the Government is supposed to be at stake, and therefore those arguments are opposed, resented, and sometimes treated with indifference and contempt, Yesterday I made a motion which was, to my mind, a very logical one, but it was characterised as absolutely illogical and absurd by Dr. Ambedkar. I do not blame him for that. It is the result of a situation of having a huge majority party, in the face of a tiny, microscopic opposition. It is the absence of an effective opposition that creates this situation. It is the result of huge confidence backed by a huge party-it is that which creates this indifference, and also intolerance of Opposition. I submit, Sir, that the want of an effective opposition induces the Government to proceed in a careless fashion, regardless of public opinion. And what has been the result? People outside lose all interest in the proceedings. They believe that in the Assembly, the Members have nothing to do beyond crying "ditto" to what is said by the Government. I submit that this is not good or healthy for the growth of a real democracy. There has already been very unhealthy Opposition to governments in the Provinces. There has been in the Provinces a very unhealthy growth. I should like that the Congress should resign. There is now no alternative Government that I can think of. Therefore, I feel that the Congress should be in power for some time to

come. But I would put in this condition, that it should try its very best to create and encourage some amount of opposition. Opposition can thus be and should be created. I would submit that the Leader of the Opposition should not only be given pay, but ample secretariat facilities. Those members who had the unfortunate, and unpalatable duty of opposing the Government felt the difficulty of the absence of secretariat help, and in those circumstances opposition has not grown very much. It is therefore the patriotic duty of every Member of this House to see that an effective opposition grows. If you want to be a stable government if you want to be in the good books of the people, if you are not desirous of creating anti-Congress feeling in the country which is growing very fast, if you think that you should keep the people from joining the forces of disorder and chaos, it is very necessary to consider this matter very seriously. It is very necessary for you to create an opposition, if necessary be some members volunteering to go to the opposition and making it healthy and strong. It is by such recognition and encouragement that you can create a healthy opposition. Then, Mr. Krishnamachari has said that the provision should find no place in the Constitution. He further says that opposition should grow convention. That has certainly been the case in England where everything has grown by convention. There the Leader of the Opposition gets a pay of £ 2,000 and secretariat facilities. But so far as our Constitution is concerned, it is a written constitution, and when we have made a special mention about the pay of Ministers and the pay and allowances of members in our Constitution and when you make no mention of the pay of the Leader of the Opposition, then the acknowledged, rule of interpretation would be that the Constitution does not desire to give the Leader of the Opposition any pay. I should, therefore, think that this should have a special place in the Constitution, though the question of the amount of pay and other things may be open for consideration.

I, therefore, ask this honourable House to consider the important principle first of all and make up their minds as to whether they should agree to the principle of creating and fostering opposition for the safety of the country, and secondly decided what pay should be given to the Leader of the Opposition. If the principle is agreed to, the fixation of pay should be a minor matter.

I submit, Sir, that one of the arguments of Mr. Ananthasayanam Ayyangar struck me as somewhat surprising. He points out that the amendment links the pay of the Leader of the Opposition with that of a Minister without Cabinet rank and he has posed a question: Suppose we abolish the post of minister without Cabinet rank, what will happen to the Leader of the Opposition? This looks like the quibbling of a lawyer. He overlooked the fact that we may create the post of a Minister without Cabinet rank, though we may not appoint one, or we may even remove him. As I have already said the exact amount of pay, or the exact provision relating thereto is not a matter of great importance. At any rate, I feel that his argument is without foundation.

During the debate the three distinguished honourable Members of the House said nothing about the status of the Leader of the Opposition. I am glad that none of them questioned the need of an organised opposition.

Another argument used by Mr. Ananthasayanam Ayyangar is that the present Opposition has no definite programme. I quite admit, in all humility, that there is now no opposition at all and, therefore, no recognised programme. It is this very situation which this amendment seeks to remedy. I agree that the opposition is not organised; it has no Secretariat; it has no money, it has not enough strength to meet an organised Government like that of the Congress. I say that it is the desire of many members of the opposition to support the Government, when they agree with its policy and oppose it when

[Mr. Naziruddin Ahmad]

they feel that the Government is wrong. They support it while they may, and oppose it when they must. Mr. Ayyangar again suggested that the only opposition was in regard to the Hyderabad issue. Somehow or other, in one form or another, the communal bogey is raised now and then in this House. I think, Sir, that is a very weak and unsubstantial argument. In fact, the opposition—if there is one—the very feeble opposition which you find in the House has never been confined to the Hyderabad issue. There have been great controversies, of course, carried on by humble individuals in their individual capacity, but that is not confined to the Hyderabad issue. Take the well-known question of the Hindu Code Bill. On this issue the Muslims of India have shown that they are not communal in their outlook. The Muslims have been wholeheartedly supporting the Government in all their constructive measures. So, I submit, that the communal argument should be brushed aside, killed and buried once and for all.

I therefore reiterate that if you want to exist as a Government, respected and loved by the people, you should, for your very existence, create an opposition. Now there is a feeling in the country that the party in power is all too powerful. In fact, there is a feeling even amongst the Members of that Party that the party is all-too powerful and that individual members have no liberty. Even the Press of late has not been very articulate. In fact, the debates in the House which put the Government in an inconvenient light are hardly reported in the Press and it is hinted that this is due to some unofficial pressure on the part of Government.

This, Sir, is not a healthy state of affairs. Where are you leading the country to? China is already engulfed in the Communist menace; Burma is in the grip of Communism; the Communist activities have already reached the gates of Bengal. Would you place the country under the Communists? If you want to save the country from the Communist menace, you should create a healthy opposition, and thereby rally the country in your support. If you have no opposition, the people will lose their confidence in the Government and the country will go to the dogs.

In Bengal—I speak with personal knowledge—there is widespread antipathy against the Congress Government. Allegations of a very serious type are levelled against the Ministry. I believe the country should be saved from chaos and disorder towards which we are heading. We want to strengthen the hands of Government; we do not want to join the forces of disorder, chaos and the like. It is by creating a healthy opposition that you will be saving the India of the future.

Sir, I think I have wasted the time of the House for a few minutes longer than I had desired to, but I feel the subject is extremely important and deserves more care and attention than it has so far received. Sir, I beg to support the principle of the last part of the amendment.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I think this simple article has taken an unreasonably long time to get through the house and Members on both sides—I beg to be excused for saying so—have brought in issues which are, strictly speaking, not at all relevant to this article. Sir, the article is a very simple one. It provides that the future Parliament should decide the salaries and allowances of the Members from time to time by law. By law is meant by a Bill of Parliament. There will be ample opportunity in that Bill to provide for the salary of the Leader of the Opposition—if there is one—as well as to correlate the salaries of the Members of the House with any functionaries of the State if the Parliament

so desires. All those things are naturally left for the Parliament of the future to decide. I think the provision in the article is so appropriate that there should be no quarrel so far as its inclusion in the Constitution is concerned.

Many Members have said that the party in power should create an opposition, as if the creation of an opposition is like the planting of a tree. Nor is it appropriate to bring in the present state of affairs either in the provinces or at the Centre. This is not also I think an opportunity for ventilating individual or group grievances, so far as the present state of affairs is concerned. We are discussing the future Constitution of India. So in this article there is hardly room for controversy. It is open to the next Parliament to have a Leader of the Opposition and pay him if necessary even more than the Prime Minister. The post may be deliberately and substantively created, if that is thought necessary. I do not think this was the proper place to bring in the matters which have been brought up. If the Honourable mover of the amendment attached such importance to the existence of an opposition and statutory provision for the Leader of the Opposition he should have taken up matter independently and in any case on some other occasion where a discussion could have been said to be appropriate. So I feel that the article is thoroughly unobjectionable and should be adopted.

There is one thing I must say and that is that the members' salaries must be adequate. I feel very apprehensive that there should be many members of Parliament who are needy. It is a dangerous thing which will vitiate the proper working of democracy in any country, more so in a poor country like India. So although certain people are nervous about talking of their own allowances, etc., and some people feel patriotic about sacrificing them partly or wholly, I should insist there should be no temptation in the way of these members so as to make them deviate from the path of strictest duty and honesty. I am constrained to say this because of the conduct of many members of the legislatures all over India, central and provincial. I would ask any Government to face the bitterest criticism from an understanding public, but pay adequate salaries and allowances to the members so that they may not be tempted to derive any benefit from any other source whatever.

Sir, I oppose the amendment and support the article.

Shri R.K. Sidhwa (C.P. & Berar: General): Sir, I am always in favour of opposition but it must be a healthy opposition. But we have heard today that there must be opposition just for the sake of opposition and the supporters of the amendment went to the length of saying that there must be a regular campaign carried on against Government. My Friend Syed Karimuddin said that for opposing the Government you must pay the Leader of the Opposition. I strongly oppose that.

Kazi Syed Karimuddin : On a point of personal explanation, I said there should be a campaign against the mistakes of Government.

Shri R.K. Sidhwa : Yes. That is, exactly what I say. You stated there should be a campaign. Sir, healthy opposition to bring Government to their senses is surely commendable, but to say there should be a campaign to discredit government is another thing. My Friend Syed Karimuddin mentioned Communists and Socialists and said whatever they stated we disliked. That is not so. What I object to is the kind of campaign, which is neither healthy nor in public interest. There is a class of people who believe in throwing acid on innocent people, burn tram-cars and buses, throw bombs. Supposing their leader happens to be in the legislature and he advocates this kind of policy, could it be called healthy opposition? I would call that class of people enemies

[Shri R.K. Sidhva]

of the country, and surely their leader you expect to be paid from the public exchequer? It is of course true that the Leader of the Opposition in England is paid out of State funds. I do not know the history of that. But there the Leader of the Opposition not only opposes but sometimes also supports the Government. But whatever may be the case in England I am opposed to the principle of paying the Leader of Opposition out of the State funds. Every party has its own funds and if the party desires that he should be a whole-time worker let their party pay him; the State should not pay him for its being attacked in and out of season. It is a very wrong principle and I strongly oppose it.

Shri Ramnarayan Singh (Bihar: General) : Sir, although I do not support Mr. Lari's amendment I think he has raised an important constitutional issue which the House should consider. I am not an admirer of the British constitution. They have got the party system which I think strikes at the very root of democracy. We are told that in that country there is opposition and the Leader of the Opposition is paid. It is a sound principle. In this country we have just got freedom, and our own party *i.e.*, the Congress Party, has got no opposition to it. I have seen how things have been going on here and I feel that there must be a strong opposition to criticise our actions and review them. In the Mahabharata we find Bhishma and Arjuna fighting in opposition to each other and there Bhishma tells Arjuna how to kill Bhishma himself. In the same way I think that Government is good which creates and encourages opposition and which is always ready to retire. A Government which does not like opposition and always wants to be in power is not a patriotic but a traitor Government. In several provinces, in my own province of Bihar, I know what is happening. There is no opposition to the Congress Government and all sorts of scandals are going on. I therefore feel that there should be an opposition to criticise Government and this opposition should be encouraged. This need not be in the constitution itself but we must consider it as soon as the constitution is passed.

The Honourable Dr. B.R. Ambedkar : (Bombay: General): Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said. Their reply I find is quite complete.

I however, accept the amendment of Mr. Santhanam for the substitution, of the words, 'Constituent Assembly', for the words 'Legislature of the Dominion of India.'

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

The question is:

"That in article 86 the words 'and until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the legislature of the Dominion of India' be deleted and the following new proviso be inserted:—

'Provided that salary payable to member of the Parliament shall not be less than one fourth or more than one-third payable to a Cabinet Minister.

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.' "

The amendment was negatived.

Mr. President : The question is:

“That in article 86, for the words ‘Legislature of the Dominion of India’ the words ‘Constituent Assembly of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 86, as amended, stand part of the Constitution.”

The motion was adopted.

Article 86, as amended was added to the Constitution.

Article 87

Mr. President : The House will take up article 87 for consideration. I find that amendment No. 1638 of Professor Shah is covered by article 98 which comes a little later.

Prof. K.T. Shah (Bihar : General): Sir, the second part is not covered. I shall move the second part only. Sir, I beg to move:

“That the following new clause be inserted before clause (1) of article 87:—

‘Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

Sir, I consider this a very important right of the people, and a privilege of Parliament, if I may say so, that the people whom the Parliament is supposed to represent should have the right to approach directly the sovereign legislature, and place before it grievances, or cases which require Parliament’s attention as the body concerned in any legislation pending before it.

Such petitions may also be in regard to any financial matter or administrative acts. In all such cases, in the ordinary way, unless some privilege of this kind is provided, the people, who theoretically are supposed to be sovereign will have actually no right of presenting their grievances, or views on any given matter to the sovereign legislature.

It may be—it frequently happens—that given the life of Parliament extending over five years, the House of the People elected four or five years before such an occasion arises, may have ceased to be in real contact, and therefore any real response to the wishes of the people, which in the period during which it has been in sessions has changed and is changing considerably, may be impossible.

Nor, is there any regular machinery by which Parliament may from time to time be able to test popular opinion, except in so far as the Ministry or Government chooses to place these matters before it. I suggest that the people should have the right of direct access for placing before Parliament on any given subject their views, and getting the Parliament’s reactions thereon. It is in this country an old privilege of the poorest, that fancying themselves aggrieved, or any individual fancying himself aggrieved, had a direct right of access to the Sovereign, even in the days of the old absolute emperors. In modern times, when we profess so much regard to the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people, I think it is not asking too much at all to suggest that this which forms admittedly the right of the people and the privilege of Parliament in Britain on which our Constitution is modelled, should also be included in our Constitution, namely that the people should have the right of direct access to Parliament and present petitions for that purpose.

I do not quite like the word ‘petition’ myself; but, as it has been used and as it is of popular use, in this matter I have adopted the word in presenting

[Prof. K. T. Shah]

this part of my amendment. Another amendment had been tabled by me, which I have however not moved, in which I was seeking to reverse the process, namely that Parliament should also, on given issues, ask or try to ascertain the opinion of the people, so to say by a parliamentary referendum, rather than by a Governmental referendum. I felt, however, that given the present tendency, given the accepted traditions, it might sound too novel or too radical to suggest that Parliament should ask the people their opinion, though in the strict theory of our democracy, in my opinion at any rate, it would be nothing unusual if some such procedure had been included. I repeat that that particular amendment I have decided not to move. But I think this one, its counterpart, is perfectly orthodox, and correct, and there ought to be no objection to it from any quarter, because it is a recognised thing. It is being frequently done, and there is no reason to believe that in this country it would either be unwanted or abused. I commend the motion to the House.

(Amendment Nos. 1639, 1640 and 1641 were not moved.)

Prof. K. T. Shah : Amendments Nos. 1642 and 1643 are on a similar subject. May I move them together, Sir? It will save time.

Mr. President : Professor Shah may move amendment Nos. 1642 and 1643 together.

Prof. K. T. Shah : Sir, I beg to move:

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be brought back to the House of the People but shall be deemed to have been passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

and

“That after clause (5) of article 87, the following new clauses be inserted :—

‘(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the people is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.’ ”

Sir, these are intended to economise the time of the House, and simplify its procedure in enacting legislative proposals coming before Parliament. It may be that a Bill after it has been duly passed by the Council of States, in all its stages in that House, and before it is sent up to the House of the People, the contingency may arise that the Lower House is dissolved before it takes up

the Bill. I suggest that such a Bill should not be deemed to have lapsed altogether; and that if it is agreed to by the new House of the People in the same form in which the Council of States had passed it, it should be deemed to have been passed by both Houses of Parliament, and be sent up to the President for assent. That is to say, it would not be returned a second time to the Council of States after being passed through all stages by the new House of the People as a new Bill brought in for the first time before the House, and then once again go through all the stages in the Upper House.

I think this stands to reason, especially having regard to the fact that both Houses are equally competent to initiate and deal with all Bills except money Bills. It may be in practice that the most important legislative proposals will originate in the Lower House. If not passed in the Lower House before dissolution, then automatically all such legislation pending there at any stage would be deemed to have lapsed, if the House is dissolved. But in the event of the Lower House passing any legislation in all its stages before its dissolution, and having so passed, sending up the proposal to the Upper House before it itself is dissolved, there should be no need to regard that Bill as having lapsed, because it has already been duly passed by the House of the People. The Upper House may then take it up and carry it through in all its stages, and if the Upper House agrees to it in the same form in which the Bill was sent up by the House of the People, there ought to be no need to send it back to the new Lower House elected after the dissolution.

I can conceive of a contingency in which this position may be abused; *i.e.* when controversial legislation may have been hurried through almost in the last days when the House of the People is likely to be dissolved, and the Upper House also being in sympathy with it might pass through all stages such Bills before the new Lower House can take up the matter. Difficulties of this nature might arise, especially if the newly elected House is dominated by a different party from that which preceded it. In that contingency, however there is no need to fear that the will of the people will not prevail, because either the Council of States may not pass the legislation passed by the previous House of the People, or if passed by it, it may not be assented to by the President. There is also nothing to prevent the new Lower House from enacting any other Bill contravening or rejecting the measure passed by its predecessor at the last moment. I think that by this amendment time would be saved, simplification of procedure would be assured, and duplication of work avoided.

No doubt these are merely procedural matters, which can be regulated primarily by each House or Parliament by rules. But if injunctions of this kind are incorporated in the Constitution itself, my amendment is necessary, as it will help to economise time. I commend it for the acceptance of the House.

Mr. President : I have received notice of certain amendments by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : (United Provinces: General): There are two amendments. One is to article 87 and the other is to article 88. I am not moving the amendment to article 87.

Mr. President : These are all the amendments that we have got. Now the amendments and the original proposition are open to discussion.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I am opposed to clause (2) of article 87 wherein it is stated that no Bill shall be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses. I do not see why in a democratic state, the representatives of the people should be placed on a par with the nominated representatives of the provincial governments. The supremacy of the Lower House must be recognised if democratic institutions are to function efficiently. It has been said

[Shri Brajeshwar Prasad]

that this clause is in conformity with the federal principles which have been agreed to in the beginning. I for one, Sir, do not see why anyone should trot out such an argument now. I do not consider this Draft Constitution to be purely Federal in character. It is partly federal and partly unitary and more unitary than federal in character. When we accepted federation the position prevailing in India was quite different. We did not accept the principle of federalism to accommodate the provinces. The provinces were never in our minds when we accepted the federal principle. We accepted federalism in order to meet the challenge of the Two-Nations theory of the late lamented Mr. Jinnah. We accepted federalism in order to persuade the Indian Princes to surrender a part of their sovereignty. Now the position is entirely changed. This country, Sir, has been unfortunately partitioned. The Princes today have been liquidated. The States today are in a far worse position than the Indian Provinces. Last time when the Constituent Assembly met I had spoken in this House in favour of a unitary State. Sir, I do not know what is in the mind of our Constitutional Pandits. Federation tends towards a unitary form of Government. I do not know of a single instance in history where a unitary form of Government has degenerated into federalism. As far as federalism is concerned, Sir, almost in all federal countries the constitution has tended towards a unitary form of Government. I visualize the role of a second chamber at the Centre merely as an advisory body. It should be a check upon hasty legislation, but to emphasize the federal character of the Constitution will be a retrograde step and those persons who talk and emphasize this aspect of our Constitution do a great disservice to the country. The Provinces were always subordinate to the Government of India and to say now that they have got autonomous and federal powers is really to turn the hands of the clock back. We are reversing, Sir, the process of history: we are emphasizing federalism, which is conservative in character and is full of weakness. Sir, I oppose clause (2) of article 87.

Mr. President : The question is:

“That the following new clause be inserted before clause (1) of article 87 :—

‘(1) Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘in the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States, the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any, amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That after clause (5) of article 87, the following new clauses be inserted :—

‘(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by

the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.' "

The amendment was negatived.

Mr. President : The question is:

"That article 87 stand part of the Constitution."

The motion was adopted.

Article 87 was added to the Constitution.

Article 88

Mr. President : The motion is:

"That article 88 form part of the Constitution."

(Amendment No. 1644 was not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I move:

"That in clause (1) of article 88, after the words 'If after a Bill' the words 'other than a Money Bill or other financial Bill' be inserted."

Shri M. Ananthasayanam Ayyangar : May I ask the honourable Member to see the proviso to article 88 which says: "Provided that nothing in this clause shall apply to a Money Bill." What is the advantage in transposing this clause?

Shri H. V. Kamath : Then the proviso itself must be altered. Sir, it is more or less a formal amendment, but it makes for clarity. I am all for brevity, but not at the expense of clarity and precision. Articles 89 and 97 deal with Money Bills and other financial Bills. Therefore, when we refer to a Bill in article 88, it would have been far happier and far clearer if we had laid it down specifically that the Bill referred to in this article was something different from or something other than a Money Bill or other financial Bill. My honourable Friend, Mr. Ananthasayanam Ayyangar, has rightly pointed out, and I am grateful to him for having done so, that there is a proviso here at the foot of clause (1) to this article referring to the exception made in regard to Money Bills. But, Sir, the language used in article 87 reads: "Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills." So if we want to be consistent in our language and in our phraseology, I think Mr. Ayyangar would agree that even the proviso should have been drafted in consonance with the language used in article 87, article 87 refers to not merely Money Bills; but Money Bills and other financial Bills, and therefore, I would accept an amendment if moved by Mr. Ayyangar modifying the proviso in the light of my amendment and including other financial Bills along with the Money Bills referred to in this proviso.

Mr. President : What will be the effect, supposing your amendment is accepted and the proviso is not deleted? There is no amendment to delete the proviso.

Shri H. V. Kamath : That is unfortunate, I realize. But unless the proviso is modified suitably a sort of lacuna will remain. If you would permit Mr. Ayyangar or anyone else to move a suitable amendment to the proviso itself including financial Bills with Money Bills referred to in this proviso, then it would meet my objection completely; otherwise, I fear there would be a lacuna which might do violence to the consistency of language used in the two articles.

Shri Prabhudayal Himatsingka (West Bengal: General): There is amendment No. 1649 to delete the proviso to clause (1) of article 88.

Shri H. V. Kamath : If that is accepted and mine is also accepted, that suits the situation admirably. I therefore move my amendment.

(Amendments Nos. 1646, 1647, 1648 and 1649 were not moved.)

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

“That in clause (2) of article 88, for the words ‘both Houses are’ the words ‘the House referred to in sub-clause (c) of that clause is’ be substituted.”

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

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

“That in clause (2) of article 88, before the last word ‘days’ the word ‘consecutive’ be inserted.”

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam : Sir, I move:

“That in clause (4) of article 88, the words ‘total number of’, be deleted.”

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent.

The point here is simple. What is intended is that the decision of the joint sittings should be taken by a simple majority. In all such cases, the usual wording is majority of the Members of both the Houses present and voting. The wording, ‘total number’ is generally used only in connection with absolute majority.

The Honourable Dr. B. R. Ambedkar : I shall be grateful if my honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards?

The Honourable Shri K. Santhanam : I agree, Sir.

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

“That in clause (4) of article 88, the words ‘for the purposes of this Constitution’ be deleted.”

Sir, this, to my mind, is an instance where these words could be omitted without sacrificing precision or clarity of meaning intended by this article. Whatever is drafted here, whatever article comes before the House is for the purposes of this Constitution. We are dealing with the Constitution. Nobody I am sure, would presume to say that anything which is embodied in this Constitution is for purposes other than this Constitution. Therefore, it is to my mind redundant, needless and superfluous to state in any article, or in this article for the matter of that, that the result of the voting shall be deemed to be for the purposes of this Constitution. I therefore move that these words which are to my mind unnecessary may be deleted. I move my amendment.

Mr. President : Amendment No. 1657. I think it is a drafting amendment.

(Amendment Nos. 1658 and 1659 were not moved.)

Shri T. T. Krishnamachari : I am afraid the amendment is of a drafting nature, seeking to omit certain words which are redundant.

Mr. President : Amendment No. 1660 is of a drafting nature.

(Amendment No. 1661 was not moved.)

Mr. President : I have received notice of an amendment from Prof. Shibban Lal Saksena, that for article 88, the following be substituted. I am afraid that it is not an amendment to any amendment. To which amendment is this an amendment?

Prof. Shibban Lal Saksena : To any of these.

Mr. President : How will you put it? It is an amendment to the original article and not an amendment to any amendment. You cannot circumvent the rule about time by merely saying that these are amendments to amendments. This is really not an amendment to any amendment. Notice of this should have been given before.

Prof. Shibban Lal Saksena : It is an amendment to amendment No. 1650.

Mr. President : How will you substitute the whole of article 88 in the place of these words?

Prof. Shibban Lal Saksena : What I am suggesting is that a joint sitting should be avoided.

Mr. President : That is a different matter. I entirely see that point that you want to avoid joint sittings. But you should have given notice of this in due time. You want to bring in this amendment which goes to the root of the whole matter in the shape of an amendment to an amendment, with which it does not fit in at all.

Prof. Shibban Lal Saksena : This procedure has been adopted throughout in bringing such amendments.

Mr. President : I do not think I can allow this kind of amendment which is really not an amendment to an amendment.

Prof. Shibban Lal Saksena : Then, may I speak on the clause, Sir ?

Mr. President : Yes, I shall see if all the amendments have been moved.

The article as well as the amendments are now open for discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, in this article a provision has been made by which in the case of disagreement over Bills between the Lower House and the Upper House, there shall be a joint sitting to solve the dispute. I had given notice of an amendment which you have thought fit to rule out; but I hope that the purpose of that amendment is worth consideration by this House.

Firstly, I do not think that an Upper Chamber is a very good institution. I am opposed to that itself. But as the House has accepted that, I do not want to say anything more about it. What I do want to say is that the Upper House should not have an authority out of all proportion to its importance. We have based our Constitution on the model of the British Parliament. There we have got the House of Lords and the House of Commons; but, authority of the House of Lord is very much restricted. What I want is that here too, the Upper House should have limited authority and this should not be almost equal in power with the Lower House, as it becomes if there are joint sittings. According to the present draft, a Bill which is passed in the House of the People will go to the Upper House and if rejected there, then there will be a joint session in which the members of both Houses will sit and decide the matter, by simple majority. Thus the Upper House may succeed in rejecting a Bill passed by the House of the People which will not have sufficient authority to give effect to that legislation by its own simple majority. I think the Upper House, even though it will be elected by the Provincial Legislatures, will not be as representative of the people as the Lower House. The Lower House will be directly elected. The Upper House will be elected by the Lower House and will have also some

[Prof. Shibban Lal Saksena]

element which will be nominated by the President. Secondly, it will be a House one third of whose members will be elected every second year so that at least 2/3rds of the members will not represent the new spirit but will be persons who shall have been elected 2 years and 4 years before. I therefore, think that the Upper House will not represent the feelings of the people of the time and to give the members of that House the same status as the members of the Lower House is, I think reactionary. Even if we want to give the Upper House some status, we must give it only that authority which the House of Lords has got in England by the Act of 1911. When the House of Lords does not agree to a Bill passed by the House of Commons it automatically becomes law after the lapse of a particular period. In our Constitution if the Upper House rejects a Bill, there will be a joint sitting and the fate of the Bill will be decided by the Joint Sitting. I think the British model which we have adopted should also be adopted in the present case as well, and if a Bill is rejected by the Council of States, then the will of the House of the People should prevail, and the Bill must become law, irrespective of the fact that the Council of States has rejected it. If the Council of States delays the consideration of the Bill and the delay is longer than a specific period, then the Bill should be taken as passed. The Upper House should not be in a position to stultify a Bill passed by the Lower House. That is a very salutary principle and even in England where the institution of Upper House began they thought it fit to limit the powers of the Upper House and it is not allowed to stultify the voice of the people expressed by the House of Commons. By providing for a Joint session we are giving the Upper House a vital power, the power to act as a check on the progress and the wishes of the people who may like legislation passed at a rapid speed to bring our country abreast of the great nations of the world. In our country when we are so much backward, we shall need to go quickly and we do not need such brakes from the Upper House as the clause provides. I, therefore, feel that the practice in Britain should be adopted. The provision of the British Parliament has been copied by other Commonwealth countries as well. In Australia if in six months the Bill is not considered by the Upper House, then the House of People passes a Resolution that the Bill should be passed. In England even that is not required; so the purpose in both places is the same, that the House of Commons should have the final say and its voice should not be stultified by the Upper House. I therefore hope that in considering this clause, members will bear in mind that they are laying down a principle which may act as a brake on our progress. I do not want that this provision should disgrace the Constitution which we are passing for our new Free Independent Democratic Republic. I therefore hope that this provision for a Joint Sitting of both the Houses should not be accepted by the House and I hope that my words will be borne in mind by the House.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, I oppose the amendment moved by Mr. Saksena.

Mr. President : I did not allow him to move the amendment. He spoke opposing the article.

Shri Chimanlal Chakubhai Shah : I speak in support of the article. Under article 87 we have provided that a Bill shall not become an Act unless assented to by both the Houses. That is a thing which we are perfectly clear about. Then the question arises as to what to do when there is a difference of opinion between the two Houses. It is possible that we may say that where there is difference of opinion we will leave the matter at that stage and allow the Bill to lapse and not make it an Act. That would be following the American model but there are some who feel that it should not be left at that stage and we should provide some machinery by which the difference of opinion between the two

Houses can be resolved. There are three or four ways in which that machinery can be provided. One is the British model under which after a certain lapse of time the Bill passed by the Lower House automatically becomes an Act if certified by the Speaker. Then there is the Irish model under which the Lower House should again pass a Resolution accepting the Bill once more on which it will become an Act. But the analogy between these two models and our model has no application at all because both those are unitary constitutions whereas ours is a federal constitution. In a Federal Constitution, the Upper House is composed of the representatives of the various units or states. It is not like the House of Lords which is hereditary or which by its very character is conservative. Our Upper House is elected by the representatives of the various States and therefore it is as representative as the Lower House itself in a particular manner. The object of providing an Upper House in the Centre is to see that the States' voice or the voice of the units is adequately represented. Therefore the third way of providing to resolve the deadlock is by Joint session. Now that is not a very ideal solution no doubt but it is a solution which is as good as possibly can be conceived of. When both the Houses meet together it is possible that either by compromise they resolve their differences or the majority of the Lower House will carry the day. But it is not right to say that the Lower House alone will be the sole judge of a particular Bill and that after a particular lapse of time the Upper House will have no voice, because the Upper House is intended to represent in a Federal Constitution the voice of the Units and they are as much elected representatives of the people as the members of the Lower House. I, therefore, submit that the solution embodied in Section 88, if not ideal, is as good as can be conceived of in a Federal Constitution and to copy the British Model is not proper because the composition of the House of Lords is entirely different from the one which we have conceived of under our Constitution and secondly it is a unitary Constitution whose model can have no application to a Federal Constitution. I, therefore, support article 88.

Shri M. Ananthasayanam Ayyangar : Sir, I am only trying to answer the point raised by my Friend, Mr. Kamath, by pointing out to him that there is a proviso under article 88 that—

“Provided that nothing in this clause shall apply to a Money Bill.”

But he thinks this is not exhaustive and therefore wants to put in the words “or other financial Bill”. With all respect to him, Sir, I submit that these words ought not to be there and I say this for these reasons, In this article a difference has been made between Money Bills and other Financial Bills. Money Bills come under article 90 which says—

“For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters.....”

It is only in cases where these matters alone are dealt with in a particular Bill that a procedure is prescribed, as distinct from other financial Bills where not finance matters exclusively, but other matters also are incidentally raised. It is only a Bill which relates only to those matters provided in article 90 that can be introduced only in the House of the People. So far as the Upper House is concerned it has no jurisdiction in these matters except in the matter of recommendations which should be sent to the House of the People. The House of the People may or may not accept the recommendation. In either case the Bill will be considered to have been passed by both the Houses. So far as other financial Bills are concerned, another procedure is prescribed; and if any question arises as to whether a Bill is exclusively a Money Bill or not, the decision of the Speaker of the House of the People is to be final. So far as

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other matters are concerned, they can be introduced in both Houses of Parliament and both Houses have jurisdiction to go into them. Under article 88 they have exempted Money Bills alone. With respect to any other financial Bill, other than money Bills, which deals with other matters also, both Houses have got jurisdiction. In the case of Money Bills, they have to be introduced only in the Lower House; the Upper House can only recommend. I would therefore, submit that this amendment is unnecessary and contrary to the scheme of the Act. So Mr. Kamath's amendment is out of order.

Shri S. Nagappa (Madras: General): Mr. President, Sir, it was not my intention to speak on this article, but coming as I do from Madras I have been experiencing how the two Chambers have been working, and how the Upper Chamber retards the work of the legislature. So far as the Congress Legislative Party is concerned, it is meeting more or less as a joint sitting, for everything that has to be passed in the Legislature is being discussed there. As is well-known, it is in the Lower House that all Bills originate, but its number happens to be 215 and in a joint sitting with the Upper House, it is not a deciding factor. So the Upper House restrains legislation that is passed by the Lower Chamber. If the Upper Chamber does not agree with anything, it can suggest amendments, and send back the Bill to the Lower Chamber, and, it is the duty of the Lower Chambers to rectify any defects. If the Lower Chamber does not agree and there is a dispute, then there is a suggestion in the clause for joint sittings. If there is a clear division, say of 100 on one side and 150 on the other, then practically the Lower Chamber will become the deciding factors in the joint sitting. But the Upper Chamber does not represent the people directly. The Upper Chamber as constituted today happen to be representatives of the petty bourgeoisie and bureaucrats, and wherever there is any trend towards progressive legislation, they try to delay matters and even to torpedo legislation passed by the Lower Chamber. As a common man, as a layman, that is how I feel about this matter. Whether there should be an Upper Chamber or not was considered by the Provincial Legislature and I was against it for a very long time. But we are now going to have adult suffrage and all sorts of people will be getting into our legislatures, may be people of experience and also people of little experience. So it is better to have experienced politicians nominated in the Upper Chamber so that we may have their experienced politicians nominated in the Upper Chamber so that we may have their experience and guidance. That was the reason which made me support the proposal to have an Upper Chamber. I do not think there was such a provision in the 1935 Act; but after all we did not work that Act fully. We had experience of it only for about a year and a half from 1937 to 1939. Within this period I do not think we ever had occasion to have a joint sitting. But as I said, in the Congress Legislative Party, we members who belongs to both Chambers assemble and discuss and decide, and so we were practically having joint sittings. We also found that progressive legislations brought in by members of the Lower Chamber were more or less retarded or delayed by the Members of the Upper Chamber. But anyhow, the Honourable Dr. Ambedkar has explained that as it is constituted, the Upper Chamber will not act as a check or rather that it will not stand in the way of progressive legislation. The people to be elected to the Upper House will not be elected from the landlords or zamindars, but by the people of the Lower Chamber; so I agree to this. The members of the Lower Chamber will understand what sort of people are to be elected to the Upper House. That does not mean, however, that once elected it will be the will of the people who elected them that will prevail. It is the will of the people who are elected that will prevail in the House. That is the point to be considered to see that progressive legislations are not checked. In my opinion, in order to have a kind of check over the hasty legislations of the Lower Chamber, it would be better to have a time-limit during which the Upper Chamber must deal with a particular question.

During that period the Upper Chamber must either accept the legislation passed by the Lower Chamber or send it back to the Lower Chamber for rectifying any defects. If the Lower Chamber sticks to its own guns, and says that it will not yield, then by the sheer lapse of time it would become the law. That, I think would have been better than having joint sittings. But anyhow there is provision in this Constitution that after ten years, if the people feel the necessity for it, they can change any clause or article in it, and they say, "practice makes a man perfect." After some time, as in the future legislature there will be the real representatives of the people, they will be in a position to know actually the difficulties they have to face because of this clause, and they may effect the necessary change. Sir, with these words, I conclude.

The Honourable Dr. B. R. Ambedkar : Sir, there is only one amendment moved by my friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words "for the purposes of this Constitution". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words "for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification, for the fear they have expressed, but as other Members have pointed out this is not any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it and see what happens in course of time. If there fears come true I have no doubt that some honourable Members will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

Shri H. V. Kamath : In view of the light shed on my amendment (No. 1645) by Mr. Ananthasayanam Ayyangar, I beg leave of the House to withdraw the amendment.

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

Mr. President : The question is:

"That in clause (2) of article 88, for the words 'both Houses are' the words 'the Houses referred to in sub-clause (c) of that clause is' be substituted."

The motion was adopted.

Mr. President : The question is:

"That in clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

The motion was adopted.

Shri H. V. Kamath : In view of the clarification made by the Honourable Dr. Ambedkar I beg leave of the House to withdraw my amendment No. 1656.

The amendment was by leave of the Assembly withdrawn.

Mr. President : There have been two amendments which have been adopted to this article 88. I shall now put the amendment article to the House.

The question is:

“That article 88, as amended, stand part of the Constitution.”

The motion was adopted.

Article 88, as amended, was added to the Constitution.

Article 89

Mr. President : I think amendment No. 1662 is a verbal amendment and it is covered by the other provisions in the Draft Constitution.

Prof. K.T. Shah : It is a much more strong assertion of an undoubted privilege or right of the lower House. I do not see why it should be put negatively.

Mr. President : That right is there. It is not taken away by the provisions of the constitution.

Shri H.V. Kamath : Sir, at the outset I have to reiterate what I had to point out yesterday that I sent these as two separate amendments but unfortunately they have been lumped up in one. I have no desire to find fault with the office which is working at high pressure. I ask your permission to move the second part of the amendment only.

I move:

“That in clause (1) of article 89, for the words ‘not be introduced in the Council of States’ the words ‘be introduced in the House of the People’ be substituted.”

Mr. President : Is it not an amendment of a formal nature?

Shri H. V. Kamath : I freely admit Sir that it is an amendment of a formal nature and so I shall leave it to the Drafting Committee for consideration.

(Amendment No. 1664, was not moved.)

Shri T. T. Krishnamachari : Sir, I beg to move:

“That in article 89, for the words ‘thirty days’ wherever they occur the words ‘twenty one days’ be substituted.”

The idea is that after a money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations. In actual practice the period of time involved might not be even more than a week. Thirty days is intended as an outside limit. At the time some of us framed this amendment, we were a little chary of suggesting a lower time-limit, than twenty-one days but I believe that a fortnight or fourteen days would be more than enough to cover all contingencies. If Dr. Ambedkar would agree and the House would give me leave I would like to substitute fourteen days instead of twenty-one days, as the former period would be more than adequate for the purpose. Sir, I move.

Mr. President : There are two amendments in the name of Mr. Naziruddin Ahmad (Nos. 1666 and 1667). They are amendments of a drafting nature.

So there is only one amendment to the article by Mr. T.T. Krishnamachari. The article is now open for discussion.

The Honourable Dr. B.R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. T.T. Krishnamachari. I would also agree to the further

reduction of the period to fourteen days. If the House will permit me to make such an amendment I should like to move that the period of twenty-one days as mentioned in the amendment be further reduced to fourteen days. I shall give my reasons for this change. In the British Parliament the House of Lords merely concurs in the financial provisions passed by the House of Commons; it has completely abrogated itself so far as finance is concerned. We are here making a departure from that position and are allowing the upper chamber to have some voice in the formulation of the taxation and financial proposals which have been initiated by the Lower House. As I said, we are conferring a privilege which ordinarily the upper chamber does not possess. At the same time we must bear in mind that the budget is a very urgent matter. Even now, as Members know, we do not give the Lower House more than six or eight days for the Finance Bill. It seems to me that to allow such a long period of thirty or even twenty-one days would result in hanging up such an important matter for a considerable length of time. If the Upper House wants to express an opinion fourteen days is a more than enough period.

Mr. President : The original question was:

“That in article 89 for the words ‘thirty days’ wherever they occur the words ‘twenty-one days’ be substituted.”

To that a further amendment has been moved that for ‘twenty-one days’ the words ‘fourteen days’ be substituted.”

“That in the amendment for the words ‘twenty-one days’ the words ‘fourteen days’ be substituted.”

The question is:

“That the amendment to the amendment be adopted.”

The amendment was adopted.

Mr. President : The question is:

“That the amended amendment be adopted.”

The amendment was adopted.

Mr. President : The question is:

“That article 89, as amended, be adopted.”

The motion was adopted.

Article 89, as amended, was added to the Constitution.

Article 90

Mr. President : Article 90.

(Amendment No. 1668 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Sir, I beg to move:

“That in clause (1) of article 90, the word ‘only’ be deleted.”

This article is a prototype of Section 37 of the Government of India Act which says that a Bill or amendment providing for imposing or increasing a tax or borrowing money, etc. shall not be introduced or moved except on the recommendation of the Governor-General. This means that the whole Bill need not be a money Bill: it may contain other provisions, but if there is any provision about taxation or borrowing, etc. It will come under this Section 37, and the recommendation of the Governor General

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is necessary. Now article 90 says that a Bill shall be deemed to be a money Bill if it contains only provisions dealing with the imposition, regulation, etc., of any tax or the borrowing of money, etc. This can mean that if there is a Bill which has other provisions and also a provision about taxation or borrowing etc., it will not become a money Bill. If that is the intention I have nothing to say; but that if that is not the intention I must say the word "only" is dangerous, because if the Bill does all these things and at the same time does something else also it will not be a money Bill. I do not know what the intention of the Drafting Committee is but I think this aspect of the article should be borne in mind.

(Amendment Nos. 1670 and 1671 were not moved.)

Prof. K. T. Shah : Sir, I move:

"(a) That at the end of sub-clause (a) of clause (1) of article 90, the words 'duty, charge, rate, levy or any other form of revenue, income or receipt by Governments or of expenditure by Government' be inserted; and

(b) That in sub-clause (b) of clause (1) of article 90, after the words 'or the amendment of law' the words 'or existing contract' be inserted."

This amendment is intended to amplify, in clause (a), the items mentioned as characterising or included in the definition of Money Bill, namely the imposition, abolition, remission, alternation or regulation of any tax, duty, charge, levy, rate, or any other form of revenue, receipt, or any other form of expenditure. This Draft Constitution has not yet included any article giving definition of important terms used in it, and hence this attempt to elucidate a crucial term in this article.

If it is intended that the word 'tax', as included in this clause, is to include all those other forms of public revenue or income, which I have particularised and separately included, then I am afraid, in the absence of clear definition clause, this is liable to mislead. It is quite possible that the ingenuity of lawyers may lead to the connotation of the word 'tax' to be so narrowed down, as to exclude many of the other items or categories of public revenues I have mentioned; and a Bill which would be substantially a Money Bill, but not include a "tax" by way of imposition, modification alteration, or regulation of "tax", narrowly construed, may not be regarded as a Money Bill. I think that would seriously increase the powers of the Council of States; and so it is of the utmost necessity that these other forms, also, of public revenue, income or receipt should be included, so that there could be no room for dispute in this matter.

After all, any student of Constitutional history would be aware that the struggles for supremacy between the House of Commons and the House of Lords in England almost invariably centered round the definition or scope of a Money Bill. The powers of the House of Lords to deal with money bills have been successively curtailed by including many matters, which, perhaps, previously were not part of the budget. By that means the supreme power of the House of Commons on financial matters has been now made almost unchallengeable.

The wording of this article as it is here leaves, according to me, considerable room for apprehension that the powers of the House of the People over matters financial will not be as wide and as complete as I had thought ought to be the correct position in representative democracy with responsible ministry.

It is for that purpose that I have inserted all those items which have in the past, in one way or another, cause some difference in other countries, and therefore should be clearly specified.

As regards the second part of my amendment, namely variation of any law or of any contract, that is still more important. The contracts of Government relate very often to borrowed money, and for the interest contracted to be

paid on such borrowed money, there may be variations and there have been variations. These variations are one-sided modification of a contract, which a sovereign Legislature is, of course, entitled to make; but that power should be in the House of the People, as part of its sole authority over money Bills and financial administration. For instance, the rate of interest on the Funded Public Debt has been frequently reduced in England. Now that is an act of sovereign authority, which no doubt belongs to the Legislature under the Constitution we are drafting. But it is part of a financial legislation; and, as such, should be within the competence only of the Lower House.

I also remember other instances. About fifteen years ago in the United States, contracts of even private individuals, in which the so-called "Gold Clause" had been inserted, were modified by an Act of the Congress. That is to say if a contract between an American citizen and his customer abroad required payment for goods or services to be made in gold, no matter in what currency the contract was expressed, that clause in the contract could be disregarded. If such contracts had remained unaffected, all measures taken by the Administration and the Congress touching the exchange value to the Dollar would have been of no effect, for no matter what happened to the local currency, the international contract was made in terms to be liquidated only in gold, or currency equivalent to gold, or bullion as the case may be. Now, the American legislature did enact that this kind of clause would be invalid. If it was allowed to stand, it would defeat the legislation that the administration had then got enacted. If you do not permit any such power to be included in the powers to the House of the People as analogous to a Money Bill, then I am afraid, in the age in which we are living you will leave out a very considerable margin of power to legislate to authorise attempt at modification of economic dealings, either between the State and the citizen or between citizen and citizen, which, in my opinion, ought to be included. If the principle is accepted very clearly that the supreme financial authority and control is in the Lower House only, there can be no objection to this suggestion.

It was with that view that I had suggested an earlier amendment, making in categorically clear that a Money Bill can only be introduced in the Lower House. The negative way, in which that clause has been framed, is open to some misconstruction and abuse. However, that amendment has not been moved. I am, therefore, now seeking to make clear what ought to be beyond doubt even in the basic Constitution, and should not be left to be elaborated either by rules of the House or standing orders or precedents. We have no precedents of our own, but have to create precedents. We cannot every time refer to the analogy to British Constitutional History. We need not leave room for legal ingenuity to be exercised at the expense of liberal institutions. On an earlier occasion it was stated in this House that this Constitution will provide a paradise for lawyers. I hope that would not be true. We must not leave our fundamental Constitution vague, uncertain, unclear by any words or phraseology, open to distortion by legal ingenuity. It is for this purpose that I have suggested this amendment, and I hope it will be acceptable to the House.

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

"That in sub-clause (e) of clause (1) of article 90, for the words 'the increasing of the amount of', the words 'varying the amount of, abolishing', be substituted."

It is not necessary for me to expatiate upon the need for an amendment of this nature, because it is common knowledge that when items of expenditure are charged to the revenues of India circumstances may so change that the need for incurring that expenditure may not be felt and the expenditure may cease to be incurred or it may be decreased or even increased. I visualise the possibility of

[Shri H. V. Kamath]

increase. But here this sub-clause visualises only one possibility and that is increase. Why, I ask, was 'decrease or abolition of such expenditure' not visualised? The question will arise, what are the various items expenditure to be charged on the revenues of India? For an answer to that we turn to article 92(3) which lays down that the following shall be expenditure charged on the revenues of India. I shall not read out the whole list. I shall content myself with bringing it on the notice of the House. There are six items, (a) to (f). If you examine them closely you will find that where as the Constitution provides in the case of the salary and emoluments of the President,—let us turn to article 48(4) which provides that the emoluments and allowances of the President shall not be diminished during his term of office. Well and good. But if we turn to the provision for the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States, or the Speaker or the Deputy Speaker of the House of the People, the relevant article does not state explicitly that the emoluments of the Chairman of the Deputy Chairman, or the Speaker or the Deputy Speaker of the House of the People shall not be diminished during their term of office, as is laid down in the case of President. I do not suppose that they will be diminished, but the Parliament being sovereign can diminish the emoluments of the Speaker or the Deputy Speaker or the Chairman or the Deputy Chairman. Comprehending this possibility, I have suggested the use of the word "vary". The word "vary" connotes to my mind both reduction as well as enhancement, increase as well as decrease. Therefore I appeal to Dr. Ambedkar and the House to accept the word "vary" as being more comprehensive and as being able to embrace in its scope both an increase and a decrease.

As regards abolition, that too is not beyond the bounds of possibility. If we turn to clause (3) of article 92 to which I have just referred, we will find that it refers to various items of expenditure which shall be expenditure charged to the revenues of India. Sub-clause (f) of this clause provides that any other expenditure declared by this Constitution or by Parliament by law to be so charged shall be charged to the revenues of India. I need not point out all the various items of expenditure which Parliament might decide to be chargeable to the revenues of India. There may be grants to various institutions, educational, cultural or social or otherwise which Parliament by law may decide to be chargeable to the revenues of India and then it may subsequently decide by law to do away with these. Therefore, Sir, this article as it stands does not include or visualise the possibility of a decrease or abolition of the items of expenditure which are charged to the revenues of India. To rectify this position and to embrace in its scope the various contingencies that may arise, I am moving my amendment, No. 1674, and I commend it for the acceptance of the House.

Mr. President : Amendments Nos. 1675, 1676, 1677 and 1678 are all verbal. All the amendments to this article having been moved, anyone who wishes to speak on the amendments and the article may do so now.

Shri M. Ananthasayanam Ayyangar : I will confine my remarks to the amendment moved by my Friend, Mr. Kamath. He referred to article 90, clause (1) sub-clause (e) which says "the declaring of any expenditure to be expenditure charged on the revenues of India or the increasing of the amount of any such expenditure." Now, it is only in case an expenditure is increased, then it becomes a Money Bill. He wants the substitution of the word "varying" for the word "increasing". Now I would only ask him to refer to the scheme and then if after understanding what the scheme of the framers is, he still wants this

change, that is another matter, but let us understand what the scheme is. If we turn to article 97, it says, "Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President.....". Even for a Money Bill, for increasing, the recommendation of the President is necessary. The proviso to this article says that "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax". Now it has been the usual procedure even under the existing law that when an amendment is moved to a Money Bill or a financial measure for the reduction or of any tax, the recommendation of the Governor-General is not necessary. Likewise, the same thing is copied here. But the imposition of a tax is a burden imposed upon the community. When you seek to reduce or abolish a tax, no such recommendation is necessary. It is left to the House, and the previous enquiry by the President whether it is in the interests of the community or not is not necessary. That is the scheme. The earlier part of article 97 refers both to a Bill and an amendment, whereas the proviso refers only to an amendment. Therefore a Bill for the purpose of reducing or abolishing a particular tax has to be recommended by the President otherwise it cannot be introduced. A Bill which seeks to increase an existing tax or increasing the expenditure also requires the sanction of the President, but the difference between a Bill, seeking to increase the amount of expenditure and a Bill seeking to reduce or abolish it is this: In one case where increase is sought, it can be introduced in the lower House only, whereas in the case where a reduction or abolition is sought, it can be introduced in any House, both the Houses having jurisdiction. In the case of reduction or abolition, the Bill can be initiated in either House, whereas my Friend wants to confine that power to the Lower House only. Increase stands on a different footing because it has to be considered whether India is in a position to bear that. Whether any expenditure should be chargeable to the revenues of India is a matter which requires investigation, since any expenditure chargeable to the revenues of the country is not subject of the vote of the House, even though the House can generally debate on it or discuss it. But it is taken out from the purview of its vote. In that case, should we not restrict the limitation imposed upon the right of the House by confining it only to increase? You want to take away the jurisdiction of the House in the matter of decrease as in the case of increase. I would respectfully submit that he has misunderstood the scope of this clause and is trying to restrict unnecessarily the authority of the jurisdiction of both Houses in a matter where only in respect of money matters and in respect of increase only the jurisdiction is confined to the Lower House. I am therefore not in agreement with the amendment moved by Mr. Kamath.

Shri H. V. Kamath : On a point of clarification, may I ask my honourable Friend to point out the article which provides that any Bill which relates to reduction or abolition can be introduced in either House, because proviso to article 97 relates to reduction or abolition of any tax, and not to other items of revenue and expenditure. The whole scheme is not very clear and I do not know how it is clear to Mr. Ayyangar. If he convinces me, I shall certainly reconsider my amendment.

Shri M. Ananthasayanam Ayyangar : So far as the amendment is concerned, an amendment to a Bill can be moved even without the recommendation of the President in so far as it relates to the reduction or abolition of a tax, but if it is a Bill specifically for the purpose of reducing, then the recommendation is necessary, but in the case of increasing, it must be in the form of a Money Bill. Let us refer to article 97. It is not a Money Bill at all.

Shri H. V. Kamath : Where is the provision?

Shri M. Ananthasayanam Ayyangar : It is a Money Bill only when it relates to increase. It is not a Money Bill when it does not relate to increase, and, therefore, it may come under article 97 and then require a recommendation or may not require a recommendation at all. My honourable Friend wants that there should be a recommendation and in addition it must be a Money Bill. As it is, when it is a Money Bill, only one House has got jurisdiction.

Shri H. V. Kamath : May I interrupt? I am sorry, but I want to have it cleared up. May I invite my honourable Friend's attention to the proviso to article 97(1) to which he has referred, which says that no recommendation shall be required where reduction or abolition of the tax is contemplated. What about other expenditure, about reduction and abolition of other items of expenditure. There is nothing in the whole scheme.

Shri M. Ananthasayanam Ayyangar : Then it would not be either a Money Bill or a financial Bill. Money Bill is one which comes under clauses (a) to (f) of subsection (1) of article 90. Now a Bill relating to increase of the amount of any expenditure alone is a Money Bill or a financial measure; if it does not relate to increase, that is, either reduction or abolition, it is not a Money Bill. That is why we want a recommendation. If this proviso relates only to a tax as I understood it, then tax means not all the matter provided for from (a) to (f). Now I find the word 'tax' has been used separately from the other provisions. Therefore that proviso does not necessarily mean a tax in any Bill or amendment relating to reduction or abolition of any of the expenditure provided in clause (1) (a). It is neither a Money Bill nor even a financial Bill. Therefore, it can be introduced freely in either House and without any recommendation whatsoever. Now the only question, therefore, is whether we should like to make it also in an exclusive category along with the measure for increasing. I would submit that we ought not to limit the scope or restrict the jurisdiction of either House even in a matter relating to reduction or abolition of any tax. A Bill to increase is given to the Lower House as an exclusive jurisdiction. The other Bills may be introduced freely without any restriction or limitation in either of these Houses. I am not in favour of this restriction, Sir.

Prof. Shibban Lal Saksena : Mr. President, in clause (2) of this article, it is said: "A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes." Now, Sir, a Bill providing of the imposition, abolition, or alteration of any tax by any local authority would not be a Money Bill. I personally feel, as Mr. Ayyangar just now pointed out, that if a Bill provides for an increase of taxation, or of a new imposition, the Bill will be a Money Bill, but here in this clause it is intended that it shall not be a Money Bill.

Mr. President : I think you are under a misapprehension. It can only provide authority to a local body to impose a tax, not the tax itself, but only gives authority.

Prof. Shibban Lal Saksena : I know that, Sir. I feel when any Bill authorises any body to impose taxes, that should also be a Money Bill. In fact, I think Prof. Shah's amendment which wants to add at the end of sub-clause (a) of clause(1) of article 90 the words, namely: "duty, charge, rate, levy or may other form of revenue, income, or receipt by Governments or of expenditure by Government", would be a much better provision. Sub-clause (a) only says "the imposition, abolition, remission, alteration or regulation of

any tax.” It has not included “duty, charge, rate, levy or any other form of revenue, income or receipt.” I would request the Honourable Law Minister who is in charge of this Bill to see that this sub-clause (a) is suitable amended. I feel that clause (2) takes away some power from the Lower House and makes it obligatory on the Government to place such bills which are properly money Bills before the Upper House. I do not think that in regard to such matters this should be so. I personally feel that many of the local bodies are today starved of revenue. They are partially without any funds today to do the huge work that they have got to do. I myself am in one of the Boards of a big district and I feel that unless the local bodies have got more revenues, they cannot carry out their programmes at all. In our Parliament we pass expenditure of crores of rupees in two or three hours time, but these local bodies are not able to raise in the whole year even a few lakhs for their most essential needs such as school buildings which have to be built and village roads which have to be repaired and similar other amenities of every day life. But here is a provision that such Bills which authorise local bodies to impose taxation shall not be Money Bills. They may thus be delayed. I think there should be some amendment to this section so that at least local bodies should not be handicapped by this dilatory process.

The Honourable Dr. B. R. Ambedkar : Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. Naziruddin Ahmad : I should also like to suggest that the position of the word ‘only’, in connection with amendment No. 1669 should be specially considered. It is a word which is absolutely misplaced.

Mr. President : There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word ‘only’ be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

Article 91

Mr. President : We shall take up the next article, 91

That motion is:

“That article 91 form of the Constitution.”

(Amendment No. 1679 was not moved.)

Shri Lokanath Misra (Orissa: General): Sir, I move:

“That in article 91, for the words ‘either that he assents to the Bill, or that he withholds assent therefrom’ the words ‘that he assents to the Bill’ be substituted, and the following words be added at the end of the proviso to the article:-

‘and if the Bill is passed again by the House with or without amendment and presented to the President, the President shall not withhold assent therefrom.’”

Sir, in moving this amendment, I am in the beat of company in so far as the Drafting Committee itself has suggested the same in a subsequent amendment. I beg to submit that when I move this amendment to take away the power from the President to dissent from any Bills passed by Parliament, I mean nothing more than saying that since our President is analogous to the King in England and as the King has no power of dissenting from any Bill passed by President this amendment is appropriate.

As regards the second amendment, without that amendment the proviso seems to be incomplete. Supposing the President sends back a certain Bill for

[Shri Lok Nath Misra]

reconsideration and Parliament comes to a certain decision, without this amendment, the whole action becomes incomplete and inconclusive and since this is also the view taken by the Drafting Committee, this amendment too should be accepted.

(Amendments Nos. 1681, 1682, 1683 and 1684, were not moved.)

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

“That in the proviso to article 91, for the words ‘not later than six weeks’ the words ‘as soon as possible’ be substituted.”

Mr. Naziruddin Ahmad : I have an amendment to this amendment, No. 94.

Mr. President : I think that is of a drafting nature.

Mr. Naziruddin Ahmad : There would be a difference in actual practice.

Mr. President : So, you consider it to be substantial?

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

“That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word ‘possible’, the words ‘may be’ be substituted.”

I beg to submit that this amendment will make some substantial change. The Proviso is to the effect that “the President may, as soon as possible, after the presentation of the Bill, return the Bill,” and so on. I want to make it “as soon as *may be*”. If we leave it exactly as Dr. Ambedkar would have it, it leaves no margin. ‘As soon as possible’ means immediately. Possibility which means physical possibility is the only test. It may leave on breathing time to the President. The words ‘may be’ give him a reasonable latitude. It would mean, “reasonably practicable”. This is the obvious implication. That is the only reason why I have suggested amendment.

(Amendment No. 1686 was not moved.)

Mr. President : Amendment No. 1687, I think, is merely verbal. Amendment No. 1688, I think, is the same as the amendment already moved by Mr. Lok Nath Misra.

Shri T. T. Krishnamachari : There is a slight difference in language. I think Dr. Ambedkar’s proposal will be the better one.

Mr. President : I shall put this to the vote. It need not be moved.

Amendment No. 1689: this is also the same as amendment No. 1688 of Dr. Ambedkar, We have taken it as having been moved. Is it necessary to move this? You can move it if there is some slight difference.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I beg to move.

“That in article 91, after the first proviso the following second proviso be added:-

‘Provided further that if after the President has declared that he withholds assent from the Bill or has returned the Bill with a request for reconsideration of the Bill or of a specified provision thereof, or of any amendment by him, the Houses of Parliament should, after reconsideration of his recommendations pass the Bill again with or without an amendment and return it to him for his assent, he shall not withhold his assent therefrom.’ ”

Sir, the present provision in article 91 provides for the action that the President has to take presumably on the first presentation of a Bill. But it does not make it clear what should be the procedure if a Bill is returned to the President without accepting any of the amendments suggested by him. Does it mean that he can again return the Bill to Parliament for reconsideration of his amendments? This will mean unnecessary delay and will mean that the Bill can be returned to Parliament more than once. My object in moving this amendment is to do away with this ambiguity and to make it clear that the President can return the Bill to Parliament with his suggestions once only, but if Parliament does not agree to the amendments that are suggested by him and returns the

Bill to him, he should not in that case return the Bill a second time for the re-consideration of Parliament. In the House of Commons any Bill which has been passed twice by the House of Commons automatically becomes law even if the House of Lords disagrees. In the same manner in the U.S.A. a Bill becomes an Act even if the President vetoes it, provided it is passed by two-thirds majority of the Congress. Some such provision should be made here in this article also so that unnecessary delay may not take place. With these words I move my amendment.

(Amendment No. 1690 was not moved.)

Mr. President : Amendment No. 1691 is covered by other amendments already moved Amendment No. 1692.

Mr. Tajamul Husain : Sir, I beg to move:

“That the following new clause be added to article 91:—

‘(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the Party that was in power at the time of the dissolution is returned in majority, the President shall vacate office and the Bill becomes an Act of Parliament.’ ”

Now, Sir, with your permission I will first, before I begin my submissions, read article 91 and the proviso to it. The article reads:

“When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President, shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the House with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.”

Article 91 says that when a Bill is passed, it is presented to the President, and the President’s power is that he either assents or does not give his assent. The proviso says that if the President does not give the assent, he returns the Bill for reconsideration. Then the House shall reconsider the Bill. My point is suppose the House does not reconsider the Bill or does not accept the suggestion made by the President, what will happen? no provision has been made in this article as regards this. Therefore I have moved this amendment. My amendment amounts to this. If the House does not reconsider or accept his amendment, then the Bill shall go back to the President. Then the President shall accept what has been sent by the houses and if he does not accept, then according to the English Constitution as I understand it, the House should dissolve itself. There should be re-election and if the party that is in power is returned again—according to the English Constitution the King must abdicate—then I want the President either to accept or he must be considered to have resigned his office and the Bill will become law by itself. This is my amendment. I think I am moving this in accordance with the English Constitution which we have been following in this House to a great extent. I commend to the House that my amendment may be accepted.

Mr. President : All the amendments have been moved. The original article and the amendments are now open for discussion.

Dr. P. S. Deshmukh : Mr. President, Sir, Obviously the article it was worded in the beginning was found to be defective in at least two particulars, as is clear from the fact that Dr. Ambedkar himself has moved one amendment

[Dr. P. S. Deshmukh]

suggesting the substitution of the words 'not later than six weeks' by the words 'as soon as possible'. The second difficulty which has been visualized and which is tried to be removed is by making a provision in case the President withholds the assent. The Provision intended is that when a Bill is presented for a second time, it shall be incumbent upon him *i.e.*, the President to give his assent and he shall not have the option to withhold the assent. So far as the first amendment of Dr. Ambedkar is concerned, I do not know if it is very necessary that the amendment should be accepted. The question for consideration is whether we should merely say that the President should give his assent as soon as possible or whether we should state any period within which he should do it. I think if the words 'not later than six weeks' are to be left as they are, then it is the duty of the President to indicate his decision as early as possible and in no case later than six weeks. So I am not fully convinced of the propriety of changing the wording as proposed.

So far as the other amendment is concerned, I think it is very necessary that there should be a proper provision in cases where the President withholds his assent. It is to be presumed that the President will always act according to the advice tendered to him by Prime Minister and unless any Bill passed in the House has the support of the Party in power, there is no possibility of any Bill being passed. So that question of withholding assent is not likely to arise unless the President finds himself under circumstances where he actually differs from and disagrees with the recommendations of the party and the Government in power. Under those circumstances, it is correct to presume that there is a conflict between the views taken by the Prime Minister of the Government of the day and the President, and when such a conflict arises there must be some solution of which the present House must think of and must make a clear provision with regard to this question so as to solve the difficulty of disagreement between the President and the Prime Minister. I think that so far as this question is concerned, the amendment that has been suggested does meet the contingency that is likely to arise, and I therefore, support it.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment moved by my Friend Mr. Misra, No. 1680, and to oppose the amendment moved by my learned Friend Dr. Ambedkar, No. 1685. My friend Dr. Deshmukh has ably supported the amendment of Mr. Misra and I do not propose to dilate further upon that. As regards the amendment moved by my learned Friend Dr. Ambedkar, I venture to state that he has not acted wisely in bringing this amendment before this House, and I am reminded of the saying that even Homer nods. And I think Dr. Ambedkar has tripped on this occasion. That such an experienced man, not only an experienced public man, but an experienced Minister of the State cannot recognise the distinction between a definite period of time and the word "as soon as possible" rather appears to me strange, to say the least. In human nature, if you will permit me to say so, unless there is a compelling sense of duty or service, there is always a tendency to procrastinate. Our wisemen have recognised this by saying:

आलस्यम् हि मनुष्याणाम्।
शरीरस्यो महा रिपुः॥

*Alasyam hi manushyanam,
Sharirasyo maharipuh.*

This tendency to inertia, this inclination to procrastinate has to be rooted out, by infusing the ideal of duty or service. We cannot be sure that every President

of the Union of India will always be guided by this ideal, by this compelling ideal of duty and service. Of course we hope and pray that it may be so, but there is no guarantee. Therefore, it is very necessary, to my mind, that the Constitution should provide specifically a time limit for a contingency of this nature. As a minister, Dr. Ambedkar, I am sure, must be aware that in the Secretariat various files are knocking about with tags or labels attached to them, some being "Immediate", "some urgent," some "early" and so on. Files marked "Immediate" reach the honourable Minister in a day, those marked "urgent" reach him in a couple of days and those marked "early" have been known to sleep in the Secretariat for two or three months. Further latterly, Government has devised new forms such as "consideration" and "active consideration". I therefore wish to obviate any difficulty arising from substitution of the words "as soon as possible". Nobody knows what they mean, what "as soon as" means. We know in the Legislative Assembly Ministers are in the habit of answering questions by saying "as soon as possible". When we ask, "When will this thing be done?" the answer is "As soon as possibly or very soon." But six months later, the same question is put, and the answer is again, "As soon as possible," or "very soon". This phrase is vague, purposeless and meaningless and it should not find a place in the Constitution, especially in an article of this nature where we specify that the President must do a thing within a certain period of time. Why do we do it? We do it in order to see that Bills are not left hanging fire in the President's Secretariat—and I know his secretariat is not going to be different in any way from other secretariats. And so I request Dr. Ambedkar to withdraw his amendment. It serves no purpose whatsoever, and I request that the article which is quite clear as it stands may be passed. I oppose the amendment of Dr. Ambedkar and support that moved by Mr. Misra.

Mr. President : I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think any reply is necessary.

Mr. President : Amendments Nos. 1680 and 1688, the substance is the same, but the wording of 1688 is slightly better, and I first put No. 1688 to vote.

The question is:

"That to the proviso to article 91, the following be added at the end:

'and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.'"

The amendment was adopted.

Mr. President : I think that blocks amendment No. 1698 which has the same substance and so need not be put.

Then I come to No. 1692, that of Mr. Tajamul Husain.

The question is:

"That the following new clause added to article 91:—

'(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the party that was in power at the time of the dissolution is again returned in majority, the President shall vacate office and the Bill becomes an Act of Parliament.'"

The amendment was negatived.

Mr. President : There is one amendment left over, i.e., No. 1685 moved by Dr. Ambedkar. There is an amendment to it, moved by Mr. Naziruddin Ahmad. I would first put Mr. Naziruddin Ahmad's amendment to vote.

[Mr. President]

The question is:

“That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word ‘possible’, the words ‘may be’ be substitution.”

The amendment was negatived.

Mr. President : Now I put Amendment No. 1685.

The question is:

“That in the proviso to article 91, for the words ‘not later then six weeks’ the words ‘as soon as possible’ be substituted.”

The amendment was adopted.

Mr. President : Then I put the article as amended by these two amendments namely, Nos. 1685 and 1688.

The question is:

“That article 91, as amended, stand part of the Constitution.”

The motion was adopted.

Article 91, as amended, was added, to the Constitution.

Mr. President : We shall adjourn now, and meet on Monday at 5 P.M.

The Assembly then adjourned till Five P.M. on Monday, the 23rd May, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 23rd May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Five of the Clock in the afternoon Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 67-A—(*Contd.*)

Mr. President : We will take up article 67-A which was taken up the other day and was postponed.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I move for permission of the House to withdraw this article.

Mr. President : I think he did not move it and so there is no question of withdrawing it.

Mr. B. Pocker Sahib (Madras: Muslim): No, it was taken up and the House is in possession of it. The honourable Member should therefore give his reasons for withdrawing it.

Mr. President : Yes, I am sorry I made a mistake. The honourable Dr. Ambedkar may give his reasons for withdrawing the article.

The Honourable Dr. B. R. Ambedkar : Sir, my reason is this. As I explained on the last occasion, we have made a provision for nominating certain persons to Parliament. The original proposal was to nominate fifteen persons; subsequently it was decided that these fifteen persons should be divided into two categories, *viz.*, twelve representing literature, science, arts, social services, and so on; and a further provision should be made for the nomination of three persons to assist and advise the Houses of Parliament in connection with any particular Bill. I feel Sir, that the provision which is already contained in article 67 which permits the President to have twelve persons nominated to Parliament would serve the purpose which underlies this new article 67-A. The services that would be rendered by the persons nominated, if article 67-A were passed into law, would be also rendered by the persons who would be nominated under article 67; and therefore the nominations under article 67-A would be merely a duplication of the nominative system covered in article 67. Besides, it is felt that in an independent Parliament which is fully sovereign and representative of the people there should not be too much of an element of nomination. We have already twelve; there may be some nominations also regarding the Anglo Indians; and it is felt that to add to that nominated quantum would be derogatory to the popular and representative character of Parliament. That is why I wish to withdraw this article 67-A.

Article 67-A was, by leave of the Assembly withdrawn

Statement *re* Articles 92 to 99

The Honourable Dr. B. R. Ambedkar : Sir, I propose that we start now with article 100.

Mr. President : I take it that the discussion on articles 92 to 99 should be held over for the time being to enable the business relating to finance and finance bills to be considered further.

The Honourable Dr. B. R. Ambedkar : Yes. The position is this. When article 90 was under debate I suggested that the debate should not be concluded and that the article should not be put to the vote because I discovered, at the last moment, a flaw in the article, which I thought it was necessary to rectify. Now if that flaw is to be rectified, then articles 96 to 99 also require to be reconsidered in the light of that article. Article 91 we have passed. Articles 92 to 99 require further consideration and therefore I want those articles to be held over for the time being. But we can begin with article 100.

Seth Govind Das (C. P. & Berar: General). *[Mr. President, article 99 relates to our language and if consideration of articles 92 to 99 is postponed now, may I know when article 99 will be discussed? As I stated the other day, we have to adopt our Constitution in our national language also. I am told that the translation committee appointed by you has already translated the first fifty articles. Hindi version of these articles may be taken up at this stage also for consideration. If consideration of article 99 is deferred I would like to be enlightened on two points *viz.*, when it will be taken up and whether the Hindi version of the articles that have already been translated can be taken up and discussed, irrespective of whether article 99 has been passed or not by that time.]

Mr. President : *[So far I have no information from the committee. I do not know how far they have proceeded. We can consider the translation of the articles already passed, if it is ready. Therefore there should be no difficulty if we do not take up the Hindi version now.]

Seth Govind Das : *[My point remains yet unanswered, Sir. Consideration of article 99 stands deferred, but I want to know for how long it is deferred.]

Mr. President : *[I cannot say exactly for how long it remains deferred but certainly we shall take it up at some future date.]

Seth Govind Das : *[May I take it that when articles, that are passed here, are rendered into Hindi and are submitted to you, they will be taken up for consideration even if article 99 is not adopted?]

Mr. President : *[I cannot say anything at this stage. I shall have to think over the matter and fix a time for it. It is just possible that article 99 may have to be held over for some time.]

We shall then start with article 100.

Shri H. V. Kamath : (C. P. & Berar: General): May I bring to your notice another aspect of this matter, namely, if we jump over certain articles we are taken unawares, when articles are taken up for which we are not quite prepared. I request that you will consider this matter for the future, if not today.

Mr. President : The Constitution has been before the Members for a pretty long time and I assume Members have studied the Draft. The number of amendments itself shows that the whole Draft has been considered in great detail by all the Members. So nobody is being unawares if an article, which does not come after the article which we have considered,

*[] Translation of Hindustani Speech.

is taken up. But we shall accommodate the Members in this respect and I do not think any serious inconvenience is caused if we take up article 100 and those that follow it.

Article 100

Mr. President : Amendment No. 1784, of which notice has been given by Shri Himmat Singh K. Maheshwari, is not really an amendment. It is a negative amendment so far as that is concerned.

Amendment No. 1785 is by Mr. Naziruddin Ahmad. That is a drafting amendment. So we can leave that there.

The question is:

“That Article 100 form part of the Constitution.”

The motion was adopted.

Article 100 was added to the Constitution.

Article 101

Mr. President : Article 101.

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

“That in clause (1) of article 101, after the words, ‘called in question’, the words ‘in any court’ be inserted.”

I only wish to make explicit what I believe is tacit in this article, and I suppose what is meant here is that the validity of any proceedings shall not be called in question in any Court, and therefore to make it quite clear and explicit I suggest the insertion of these words.

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

“That in clause (2) of article 101, for the words ‘or other member’, the words, ‘and no member’ be substituted.”

Clause (2) in the article runs thus:

“No officer or other Member of Parliament.....” and so forth.

In fact, ‘No officer or other Member’ seem to imply that an officer is a Member of the House. The word ‘other’ is absolutely misleading. It gives a false impression. The amendment is accepted would make the passage run like this :

“No officer and no Member of Parliament.....” and so forth.

In fact, I want to draw a distinction between an officer and a Member. This is the simple reason for this amendment. I do not wish to move the next amendment.

Mr. President : I think that seems to be an unnecessary amendment.

The Honourable Shri K. Santhanam : (Madras: General): I think both the amendments are mistaken. In the one case, the proceedings are not to be called in question in any court, while in the other case the Speaker and the Deputy Speaker may be rightly called officers of Parliament. So they must also be exempted. I think that is the intention of that clause.

Mr. President : Does it cover the other officers?

The Honourable Shri K. Santhanam : ‘An officer of Parliament’ will include the Speaker and other officers appointed by the Speaker for the purpose of Parliament. It is intended to be comprehensive and not restricted.

Mr. President : 'No Member' will also include the Speaker?

The Honourable Shri K. Santhanam : The Speaker will also be a Member. So I think the words 'other Member' is used.

Mr. President : Supposing it is 'no officer' and 'no Member' it will include Speaker and Deputy Speaker.

The Honourable Shri K. Santhanam : May be. I do not think there is any great harm.

Mr. President : Probably it is intended that other officers should be protected, as for example, the Marshal.

The Honourable Shri K. Santhanam : 'Officers' includes all officers. The question is whether 'Member' should be there. There would not be any particular difficulty felt if it is left as it is. So far as the first part is concerned, I do not think we would restrict it by putting in the words 'and no member'.

Shri K. M. Munshi (Bombay: General): There is something wrong with the loud speaker in front of you, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court? Therefore the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court. Therefore it is unnecessary to mention the words which Mr. Kamath wants in his amendment.

For the reason I have explained, the only forum there the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any officer or Member, being the Court, it is unnecessary to specify the forum. Mr. Kamath will see that the marginal note makes it clear.

With regard to the amendment moved by my Friend Mr. Naziruddin Ahmad, he has not understood that the important words in sub-clause (2) are 'in whom powers are vested'.

Mr. Naziruddin Ahmad : For maintaining order.

The Honourable Dr. B. R. Ambedkar : 'No officer or other Member of Parliament in whom powers are vested' are the persons who are protected by sub-clause (2). The Speaker is already an officer and also a Member. No power has to be conferred upon him. The Constitution confers the power on him. Therefore, having regard to the fact that it is only 'other Member' that is to say, Member besides the Speaker or the Deputy Speaker as the case may be who requires to be protected. Therefore the word 'other' is important.

Mr. President : What is the effect of the words 'or for maintaining order'?

The Honourable Dr. B. R. Ambedkar : Supposing there is a brawl in the House I do not like to put it that way. But, supposing there is a brawl in the House, and the Speaker, not finding any officer at hand to remove a certain Member, asks certain other Member who is present to remove the Member who is causing the brawl. Then that particular Member is the Member who is invested with this authority by the Speaker and he would come under "other Member".

Mr. President : ‘Or any other officer who is not a Member of the House’ Does he come under that.

The Honourable Dr. B. R. Ambedkar : ‘Officer’ would be there.

Shri H. V. Kamath : May I ask for some clarification? Mr. Santhanam, referring to my amendment said that the validity of any amendment can be called in question not merely in the court of law, but also in a legislature. Does Dr. Ambedkar agree with him?

The Honourable Dr. B. R. Ambedkar : I am responsible for the explanation I have given.

Shri H. V. Kamath : As regards the other point mentioned by Dr. Ambedkar that the marginal sub-head is clear, may I point out that in the other forum, *viz.*, the Legislative Assembly. I was told that the marginal headings have nothing to do with legislation as such and that articles or sections are taken without reference to the marginal headings. If this is so, if you do not read the marginal heading and the article together, the meaning to my mind is not clear.

The Honourable Dr. B. R. Ambedkar : On that point there are two views. One is that the marginal note is not part of the section and the other view is that the marginal note is: for instance, Mr. Mavalankar when he was in Bombay held the view that the marginal note was not part of the section, but the present Speaker of the Bombay Assembly recently said that the marginal note was very much part of the section as it gives the key to the meaning of the section.

Mr. President : The question is:

“That in clause (1) of article 101, after the words ‘called in question’, the words in any court’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 101, for the words ‘or other member’, the words, ‘and no member’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 101 stand part of the Constitution.”

The motion was adopted.

Article-101 was added to the Constitution.

PART V—CHAPTER III

Mr. President : Part V—Chapter III.

(Amendments Nos. 1789 and 1790 were not moved.)

Prof. K. T. Shah : (Bihar: General): Sir, I beg to move:

“That in heading to Chapter III of Part V for the word ‘Legislative’ the word ‘Extraordinary’ be substituted.”

It would then be

‘Extraordinary Powers of the President’.

I particularly wish to draw attention to this aspect that any power the Head of the State or the Chief Executive has should be of an executive character. If any other powers are proposed to be put in under this article, it should be clearly understood that they are extraordinary; that is to say, they are not to

[Prof. K. T. Shah]

be employed in normal times, in ordinary circumstances. Of course in extraordinary circumstances, as in the case of an emergency, the use of extraordinary powers would be both necessary and justified. I think that it is important, therefore to make it clear, in the heading itself that this is an avowedly extraordinary power which may take the form of the legislation without our calling its legislative power. Legislative power the executive head should not have. Or it may even take the form of an executive decree or whatever form seems appropriate in the circumstances. The point that I wish to stress is that we must not, by any mention here imply or convey or suggest that the law making powers of the President are any but extraordinary powers. I think this is sufficiently clear, and will be acceptable to the House.

Mr. Tajamul Husain (Bihar: Muslim): Sir, Chapter III deals with the legislative powers of the President. Professor Shah wants that instead of the word “legislative” the word “extraordinary” should be used. Article 102 makes it clear that it is an extraordinary power of the President. It is nothing but extraordinary but it is still legislative power. Therefore I oppose this amendment.

Mr. President : I do not think that any further discussion is necessary. The question is:

“That in heading to Chapter III of Part V for the word ‘Legislative’ the word ‘extraordinary’ be substituted.”

The amendment was negatived.

Article 102

Mr. President : Then we come to the article itself. The first amendment is No. 1792 by Shri Damodar Swarup Seth.

(The amendment was not moved)

Shri H. V. Kamath : Mr. President, Sir, I request permission at the outset to move this amendment in two parts. By some accident they have been lumped together in the Secretariat as one amendment.

Mr. President : Yes.

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

“That in clause (1) of article 102, for the words ‘when both Houses’, the words ‘when one or both Houses’ be substituted.”

If we turn to article 69 of the Constitution, and read clause (2) thereof, we find that the President may from time to time summon the Houses or either House of Parliament. So it is not unlikely that at a particular time both Houses may not be in session but only one House may be in session. Therefore I would restrict the power of the President only to such occasions when no House will be in session. According to this article the President is empowered to promulgate ordinances when both Houses are not in session. As I have already stated, referring to article 69, an occasion may arise when one House will be in session. Therefore to make this clear, we will have to say “except when both Houses or one of the Houses of Parliament are in session.”

My second amendment, that is the latter half of amendment No. 1793,* is purely verbal. I only move it formally and leave it to the Drafting Committee for its consideration, because it is obvious that the President may promulgate

*That for the words “Such Ordinances” the words “Such Ordinance or Ordinances” be substituted.

one ordinance or more than one ordinance. The article, as it stands, uses the plural. To provide for the contingency I have mentioned, I move this amendment. It is purely verbal and I do not wish to dilate on it any further.

There is a third amendment, amendment No. 1794, which stands in my name. On re-reading this article 102, I think it is not necessary because the President, before satisfying himself, will have recourse to every means at his disposal including consultation with his Council of Ministers. Therefore I do not propose to move amendment No. 1794.

Mr. President : Amendment No. 1795 is verbal and therefore disallowed.

Sardar Hukum Singh (East Punjab: Sikh): Amendment No. 1794 stands in my name also. I would like to move it.

Mr. President : I will give you an opportunity later.

Mr. B. Pocker Sahib : Mr. President, Sir, I move:

“That to clause (1) of article 102, the following proviso be added :

“Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.” ”

Sir, this is a very important matter and affects the fundamental right of every citizen to be tried by a competent court of law before he is deprived of his liberty. No doubt there may be circumstances in which action should be taken immediately but that should not deprive the citizen of his fundamental right of being tried by a court of law. The reason why I have given notice of this amendment is the recent experience we have had in the various provinces in the matter of enforcing ordinances and even the Public Safety Acts which have taken the form of ordinances. The ordinances were later made into law, but the important matter to be noted is that the fundamental right of the citizen to be tried by a court of law has been lost to him. I know that in the province of Madras there have been hundreds of cases in which even the provisions made in the Public Safety Act passed by the legislature of that province have not been complied with the persons were arrested and detained in custody not merely for weeks but for months without even being the grounds for which they were arrested. This is a very scandalous state of affairs. You might have come across the judgments of the High Court which were published in the Press and this practice has been condemned in strongest words by the High Court of Madras, very recently. After all there may be some emergency in which some extraordinary power has to exercised, but that should not in any way deprive a citizen of his elementary right, and after all, I do not know why the citizen should be deprived of that right, even though emergencies might arise, in which quick action is necessary. But the scandalous way in which even the Public Safety Act has been administered in an eye-opener to us that to give such a power to the President to pass ordinances, which give unrestricted powers to deprive the citizens of their liberty, should not be tolerated; and therefore, Sir, I submit that this is a very necessary and desirable proviso that should be added to this clause, and I would request the House to take into considerations the recent experiences in the administration of Public Safety Ordinances and Public Safety Acts, by which innocent citizens have been kept without trial for months and months together in very many cases a person is kept in custody for months and months and then he is just released without giving any reason. I submit, Sir, that in future there should be no rule for tolerating such a state of affairs, and therefore I would request honourable Members of this House to pay serious consideration to this aspect of this matter and though the drafters of this clause may have in view the Communists or such other bodies, even that is no justification for depriving the citizens of their liberty, entirely by such ordinances and that too indefinitely. Therefore, I submit, Sir, that this House may be pleased to accept this amendment.

Mr. President : Amendment No. 1797 is covered by an amendment which has been moved by Mr. Kamath.

(Amendments Nos. 1798 and 1799 were not moved.)

Shri Jaspal Roy Kapoor (United Provinces: General): Mr. President, I have given notice of an amendment to No. 1798.

Mr. President : Amendment No. 1798 has not been moved. No question of moving an amendment to an amendment, which has not been moved, arises.

Shri Jaspal Roy Kapoor : I am sure it will be readily accepted by Dr. Ambedkar. It is a formal amendment, but yet necessary.

Mr. President : If it is a formal amendment, you can talk it over with him.

Shri Jaspal Roy Kapoor : I leave it to you whether it may be allowed to be moved or not.

The Honourable Dr. B. R. Ambedkar : It is not in the printed list.

Mr. President : It is in the list which has been circulated today. Item No. 39—List II (Second week).

Shri Jaspal Roy Kapoor : I submit, Sir, that the words “assented to by the President” in clause (2) of article 102, may be deleted, because they are obviously redundant. It is a Bill which is assented to and not an act. Once a Bill has been assented to by the President, it becomes an Act. Thereafter, no further assent of the President is necessary.

Mr. President : This is not an amendment to an amendment. It is really an amendment to the original article.

Shri Jaspal Roy Kapoor : It is only an amendment with reference to the amendment.

Mr. President : I have disallowed that kind of amendment on a previous occasion, which comes under the guise of an amendment to an amendment. I rule this out also.

(Amendment No. 1800 was not moved.)

Shri H. V. Kamath : Mr. President, Sir I move:

“That in sub-clause (a) of clause (2) of article 102, after the words ‘both Houses of Parliament’, the words ‘within four weeks of its promulgation’ be inserted.”

If my amendment be accepted by the House, the clause will read thus:

“Every such ordinance, shall be laid before both Houses of Parliament within four weeks of its promulgation, etc. etc.”

The importance of the appropriateness of this amendment of mine arises out of a lacuna which has crept in here. No article in this Chapter provides for the life of an ordinance promulgated by the President. So far, we were under the impression, at least going by the experience of the Government of India Act and the ordinance making power of the Governor General provided for therein, that an ordinance expires or dies a natural death at the end of six months. But, some how or other, this Chapter is silent on that point.

Mr. President : The article says, “shall cease to operate at the expiration of six weeks from the re-assembly of Parliament.”

Shri H. V. Kamath : Six weeks from the re-assembly of Parliament. Suppose, Parliament is not summoned at all. We expect our President to be a Constitutional President and that he would always act upon the advice or direction of Parliament. But if the President is inclined to dictatorship, or to exercise dictatorial powers,—who knows what the future has in store for us ?—and if this article is left as it is, he may very well refrain from summoning Parliament to consider the emergency that has arisen or the circumstances which has made it necessary for him to promulgate the ordinance. If we read the entire chapter, we will find that there is no time limit specified for summoning Parliament. The article merely says that the ordinance shall be laid before both Houses of Parliament. For that also there is no time limit. Then, it shall cease to operate at the expiration of six weeks from the reassembly of Parliament. Suppose the President summons Parliament, say, after one year—Dr. Ambedkar says ‘no’ by a gesture—perhaps he is constitutionally minded and he does not aspire to dictatorial powers if he be elected President—certainly a man different from him might take unfair advantage of this article and refrain from summoning Parliament within a reasonable period. Therefore, I think it is necessary

Mr. President : Article 69 clause (1) might take the position clear. It says: “The Houses of Parliament shall be summoned to meet twice at least in every year and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in their next session.”

Shri H. V. Kamath : He can summon the next session six months after promulgating the ordinance. Then, six weeks after the re-assembly of Parliament, the ordinance expires. This means that an ordinance can continue in force for seven and a half months or a day or two less than seven and a half months, and not six months as it was even during the British regime. This is a very important chapter in as much as we are seeking to clothe or invest the President with certain powers against which the Congress and all patriots fought during the British regime,—I mean the ordinance-making power of the Governor-General. I want to restrict this power as far as we can. Therefore, I want to provide a constitutional safeguard against the misuse of this article. I want this article to provide that an ordinance promulgated by the President shall be laid before Parliament within four weeks of its promulgation. There is no practical difficulty about this at all. Parliament can be summoned, I am sure, as it is done in many other countries, even within two weeks. You can summon an emergent session, and four weeks is a liberal period of time within which to summon both Houses of Parliament.

If we turn to article 275, there it is definitely laid down in sub-clause (c) of clause (2) that a Proclamation “shall cease to operate at the expiration of six months....” But, here, as I have already pointed out, this lacuna has crept in and I would be happy if it is definitely laid down that an ordinance promulgated by the President would expire at the end of six months. I do not know how this oversight has overtaken the wise men of the Drafting Committee. I would be happy if this safeguard is laid down in this chapter to the effect that no ordinance shall continue in force after the expiry of six months, or that every ordinance will die a natural death at the end of six months. If that be not accepted, then, I think my amendment is the only way out, that Parliament must be summoned within four weeks of the promulgation of the ordinance. The article provides that it shall cease to operate within six weeks after that. This would make the ordinance making power very much restricted. This would give an ordinance a life of ten weeks at most. It may happen that now and then the President may have to promulgate ordinances and it may be that it will not be practicable, for various reasons to summon Parliament every time. But, then, it must be made

[Shri H. V. Kamath]

clear in this article that no ordinance shall have effect six months after its promulgation. I hope Dr. Ambedkar, even if he does not accept my amendment—I am not pressing my amendment in case this article stipulates the maximum life of an Ordinance,—will provide specifically for this, that no ordinance shall continue in force as the expiration of six months from the date of its promulgation. We should not leave it merely to the working of article 69, because under that article, as I have already calculated by simple arithmetic, an ordinance could continue in force for seven and a half-months. I hope therefore, that the Drafting Committee would reconsider this matter and definitely provide for an ordinance expiring at the end of six months from the date of its promulgation, at the latest.

Mr. President : Amendment No. 1802. I think this amendment goes with amendment No. 1805. Both of them might be moved together. Would you like to move both the amendments together or separately?

Pandit Hirday Nath Kunzru (United Provinces: General): I do not propose to move amendment 1805. Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 102, for the words ‘six weeks from the re-assembly of Parliament’ the words ‘thirty days from the promulgation of the Ordinance’ be substituted.”

Article 102 requires that:

“An Ordinance promulgated under this article ‘shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions.’ ”

This is a vital matter to which the Constitutions recently passed in several European countries have attached the greatest importance. The power of passing an Ordinance is equivalent to giving the executive the power of passing a law for a certain period. If there is such an emergency in the country as to require that action should be immediately taken by the promulgation of an Ordinance, it is obviously necessary that Parliament should be summoned to consider the matter as early as possible. Suppose that law and order in the country are seriously affected and the Government of the day consider it necessary that an Ordinance should be promulgated at once in order to prevent the situation from deteriorating or to bring it under control, it is obvious that if the Legislature is not sitting, the Executive must be enabled to arm itself with adequate power to maintain the peace of the country; but it is equally necessary that the Legislative should be summoned without avoidable delay to consider the serious situation that makes the promulgation of the ordinance necessary. I do not therefore see why an Ordinance promulgated by the Governor-General should be in force for several months. The article, as it is, implies two things, first that the Ordinance will remain in force as long as Parliament does not meet, and secondly that even when Parliament meets, it will not expire immediately but will remain in force for six weeks from its re-assembling unless it is disapproved by both Houses before the expiry of that period. I know that a similar procedure is laid down in the Government of India Act, 1935, but such a procedure was understandable in the circumstances in which that act was passed. That Act was not meant to confer full responsible Government on us. The executive was not even partially responsible to the Legislature. The provisions of the Act were such as to enable the British Government to exercise authority with regard to the maintenance of law and order in the country in the last resort. All that has changed now. We have now a responsible Ministry. There is no reason therefore why the process laid down in the Government of India Act, 1935, should be sought to be copied in the new Constitution.

Sir, There are several countries in which the Executive does not possess this power. There are some countries in which the Executive though armed with the power of promulgating decrees has to summon the Legislature as soon as possible and to place certain kinds of decrees before it. Take for instance France. My impression is that the period during which an Ordinance can remain in force there is much shorter than it will be if article 102 is passed by the Assembly. I do not think that in the new circumstances there is any justification for arming the Executive with the wide powers conferred on it under the Government of India Act 1935. All legislation, and ordinance is a particular kind of legislation, should be subject to the approval of Parliament and this approval should be sought as early as possible.

Sir, I shall make my meaning clearer by giving an illustration. Suppose soon after the winter session of the Assembly a situation requiring the promulgation of an Ordinance manifests itself in the country. Normally another session will be held only in October or November next. If article 102 is accepted the Ordinance will remain in force for about six months and possibly six weeks thereafter. The maximum period during which the Ordinance may remain in force can therefore be seven and a half months. This obviously is much too long a period and there is no reason why the Executive should have the power to legislate for so long a period. I think therefore that the period should be long enough to enable the legislature to meet and consider the extraordinary situation requiring the promulgation of an Ordinance, at any rate an Ordinance made necessary by factors affecting the peace or security of the country. For instance, if there are certain tariff laws that require to be changed immediately in the economic interests of the country, the Executive may well make the necessary change and nothing may be lost if we wait for six, seven or eight months and the Legislature considers the ordinance only after that. But when the ordinance relates to the peace or security of the country, or to similar circumstances, requiring extraordinary action to be taken by the executive under an Ordinance, then I think, we have to see that the period during which the Ordinance remains in force is as short as possible, and that any legislation that may be required should be passed by Parliament after a due consideration of all the circumstances.

Sir, my objection is not merely that the period during which the ordinance may remain in force is too long; it also relates to the character of the Ordinance that may be promulgated. The executive may in a hurry pass an ordinance which is only partially necessary, may not be required in all its details. It is therefore necessary that the legislature should be given an opportunity, not merely of considering the situation requiring the passing of an Ordinance, but also the terms of the Ordinance. It is quite possible, Sir, that the legislature, while taking the view that some legislation is necessary, may not agree completely with the Executive, and may modify the Ordinance that has been promulgated. For these two reasons, Sir, I consider it very necessary that the power of passing an Ordinance given to the executive should be much more limited than it would be under article 102. I hope that my honourable Friend Dr. Ambedkar will give the matter the consideration that it deserves and will agree with me that this is a matter in regard to which, if necessary, the House may be asked to postpone consideration, if he is not ready with the necessary amendment.

It is quite possible Sir, that the amendment in the form in which I have put it may be defective. It may be perfectly easy for any Member to get up and point out the defects in it. But what is necessary is not that destructive criticism should be resorted to, but that such action should be taken as will be consistent with the new constitutional status of the country, and be in conformity with the responsibilities of the legislature.

Mr. President : May I just point out that you have to move amendment No. 1805 also, as that becomes necessary in case this amendment is accepted.

Pandit Hirday Nath Kunzru : Yes, Sir, I agree. I see that it should be moved. I therefore move, Sir:

“That the Explanation to clause (2) of article 102 be omitted.”

I need not say anything about this amendment, because it is a necessary consequence of the amendment that I have already moved.

Mr. President : Mr. Jaspat Roy Kapoor has given notice of an amendment to this amendment. Does he move it?

Shri Jaspat Roy Kapoor : No, Sir.

Mr. President : Prof. Shah.

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 102, after the word ‘Parliament’, where it first occurs, the words ‘immediately after each House assembles’ be inserted; after the word ‘and’ where it first occurs the words ‘unless approved by either House of Parliament by specific Resolution’ and after the word ‘operate’ the word ‘forthwith’ be inserted; and the words ‘at the expiration of six weeks from the re-assembly of Parliament, or if, before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;’ be deleted.”

Sir, the amended clause would be thus:

“Every such Ordinance shall be laid before both Houses of Parliament immediately after each House assembles, and unless approved by either House of Parliament by specific Resolution, shall cease to operate forthwith.”

The words “at the expiry of six weeks, etc. etc.”, will be all gone.

Sir, the principle of my amendment is the same as that which found such a powerful support from Pandit Kunzru. Most of us, I am sure, view with a certain degree of dislike or distrust the ordinance-making power vested in the Chief Executive. However we may clothe it, however it may necessary, however much it may be justified, it is a negation of the rule of law. That is to say, it is not legislation passed by the normal Legislature, and yet would have the force of law which is undesirable. Even if it may be unavoidable, and more than that, even if it may be justifiable in the hour of the emergency, the very fact that it is an extraordinary or emergency power, that it is a decree or order of the Executive passed without deliberation by the Legislature, should make it clear that it cannot be allowed, and it must not be allowed, to last a minute longer than such extraordinary circumstances would require.

This power is either not given in many constitutions, to the chief executive; or if given it is restricted as effectively and rigorously as possible, in some such manner as is proposed by this amendment. That is to say, if the ordinance has to be passed, in the hour of emergency or to meet extraordinary circumstances, it must be laid before either Houses of Parliament immediately it assembles; and unless each House approves of it by a Specific Resolution, it must cease to operate forthwith. This is the minimum needed in the interests of civil liberty.

I think we cannot show our distrust of this extreme power in the hands of the Executive more clearly than by requiring that, unless Parliament approves and thereby makes it, so to say, its own Act, unless the Legislature makes it

its own enactment, executive legislation of this kind, passed by the President, must cease to operate immediately. We must leave no room for any doubt as to the maximum length of time during which the Presidential Ordinance can remain in operation. If Parliament is not in sessions, or if a general election is pending and therefore Parliament is not able to meet a margin of time may be allowed; but it must be the shortest possible. In that case, of course, other amendments which have been moved will operate, and I hope will operate, that is to say, the maximum life of the Ordinance must be limited by the Constitution. Even if it is any time necessary, even if it is unavoidable and justifiable under an emergency, the maximum life of the ordinance itself must be limited to three or four weeks, or six weeks at the most. The period is immaterial; the principle is important. By saying that the period is immaterial I do not suggest that it can be extended to any length. All I say is that between three, four or six weeks not much material difference may be found. Ordinance-making by itself being an unusual, extraordinary, and undesirable power, it should be qualified by a maximum period being described for its life.

Secondly, if a longer period or duration appears necessary, in any case within that period, the Parliament must be called; and either House must consider the Ordinance, and unless approved by each House by a special resolution the ordinance must be deemed forthwith to cease to operate.

On those terms, and under those limitations only, I think it may be possible to agree to this extraordinary power being vested in the President.

It is true that though the nominal authority which makes the Ordinance, is that of the President, he would be acting only on the advice of the Prime Minister and the Prime Minister naturally would be responsible to Parliament, where the ordinary remedies of responsible Ministries may take effect. In spite of this factor, I would not leave it to the exigencies, or to the possibilities of party politics, to see that such extraordinary powers are exercised at any time or for any time, and that is why I would require, under the constitution and by the constitution, that a maximum period is prescribed to the life of an ordinance; and that a definite procedure be laid down whereby the ordinance can be approved by either House of Parliament by a specific resolution. Otherwise it shall cease to operate immediately thereafter. I hope this very important matter will commend itself to the House, and the amendment will be accepted.

(Amendments Nos. 1804, 1806, 1807 and 1808 were not moved.)

Sardar Hukam Singh : Sir, I beg to move:

“That in clause (1) of article 102, after the words ‘except when both Houses of Parliament are in session’ the words ‘after consultation with his Council of Ministers’ be inserted.”

This is so evident that I might be met with the reply that in all constitutions it is supposed that the constitutional head always acts on the advice of his Council of Ministers and in other constitutions it is never put down expressly that he should do so. With that consciousness I have moved this amendment, because I feel that we are framing a written constitution wherein we are giving every detail, with the result that it is so cumbersome and bulky. Under such circumstances I feel that a matter of such importance and which is so apparent must be expressly put down. It may be said that conventions would grow automatically and the President shall have to take the advice of his Ministers. My submission is that here conventions have yet to grow. We are making our President the constitutional head and we are investing him with powers which appear dictatorial. Conventions would grow slowly and as this constitution is written and every detail is being considered, why should

[Sardar Hukam Singh]

we leave this fact to caprice or whim of any individual, however high he may be? If we clearly put down that he is to act on the advice of his Ministers, it is not derogatory to his position. With these words, Sir, I move my amendment.

Shri R. K. Sidhva (C.P. & Berar: General): On a point of order, Sir, the amendment moved by Mr. Pocker is out of order. His amendment reads:

“Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.”

If you refer to article 15 under Fundamental Rights, which we have already passed, it says:

“No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.”

This article which we have passed definitely defines what are the personal liberties and how they should be safeguarded. Hence this amendment would be out of order.

Mr. President : I do not think it is out of order. It is not consistent with article 15 which we have passed. It only confirms it. Therefore I, allow the amendment.

Dr. P. S. Deshmukh (C.P. Berar: General): Sir, there are a good many amendments moved to this article. It is quite natural for the House to emphasise that the ordinary powers of the Parliament shall not be circumscribed nor the Parliament's wishes defeated in any indirect way. It is with that intention that many Honourable Members of this House have come forward to limit the period of time of the operation of the ordinance and to insist that the President shall call a session of the Houses of Parliament at the earliest possible moment. I am afraid I have not been much impressed by the speeches in support of any of the amendments that have been moved.

The first amendment that has been moved by Mr. Pocker has been moved at a very wrong place. Not only has adequate provision been made already by the House regarding arresting of any person without there being any law under which he can be arrested but this is not the place where such an amendment should be moved because essentially I do not think that the House need fear that the President would misuse his power for the sake of arresting people without providing for it, or would promulgate an ordinance only for the sake of depriving any set of the citizens of India of their liberties. In any case the fundamental rights having already been approved I do not think there is any need for the amendment moved by Mr. Pocker. At the present moment many people have lost their liberties under the law of detention, the Public Safety Act and other laws passed in the Provinces. Honourable Members are correct in complaining that the provisions of the Public Safety Acts operating in the provinces have been somewhat arbitrarily and oppressively used and that it has caused considerable amount of dissatisfaction. But we are not dealing with the provinces, or their powers. we are here dealing with the legislative powers of the President and we have got to take notice of the fact that at the present moment Governments have ceased to be merely policemen or judges. A time there was when the Governments of the world were only policemen and judges. But now-a-days there is nothing that is outside the sphere of governmental activity. Amongst other things, Governments of the present day are shop-keepers; they are commission agents and even contractors. Every sort of duty that an ordinary citizen was performing is being performed

by the State under the exigencies of the present circumstances. I therefore feel, Sir, that the powers that we are giving to the President are all the more necessary because the day to day administration has become so complex.

Take, for instance, the administration of the controls. There are a thousand and one occasions when it would be necessary for the Executive to possess some such power. In the present extraordinary times through which the world is passing, Sir, I think it is absolutely necessary and desirable that the Head of the State should be empowered with these extraordinary powers.

Shri H. V. Kamath : The Constitution is not framed merely for extraordinary times; it is intended for many many years to come.

Dr. P. S. Deshmukh : I am sure, Sir, that the provisions that exist in this Constitution are such that there is no possibility of their being abused in ordinary circumstances also.

Pandit Kunzru said that it was well for the British Government to have had a section like this in the Government of India Act, 1935, when the Government was irresponsible. But when the Government is responsible to the Legislature there is no fear of its being abused. I think Pandit Kunzru has himself suggested a reply to his own argument. I am sure no President will act without the consent of the Cabinet and no Cabinet will act without the consent of the majority of the Members of the House. So, any power that is likely to be exercised under this Section by the President will have the tacit approval and consent of the Legislature, and for that reason I think the amendment of Sardar Hukum Singh is also not necessary. No President can continue to be in office if he were to issue ordinances which have not the consent of the Cabinet and ultimately of the Legislature. I, therefore, think, Sir, that there is no need for the safeguard which have been suggested. When the powers of withdrawal of Ordinance has been given to the President, I am sure, Sir, he will, as constitutional head—as the guardian of the people—not permit any legislative measure to continue for a day more than is absolutely necessary.

Then, Sir, as a consequence of the amendment which Pandit Kunzru has moved, he wants to omit the explanations. Now, actually, Sir, there are not two explanations. There is only one explanation. The third sub-clause of the article is also, in my opinion, a very important provision. It reads as follows:

“If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.”

I think this provision should satisfy Mr. Pocker Sahib also, because if the legislative power exercised by the President goes counter to any of the Fundamental Rights, to that extent it shall be *ipso facto* void and shall be of no consequence whatever.

Under all these circumstances, Sir, I do not think there is need of any of the amendments that have been moved. I think the time which has been stated here, will probably be quite sufficient. But if in spite of this Dr. Ambedkar feels that he is convinced by the arguments that have been advanced and wants to make a provision for the immediate calling of the Parliament within the specified period of thirty days, I should have no objection, but I feel, Sir, that there is no likelihood of the legislative powers given to the President being misused and the powers of the sort which have been mentioned in the article are essential.

Mr. Tajamul Husain : Sir, I should first take up amendment No. 1802 moved by my honourable Friend Pandit Kunzru. Now, Sir, sub-clause (a) of clause (2) says that every ordinance shall be laid before Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, etc. My honourable Friend Pandit Kunzru says that it should cease to operate at the expiration of thirty days from the promulgation of the Ordinance. I submit, Sir, I am unable to understand this. Ordinances are promulgated only in cases of emergencies. Suppose an emergency is such that it would last for more than thirty days, then what are we to do in that case?

Shri H. V. Kamath : Sir, the honourable Member has not properly understood Pandit Kunzru's amendment.

Mr. Tajamul Husain : Sir, I was not here when Pandit Kunzru moved his amendment. But from his amendment it is clear that he wants that the Ordinance should cease to operate at the expiration of thirty days from the time of promulgation of the ordinance. If that is the case, then I will place an example before you. Supposing the House of the People is dissolved today for the purpose of general election. It may take more than one month and in that case as soon as the dissolution takes place, the next day an emergency arises and the President of the Union promulgates an Ordinance. What are you going to do? There are no more members. How are you going to summon Parliament again? I oppose the amendment.

Now let me take amendment No. 1796 moved by Mr. Pocker. He says: 'Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by the competent court of law.' I cannot understand this. This is an extraordinary procedure. Ordinance means extraordinary procedure. In such an emergency the question of personal liberty does not arise. We do not know what will happen at that time. Therefore his amendment also should be opposed.

The amendment moved by Sardar Hukam Singh says that when an Ordinance is promulgated, there should be prior consultation with the Council of Ministers. It is very reasonable. We should support it. After all, the Prime Minister and the Cabinet are the chief representatives of the people. No doubt the President also represents the entire Union. But the Prime Minister and his Cabinet are I think more responsible people and they should be consulted before an Ordinance is promulgated. Therefore I support that amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Mr. President, Sir, I am in complete agreement with the amendment moved by Pandit Kunzru and also with the amendment moved by Mr. Pocker. I will speak first on the amendment moved by Pandit Kunzru. I think it must be possible for my Friend Dr. Ambedkar to accept it. Pandit Kunzru has clearly pointed out that the ordinance regime might continue for six months, and for six weeks added on to six months. Now the question is whether it is desirable that in a democracy, where you have got people's representatives in the country who could be summoned at short notice, that you should give any opportunity to the executive to postpone calling the Parliament which the executive is entitled to do for six months and give six weeks more. It is I submit undemocratic and will lead to executive oppression, to say the least. What I find in the present day is the tendency on the part of Members of the Cabinet to bring forward legislation or make proposals in

the Constitution itself based upon the present fears. The Government in power or the persons in charge of these matters consider that tension always exists and provision must be made for it, giving the executive power to meet any contingency. Well, we are prepared to give power to the executive to meet the situation the moment any contingency arises. When Parliament can be called at once within a week or ten days, I do not see any reason why we should allow an opportunity to delay calling the Parliament in order to decide whether the ordinance promulgated should continue. It is fraught with danger and the chances are that the executive might arrogate to itself the powers and will be tempted to postpone calling the Parliament. So, Sir, democratically-minded Dr. Ambedkar must be able to accept the suggestion embodied in the amendment of Pandit Kunzru.

Now, with regard to the amendment of Mr. Pocker. I do not want to revive the controversy which arose in the course of the discussion of article 15. There it was ruled that the protection of personal liberty can be in accordance with the procedure laid down by law, that is by Parliament. We have passed that. But why should we now not protect the liberties of the persons even from the arbitrary rule of the President, even though it may be for six months or two months? The merit of article 15 which was passed in that Parliament is to legislate with regard to the procedure. It is Parliament that has to lay down the procedure with regard to certain matters. For instance, when a man is deprived of his liberty without being brought to trial he may be clapped in jail, in accordance with the procedure laid down by Parliament. But now why should a single individual, the President, be allowed to pass an ordinance by which he might deprive a person of his liberty without letting him to be tried by a court of law? Therefore I support this amendment. I think it must be possible for Dr. Ambedkar to accept them.

The Honourable Dr. B. R. Ambedkar : Mr. President. Sir, my Friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my Friend, Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in Section 42 of the Government of India Act and the other is contained in Section 43. The provisions contained in Section 43 conferred upon the Governor-General the power to promulgate ordinances which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgement. In the ordinances which the Governor-General had the power to promulgate under Section 43 the legislature was completely excluded. He could do anything—whatever he liked—which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under Section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of Section 43. It would be seen that the present article 102 does not contain any of the provisions which were contained in Section 43 of the Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 of the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only

[The Honourable Dr. B. R. Ambedkar]

then that the provisions contained in article 102 could be invoked. The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently my suggestion is that the argument which was propounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous—I am using very cautious language to the provisions contained in the British Emergency Powers Act, 1920. Under that Act, also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is the executive to do? The executive has got a new situation arisen, which it must deal with *ex hypothesi* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *ex hypothesi*, the legislature is not in session. Therefore it seems to me that fundamentally there is no objection to the provisions contained in article 102.

The point was made by my Friend, Mr. Pocker, in his amendment No. 1796, whereby he urged that such an ordinance should not deprive any citizen of his fundamental right of personal liberty except on conviction after trial by a competent court of law. Now, so far as his amendment is concerned, I think he has not read clause (3) of article 102. Clause (3) of article 102 lays down that any law made by the President under the provisions of article 102 shall be subject to the same limitations as a law made by the legislature by the ordinary process. Now, any law made in the ordinary process by the legislature is made subject to the provisions contained in the Fundamental Rights articles of this Draft Constitution. That being so, any law made under the provisions of article 102 would also be automatically subject to the provisions relating to fundamental rights of citizens, and any such law therefore will not be able to over-ride those provisions and there is no need for any provision as was suggested by my Friend, Mr. Pocker, in the amendment No. 1796.

The amendment suggested by my Friend, Mr. Kamath, *i.e.*, 1793, seems to me rather purposeless. Suppose one House is in session and the other is not. If a situation as I have suggested arises, then the provisions of article 102 are necessary because according to this Constitution no law can be passed by a single House. Both Houses must participate in the legislation. Therefore the presence of one House really does not satisfy the situation at all.

Shri H. V. Kamath : Does it mean that when one House only is in session, say, the House of the People, the President will still have this power?

The Honourable Dr. B. R. Ambedkar : Yes, the power can be exercised because the framework for passing law in the ordinary process does not exist.

Shri H. V. Kamath : Shameful, I should say.

The Honourable Dr. B. R. Ambedkar : Now I come to the other question raised by my Friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is

that it shall continue for six weeks after the meeting of Parliament. Now, the reason why my Friend, Pandit Kunzru, has brought in his amendment is this: he says that under the provisions contained in the draft article, a much longer period might elapse than six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there—that would be practicable—or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my honourable Friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the Government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 to remain in operation for a period unduly long, and I therefore, think that the provisions as they exist in the draft article might be permitted to remain.

Shri H. V. Kamath : Mr. President, Sir, may I ask one last question? Is it not repugnant to our ideas of conceptions of freedom and democracy, which are, I presume, Dr. Ambedkar's also, not to lay down the maximum life of an ordinance in this article?

The Honourable Dr. B. R. Ambedkar : My own feeling is this that a concrete reason for the sentiment of hostility which has been expressed by my honourable Friend, Mr. Kamath as well as my honourable, Friend Mr. Kunzru, really arises by the unfortunate heading of Chapter "Legislative powers of the President". It ought to be "Power to legislate when Parliament is not in session". I think if that sort of innocuous heading was given to the Chapter, much of the resentment to this provision will die down. Yes. The word 'Ordinance' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word "ordinance", but I cannot find any other word to substitute it.

Mr. President : There is another amendment which has been moved by Sardar Hukam Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar : I am very grateful to you for reminding me about this. The point is that amendment is unnecessary, because the President could not act and will not act except on the advice of the Ministers.

Mr. President : Where is the provision in the Draft Constitution which binds the President to act in accordance with the advice of the Ministers?

The Honourable Dr. B. R. Ambedkar : I am sure that there is a provision, and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President : Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar : Though I cannot point it out just how, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members : Article 61 (1).

Mr. President : It only lays down the duty of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the President is bound to accept the advice. Is there any other provision in the Constitution? We would not be able even to impeach him. Because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to article 61, which deals with the exercise of the President's functions. He cannot exercise any of his functions, unless he has got the advice, 'in the exercise of his functions.' It is not merely to 'aid and advise'. "In the exercise of his functions" those are the most important words.

Mr. President : I have my doubts if this word could bind the President. It only lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will be bound to accept that advice.

The Honourable Dr. B. R. Ambedkar : If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advise him. He will never be able to act independently of ministers.

Mr. President : Is there any real difficulty in providing somewhere that the President will be bound by the advice of the ministers?

The Honourable Dr. B. R. Ambedkar : We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President : I have considered that also.

The Honourable Dr. B. R. Ambedkar : Paragraph 3 reads: In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President : You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.

The Honourable Dr. B. R. Ambedkar : Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.

Shri H. V. Kamath : You will be leaving this article silent on the subject of the maximum life of an ordinance which can extend to seven and a half months. It is impossible.

Mr. President : Is Mr. Kamath going to make a second speech on his amendment.

The Honourable Dr. B. R. Ambedkar : Our President is quite different from the President of the United States.

Shri H. V. Kamath : I only wish to say that inframing this article, we have gone one better than the British regime and it is a most atrocious position.

Mr. President : You have already made your speech. I do not think you are entitled to make that observation at this stage. I will now put the amendments to vote.

The question is:

“That in clause (1) of article 102, for the words ‘when both Houses’, the word ‘when one or both Houses’ and for the words ‘such Ordinances’, the words ‘such Ordinance or Ordinances’ be substituted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 102, after the words ‘except when both Houses of Parliament are in session’, the words ‘after consultation with his Council of Ministers’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That to clause (1) of article 102, the following be added:

‘Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, after the words ‘both Houses of Parliament’ the words ‘within four weeks of its promulgation’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, for the words ‘six weeks from the re-assembly of Parliament’ the words ‘thirty days from the promulgation of any Ordinance’ be substituted” and

“That the explanation to clause (2) of article 102 be omitted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, after the word ‘Parliament’, where it first occurs the words ‘immediately after each House assembles’ be inserted; after the word ‘and’ where it first occurs the words ‘unless approved by either House of Parliament by specific Resolution’ and after the word ‘operate’ the word ‘forthwith’ be inserted; and the words ‘at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;’ be deleted.”

The amendment was negatived.

Mr. President : I think those are all the amendments.

The question is:

“That article 102 stand part of the Constitution.”

The motion was adopted.

Article 102 was added to the Constitution.

CHAPTER IV

Mr. President : There is an amendment of which I have a notice that a new article be added, article 102-A. We shall take it up.

[Mr. President]

There is an amendment with regard to the heading of the Chapter.

Amendment No. 1809 by Mr. Naziruddin Ahmad about the numbering of the chapter. I do not think it is necessary to take it up.

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

“That in the heading to Chapter IV of Part V, for the words ‘Federal Judicature’ the words ‘Union Judiciary’ be substituted.”

This is merely consequential to the earlier article where India has been described as a Union.

Mr. President : The question is:

“That in the heading to Chapter IV of Part V for the words ‘Federal Judicature’ the words ‘Union Judiciary’ be substituted.”

The amendment was adopted.

Mr. President : Mr. Gupta’s amendment is the same as the previous one.

New Article 102-A

Prof. K. T. Shah : Sir, I move:

“That under Chapter IV of Part V, the following new article be added:—

‘102-A. Subject to this constitution the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature.’”

Sir, this amendment enunciates a very important proposition in constitution making, which I have urged from a variety of angles already, but which I should now like to urge from this angle, in the hope that, at least for securing the independence of the Judiciary, it may commend itself to the House.

Sir, the principle of the separation of powers has been regarded in many countries as the foundation stone of democratic Government. Unfortunately, I have not been able to persuade the House, in regard to this very important principle, on other occasions that I had enunciated it either generally or in regard to the Legislature being independent of the executive, and the executive of the Legislature. In the case, however of the Judiciary, I submit that the proposition is still more important than anywhere else. After all, in this country, the history of the popular movement has been associated ever since its commencement with the demand that the Judiciary at least should be separate from and completely independent of the Executive. One of the characteristics of the preceding Government was that, upto a considerable stage in the scale of judicial organisation, the powers of the judiciary and the executive were combined in one and the same officer. That was the situation to which exception was taken ever since the democratic movement began in this country.

Though it has not even now found acceptance in this constitution in the fulness of form that I would have desired, I am sure that a majority even in this House does not object in principle to this proposition. I have, however, made it a much wider proposition. In this amendment: it is not merely the separation of the Judiciary from the Executive, but also its independence, and I want it to be also separate from the legislature and the executive as well.

The presence of the judicial element in the legislature is, I think of no advantage, no help either to the legislature or to the judges themselves, in as much as the Judges, if members of the Legislature, are liable to be influenced by the debates of the proceedings that may have taken place in the making of the law, and not keep themselves strictly to the letter of the law as it may come before

them in any specific case. It has, however, been accepted as a very sound principle of administration of justice, that Judges do not concern themselves with anything that has happened in the legislature while the law in question was being passed, and whatever arguments were used, whatever points were made while the law was under discussion in that body, must have no weight with the Judges. They must confine themselves only to the final Act of the legislature as it has been worded and they remain the supreme authority for interpreting that law as and when any matter comes up before them involving such law.

That, I think, in itself is a very sound position and ought to be normally emphasised in the Constitution. Hence, that part of my amendment, which relates to the separation and independence of the Judiciary from the legislature.

Much more important, from the point of view of civil liberty and the general democratic character of the governance of the country, is the complete separation of the Judiciary from the Executive in every way that we can possibly guarantee. I think it is of the utmost importance that the Judiciary, which is the main bulwark for civil liberties, should be completely separate from and independent of the Executive, whether by direct or by indirect influence. The possibility of the translation, that has frequently occurred in the past, of high judicial officers being available for promotion or transfer to equally high or even higher executive offices, is, in my opinion, itself a temptation against which Judges should be guarded. By law, I think, Judges should be barred from any such translation from the judicial to executive offices, however eminent, however imposing that office may be, lest, in such translation, they should be even indirectly influenced, and that they should model their judgments, unconsciously perhaps, in the hope of proper appreciation being shown at suitable moments by the powers that be.

I think this cannot be emphasised too much in a country particularly like this, new yet to the forms of democratic Government, new yet to the limits of Party Government and party dispensation of not only the loaves and fishes of office, but also other advantages, that the Judiciary should be completely independent, and in no sense open to influence in any way by the executive. The spectacle used to be frequent in the past,—perhaps this is within the knowledge of many of us here, when superior executive officers did not scruple even to issue instructions, certainly demi-official advice, as to the course of legal proceedings. I trust that is no longer the case now in this country. But lest there may be the slightest unconscious room for influence being exercised by the Executive upon the Judiciary, I suggest the very possibility should be avoided. The Constitution should therefore definitely provide that the Judiciary shall be completely separate from and independent of the Executive or the Legislature. I trust this simple proposition will find no objection and will be accepted by the House.

Shri K. M. Munshi : Mr. President, Sir, I have only a few remarks to offer with regard to the amendment proposed by my Friend Professor Shah. In this amendment as the House will see, two ideas have been mixed up. The first is about the separation of Judicial from the Executive Powers. The other is the independence of the Judiciary. Now if I may remind the House, the doctrine of separation of powers which was originally put forward by Montesquieu in the middle of the eighteenth century was the basis on which the Constitution of the United States of America was framed. But the last 150 years of experience has shown that the doctrine of separation of powers cannot be maintained in a modern State. Today we find the Executive appointing members of tribunals of a quasi-judicial character. We find a large number of rules made by the Executive under law regulating conduct of different kinds. In modern

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State the Executive enjoys certain powers of legislation as well as of deciding disputes. We also find Industrial courts which are taking upon themselves the right to adjudicate upon rights between the parties. On the other hand we find that the Judiciary has sometimes to perform functions which may be Executive in a very narrow sense. Therefore the doctrine of separation of powers is an exploded doctrine. This Constitution has been based on an entirely different principle, adopting the British model. We have invested the Judiciary with as much independence as is possessed by the Privy Council in England and to large extent, by the Supreme Court of America; but any water-tight compartments of powers have been rejected. That is with regard to separation of powers.

As regards the question of the independence of the Judiciary, which my Friend Professor Shah emphasised, ample care has been taken in this Chapter that the judicial system in India under this Constitution should be an integrated system, and that it should be independent of the Executive in so far as it could be in a modern State. The House will see as it proceeds to deal with this Chapter that once a Judge is appointed, his remuneration and allowances etc. remain constant. Further he is not removable except under certain conditions like a two-thirds majority of the two Houses. He is precluded from practicing afterwards and I am sure he is not going to look up to any future prospects from Government after his term of Judge is over. These are considered sufficient guarantees of the independence of the Judiciary throughout those countries which have adopted England as the model. These safe guards are there. Largely however it will depend on how the Judiciary works, what the spirit of the Legislature is and what spirit the Executive works. That is a matter which principally lies with the public opinion in the country as well as with those working the Constitution. But so far as the Judiciary is concerned, it is as independent as in any other country of the world and there should be no fear that by reason of not accepting the first part of Professor Shah's amendment the independence of the Judiciary would in any way be crippled or whittled down.

Shri R. K. Sidhwa : Mr. President, Sir, the Congress is committed for the last over fifty years that the Executive should be separated from the Judiciary. The main reason that this has been advocated every time and this subject came up before the public is that it is bad in principle. The prosecutor and the Judge should not be the same person and that is what is at present existing in this country and there has been miscarriage of justice in past when the Prosecutor and the Judge is the same person who sits on trial over the accused person. I would not go on stating details because it is very well known to the people as to why we have been advocating the separation of these two functions and it is absolutely necessary that these two functions should be separated. But, Sir, I might state that this question came up for discussion in this House in the last Assembly and we discussed it for nearly three hours. If you will kindly see the Directive Principles of State Policy there has been an article passed-article 39-A-which says:

“The State shall take steps to separate the judiciary from the executive in the public services of the State.”

Now it is one of the articles which has been passed and adopted as a Directive Principle given to the Governments that may be in Office, and that is of greater force than the amendment which my Friend Professor Shah desires to move. The matter having been already discussed and decided and forming part of one of articles, while I agree in principle about this matter, as it has been discussed threadbare on the floor of this House in the last Session.

I see no reason why we should again put in another clause on this matter and complicate the issue. 'Directive' means in my opinion that it has a greater force than this article. It may be that any Government may not accept that Directive Policy. Well, for that matter, the measure lies in the hands of the Legislature if they do not accept this Directive Policy. I therefore contend that while I accept in principle, as the matter has been discussed threadbare for three hours as far as I remember and forms part of an article, there is no necessity for passing a resolution of this nature.

Dr. P. K. Sen (Bihar: General): Sir, I cordially support the amendment moved by my honourable Friend Prof. Shah. The question as to the combination of judicial and executive functions has been mooted, I do not know, how many times. From the time of Raja Ram Mohan Roy this question about the absolute necessity of separating judicial and executive functions has been before the nation. I was rather taken by surprise—in fact it took my breath away—when my honourable Friend Mr. Munshi said that it was an exploded doctrine that there should be no combination of executive and judicial functions. Of course the question does not arise in connection with the Judges of the Supreme Court or the Judges of the High Courts.

Mr. President : I may point out that here in this Chapter we are concerned only with the Union Judiciary. Here we are not concerned with the subordinate judiciary or any other judiciary. There is no question of combination of functions so far as the Union is concerned, between the Executive and the Judiciary.

Dr. P. K. Sen : But, Sir, the amendment, I think is:

“Subject to this Constitution, the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature.”

It does not necessarily come under the Union Judicature. I should submit that what ever the proper place for it, which can be a matter of dispute, the principle itself—and the amendment represents a principle—is one which we must accept. Now is the time for us definitely to say that there should be a separation between the Executive and the Judiciary. I do recognise that coming as it does at this particular place, it seems that it is under Union Judicature, but that is not the case. The amendment simply says this, that under Chapter IV, of Part V, a new article should be added. Let there be a separate heading even. I do not know at which place exactly it should appear. But that is really immaterial. I do hope that this amendment will not be rejected in a hurry, but that the House will really give its considered opinion that it should be regarded as accepted doctrine. It is a very important principle that we have insisted upon for many years past, and therefore it should be embodied in our Constitution. It does not come under Federal Judicature, or under the High Court even; but it is notorious that in the Subordinate Judiciary, there is this combination of functions practically everywhere in India, and it is this which leads to the mischief that we have complained against for many many years. I therefore, beg to support the amendment.

Shri H. V. Kamath : Mr. President, I rise to support the amendment that has been moved by my Friend Prof. Shah, seeking to incorporate a new article, article 102-A, in the Constitution. I was rather surprised to hear Mr. Munshi come forward and plead against the separation of the judicial and executive powers, considering that the House has already passed an article, as Mr. Sidhva rightly pointed out—article 39-A—in the Directive Principles of State Policy which lays down that the State shall take steps to secure the separation of the judiciary from the executive in the public services of the State. The original article, 39-A, as moved before the House, specified a time limit, namely a period

[Shri H. V. Kamath]

of three years from the commencement of this Constitution. Subsequently, however, the time limit was eliminated, and article 39-A was passed without the specification of any period or time limit within which this separation of the two functions was to take place. This deletion of the time limit aroused suspicions in various parts of the country, among judges among lawyers, who thought there was really an attempt to shelve the whole issue for an indefinite period. Soon after this article 39-A was adopted by this House, the Chief Justice of the Patna High Court Mr. Clifford Manmohan Agarwala, while inaugurating the Bihar Judicial Officers' Conference referred to this article—I am reading from the Hindustan Times of the 9th December 1948—and said,

“Is it not obvious that having discovered that power over those appointed to administer the criminal law helps to lubricate the creaking machinery of administration, the Government is reluctant to part with that power, even though the public they claim to represent demands this long over-due reform and even though they themselves are fully aware that is a necessary step if the administration of criminal law is to command the confidence of the people for whose protection it exists?”

When the amendment incorporating this article 39-A was moved in this House, in November or December last the honourable Pandit Jawaharlal Nehru said that the Government of India were entirely in favour of the separation of the judiciary from the executive.

Mr. President : Mr. Kamath, was that remark of the Chief Justice made in reference to this article?

Shri H. V. Kamath : Yes, regarding the suspicion that was aroused. I was reading from the Hindustan Times of the.....

Mr. President : Does it refer to this particular article?

Shri H. V. Kamath : It refers to the suspicion. Shall I read the whole extract? It says that this article seeking to eliminate a period, or time limit arouses suspicion in the minds of various people, and “this suspicion was voiced eloquently by the Chief Justice of the Patna High Court etc. etc.” The late Sarojini Devi “who also spoke at this Conference of Bihar Judicial Officers” I am again reading from the Hindustan Times of the same date.

Mr. President : I am afraid all these references have nothing to do with this particular article.

Shri H. V. Kamath : I only want to refer to article 39-A without the time limit of three years, and this aroused suspicion in the minds of various people. Though we know as the Prime Minister has stated, the Government of India were entirely in favour of the principle of separation, yet, by agreeing to omit this limit of three years, many people suspected or thought that we were not earnest about it. In my judgment, the paramount need for an independent judiciary arises from the fact, firstly, that we are here building a federal Union Constitution where an independent judicial authority is necessary to arbitrate or to settle disputes that might arise between the Centre and the Units; and secondly in my humble judgment, it is essential that the citizen should in a democratic state be in a position to refer complaints against the State to an impartial authority. These two functions which I just referred to, namely, the functions of the judiciary to adjudicate or settle disputes between the Centre and the Units in the first place, and to give justice to the citizen as against the State cannot be fulfilled unless and until the judiciary is separate from the executive and is completely independent of the executive. Therefore, in the context of the free State that we are going to build, the free

democratic State that we are going to build up in our country, an independent judiciary should assume a high priority, before we proceed to confer fundamental rights upon the citizen, or before we allocate various functions and powers between the Centre and the Units. If the judiciary is not there to protect and safeguard these rights that you confer on the citizen, how are we going to preserve the sanctity of our Constitution? Therefore, I say, I was rather not prepared to hear Mr. Munshi say that it is an exploded doctrine and that it has no validity in the present age. On the contrary, Sir, I make bold to say that with the increasing in roads upon personal liberty and democratic freedom that we witness all over the globe today, that need for such separation and for an independent judiciary was at no time higher than it is today. Therefore, Sir, I support the amendment that has been brought before the House by my Friend, Prof. K. T. Shah and appeal to the House to accept this amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): I have a number of objections to the amendment moved by Prof. Shah. In the first place it is not germane to the chapter which deals with the constitution and the functions of the Supreme Court. The general question as to the relation between executive and the judiciary is not the subject of the chapter. As a matter of fact, we have not in the Draft Constitution a general chapter relating to the Judicature, the High Court, the Supreme Court and the Subordinate Courts. If that were so and if we were defining the relation between the executive and the judiciary, possibly it might be different. If there is to be any article of that description it must find a place in some other part of the Constitution.

The second point is that this House has already considered the general question in some form when the fundamental rights were debated by the House. Having regard to the present condition of things, it would be impossible to work the constitution in the first few years, it was felt, if immediately the question of the separation of the executive and the judiciary is to be undertaken. Therefore this amendment goes against the spirit of the resolution which has already been arrived at by the House. That is the second point.

Thirdly, a general clause like this may place the whole administration out of gear. I shall illustrate it in a minute.

From the date the Constitution comes into being there shall be a complete separation of the executive and the judiciary. Today, as a matter of fact in the framework of the administration in the different provinces of India, there is a certain combination of fusion between the executive and judicial functions. How exactly is the administration to work in the meantime if you have a general article of this description, without having specific provisions in regard to the judiciary and upon the way in which the Judiciary is to work in different parts of the Constitution? Leaving that apart, there are other weighty constitutional objections to an article of this description. I may at once mention that I am in wholehearted agreement with the general principle of the separation of the executive from the judiciary functions. But if you put a general article like this or an amendment like this in the Constitution, it is likely to give rise to considerable difficulties. If only we survey the working of administrative institutions in different parts of the world, including America, where this theory of separation is recognised—at least the separation of the executive from the judiciary—you will find a large number of quasi-judicial functions being invested in what may be called executive or administrative bodies. Without that the ordinary administration cannot get on. Those functions may not be completely judicial in the sense in which the functions are to be discharged by a Court of Law. But certainly their work bears upon the rights and obligation between parties.

[Shri Alladi Krishnaswami Ayyar]

I would ask the Members of the House to take any volume of the United States Supreme Court reports and the number of cases which have come up from what may be called the Inter-State Commission and various other quasi-judicial commissions working in different parts of America. No doubt in those cases there is the ultimate recourse of the Supreme Court. Apart from the difficulty to it, it is impossible to work a modern administrative machinery without some kind of judicial functions being vested in administrative bodies. I might mention that even without a clause as to separation an article in the Australian Constitution, investing the Judicial power in Courts, has given rise to difficulties. There the expression used is 'Judicial powers shall be vested in so and so'. The question has arisen in Australia whether income tax tribunals exercising quasi-judicial functions could deal with the question of assessment at all. After considerable difficulty and exploring the history of Courts and tribunals, the Privy Council got over the thing and pointed out that a body which is exercising judicial functions but is not exercising judicial powers may not be strictly a Court.

Therefore, even if we are anxious to put this through, it must be undertaken by the different Legislatures. The Legislatures in undertaking such legislation will have to examine the various functions which have to be discharged by administrative, quasi-administrative, quasi-judicial tribunals, and then see how far the ultimate recourse to the Courts or the Superior Courts can be guaranteed, consistent with certain quasi-judicial functions being invested in administrative bodies.

I think a general article like this will land us in considerable difficulty. While I do not want to espouse the cause of the executive or to say that there should not be any separation between the executive and the judiciary it requires a certain exploring of the world field and you must be in a position to go into the entire field of administrative working, have a regard to the way in which the thing is being worked in countries where this theory of separation is recognised, profit by their example in recent times and see that we avoid the pitfalls into which they have fallen. That is the proper way to approach this problem.

I therefore oppose the amendment on these grounds: first that it is not germane to the particular chapter: secondly, that it involves the exploring of the whole field of general administration: thirdly that it is sure to put the whole administration out of gear; fourthly, the words 'wholly independent' and 'wholly separate' will lead of considerable difficulty.

I oppose the amendment of Prof. K. T. Shah.

Dr. P. S. Deshmukh : Sir, I regret I cannot find myself in a line with Prof. K. T. Shah and I cannot support the amendment moved by him. There have been two speeches made on the other side (Shri K. M. Munshi and Shri Alladi Krishnaswami Ayyar) but I regret to have to say that they were not fully audible, and so if I repeat a point here or there I shall be forgiven. As a matter of fact, I want to be as brief as possible.

The amendment that has been proposed wants two things. It wants the separation of the executive from the judiciary and it also wants to provide for the independence of the judiciary. So far as the Supreme Court is concerned it is separate from the Executive and no question of separation therefore arises. The second thing which Prof. Shah wants to achieve is independence. Now how is independence of the Supreme Court to be secured? If we look into the Constitutions of various other countries it is

nowhere provided how the judiciary of any particular country shall be independent. The independence of the judiciary is secured more by a proper selection of the method of the appointment of the judges, by providing that there shall be no interference by the executive in the judicial functions of the judicature, by making the judges not easily removable and so on and not by a direct provision that the Judges of the Supreme Court shall be independent. I would make bold to say, irrespective of what I heard Mr. Munshi and Shri Alladi Krishnaswamy Ayyar say (I do not know if I heard them correctly) that I, for one, take the view absolutely and emphatically that the independence of the judicature is provided for in the Draft Constitution, which is before the House, and beyond this it is not necessary and advisable to go. We cannot make it independent by saying that it shall be independent, just as we cannot create an opposition just by saying that certain Members should form an opposition. In the same way you cannot have an independent judiciary by telling them "You are independent." Actually from my own experience of the judiciary in India for a long time I can safely say that an Indian judge is likely to be more independent than he should be, rather than contrary. If one were to observe the working of the judiciary of India as a whole, the High Court Judges, and the Federal Court Judges, I can safely say that even without providing for this clause by which we propose to tell them that they are independent and they are not amenable to executive influence, they have acted as independently as the country would like them to act. From that point of view I say that the provisions are absolutely adequate, and that we are providing for an adequately independent judicature. I would like to differ respectfully from Mr. Munshi if he thought and says, that it is not possible to provide for an independent judiciary. In my view it is absolutely necessary to provide for an independent judicature but I feel convinced that provisions in this chapter secure this purpose.

I have a small suggestion to make. I have already stated that our Constitution is neither a Union nor a Federation: It is a hotch-potch of both. Dr. Ambedkar is bringing forward an amendment for the alteration of the word "Federal" to the word "Union". I do not think there is much meaning in that. But so long as there is any trace of federation in the constitution, I would beg of Dr. Ambedkar to give this important subject an independent part of itself in the constitution rather than include it in another part and give it only a chapter. The three essential elements of a constitution which is federal in character are the Legislature, the Executive and the Judicature. As far as dignity is concerned the Judicature is no less than the other two and should therefore have for itself a separate part. That suggestion I would like to make to Dr. Ambedkar. It should not be left to Chapter IV but should have a separate part for itself.

Mr. Naziruddin Ahmad : Sir, I wholeheartedly support the principle of the amendment which has been moved. Much has been said as to the propriety of putting it at this place and also as to the exact wording. What I wish to emphasise is the principle behind the separation of the Judiciary from the Executive and the independence of the Judiciary. As to where it should be inserted and what should be the exact wording is a matter which is of secondary consideration. In fact, in discussing and deciding upon this important issue it is very desirable to keep these two matters entirely distinct. If we do not like the principle we should say so plainly but if we do, then the question of its being placed in the proper place or its exact wording can be a matter of adjustment in the House.

It is somewhat surprising to hear in the House after over fifty years of agitation for securing the independence of the Judiciary, that the independence of the Judiciary is no longer a desirable thing. In one form or another, it

[Shri Naziruddin Ahmad]

has been suggested here that this is not the proper time, and that this country is not now suited to this experiment of separating the Judiciary and the Executive, and the independence of the Judiciary is no longer a covered thing. We have been under slavery for centuries and it seems to me that we have not yet been able to get rid of that slave mentality, so that having obtained independence we want to subjugate our judiciary to the wishes and whims of the executive. From the Congress and Muslim League platforms as also in the press and everywhere else the cry was that the Judiciary must be made independent and separate from the Executive.

Mr. Tajamul Husain : What about the Mahasabha platform?

Mr. Naziruddin Ahmad : They also, I believe, supported this principle. There is no one today who does not support the principle, except those who are now in power and who hitherto cried for it the most. Having obtained power they do not want to part with it so as to make the Judiciary independent of, and separate from, the Executive. That is the impression that I get from listening to the debate.

The poisonous effect of joint executive and judiciary functions is notorious. Cases have happened where the Government or the Prime Minister telegraphed to the District Magistrate that a particular case should be decided or dealt with in a particular manner. These matters have come to the notice of the High Court. One such case arose in Calcutta only a few years ago and there were severe strictures made about it. This is also happening today. It is a revealing thing that in these days of independence such things are possible. In fact, the magistracy is controlled indirectly by wire-pulling from the top. I submit that the arguments of one very distinguished Member of the House and a distinguished lawyer, Mr. Munshi, require adequate consideration. Mr. Munshi seems to suggest that the separation and independence of the Judiciary is not practicable at this stage and the argument he has advanced is somewhat unexpected, if I may respectfully say so. He pointed out that we have taken rule-making powers. There are the Industrial Courts and other things where Government has to take decisions. I would however submit that rule-making power has nothing to do with the separation of the Judiciary and Executive. Take as much power as you like. A democratic House will give you power that is needed. You can pass any laws you like. All that the independence of the Judiciary means is that within the rules you make, the power that you give to the Courts, should be allowed to be exercised without Executive interference—that when a magistrate exercises judicial functions he should be above any influence. The worst thing that he can do is to refuse real justice to the people. If there is one thing which will thrill the hearts of people and will make our independence a solid achievement it is the confidence in the Judiciary. The moment you let any person think that he will not have confidence in the Judiciary, the stability of the Government will be undermined. I submit that from this point of view the independence of the Judiciary should be guaranteed. It is not as if this is being asked for too soon. This is a reform for which we have been asking for a long time. What is the argument today against this reform? It is the argument which the British Government had been advancing for over fifty years. We are repeating their argument today. I submit that the principle should be accepted here and now without any qualification and without any mental reservation. I submit that the rule-making power and the need for interference by the State in many matters will not really go to the root of the matter. The Judiciary may yet remain independent of them. The Executive should have the power to make rules. But within the narrow limits of powers given to Court, let them be exercised independently. Sir,

a distinguished Member of the House with rich judicial experience has pointed out that this agitation is as old as the time of Raja Ram Mohan Roy, more than a hundred years ago. In fact this has been the strongest plank in the platform of our nationalist agitation. I mean to say that if the judiciary is not separated from the influence of the Executive there will be intellectual corruption. There will be undermining of the faith of the people in the judiciary.

Shri Alladi Krishnaswami Ayyar, another distinguished lawyer and jurist and a great patriot has given us the view that he accepts the principle, but says that this is not the time for it. The present time does not allow it, he says. I implore the House to consider whether we should be repeating the arguments of the bureaucratic British Government in refusing to accept the reform at once. Sir, I have said enough. I do not wish to prolong the debate. I simply wish that the principle should at once be accepted without any reservation.

Mr. President : It is eight o'clock now. I think we had better close the discussion.

Shri Brajeshwar Prasad (Bihar: General) : May I have one minute of the time of the House to speak on this motion?

Mr. President : I think the House is not willing to hear further speeches now.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any reply is necessary. If I may say so, it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the Directive principles of State Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been practically concluded in article 39-A.

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

The question is:

“That under Chapter IV of part V, the following new article be added:

“102-A, Subject to this constitution the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature.”

The motion was negatived.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 24th May, 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 24th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): Sir, could we not do something to be punctual? It pains me very much to see that we commence our business eleven minutes late. This is very bad for us and it ought to be a matter worthy of your consideration that we should be punctual.

Mr. Tajamul Husain (Bihar: Muslim): For that we are to blame. The fault is ours. We do not come here in time.

The Honourable Shri Ghanshyam Singh Gupta : What I once did in the C.P. Assembly was that I entered punctually and when I found that there was no quorum, I told honourable Members that I would retire for five minutes to see whether there was quorum. This was the solitary instance and I have found that I have not to wait even for five seconds. It is a matter of very great concern that this august House should commence its work eleven minutes after time.

Mr. President : I am glad that the honourable Member has drawn attention to this. I myself have been waiting for the past twenty minutes in the chamber. I hope the point that he has raised will receive due consideration at the hands of honourable Members and it will not be necessary for me to take the step which he took in the C.P. Assembly. From tomorrow we shall always be here exactly in time.

We shall now take up article 103.

DRAFT CONSTITUTION—(contd.)

Article 103

Mr. Tajamul Husain : Mr. President, Sir, my amendment is a very simple one. I beg to move:

“That in clause (1) of article 103, before the words ‘Chief Justice’ the word ‘Supreme’ be inserted.”

Now I will read article 103, clause (1).

“There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than seven as Parliament may by law Prescribe.”

If my amendment is accepted, the amended clause will read:—

“There shall be a Supreme Court of India consisting of a Supreme Chief Justice of India, etc.”

According to this article, the Chief Justice of the Supreme Court will be called the Chief Justice of India and the Chief Justice of a provincial High Court will also be called a Chief Justice. I am of the opinion that there must be a distinction between these two. No doubt the Chief Justice of

[Mr. Tajamul Husain]

India is called the Chief Justice of India and the other is only a Chief Justice. We have distinguished between the Prime Minister of India and the provincial Prime Ministers. The Prime Minister of India will be called the Prime Minister but the provincial head will be called only the Premier. Then again, the Advocate-General of India will be called the Attorney-General, while in a province he will be called the Advocate General. We have distinguished here also. The Auditor-General of India will be called the Auditor-General, while in a province he will be called only the Auditor-in-Chief. Therefore in order to distinguish between the Chief Justice of a provincial High Court and the Chief Justice of the Supreme Court, we should call the Chief Justice of India the Supreme Chief Justice of India instead of merely the Chief Justice of India. With these words I move my amendment and I hope it will be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

“That in clause (1) of article 103, for the words ‘and such number of other judges not being less than seven, as Parliament may by law prescribe’ the words ‘and until Parliament by law prescribes a larger number, of seven other judges’ be substituted.”

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

(Amendment No. 1815 was not moved.)

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I move:

“That for clause (2) of article 103 the following be substituted:—

‘Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.’ ”

Sir, read with article 61, my amendment would carry the same meaning and purpose as the provisions of Section 200 of the Government of India Act, 1935. Under that Section the Chief Justice and the other Judges of the Federal Court are appointed by the King and the King is supposed to act on the advice of his Ministers. Now under article, 61, the President of India shall act on the advice and instance of his Ministers. Again, Sir, in the United States of America, the Chief Justice of the Supreme Court is appointed by the President on the advice and with the consent of the Senate. In the other Dominions also, the representative of the King, on the advice of the Ministry concerned, appoints the Chief Justice and other Judges of the Supreme Court. So my amendment is quite in accord and in line with what prevails in the United States, is provided in the Government of India Act, 1935, and is the practice in the other Dominions as well. Sir, I move.

Mr. President : There are two other amendments which are more or less to the same effect that is, 1822 and 1823. I do not think it is necessary to move those amendments separately, but I will take them as representing more or less the same view-point as conveyed in amendment No. 1816. We shall take the amendment which may be considered to be the best from the point of view of language.

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

“That for clause (2) of article 103, the following clauses be substituted:—

‘(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of Parliament assembled

in a joint session of both the Houses of Parliament.’

‘(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years.’

Provided that :

- “(a) a judge may, by writing under his hand addressed to the President, resign his office;
- (b) a judge may be removed from his office in the manner provided in clause (5).”

Sir, in this amendment I have provided that the Chief Justice of the Supreme Court shall be appointed by the President, but it shall be confirmed by at least two-thirds majority of both the Houses. At present, clause (2) provides that the President shall appoint the Chief Justice of the Supreme Court, which means that the Prime Minister or the Executive shall appoint him. The Chief Justice of the Supreme Court should be completely independent of the Executive and it is this principle which I want to introduce in this section. At present he shall be a creature merely of the executive and the President shall appoint him on the advice of the Prime Minister. This will take away some independence of the Supreme Court. We are here providing for the highest tribunal of justice in our country. This tribunal should be above suspicion and no executive should be able to have any influence upon him. If the Chief Justice is appointed by the President or the Prime Minister then his independence is compromised. I therefore want, Sir, that the Chief Justice shall be appointed by the President of course, but at least two-thirds members of the Parliament shall approve his name. This means that the President shall and will be the prime mover in the appointment but if the name he chooses is not one which can be approved by the members of Parliament by at least two-thirds majority, then that name shall be changed and another name shall be proposed which shall be acceptable to two-thirds majority of both Houses. In this manner, there is some initiative to the President also. He will be the man who will give the names, but the name will only be accepted if two-thirds majority of both the Houses support him, so that the President shall have the initiative, but the man chosen will be such who shall enjoy the confidence of both the Houses of Legislature. This method has two advantages; it gives the executive the right of choosing the person who they think will be proper, but it will not exercise that right in a party spirit but shall decide it in a manner that all the members of both the Houses, or at least a two-thirds majority of them, shall approve that name. Therefore, Sir, I think that the provision which I am suggesting will be a far better provision than the one contained in the draft already. At present, Sir, the judges also have not to be appointed on the advice merely of the Chief Justice of the Supreme Court, but they are appointed in consultation with the Supreme Chief Justice, which means even in their appointments the Executive has got the major hand. I think, Sir, that this should not be. Every Judge of the Supreme Court should be appointed on the advice merely of the Supreme Judge of the Supreme Court, so that they may derive their authority from the Chief Justice and not from the Executive. This, I think, Sir, is a very important thing and should be incorporated in our Constitution. We have all along said that we want an independent judiciary; that is the pride of many peoples and that is the pride of the United States of America. I think we too want that our Chief Justice and the Supreme Court should be above suspicion. These should be completely independent, so that a man can feel that they shall be absolutely independent of the Executive. To my mind my amendment is very important and I, therefore, hope that the Members here

[Prof. Shibban Lal Saksena]

will see that they make some changes so that the Chief Justice of the Supreme Court does not become a creature merely of the Executive, and the President appoints him on his recommendation.

I also feel, Sir, that this provision about consultation with the High Courts in States is an anachronism. The States shall now not have an independent existence as they have merged. Probably it was intended when they were not given that right, but now this should not be there. I hope, Sir, that Dr. Ambedkar will see that this is removed and things are brought up to date, and we shall have an independent judiciary which shall be absolutely independent of the Executive. I have already provided that the initiative shall be entirely that of the President, which means that the Executive shall have the right to suggest the names, but out of the names, it will be the Assembly, the joint session of both the Houses which will choose the name they think proper, by the two-thirds majority in a proper manner. Sir, I move.

(Amendment No. 1818 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim) : Sir, I move:

“That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:—

‘(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme Court and the Chief Justices of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.’ ”

Now, Sir, in giving this amendment, I wanted to see that the appointment of the judges of the Supreme Court is not in any way affected by political influences. It is with that view that this amendment has been given and in that view. I am very strongly supported by the opinions given by the Federal Court and the Chief Justices of the various High Courts, which have been submitted to this body. That memo has been circulated to the honourable Members of this House. Sir, you will permit me to read only some of the sentences from that memo. This is what it says:

“It appears that a certain provincial Government has issued directions that the recommendations of the Chief Justice, instead of being sent to the Premier, should be sent to the Chief Secretary, who, in some instances, has asked the Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the province. With a view to check this tendency which is bound to undermine the position and the dignity of the High Courts and lower them in the estimation of the public, the Judges assembled in conference were unanimously of opinion that a procedure on the following lines must be laid down for the appointment of High Court Judges:

“The Chief Justice should send his recommendation in that behalf directly to the President. After consultation with the Governor, the President should make the appointment with the concurrence of the Chief Justice of India.”

This procedure would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and the Home Minister and justify his recommendations before them. It would also ensure the recommendation of the Chief Justice of the High Court being always placed before the appointing authority, namely, the President. The necessity for obtaining the concurrence of the Chief Justice of India would provide a safeguard against political and party pressure at the highest level being brought to bear on the matter.”

It is said later on that *mutatis mutandis*, the very same principles apply to the appointment of the Judges of the Supreme Court. The same memo points out:

“It is therefore suggested that article 193 (1) may be worded in the following or other suitable manner. ‘Every Judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.’ ”

Further, it is stated:

“The foregoing applies *mutatis mutandis* to the appointment of the Judges of the Supreme Court. Article 103 (2) may also be suitably modified.”

I submit, Sir, the views expressed by the Federal Court and the Chief Justice of the various High Courts assembled in conference are entitled to the highest weight before this Assembly, before this provision is passed. It is of the highest importance that the Judges of the Supreme Court should not be made to feel that their existence or their appointment is dependent upon political considerations or on the will of the political party. Therefore, it is essential that there should be sufficient safeguards against political influence being brought to bear on such appointments. Of course, if a Judge owes his appointment to a political party, certainly in the course of his career as a Judge, also as an ordinary human being, he will certainly be bound to have some consideration for the political views of the authority that has appointed him. That the Judges should be above all these political considerations cannot be denied. Therefore, I submit that one of the chief conditions mentioned in the procedure laid down, that is the concurrence of the Chief Justice of India in the appointment of the Judges of the Supreme Court, must be fulfilled. This has been insisted upon in this memo and that is a very salutary principle which should be accepted by this House. I submit, Sir, that it is of the highest importance that the President must not only consult the Chief Justice of India, but his concurrence should be obtained before his colleagues, that is the Judges of the Supreme Court, are appointed. It has been very emphatically stated in this memo that it is absolutely necessary to keep them above political influences. No doubt, it is said in this procedure that the Governor of the State also may be consulted; but that is a matter of minor importance. It is likely that the Governor may also have some political inclinations. Therefore, it is that my amendment has omitted the name of the Governor. That the judiciary should be above all political parties and above all political considerations cannot be denied. I do not want to enter into the controversy at present, which was debated yesterday, as to the necessity for the independence of the judiciary so far as the executive is concerned. It is a matter which should receive very serious consideration at the hands of this House and I hope the Honourable the Law Minister will also pay serious attention to this aspect of the question, particularly in view of the fact that this recommendation has been made by the Federal Court and the Chief Justices of the other High Courts assembled in conference. I do not think, Sir, that there can be any higher authority on this subject than this conference of the Federal Court and the Chief Justices of the various High Courts in India.

Another point, which I have raised in my amendment is that the age of retirement of the Supreme Court Judges should be raised to 68. It has been found in recent years that there are many High Court Judges who have retired at the age of sixty, who are very energetic and who are well fitted to discharge the duties for a number of years more. Apart from that, there are very cogent reasons given in this memo. Why the age of retirement of the Judges of the Supreme Court should be raised to sixty-eight. In this memo it is stated that there may be a difference of three to five years between the age of retirement of a Judge of a High Court and that of the Supreme Court. The very same

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memo, says that the age of retirement of the High Court Judges may be fixed at sixty-five and that of the Judges of the Supreme Court may be fixed at sixty eight. As regards the age of retirement of the Judges of the High Court, the matter has to be discussed when those relevant sections are taken up for consideration. I do feel, Sir, that the age of retirement of the High Court Judges should be raised to sixty-two or sixty-three, and that of the Judges of the Supreme Court should be raised to sixty-eight as recommended by the Federal Court and the Chief Justices of the various High Courts of India. I submit, Sir, that this is a matter which should receive very serious attention at the hands of the honourable the Law Minister, in view of the fact that I am supported in my amendment by the recommendations of the highest judicial authority in the country.

(Amendment No. 1820 was not moved.)

Shri H.V. Kamath (C.P. & Berar: General): Amendment No. 1821 is purely of a drafting nature. I leave it to the Drafting Committee.

Mr. President : Amendment Nos. 1822 and 1823, as I said, are covered by amendment No. 1816 which has been moved.

Prof. K.T. Shah (Bihar: General): Sir, I beg to move:

“That in clause (2) of article 103, after the word ‘with’ the words ‘the Council of States and’ be inserted.”

The amended proposition would read:

“Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with the Council of States and such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:”

Sir, this is an amendment seeking to make the appointment of Judges free from any particular influence. My amendment is that the President, if he makes the appointment, will naturally do so on the advice of the Prime Minister. In my opinion, Sir, if I may say so with all respect, this Constitution concentrates so much power and influence in the hands of the Prime Minister in regard to the appointment of judges, ambassadors, or Governors to such an extent, that there is every danger to apprehend that the Prime Minister may become a Dictator if he chooses to do so. I think there are cases which ought to be removed from the political influence, of party manoeuvres. And here is one case, *viz.* Judges of the Supreme Court, who I think should be completely outside that influence. I am, therefore, suggesting that the appointment of the Judges should be made by the President, after consultation not only with the Judicial services proper, but also with the Council of States so that the party element may be eliminated or minimised, and any political influence also may be avoided.

The suggestion has further this argument in its support that just as in regard to the financial powers the Lower House or the House of People is made supreme, so in matters of this kind, in matters of making high appointments as a pure consideration of balance of power I suggest that the Council of States should be associated, if only to avoid the influence that is likely to dominate when the Prime Minister alone advises the President on such matters.

The Council of States composed, as it is of representatives of States as well as certain interests, would be, I think, more able to be balanced in this matter. Accordingly, the addition of the Council of States as an advisory body to the President in such matters will not be in any way objectionable.

There is of course the obvious precedent of the U.S.A. Senate which is associated in such matters, even though the Constitution of the U.S.A. is based, fundamentally speaking, on a somewhat different principle than that which we have adopted in this draft. Nevertheless, here is a case in which I think it would be well for us to adopt that line and associate the Council of States for advising the President in the appointment of the Supreme judiciary. I hope this will be accepted.

(Amendment Nos. 1825, 1826 and 1828 were not moved.)

Mr. President : No. 1827 is covered by other amendments moved.

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

“That in clause (2) of article 103, for the words ‘may be’ the words ‘the President may deem’ be substituted.”

As the clause stands the words ‘may be’ may come before a Court of law because somebody has to decide about the necessity and so my amendment seeks to give the President the discretion to decide which Judges it will be necessary to consult. I think the amendment is essential as otherwise the words are left vague.

Mr. President : No. 1830 and No. 1831 are already covered by No. 1829.

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

“That in clause (2) of article 103, for the words ‘until he attains the age of sixty-five years’ the words ‘during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force’ be substituted.”

The amended proposition would read:

“Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force.”

This is another way in which I am trying to secure the absolute independence of the judiciary. This means that the appointments will be not for a definite period, or within a prescribed age-limit, on attaining which a Judge must compulsorily retire, but, as is the case in England, and as was quite recently the case in the United States of America, judges, particularly of the Supreme Court, should be appointed for life. They should not, in any way be exposed to any apprehension of being thrown out of their work by official or executive displeasure. They should not be exposed to the risk of having to secure their livelihood by either resuming their ordinary practice at the bar, or taking up some other occupation which may not be compatible with a judicial mentality, or which may not be in tune with their perfect independence and integrity.

I suggest, therefore, that the practice which exists in England, and which existed quite recently in U.S.A. of allowing judges to continue in their office during good behaviour, that is, practically for the rest of their lives, should be accepted.

If, however, any judge feels that, due to mental or physical causes, he is unable to carry on or do full justice to his functions, it may be open to him to resign I suggest, after ten years of service in a judicial capacity; and if he so

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resigns, I further suggest that he should be exposed to no want, no fear as to his ordinary livelihood. He must be completely secure in his social position, in his economic position, and as such he must be allowed a reasonable pension.

I leave the amount of this pension to be determined by law by Parliament, not for a particular judge, if and when he resigns, but as a rule for general application. Whatever be the law in force at that time, a retiring judge after ten years of service should be allowed the benefit of that law by way of a pension.

Speaking for myself, I would suggest that the pension for the such judges should be not less than their own salary while in office, so that there is no temptation left to them either to seek any other employment, or carry on any other occupation or profession by which they could eke out their existence. If the salary was sufficient to maintain them in a given standard of life, the pension also should be of a similar nature.

This, however, is my personal opinion which I do not wish to be included in the Constitution, and I suggest it may be left to the law to be made by Parliament in that behalf. But the supreme principle that I have all the time been pressing upon the House is the necessity of securing the absolute independence of the judges. That I have attempted to secure, first, in the previous amendment, by the procedure for their appointment, and here, secondly, by the term of their appointment being made for the duration of good behaviour, that is to say, practically for the rest of their lives. If for any reason it becomes necessary for a judge to wish to retire from his office, or even to be removed, without of course any censure being attached, then he should be entitled to pension sufficient to maintain him in independence and in perfect security and comfort, not necessarily affluence, during the rest of his life. This, Sir, is such a simple principle that I hope there will be no objection taken to it and that the proposition will be accepted.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, Sir, I beg to move:

“That in clause (2) of article 103, for the word ‘sixty-five’ the word ‘sixty’ be substituted and the words ‘The President, however, may in any case extend from year to year the age of retirement up to sixty-five years’ be added.”

Sir, my reasons for moving this amendment are three. Firstly, the ordinary age of retirement in the case of government servants is 55 years, but in the case of High Court Judges it has been raised to sixty. I see no reason why a further extension up to the age of sixty-five should be granted in the case of judges of the Supreme Court. They must, after putting in long years of service retire and make room for others to come in. I know that the Chief Justices in a conference which they held some time ago, recommended that the age of superannuation of the judges of the Supreme Court should be sixty-five. I have not been able to find in the proceedings of that conference any cogent reasons urged by the learned Chief Justices. The main reason which they have urged is that if the age of superannuation is not raised to sixty-five years, there will not be enough attraction to the High Court Judges to accept posts in the Supreme Court. I must confess that I felt considerably disappointed at this sort of argument being urged by the learned Chief Justices. We should not accept this recommendation of the Chief Justices merely in order to provide attraction to such Judges of the High Courts with whom monetary considerations weigh the most.

My second reason is, and I urge this reason with due respect to such honourable Members of this House who are above the age of sixty, that very often a person who has gone beyond the age of sixty is not very fit and is not

mentally alert, to perform the strenuous duties of a judge of the Supreme Court. I know that sometimes there have been judges in the High Court who even before they have attained the age of sixty are not mentally fit to discharge the functions of a High Court Judge. Sometimes, we have found High Court Judges—and I say this with due respect to them—we have found them sleeping and snoring when the learned advocate is going on speaking.

Mr. President : That does not depend upon age.

Shri Jaspal Roy Kapoor : Of course, not always, Sir, I only say that sometimes it happens that a person who is even nearing the age of sixty is not fit to perform the strenuous duties of a High Court Judge, and much less to be able to perform the duties of a judge of the Supreme Court. I know that we cannot say that generally it is so, but I can say that sometimes it is certainly so. Therefore, my submission is that if we make it a definite rule that every Judge of the Supreme Court shall go up to the age of sixty-five, it may not be safe to do so. I know, of course, honourable Members of this House, a good many of them, are beyond the age of sixty and they are an ornament to the country. But it is not everybody who goes beyond the age of sixty that continues to be so fit and so mentally alert.

And then, Sir, my third reason is—and that is the most important of the reasons—that one who has served and has earned handsomely from the Government up to the age of sixty years should be prepared to retire and serve the society thereafter in an honorary capacity. Society has a right to expect of everyone who has attained the age of sixty to work honorarily for the benefit of the society. In our country, Sir, the ideal, the ancient ideal has been that every person in the fourth stage of his life must become a *Sanyasi* and must serve society in an honorary capacity. This is the standard which has been set before us by our ancient sages, and I think, Sir, we can reasonably expect of everybody, and more particularly of the learned ones like the Judges of the Supreme Court, to set a good example for everybody else, of service to the country in an honorary capacity after the age of sixty years. I have often thought that Government servants who are on pension after retirement and free from worry about earning a living may very well serve society in an honorary capacity in doing constructive work, in which case we may have a very good army of social workers in various spheres of activity. My amendment, however, does not absolutely bar the continuance of judges of the Supreme Court in service after the age of sixty. What I say is that ordinarily they shall retire at sixty but in exceptional cases the President, if he thinks the Judge is exceptionally capable and should be retained in the interest of good judicial administration, may keep him till sixty-five, but only by giving him extensions from year to year. I hope this amendment will be acceptable to the Honourable Dr. Ambedkar and the House.

(Amendment Nos. 1834 and 1835 were not moved.)

Shri Satish Chandra (United Provinces: General):

“That in clause (2) of article 103, for the words ‘until he attains the age of 65 years’ the words ‘for such period as may be fixed in this behalf by Parliament by law’ be substituted.”

There has arisen a lot of controversy over the question of age-limit which is prescribed in this clause. My honourable Friends Mr. Pocker Saheb, Mr. Naziruddin Ahmad and Mr. Mahboob Ali Baig wish it to be raised to sixty-eight years, while Shri Jaspal Roy Kapoor and Shri Mohanlal Gautam would like it to be reduced to sixty. I think our constitution is being unduly burdened with age-limits in various articles here and there. The question of age is one which can be left safely to the future parliaments to be decided and fixed, in particular circumstances, according to the needs and exigencies of the time.

[Shri Satish Chandra]

I endorse most of what Shri Jaspat Roy Kapoor has said and do not wish to repeat the arguments. My feeling is that this House, composed as it is of elderly gentlemen has been unfair to young men at various stages in fixing the age-limits. Our constitution has provided for the membership of Legislatures minimum age-limits which are highest in the world; and, but for the one amendment that was accepted about the eligibility for the Upper Chamber of Parliament, the age-limits should have been higher than the highest in the world. I hope my amendment will be accepted and it will be left to the future Parliament to decide the age-limit in this case. I think after the age of sixty, physical and mental incapacity overtake most people, although there are always exceptions. However I do not wish to enter into that controversial point and desire to leave such questions of detail to the future Parliament.

(Amendment Nos. 1837 and 1838 were not moved.)

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Sir, I beg to move:

“That in the first proviso to clause (2) of article 103, for the words ‘the Chief Justice of India shall always be consulted’ the words ‘it shall be made with the concurrence of the Chief Justice of India’ be substituted.”

Under our proposed constitution the President would be the constitutional Head of the executive. And the constitution envisages what is called a parliamentary democracy. So the President would be guided by the Prime Minister or the Council of Ministers who are necessarily drawn from a political party. Therefore the decision of the President would be necessarily influenced by party considerations. It is therefore necessary that the concurrence of the Chief Justice is made a pre-requisite for the appointment of a Judge of the Supreme Court in order to guard ourselves against party influences that may be brought to bear upon the appointment of Judges.

This is a salutary principle and it is necessary that the concurrence of the Chief Justice should be made necessary for the appointment of the Judges of the Union Judiciary. It may be said that there might be disagreement between the opinion of the President and the Chief Justice and there might be a sort of deadlock. I submit, Sir, at that higher level between the Supreme Judge and the President, there is not likely to be any such difference of opinion. Even if there was any such difference of opinion it is open to the President to just propose another name which will be acceptable to the Chief Judge. So there cannot be any serious objection to make the concurrence of the Chief Justice a necessary pre-requisite for the appointment of the Judges of the Union Judiciary and that will certainly guard us against any party influences being brought to bear upon the appointments.

(Amendment Nos. 1840 and 1841 were not moved.)

Dr. P. K. Sen (Bihar: General) : Sir, I move:

“That after the second proviso to clause (2) of article 103, the following new proviso be inserted :—

‘Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.’ ”

The object of this amendment, Sir, is to keep the Judge, who has to retire on account of impairment of health, free from fear or temptation and free from the allurements of holding some office in the executive line or in the political field. It is an admitted principle, and no one in this House, I am sure, will take exception to it, that the Judge of the Supreme Court, or the Judge of the High Court, should be above all fear and temptation. Now, here is the case of a man who has served at the time when he was in health, but while

he is fifty-seven or say sixty-one or even sixty-two he feels that any day he might have to retire on account of ill-health. Well, there is a natural temptation to provide something during the period when he will be out of office: We are not unaccustomed to the spectacle of a man in this country who has been a Judge of a High Court, then a Member of the Executive Council of the Governor-General of India, then back again to his province as a Member of the Executive Council of the Province, and further again transported to the Bench of the High Court. Well, this sort of thing should be avoided, and as a matter of fact if a man feels that he has got no provision at all, then he may have to go a begging as it were for some employment or office or occupation, which may keep the wolf from his door. This is the object. I think in this connection. I may draw the attention of the House to clause (7) of article 103, which is also germane to this issue. It says:

“No person who has held office as a Judge of the Supreme Court shall plead or act in any Court or before any authority within the territory of India.”

Although it is not really directly relevant, I may mention that I have also tabled another amendment—it is new article 103A—in which I have said that a person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State other than that of the Chief Justice of India or Chief Justice of High Court, provided that the President may with the consent of the Chief-Justice of India depute a Judge of the Supreme Court temporarily on other duties: provided further that the article shall not apply in relation to any appointment made and continuing while a proclamation of an emergency is in force if such appointment is certified by the President as necessary in the national interest.

Barring those exceptions, I desire that the Judge who has retired will not be able to engage himself in any office of emolument under the Government in any other field of activity, and that is exceedingly necessary, because otherwise there is always the phenomenon of the Judge while in office aligning himself with a political party or with commercial caucuses, which is a very undesirable thing. If all those safeguards are to be adopted, one of the most essential things to be done is also to give him the pension as if he had served up to the age of sixty-five, the utmost limit provided for by the Constitution.

It may be said that all this will be provided for by the rules. I doubt if there is any such thing in the Constitution, and when there is the express provision in the Constitution that he has to serve up to sixty-five years of age, if he does not serve—whether it be on account of ill-health or any other consideration—the result will be that he will only get proportionate pension or very little pension perhaps and naturally in that case not only will it affect his attitude while he is in office, because he will try and look about for something which he may get for the purpose of saving him from penury. I do think that the Judge should be made perfectly independent so that he can live in dignity when he is in retirement, although the retirement may be premature—before the age of sixty-five.

I hope, Sir, that in the wilderness of amendments with which we are surrounded, this little amendment will not be thrown away as if it were not necessary. I think it is very essential in the public interests of the country.

Prof. K. T. Shah : Sir, I beg to move amendment No. 1843:

“That after clause (2) of article 103, the following new clause be added:—

‘(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing from his office as judge, from being elected to a seat in either House of Parliament, or in any State Legislature.’ ”

[Prof. K. T. Shah]

This follows the general principle I have been trying to lay before the Houses *viz.*, or keeping the Judiciary completely out of any temptation, and contact with the executive or the legislative side. Whether during his tenure of office, or in the ordinary course of judgeship or even on retirement, I would suggest that there should be a constitutional prohibition against his employment in any executive office, so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge.

I further suggest also that a judge should be free to resign his office and then it would be open to him to have all the rights of an ordinary citizen, including contesting a seat in the legislature, but certainly not during his tenure of office. I consider that these are so obvious that no further words need be added to support it. I would only say once more that in the past we had bitter experience of high-placed Government servants who had risen fairly high in the scale of service, used to secure on retirement influential positions in Britain or directorships in concerns operating in this country. On account of the official position which they had held here in the past, they were able to exercise an amount of undue influence. Such practices the Congress and other parties had frequent occasion to object to. As such I suggest that that practice should now be definitely avoided. I take it that this is also on a par with that principle, and as such should be acceptable to the House.

Shri Jaspat Roy Kapoor : Mr. President, I beg to move:

“That in amendment No. 1843 of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted:—

‘(2A) No judge of Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any State after he has ceased to hold his office.’”

Sir, I am in agreement both with the principle and with the substance of Professor Shah’s amendment No. 1843. But I am moving my amendment because I find that Professor Shah’s amendment is defective in two respects. Firstly, in his amendment we have the words “Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office”. It means that he shall be prevented from performing any duties under the Government of India or the Government of any other State even in an honorary capacity. I think it should be open to the Government of a State or the Centre to utilise the services of retired Supreme Court Judges in an honorary capacity.

The second defect in the Professor’s amendment is that it unnecessarily lays down that a judge of a Supreme Court shall be eligible to be a member of either House of Parliament after resigning his seat. I think, Sir, it shall be applicable to every Government servant that so long as he is holding any office of profit he shall not be eligible to be a member of any legislature, be it provincial or Central. So this part of the amendment of Professor Shah is unnecessary. Hence I am moving my amendment.

Sir, the Professor has rightly said that in order to maintain the independence of the judiciary there should be no temptation before any Supreme Court Judge of the possibility of his being offered any office of profit after retirement. That is the first reason. Secondly, as I said while moving another amendment a few minutes ago, the Judges of the Supreme Court, after retirement should be prepared to offer their services to society in an honorary capacity. Thirdly, I find that this principle is going to be accepted in the case of the Auditor-General. According to article 124(3), with which we shall deal after sometime, provides that the Auditor-General shall not be offered any office after

his retirement. The same principle should be made applicable in the case of the Supreme Court Judges. While I was discussing this point with a very learned Member of this House I was told that it should be open to the State to utilise the services of retired Supreme Court Judges in various capacities. I have absolutely no objection to that. But no emoluments should be offered to the retired Supreme Court Judges. A retired Supreme Court Judge may be called upon to perform various and important duties. But then he should be content with the pension which he must necessarily be receiving and no further emoluments should be offered to him.

With these words, I move my amendment and hope it will be accepted by the House.

(Amendment No. 1844 was not moved.)

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

“That in clause (3) of article 103, the following new sub-clause be added :—

‘(c) or is a distinguished jurist.’ ”

The object of this little amendment of mine is to open a wider field of choice for the President in the matter of appointment of judges of the Supreme Court. The House will see that the article as it stands restricts the selection of judges to only two categories. One category consists of those who have been judges of a High Court or of two or more such courts in succession and the second category consists of those who have been advocates of a High Court or of two or more High Courts in succession. I am sure that the House will realize that it is desirable, nay it is essential, to have men—or for the matter of that, women—who are possessed of outstanding legal and juristic learning. In my humble judgment, such are not necessarily confined to Judges or Advocates. Incidentally I may mention that this amendment of mine is based on the provision relating to the qualifications for Judges of the International Court of Justice at the Hague. I hope the House will see its way to accept my amendment and thus give a wider choice for the President in the matter of appointment of Judges of the Supreme Court.

(Amendment Nos. 1846 and 1847 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

“That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted :—

‘(c) has been a pleader in one or more District Courts for at least twelve years.’ ”

Sir, clause (3) of article 103 lays down the qualifications of Judges of the Supreme Court. The clause reads:

“A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

- (a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.”

So far as the qualifications for the appointment of Judges are concerned, I want that the pleaders should also be qualified for appointment as Judges of the Supreme Court. My reason for this is that the qualification of an Advocate and the qualification of a pleader is the same. An advocate is not better qualified than a pleader. Of course an Advocate generally practises in a High Court, and a pleader practises in the District Courts, but this is a matter of convenience and nothing else. In these days, a pleader also can become an advocate by depositing a certain amount of money with the Association. As soon as

[Mr. Mohd. Tahir]

he deposits the money, he becomes an Advocate. May I know, Sir, whether by simply depositing a certain amount of money he becomes more qualified than he was before? Therefore my contention is that so far as the qualifications are concerned, both the Advocates and the pleaders have got the same qualifications. Besides this, Sir, if pleaders have not got a chance of being appointed as Judges of the Supreme Court, a great injustice would be done to the class of pleaders. That is the class, Sir, which, as everybody knows, has gone through greater sacrifices in achieving the independence of the country. I do not say that it was only the pleader class that fought for the independence of the country. There are other classes who fought for it, but so far as the lawyer class is concerned, you will find that only a very few advocates or almost none of the advocates have taken part in the fighting for the independence of the country. When we are making our Constitution, it will be a great injustice if we are not going to give a chance to the pleaders as such of being appointed as Judges of the Supreme Court. Some of my friends might say that even the briefless pleaders of the District Courts will have the right to be appointed as Judges of the Supreme Court. That is not the position. There are many advocates who are briefless. Moreover, when a man is appointed as a Judge of the Supreme Court, certainly it will be seen that he is qualified to be appointed as such. My point is that so far as the qualifications are concerned, there is no difference whatsoever between the pleaders and the advocates. Therefore, if an advocate is entitled to be appointed as a Judge of the Supreme Court, there is no reason why a pleader should not be entitled to be so appointed. With these words, Sir, I move.

(Amendment No. 1849 was not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

“That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be re-numbered accordingly:—

Explanation II.— In this clause District Court means a District Court which exercises or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.’ ”

I do not wish to make a speech in support of this amendment because this is only consequential on the amendment that I have moved just now. So, no further explanation is necessary.

Sir, I also move:

“That in Explanation II to clause (3) of article 103, after the word ‘advocate’ wherever it occurs the words ‘or a Pleader’ be inserted and for the words ‘a person held judicial’ the words ‘such person held judicial’ be substituted.”

I am not going to say anything more on the first part of this amendment. So far as the second part of this amendment is concerned, if we look at the Explanation, it runs thus:

“In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate. Shall be included.”

Instead of “a person held, etc.” it should be “such person held, etc.” Instead of article “a”, it should be “such”.

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

“That in Explanation II to clause (3) after the words ‘judicial office’ the words ‘not inferior to that a district judge’ be inserted.”

I also move:

“That in clause (4) of article 103, for the words ‘supported by not less than two-thirds of the members present, and voting has been presented to the President by both Houses of Parliament’ the words ‘by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President’ be substituted.”

Mr. President : There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

Dr. Bakshi Tek Chand (East Punjab: General): Sir, I do not want to move that.

Mr. President : There is another amendment, I am afraid.

Is Mr. B. Das moving his amendment No. 102? He has given notice of an amendment to this amendment, that is No. 102 in the printed list.

(The amendment was not moved.)

Shri H. V. Kamath : As regards my amendment No. 1854, it being more or less of a drafting nature may be left to the Drafting Committee. Therefore, I do not move it.

Mr. Tajamul Husain : Mr. President, Sir, I move:

“That in clause (4) of article 103, after the word ‘passed’ the words ‘after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and be inserted.’”

With your permission, Sir, I will read clause (4) of article 103.

“A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.”

Therefore, Sir, clause (4) of article 103 deals with the procedure for the removal of a judge. It says that the President can remove a judge after an address is presented to the President by both Houses of Parliament. In my opinion, Sir, to remove a judge on the recommendation of the Parliament would be wrong in principle. If the majority party in the parliament is not in favour of a particular judge, then removal will become very easy, and the judge should always be above party politics. He should be impartial and he should never look up to the Government of the day and he must carry on his work. It does not matter who is in power. If there is an allegation against a judge, I submit, Sir, that the allegation must be enquired into first. Therefore, I suggest that all the judges of the Supreme Court from themselves into a Committee, and this Committee should investigate the charge against the particular judge, then submit its report to the President and then the President is to remove him in consultation with the parliament, provided the charges are proved against him. Therefore, Sir, my amended resolution, if accepted, will read in this way:

“A judge of the Supreme Court shall not be removed from his office except by an order of the President passed, after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and etc.”

I think, Sir, it is the best course we can take as far as the removal of the judges is concerned.

Mr. President : Amendment No. 1856 stands in the name of Mr. Mohd. Tahir. I do not think it is necessary to have any speech on this. It only substitutes the words “a majority” for the words “not less than two-thirds”. I take it that it is moved.

Mr. Mohd. Tahir : All right, Sir. I have no objection to it.

Mr. President : Amendment No. 1857 is a verbal amendment.

Amendment No. 1858 stands in the name of Professor K.T. Shah. Is not that covered by the words 'incapacity and misbehaviour'?

Prof. K. T. Shah : I would accept it if you think that they are covered. I do not move it.

Mr. President : Amendment No. 1859. That is also more or less covered by the amendment which has been moved by Mr. Tajamul Husain.

Amendment No. 1860 also goes with Amendment No. 1859.

Amendment No. 1861 is a verbal Amendment.

Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words "a declaration" the words "an affirmation or oath". We have made similar changes wherever that expression occurs in other parts of the Draft Constitution. I take it that it is moved.

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

"That in clause (6) of article 103, for the words 'a declaration' the words 'an affirmation or oath' be substituted."

Mr. Mohd. Tahir : Sir, I beg to move:

"That clause (7) of article 103, be deleted."

The article runs thus:

"No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

This clause, as it is, would, I think, make a person quite useless after he retires from the office of a Judge. Suppose a man is appointed as a Judge of the Supreme Court and he retires and after that he has got enough ability and capacity as well to work and do many other jobs in the affairs of the world; then, Sir, making a constitution which makes a man unable to do what he wants to do, I think, is quite unjustified. A constitution should not contain such provisions by which the activities of a person should be limited even if he has got the capacity to do it. Therefore, I think those persons who have worked as Judge of the Supreme Court and retired in due time, if they have got the capacity to work in other fields, they should be allowed to do as they are able to do. With these words, I move.

(Amendment No. 1864 was not moved.)

The Honourable Shri K. Santhanam : Sir, I beg to move:

"That in clause (7) of article 103, after the words 'any authority' the words 'or shall hold any office of profit without the previous permission of the President' be inserted."

I want to put in the words "of profit".

Sir, it has been argued by many that a Supreme Court Judge after retirement should not seek any office. To make such a complete prohibition will land us in difficulties. There is for instance, the Income Tax Investigation Commission of which Mr. Justice Varadachariar is the Chairman. Similarly, we may have Enquiry Commissions and other Commissions for which these retired Judges may be the fittest persons. But my amendment tries to prevent them from holding any office of profit without the express permission of the President. Ordinarily, the President will not give such permission unless it is an office which does not militate against the independence of the Judge. Particularly, I want to prevent Supreme Court Judges from taking office in private companies such as Chairman of the Board of Directors, etc. This is absolutely

essential if we want to keep our judiciary beyond all possibility of temptation. Therefore, I suggest that my amendment carries out all these purposes with the least complication or difficulty. I commend it to the House.

(Amendment No. 1866 was not moved.)

Mr. President : Amendment No. 1867: there is another article 196 in the Constitution which deals with the Judges of the High Courts. I think this is covered by that article. Do you insist on moving the amendment here also?

Prof. K. T. Shah : I do not move, Sir.

(Amendment Nos. 1868 and 1869 were not moved.)

Mr. President : We have now disposed of all the amendments of which I had notice. Those who wish to speak on any of the amendments or on the original article may do so now. I would request the Members to be brief. We have already taken two hours in moving amendments in one article.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I support amendment No. 1817. According to the provisions of this amendment, confirmation of the appointment of the Chief Justice of the Supreme Court must be made by a two-thirds majority of the total number of members of Parliament assembled in a joint session of both Houses of Parliament. If you kindly refer to clause (4) of this article, it will appear that so far as removal of a Supreme Court Judge is concerned, an address supported by not less than two-thirds of the members present and voting should be presented to the President by both Houses of Parliament in the same session. I beg to submit that this principle is quite sound that the dismissing authority should be the appointing authority also. Therefore, the objection that the legislature should not have any influence in regard to the Judges of the Supreme Court has been laid at rest by this provision about removal. There can be no such valid objection so far as the appointment of the Chief Justice of the Supreme Court is concerned. No doubt, the appointment should be made by the President; but what is sought now is that the confirmation may be got to be made by a two-thirds majority of the total number of members of Parliament. This would inspire much more confidence in the Chief Justice of the Supreme Court and at the same time, the Chief Justice also shall get more influence and prestige when it is known that his appointment has not only been supported by the President, who practically represents the majority in the legislature, in so far as that it will be the Prime Minister who will give his advice to the President. All the same, if a two-thirds majority is insisted upon, it shall give him more influence and prestige. Moreover, the objection relating to amendment No. 1813 is also removed because the name which has been given is 'Chief Justice of Bharat'. This will be different from the name given to the Chief Justice of the High Courts.

I want to make one observation more in regard to amendment No. 1843. It has been pointed out that after retirement, no Judge of the Supreme Court should hold any office of profit, nor should he be allowed to practise in any of the courts. So far as it goes, this provision is quite wholesome; but at the same time, the restriction put upon his activities in amendment No. 1843 is not justifiable. According to me, a Judge of the Supreme Court, after retirement, is perfectly fitted to become a member of the House of the People or of the Council of States. Therefore, I am of the view that though a Judge should not be allowed to practise in any subordinate Court subsequent to his retirement, he should be allowed to continue his activities as a Member of the legislature.

The Honourable Shri Jawaharlal Nehru : (United Provinces: General): Sir, I wish to say about one particular matter with which some amendments have dealt, that is, the age-limit of the Supreme Court Judges. Some Members have proposed an amendment reducing the proposed age-limit to sixty; one of them suggested increasing it to sixty-eight. It is rather difficult to give any particular reasons for a particular age, sixty-five or sixty-six; there is not too much difference. After much thought, those of us who were consulted at that stage thought that sixty-five would be the proper age limit.

This business of fixing age-limits in India in the past was, I believe, governed by entirely the service view. The British Government here started various services, the I.C.S. which was almost manned entirely by Britishers and then later on some Indians came in and other services. The whole conception of Government was something revolving round the interests of the services. No doubt, these services served the country; I do not say anything against that. But, still, the primary consideration was the service and all these rules were framed accordingly.

Now, the other view is, how you can get the best service out of an individual for the nation. Each country spends a lot of money for training a person. Now, we have to get the best out of the training you give to a person. You should not, when he is quite trained and completely fit, discard him and get an untrained person to start afresh. Now, it is difficult, of course, to say when a person is not working to the peak of his capacity. In different professions the peak may be different with regard to age. Obviously a miner cannot work as a miner at sixty or anywhere near sixty. An intellectual worker may work more. So also about writers. It will be manifestly absurd to say that a writer must not write after a certain age, because he is intellectually weak. Or for the matter of that, I rather doubt whether honourable Members of this Assembly will think of fixing an upper age-limit for membership of this Assembly, or for any Cabinet ministership or anything of that kind. We do not do it. But the fact is, when you reach certain top grades where you require absolutely first-class personnel, then it is a dangerous thing to fix a limit which might exclude these first-rate men. I would give you one instance which came up in another place. It was the case of scientists. In such a case, can we say that he cannot work because he has reached the age of sixty? As a matter of fact, some of the greatest scientists have done their finest work after they reached that age. Take Einstein. I do not know what his age is, but certainly it should be far above sixty; and Einstein is still the greatest scientist of the age. Is any government going to tell him, "Because you are sixty, we cannot use you, you make your experiments privately"? There are some scientists in India—first class scientists—and the question came up before me, should they retire? I pointed out that we are already short of first-rate men, and if you just push them out because of some rules fixed for some administrative purposes, which have nothing to do with the highest class of inventive brain work, it would be a calamity for us. We would not get even the few persons we have got for our purpose.

With regard to judges, and Federal Court Judges especially, we cannot proceed on the lines of the normal administrative services. We require top men in the administrative services. Nevertheless, the type of work that a judge does is somewhat different. It is, in a sense, less physically tiring. Thus a person normally, if he is a judge, does not have to face storm and fury so much as an administrative officer might have to. But at the same time it is highly responsible work, and in all countries, so far as I know, age-limits for judges are far higher. In fact there are none at all. In America the greatest judge

that I believe the Supreme Court produced went on functioning till the age of ninety-two—Holmes—and he went on functioning extremely well up to the age of ninety-two for thirty or forty years running. If you go to the Privy Council of England I do not know what they are now, but some years back when I went there I saw patriarchs sitting there with long flowing beards; and their age might have been anything up to a hundred years, so far as looks were concerned. May be, you may over do this type of thing. But the point is we must not look upon this merely as a question of giving jobs to younger people. When you need the best men, obviously age cannot be a criterion. A young man may be exceedingly good, an old man may be bad. But the point is if an old man has experience and is thoroughly fit, mentally and otherwise, then it is unfortunate and it is a waste from the State's point of view to push him aside, or force him to be pushed aside, and put in some one in his place who has neither the experience nor the talent, perhaps. We are going to require a fairly large number of High Court Judges and Supreme Court Judges. Of course the number of Supreme Court Judges will be rather limited. Nevertheless, there are going to be more and more openings, and the personnel at our disposal is somewhat limited. Judges presumably in future will come very largely from the bar and it will be for you to consider at a later stage what rules to frame so that we can get the best material from the bar for the High Court or Federal Court Judges. It is important that these judges should be not only first-rate, but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way. Now, taking all these into consideration I feel that the suggestion made by the Drafting Committee with regard to Federal Court Judges, that the age-limit should be sixty-five, is by no means unfair, for it does not go beyond any reasonable age-limit that might be suggested. Many of us here are, as you are aware, dangerously near sixty or beyond it. Well, we still function, and function in a way which is far more exhausting and wearing than any High Court Judge can be. We are functioning presumably because in the kindness of your heart, in the country's heart, you put up with us, or think us necessary. Whatever it be, you can change us and push us out if you do not like us. There is no age-limit. But the High Court Judges and Federal Court Judges should be outside political affairs of this type and outside party tactics and all the rest, and if they are fit, they should certainly, I think, be allowed to carry on. Of course every rule that you may frame may give rise to some difficulties and undesirable men may carry on. But a man appointed to the Federal Court is presumably one who has gone through an apprenticeship in the High Court somewhere. He cannot be absolutely bad, otherwise he would not have got there. He must have justified himself in a High Court as Chief Justice or something. So you are fairly assured that he is up to a certain standard. If so, let him continue. Otherwise the risk is greater, of pushing out a thoroughly competent man because of the age-limit, because he has attained the age of sixty. So I beg the House to accept the age-limit of 65 for Federal Court Judges that has been suggested.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. President, Mr. Kapoor's amendment says that the age-limit should be curtailed from 65 to 60, and Mr. Satish Chandra suggests that the age should be left to the Parliament to decide. Sir, Mr. Kapoor himself was not sure in his argument whether the age sixty was the right age. He said that a judge under sixty he had come across was mentally unfit. Well, if the judge under sixty was mentally unfit, then the appointing authority, according to me, must have been mentally unfit, because it is not expected that a judge will be mentally unfit, which means mentally unsound or mad. Such a man cannot be allowed to continue. Sir, it has been argued that persons who have crossed the age of sixty are

[Shri R. K. Sidhwa]

generally unfit, that they have lost all their energy. Let me tell my Friends who hold such a view that there are thousands of persons who have crossed the age of sixty, but they are younger in energy, younger in ability, younger in activity and younger in common-sense than so many of the young persons who boast of possessing these qualities. That is a fact which cannot be denied. Therefore those who say that a man after sixty is insane do not know the youngsters today. Today their constitution is such that a man of forty looks like one of sixty. Medical science says that a person is necessitated to wear glasses after forty-five, but you find youngsters of thirty years wearing glasses. The youngster of today is an old man at forty, whereas there are thousands of men above sixty who are stronger in their constitution than young men. In the judiciary older persons bring a lot of knowledge and experience. I know the Pay Commission has recommended the extension of the age of pension. I do not know what Government have done about it. Of course from the administrative point of view it will block the promotion of younger people, but to say that a man is insane after sixty is nonsense. I know two Judges who lost their eyesight sat on the bench and used typewriter and they were two of the very best Judges this country has ever had. After all the Judges have got to be able and impartial, and age does not count in this matter. I myself claim to be younger than many of the young people although I have crossed sixty. It is ability that counts; and if a man has got energy and ability and perseverance, he should be kept in public service even if he is over sixty. I lay stress on this because I want that we should not be carried away by sentiment merely because we have to give a chance to younger people. You cannot discard people merely because they are over sixty years of age.

Now coming to the amendment of Professor Shah, he wants the Council of States to decide the question of the appointment of Judges. This I must strongly oppose. We want impartial and independent Judges; and if you leave it to the Council of States there is bound to be individual canvassing, in which case the question of ability, etc, will be set aside. Of course from the point of democracy it may be good to consult them because we want wider consultation and discussion but there must be a limit to it. And if you leave it to the Council of States to appoint Judges, that will be going too far. After all our Prime Minister will be a responsible person; Professor Shah stated that the Prime Minister has to make appointments of Ambassadors, Governors, Judges etc. This is true; he is likely to make appointments of his choice or show favoritism, but surely he is subject to our votes. You cannot have it decided by a Council of 150 people or more; canvassing will go on and ability will be discarded. I can only say that I am surprised that of all persons Prof. Shah should have moved this amendment.

My honourable Friend, Mr. Mohammad Tahir, wants that pleaders of district courts of twelve years standing should be considered for the posts of Judges of the Supreme Court. Sir, we know of briefless and duffer barristers and lawyers who wander in the corridors of courts; are these people to be appointed Supreme Court Judges? The Supreme Court Judges should be men of experience and knowledge gathered in the High Courts and from that point of view the amendment of Mr. Tahir is objectionable.

Coming to the article itself, clause (4) contains an important provision about the removal of Judges. It says that the President can remove a Judge on an address presented by the House of Parliament and if two-thirds of the members present have voted for it. I do not know any case of removal of a Judge except a recent one in the United Provinces where the Governor-General at the instance of the Premier of the U.P. removed a Judge for misbehaviour. I did not know the Governor-General had this power because it has never been used

although I know of one Judge who has been guilty of misuse of power. I am glad our Governor-General has made history; other Judges also will learn from this a lesson to be more careful about their character and behaviour in future. You now want in this constitution that if two-thirds majority of the two Houses sitting together want a Judge to be removed the President will dismiss him. It is good to give wide powers to legislature but it will lead to all kinds of outside influences being brought to bear on the question and no Judge will ever be dismissed. In this U.P. case several things could not be proved against the Judge and circumstantial evidence only had to be taken into account. If we leave it to the two Houses it will be difficult to remove a Judge even if he is guilty. In spite of our wanting wider powers for the legislature I cannot support this and I am surprised that this provision has been proposed in the constitution. If you leave it to the President and he misbehaves he will be accountable to us; and he will not act in an injudicious manner.

I oppose this age-limit amendment and I support the proposition as stated *minus* the power that is vested in the Legislature in both Houses to remove a Judge.

Shri Biswanath Das (Orissa: General) : Sir, a number of important issues have been raised in the course of the discussions on article 103. Of these, the first one that I would like to discuss is the introduction of the system of elections into our Judiciary. Sir, it has been proposed that a joint Session with a two-third majority is one way of selecting the Chief Justice of India. Prof. K. T. Shah contracts the process of the election by having the election of Judges to be done by the Council of States. In any event, be it by a joint Session of Parliament or by the Council of States, the fact remains that we are trying to import a very dangerous principle, namely the process of electing Judges of the Supreme Court in place of the one that we have, namely the process of selection. Sir, intense thought has been given up this aspect of the question, whether Judges have to be selected or elected, and we have rejected the one and retained selection as the proper mode of appointing Judges.

Prof. K. T. Shah : On a point of personal explanation, I have not said that they should be elected. I have said that the Council of States should be consulted.

Shri R. K. Sidhwa : It comes to the same thing.

Shri Biswanath Das : Consulting the Legislature and election are certainly technical two different processes. But in a democracy functioning, as we propose it should, under this Constitution, is it anything less to say that my Friend, Prof. Shah, wants to import election into the appointment of the Judges? I think there is nothing for me to stand corrected by the revised version given by my honourable Friend, the learned professor. We have seen the difficulties and distress of countries which have accepted the principle of such election. If you once accept the principle of election what reasons could you assign to exclude the subordinate? As has been done in America, even Public Prosecutors are to be elected by a defined electorate.

Under these circumstances, Sir, I plead with my friends that the system of appointment by a process of election be shunned and be given up for good.

Sir, I come to the question of the age-limit of the Honourable Judges of the Supreme Court. We have in ordinary Government service fifty-five years. This has been extended to sixty years in the case of the Judges of High Courts and the Supreme Court the Drafting Committee, I am afraid, have not given convincing and adequate reasons why this change was made. I see a note in which some explanation has been given, but I claim that the

[Shri Biswanath Das]

explanation that they have given is not adequate. One fact we cannot forget namely, that the Judges of the Supreme Court and the High Courts who are bound to be practitioners in the Bar or subordinate judicial officers, who have risen by dint of merit-in any case the private property which they have earned age their property. The constitution gives them ample safeguards regarding the tenure of service, their freedom of judgment and safeguards from interference so far as the discharge of their functions and responsibilities are concerned. Under these circumstances, I am afraid, that further reasons are necessary if my honourable Friends want us to accept even the age-limit of sixty-five years. Sir, in a country where the average duration of life was twenty-eight years under the British rule, and I believe the same period is being continued even today, there is little justification for the Honourable Judges of the High Court to go on functioning up to sixty-five years. The great Seers of Hindu society have prescribed the ways of life for us. They have provided that the closing stages of life should be reserved for *Vanaprasth* or *Sanyas*. Are you going to close these chapters. So far as such Judges of the High Courts and Supreme Court are concerned for *Vanaprasth* and *Sanyas*? It is a very important stage of life in Hindu society. In other societies, such as among the Christians and the Muslims, they have also the necessary and natural expectation that people at the last stages of life shall have time to devote themselves either to God or to free social work. Man must have some leisure to devote himself, at least in the last days of his life, to some other work-either spiritual or social. Under these circumstances, I believe that the honourable Members of this House should not give the go-by to that normal and general expectation of society and that the limitation of sixty-five years be given up in favour of allowing the Honourable Judges of the Supreme Court, from whom the society, the country and the State expect much, either to live a *Vanaprasth* or a life of a *Sanyasi*, so that they could devote themselves to their Maker and for those who do not believe in God, at least to the service of society.

I now come to the proviso in clause (2) of article 103. It has been said: 'Provided that in the case of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted.' I do not know of any reason or justification for the retention of this proviso. The Chief Justice is a very responsible person and there is no reason why he should not be consulted in the case of the appointment of the Chief Justice who is to be his successor. I think in the matter of the selection of a person to succeed the Chief Justice it will be doing an injustice to the place and position of the Chief Justice himself not to be consulted.

One other point and I shall have done. It has been stated that no office of profit should be offered to a judge in office or after retirement. I do not see much logic in this amendment. The judges of the Supreme Court are granted the highest scale of salaries, barring the Governor-General and the Governors. If at any time an office of profit under the Government is to be offered to a judge of the Supreme Court it is either the same or some other allied office involving semi-judicial functions. That being so, I do not find any justification for a restriction of the kind proposed. I do not therefore agree with those friends who hold this view. Such a proviso merely reveals a fear complex. I would appeal to my friends to give up this fear complex. I feel that the system of election as has been proposed, direct or indirect, to be imported into the appointment of judges of the Supreme Court should not be thought of and that the age-limit should be fixed at sixty and not at sixty-five. The proviso to clause (2) of article 103 is unnecessary and the restrictions sought to be imposed upon the appointment of judges of the Supreme

Court to offices of profit under the State are needless restrictions which reveal nothing except fear complex.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. President, I have come here purposely to warn the House against the acceptance of the suggestion made by my Friend Mr. Shibban Lal Saksena. He seems to think that any appointment which is made should be subject to confirmation by two-thirds majority of the Houses of Parliament. I submit that this is a very dangerous principle. Confirmation by two-thirds majority of the Houses of Parliament means that the appointment will be at the pleasure of the leader of the majority party. Already there have been suggestions that the present Government—the Ministers in different provinces—are interfering at times with the administration of justice. Recently, very adverse remarks were made by Mr. Justice Beaumont, Judge of the Privy Council. In the course of delivering a judgment, the Judge observed that he was constrained to say that the Congress was at one time very anxious to have separation of the judiciary and the executive and now that it has come to power they seemed to like that the old system should continue. This utterance by a very eminent Judge that there is at times room for the executive to interfere with the course of justice and this might lead to very serious consequences in future. I would therefore warn the House not to accept any proposal aimed at giving the House power to confirm the appointment of judges or agree to the suggestion that action for the removal of a judge can be taken by Parliament itself. That sort of thing should not be allowed to be accepted for a moment.

Next I come to the consideration of age. In my opinion what we have to do is to fix the minimum age of a judge and not the maximum age. We know that in England there is no age-limit for a High Court Judge or a Supreme Court Judge. A man of any age, provided he is able to conduct the judicial proceedings properly can be admitted to the Bench. It is a very wrong principle to compel a man, particularly a man of advanced age, to declare his age. In this connection I would like to warn the leaders of people, distinguished men, not to celebrate their birthdays. If at all they want to celebrate their birthday, let them not disclose their age. It is a very sad thing that a particular person whom we consider to be young—I have in mind our leader Pandit Jawaharlal Nehru—should give out that he is nearly sixty, when he allowed his birthday to be celebrated. People now know his correct age. He was very easily passing for a man younger by ten years. Not that he wanted to do so. It is a wrong thing to remind people of one's age.

Further, so far as age is concerned, there seems no bar to the appointment of a female as Supreme Court Judge. I would ask you, Sir, where is the sensible woman who would declare her age as fifty-five even if she is fifty-five in order to get appointed to the Supreme Court Bench? Now even for the Kingdom of England would a woman say she is fifty or sixty years old—much less in order to continue as a High Court Judge. Not even for a Kingdom would a woman say so. Therefore it is a wrong principle to have the age prescribed. A man is not necessarily old because he is old in age or a woman is necessarily old because she is old in age. The maximum age should not be fixed now. It should be left to be decided by persons competent to judge in this matter.

I would refer in this connection to the amendment of Mr. Satish Chandra. He wants that the age should not be prescribed here and should be left to be fixed by the future Parliament. If we agree to that, there would be one difficulty. After the Constitution is adopted, we may have to appoint a Chief Justice for the Supreme Court and for the High Courts. If at that time no age

[Shri Rohini Kumar Chaudhari]

limit is fixed there would be difficulty, if we say that it should be fixed by Parliament sitting. We would not know what sort of people we should exclude.

I want now to say a word about 'consultation'. In my opinion the amendment suggested by Dr. Ambedkar for the deletion of the line where it is said that after consultation with such of the judges of the Supreme Court and of the High Courts in the States where necessary should be accepted. After all, this is a matter which should be entirely dealt with by the President. He can, if he likes, consult anybody; if he does not like, he need not consult anybody. If he knows the man to be of outstanding ability, it is not necessary for the President to consult anybody. It should not be made obligatory. I think that the interpretation of this article is that the President is not bound to consult anybody if he does not consider it necessary to do so. If that is the interpretation, well and good. If that is not the interpretation, then I submit that it will not be proper to say that the President is bound to consult the High Court Judge. After all, the Chief Justice of the Supreme Court is a person of superior position in relation to the High Court Judges. It seems rather queer that the President will have to select a person of higher grade only after consulting persons of a lower grade, but that may be the tendency of democracy now-a-days. We are finding students claiming that they should be consulted over the appointment of teachers and even in the promotion of the teachers. Sometimes we come across cases where the students demand—engineered no doubt—that a particular teacher should be made the headmaster. But that is not the proper way, and I submit, Sir, that a person of a lower grade should not be consulted over the appointment of people of a higher grade. We have the curious position in some parts of the country where the Public Service Commission is consulted over the appointment of a Sub-Judge or a Judge. The Public Service Commission may not have any member who has ever practised in a court of law or who has any knowledge of the qualifications of a Judge, but still the Public Service Commission is consulted. This is rather absurd. In some places a Sub-Judge has to sit for departmental examinations in law, which is held by an officer who has no idea of law. That sort of thing ought not be allowed. I therefore submit, and submit strongly, that the procedure for consulting a judicial officer of a lower grade for making appointments to a higher grade is rather unreasonable.

Then, Sir, I have to say a word about my honourable Friend, Dr. Sen's amendment. It is definitely worthy of consideration. If a High Court Judge who joins the bench after giving up practice, next year on account of illness resigns and finds himself without any resources, it will be a very sad thing. He must have some security for the future and that security should be given to him by providing for a pension. We have found cases where a member of the Judiciary has had to resign on account of illness brought about by hard mental labour. In such cases there should be some provision for pension. I am not sure, Sir, whether such a provision should be made in the constitution itself or whether it should be left to Parliament to decide or whether it should be left to the President to decide. The President may even specify in the terms of appointment of a Judge that if on account of illness he is forced to resign, he will get a pension.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, we have now reached in the discussion of this constitution, a stage which according to me is one of the most important stages if not the most important stage in the discussion of this constitution. The Supreme Court is the watchdog of democracy. In an earlier part we enacted the Fundamental Right and we are very anxious to provide the means by which these Fundamental Rights could be

guaranteed to the citizens of the Union. This is the institution which will preserve those rights and secure to every citizen the right that have been given to him under the Constitution. Therefore naturally this must be above all interference by the Executive. The Supreme Court is the watchdog of democracy. It is the eye and the guardian of the citizen's rights. Therefore at every stage, from the stage of appointment of the judges, their salaries and tenure of office, all these have to be regulated now so that the executive may have little or nothing to do with their functioning. The provisions, that have been made, have been made with an eye towards that. If amendments are moved now, each amendment must be judged by the test whether it secures the independence of the judiciary which this Chapter attempts to provide for.

Now, Sir, two formal amendments have been moved, amendments Nos. 1813 and 1840, relating to the nomenclature. They want the Chief Justice of India to be called the Supreme Chief Justice. When we come to the High Court, this means that we should call the Chief Justice of the High Court as High Court Chief Justice or High Chief Justice. Supreme Chief Justice, High Chief Justice or Law Chief Justice—I have never heard of such a nomenclature being given to Judges. A Supreme Court is not a peculiar institution to this Country. There are Supreme Courts in America and in various other places. These amendments are absolutely unnecessary and should be rejected.

Then as regards the number of judges, inasmuch as the Supreme Court has appellate jurisdiction in various matters, the number seven is not big at all. The Parliament is given the power to increase this number seven according to the needs and circumstances.

The important amendments that have been moved relate to the necessity for the President consulting the judges of the High Court in the States. Now, consultation with the Chief Justice is necessary for making appointments of Puisne Judges of the Supreme Court. So far as the Chief Justice himself is concerned, there is no higher judicial authority who may, be consulted.

Therefore that provision will have to remain. Now, as regards the appointment of Puisne Judges, the Chief Justice will be consulted, but the objection is to the consultation with the Judges of the High Courts in the States. If the President considers that such consultation is necessary, I feel that it should be open to him to do so. Whether it is necessary to consult the judges of the High Court is left to the discretion of the President. The Chief Justice of the Supreme Court may be drawn from one of the provinces of this country and might not be able to suggest as to who should be appointed Judges of the Supreme Court. Naturally therefore the President would not be able to get the necessary advice from the Chief Justice alone and would have to consult the Judges of the various High Courts. It is not obligatory on him to consult everyone of the Judges. It is optional to him, wherever he considers it necessary in the interests of proper administration of justice. That power must be given to him.

Then, it is almost fantastic—I hope the honourable Members who have moved the amendment would forgive me for saying so—but I cannot use a milder word than 'fantastic' to characterise the suggestion that the Chief Justice of India should be appointed on the recommendation of the majority of the Members of the Council of States. This will reduce it to an election and there will be canvassing to get the majority of votes. This is inconceivable and unheard of in any part of the civilised world.

Then as regards the age, some young friends want it to be reduced from sixty-five to sixty and others want to raise it from sixty-five to sixty-eight.

[Shri M. Ananthasayanam Ayyangar]

In Canada the upper limit is seventy-five. Up to the age of seventy-five, judges can go on being in office. That may be a cold country where the age seventy-five may be the upper limit. So far as the Privy Council is concerned in Great Britain, I am told that the age for retirement is seventy. In America there is no age-limit at all. The judge of the High Court retires normally under existing law at the age of sixty and if he was appointed a few years before that, there is absolutely nothing to say against it. Our Friend, Mr. Munshi—he may not accept this, if he is offered—is quite strong and healthy and for another twenty-five or thirty years he will be able to judge between man and man and persons of that caliber must be available and the age sixty is too early an age and even in a hot climate like ours, I would like to go even to seventy, but let us be somewhat careful. So sixty-five seems to be a proper limit. Therefore the age sixty-five need not be raised nor cut down to sixty. Younger men on account of their enormous energy may go into various other fields which are open to them. For the judiciary there must be a balanced mind. Immature minds are useless. They must have sufficient experience; they must judge calmly and coolly. Old judges will not stand in the way of younger men, but the younger men may have a lot of other things to do. Youth ought not to come in the way of proper judgment and therefore, older men alone must be chosen; but there is nothing preventing a young man of extraordinary ability if he possesses a balanced mind, an enormous capacity and intellect to judge between man and man. The Chief Justice of the Madras High Court is barely forty-three and he can go on mature in age until the age of sixty-five. These are exceptional cases; otherwise you do not expect a judge to be a very young man to judge between man and man.

Then, Sir, I agree with my honourable Friend, Mr. Kamath, when he says that the choice of Supreme Court judges ought not to be limited to judges already in service and of ten years' standing. He has moved that it ought to be open to the President, if he so chooses, in the interest of proper administration of justice, to include a distinguished jurist. His amendment does not make it obligatory upon the President to choose only a jurist only among jurists. In various cases a Supreme Court has to deal with constitutional issues. A practicing lawyer barely comes across constitutional problems. A person may enter the profession of Law straightaway. He might be a member of a Law College or be a Dean of the Faculty of Law in an University. There are many eminent persons, there are many writers, there are jurists of great eminence. Why should it not be made possible for the President to appoint a jurist of distinction, if it is necessary? As a matter of fact, I would advise that out of the seven judges, one of them must be a jurist of great reputation. I am told, Sir, by my honourable Friend, Shri Alladi, whom I consulted, that some years ago President Roosevelt in the U.S.A. appointed one Philip Frankfurter. He was a Professor in the Harvard University. That was a novel experiment that he made. Before that, barristers were being chosen and also persons from the judiciary. This experiment has proved enormously successful. He is considered to be one of the foremost judges, one of the most eminent judges in the U.S.A. Therefore, Sir, I am in agreement with the proposal to add a jurist also, a distinguished jurist, in the categories for the choice of a judge of the Supreme Court.

As regards good behaviour, my honourable Friend, Prof. Shah wants that the tenure of office must be during good behaviour. He has evidently forgotten that provision is coming later. No doubt in the earlier portion in clause (2) it is not definitely prescribed to continue only during good behaviour, but later on there is a provision for the removal on the ground of proved misbehaviour or incapacity. I understand this to mean that they do not want

such an eminent person as the judge of the Supreme Court, his tenure ought not to be linked even at the start with, or that anyone should have, a suspicion that he may be guilty of misbehaviour. In the Australian Constitution they say that the appointment should endure so long as he is of good behaviour. Later on a provision is made that in case of misbehaviour, he may be removed. In substance there is provision here for removing a judge who is guilty of misbehaviour. Even at the outset, it is something like thinking even at the time of marriage—if the man dies, what happens. It is only certain communities that think of the death of a son-in-law even at the time of marriage and make provision for that, while other communities are a little more anxious to avoid this possibility. I would not like to lay down that a judge must be appointed only during good behaviour; there is enough provision for his removal, in case he proves himself incapable or is of bad behaviour.

Then I come to 'office'. Mr. Santhanam referred to clause (7) and says that a person who was a judge of the Supreme Court ought not to hold any office of profit except with the consent of the President. I have seen and we have seen a number of cases where important Secretaries who were drawing Rs. 3,000 to 4,000 while in office have helped some person in some industries and immediately they retired, they become Managers of this Institute or that Institute. I want to avoid this kind of selling away. Particularly, a judge cannot decide in favour of a particular person and then join his service. It is not as if this provision is absolute and it is a prohibition. With the consent of the President, he will decide as to whether this new office is or is not inconsistent with the office he held, and the President may give due permission in proper cases. I would urge upon the House to accept the amendment moved by honourable Friend, Mr. Santhanam, regarding the prohibition that a person who holds the position of a judge of the Supreme Court ought not to accept an office of profit except with the consent of the President.

Coming to Dr. Sen's amendment that person who hold the office of judgeship ought to be given pension even if for reasons of illness they are unable to continue in office before the period is over. Person that are going to be appointed judges are of three classes. A person in service will always get his pension. He is entitled to retirement in advance. Therefore, this amendment does not apply to such a person. A person who straightaway is drawn from the bar, a practicing lawyer, if he is old by the time he is appointed a judge of the Supreme Court, he must have attained sufficient reputation and amassed a sufficient sum of money. With respect to him, it may not be necessary. I no doubt agree with him that with respect to not only of judges of Supreme Court but in respect of ministers also there must be a National Pension Scheme and, in fact, with respect to all persons who have rendered great service to the nation. After giving up their jobs or after the country no longer feels them necessary for public work, they ought not to be thrown no the streets, and some such person scheme must be started. That must be an all-round scheme and ought not to be confined to the judges of the Supreme Court only.

I oppose the other amendments, barring those which I have accepted. I would appeal to the House to see that the other amendments are of a formal nature, or go against the scheme of this provision which makes the judiciary absolutely independent of the executive.

Mr. President : Mr. Naziruddin Ahmed. He will be last speaker. After his speech, we shall close the discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, we are indebted to the Honourable Prime Minister for his illuminating speech giving a true picture of men of high intellect. You can put no age-limit to men of real worth. Two honourable Members have tried to put the age-limit not only to Judgeship of the Federal court, but to all mental efficiency at sixty. I submit if this test is to be applied, Pandit Jawaharlal Nehru, who is about sixty-one would be unfit for public office. Mr. K. M. Munshi who is sixty-two would be equally unfit. Mr. Alladi Krishnaswami Ayyar who is sixty-six would be more unfit, and Sardar Patel who is seventy-four, who is an ornament of the country, and whose intellect is as keen as ever, would according to this argument, be equally unfit. To put the age-limit for men of real worth at sixty is meaningless. I should say childish. One Member has gone so far as to say that at sixty, a man is intellectually defunct and becomes absolutely unfit for any mental activities. His view is that the younger the man, the greater is his intellect. In fact, he would prescribe a formula that mental capacity increases in the inverse proportion to the advance in years. In other words, the younger the man he is, the more he is mentally fit for high judicial or other intellectual work. These are absurd propositions to be laid down.

While the Honourable Prime Minister has laid an age-limit at sixty-five, I shall, with due respect to him, try to support the age-limit as sixty-eight. My reasons are these. Men in the legal profession, who are very efficient, earn a very high income. If they are to be appointed judges that means a heavy sacrifice. If you put the age-limit at sixty-five, you discourage high legal talents from accepting high judicial appointments. While you put the age-limit at sixty-five, in clause (6) you require him not to plead or act in any Court. That is a highly desirable condition; but it goes against the age-limit of sixty-five. At the age of sixty-five, very efficient people are highly alert and if they are not to be allowed to practise in the Courts, which I concede is a desirable condition, you must raise their age-limit. In fact, Judges of the Supreme Court will have very high judicial duties to perform. If you put the age-limit of sixty-five, you will be shutting out from the service of the country men of real worth and ability at the very height of their efficiency and experience. In these circumstances, I should think that the age-limit should be sixty-eight.

To ask a Supreme Court Judge to take up any position of profit under the Government with the consent of the President would be to introduce a pernicious principle. Judicial officers, especially of the highest rank should never be induced to accept any Government job. When they retire, they should never like up to Government for some sort of job after their judicial career is ended. The difficulty which has been felt by Mr. Santhanam in shutting out men of ability is not met by his amendment, but rather would be met by raising his age-limit to something like sixty-eight. In England the age-limit of ordinary Judges is 72, but there is no age-limit for Judges who are Law Lords. They hold office during the pleasure of His Majesty and that means efficiency. In England, there are various ways of ascertaining the efficiency of a Judge. There, the usual age of the highest judicial officers in the Privy Council and in the House of Lords is about seventy at the lowest. The average of men in the highest judicial posts, the Law Lords, is about eighty. We have heard from the Honourable Prime Minister that men of ninety or even above that are in a very good alert condition of mind. Some of the greatest judgments of the Privy Council and of the House of Lords, were delivered by men who were above eighty, some at ninety. It has been suggested that the climate of India does not reconcile high age with efficiency. I submit that is a fallacy. The British put down the

age-limit for High Court Judges as sixty and for ordinary officers as fifty-five. They never allowed any efficiency to be developed. They allowed something like mechanical efficiency or a kind of clerical ability in their officers. They allowed no initiative, no freedom of action, no freedom of thought; they crippled the men's intellect while in Government service. Now, Sir, all these adverse factors would be gone. We are breathing a free atmosphere; the ability of our officers will increase. They will have enough initiative, enough patriotism behind them to do the best work for the country. The artificial age-limit of fifty-five and sixty and the reasons therefore no longer apply. For all these reasons, I think the age-limit should be enhanced. Especially in high judicial posts, I am of opinion, not without much careful thought, that the minimum should be sixty. Efficiency as high judicial officers can rarely being before sixty. Ripe experience and alertness of mind of high judicial talents really asserts itself after sixty. I should have been very happy to put the age-limit even higher. But, that would have necessitated the condition of his being in office during the pleasure of the President. It is considered that this may be utilised or used to the detriment of high judicial abilities. Therefore, I do not wish to limit the duration of high judicial service during the pleasure of the President. I should therefore strike a *via media* between sixty-five, and putting no age-limit, that is at sixty-eight. The duties of a judicial officer are extremely high. They do not earn their pay for nothing; they have to work very hard. They should look forward to a long career of usefulness, to induce them to give up their profession at the bar to accept high judicial post. In fact, it has been suggested against this that a man should make it as a matter of sacrifice for public service. I think, however, that a man who gives up a lucrative practice at the bar makes a tremendous sacrifice. To sacrifice and sacrifice, there must be some limit. From these considerations, I submit that the age-limit to the judges should be enhanced, and also in another context I should submit that their pay should also receive due consideration. I submit that this debate has been of a very revealing character fully deserving our attention. It has dispelled once for all the impression that any age above sixty means inefficiency. I submit that though the amendment which I have sponsored may not be accepted in the House today, its principles would be remembered and a day would come when will be compelled to raise the age-limit, at least of our highest judicial officers.

Mr. President : I think we had better close the discussion now. We have had so many speeches.

Shri B. Das (Orissa: General): But till now we have had all speeches from lawyers.

Mr. President : If you wish to speak I will not stop you. But I should think we have had a full discussion. And all the speeches were not from lawyers. For example, Mr. Sidhva is not a lawyer.

Dr. Ambedkar, would you like to say anything about the amendment.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir. I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845 moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr. Kamath's amendment No. 1845, I should like to make one reservation and it is this. I am not yet determined in my own mind whether the word "distinguished" is the proper word in the context. It has been suggested to me that the word "eminent" might be more suitable. But as I said, I am not in a position to make up my mind on this subject;

[The Honourable Dr. B.R. Ambedkar]

and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say whether it would accept the word “ distinguished” or substitute “ eminent” or some other suitable word.

Now, Sir, with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme Court to be appointed? Now grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament; and the third suggestion is that they should be appointed in consultation with the Council of States.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Great Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, officers of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate in the United States. It seems to me in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United State, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesi*, well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all the Chief Justice is a man with all the feelings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto is the President or the Government of the day. I therefore, think that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article to the question of age. Various views have been expressed

as to the age. There are some who think that the judges ought to retire at the age of sixty. Well so far as High Court are concerned, that is the present position. There are some who say that the Constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems to me that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the Bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from time to time, but must be fixed in the Constitution itself. The other view is that if you fix any age-limit what you are practically doing is to drive away a man who notwithstanding the age that we have prescribed, *viz.*, sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service to the State. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107 where we have provided that it should be open to the Chief Justice to call a retired Judge to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed in the course of the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point, one by Prof. Shah and the other by Shri Jaspat Roy Kapoor. I personally think that none of these amendment could be accepted. These amendments have been moved more or less on the basis of the provision that have been made in the Draft Constitutions relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the Crown for a certain period after he has retired from the Public Service Commission. But it seems to me that there is a fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz.*, the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Services Commission by promising something else after retirement if he were to recommend a certain candidate in whom the minister was interested. Between the Federal Public Service Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Services Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides there are very many cases where the employment of judicial talent in a specialised form is

[The Honourable Dr. B. R. Ambedkar]

very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed members of a Commission investigating income-tax questions.

Shri Jaspal Roy Kapoor : Let it be in an honorary capacity.

The Honourable Dr. B. R. Ambedkar : No, he is paid. It is an office of profit under the Crown.

Therefore, who else-can be appointed to positions like this, except persons who had judicial talent? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspal Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distant that the executive has hardly any chance of influencing the judgment of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Mr. President : The question is:

“That is clause (1) of article 103, before the words ‘Chief Justice’ the word ‘Supreme’ be inserted”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 103, for the words ‘and such number or other judges not being less than seven, as Parliament may by law prescribe’ the words ‘and until Parliament by law prescribes a larger number, of seven other judges’ be substituted”.

The amendment was adopted.

Mr. President : The question is:

“That for clause (2) of article 103 the following be substituted:—

‘Every Judges of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.’ ”

The amendment was negatived.

Mr. President : The question is:

“That for clause (2) of article 103, the following clause be substituted:—

‘(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of the total number of members of Parliament assembled in a joint session of both the House of Parliament.’

‘(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years.’

Provided that:

- (a) a judge may, by writing under his hand addressed to the President, resign his office;
- (b) a judge may be removed from his office in the manner provided in clause (5).

The amendment was negatived.

Mr. President : The question is:

“That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:—

(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the judges of the Supreme Court and Chief Justices of High Courts in the States and with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme and the Chief Justices of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 103, after the word ‘with’ the words ‘the Council of States and’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 103, for the words ‘may be’ the words ‘the President may deem’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (2) of article 103, for the words ‘until he attains the age of sixty-five years’, the words ‘during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 year of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 103, for the word ‘sixty-five’ the word ‘sixty’ be substituted and the words ‘The President, however, may in any case extend from year to year the age of retirement up to sixty-five years’ be added.”

Shri Jaspat Roy Kapoor : Sir, I beg leave of the House to withdraw my amendment.

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

Mr. President : There is the amendment of Shri Mohan Lal Gautam—No. 1834. I did not allow him to move it in the first instance because it was covered by amendment No. 1833. Does he want me to put it to the House?

Shri Mohan Lal Gautam (United Provinces: General): Sir, I beg leave of the House to withdraw my amendment.

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

Mr. President : The question is:

“That in clause (2) of article 103, for the words ‘until he attains the age of sixty-five years’ the words ‘for such period as may be fixed in this behalf by Parliament by law’ be substituted.”

Shri Satish Chandra : Sir, I beg leave of the House to withdraw my amendment.

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

Mr. President : The question is:

“That is the first proviso to clause (2) of article 103, for the words ‘the Chief Justice of India shall always be consulted’ the words ‘it shall be made with the concurrence of the Chief Justice of India’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That after the second proviso to clause (2) of article 103, the following new proviso be inserted:—

‘Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.’”

The amendment was negatived.

Mr. President : There is an amendment to this amendment by Shri Jaspat Roy Kapoor. It is in List No. II, amendment No. 41, namely:—

“That in amendment No. 1843, of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted:—

‘No Judge of the Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any State after he has ceased to hold his office.’”

Shri Jaspal Roy Kapoor : I do not desire that this very useful amendment should be defeated. I, therefore, beg leave of the House to withdraw it.

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

Mr. President : I shall then put Professor K.T. Shah's original amendment to the House.

The question is:

"That after clause (2) of article 103, the following new clause be added:—

'(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing from his office as Judge, from being elected to a seat in either House of Parliament or in any State Legislature.' "

The amendment was negatived.

Mr. President : I shall put amendment No. 1845 as amended.

The question is:

"That in clause (3) of article 103, the following new sub-clause be added:—

(c) or is an eminent jurist.' "

The amendment was adopted.

Mr. President : The question is:

"That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted:

'(c) has been a Pleader in one or more District Courts for at least twelve years.' "

The amendment was negatived.

Mr. President : The question is:

"That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be renumbered accordingly:—

'*Explanation II.*— In this clause District Court means a District Court which exercises or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.' "

The amendment was negatived.

Mr. President : The question is:

"That in Explanation II to clause (3) of article 103, after the word 'advocate' wherever it occurs the words 'or a Pleader' be inserted, and for the words 'a person held judicial' the words 'such person held judicial' be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That in Explanation II to clause (3) after the words 'judicial office' the words 'not inferior to that of a district judge' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 103, for the words 'supported by not less than two-thirds of the members present and voting has been presented to the president by both Houses of Parliament' the words 'by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 103, after the word 'passed' the words 'after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and' be inserted."

The amendment was negatived.

Mr. President : The question is:

“That in clause (4) of article 103, after the words ‘not less than two-thirds’ the words ‘a majority’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (6) of article 103, for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That clause (7) of article 103, be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (7) of article 103, after the words any ‘authority’ the words ‘or shall hold any office of profit without the previous permission of the President’ be inserted.”

The amendment was negatived.

Mr. President : I shall now put the article as a whole, as amended by the amendments which have been accepted.

The question is:

“That article 103, as amended, be adopted.”

The motion was adopted.

Article 103, as amended, was added to the Constitution.

Article 103-A

Dr. P. K. Sen : I do not wish to be long in my observation on this amendment. As a matter of fact it will be remembered that when I was moving my amendment No. 1842, I did refer to this amendment also and to the principle that underlines it, namely, that the man who has held the office of a Judge should not be under the necessity of seeking office afterwards, and for that purpose wooing political parties and causes or other persons, and thereby lowering the dignity of the office which he has held. As a matter of fact, this has been touched upon at various stages of the debate to which we have just listened and I have nothing further to say except this that I do not see in the Constitution as it stands now any definite provision of this character and I think it is absolutely essential that a Judge should be precluded from trying to get some office or other after he has vacated office. For that reason this provision is important, especially in this country, where we have known of person having filled offices in the Judiciary and then in the Executive and then again in the Judiciary. This sort of thing should be stopped and for that reason I do move my amendment and I hope that the House will accept it.

Mr. Naziruddin Ahmed : But the amendment has not been formally moved!

Mr. President : He says he has moved it!

Dr. P.K. Sen : I have not actually moved it now. I read it out on the last occasion when I was referring to it while moving my amendment No. 1842. Sir, I therefore move formally:

“That after article 103, the following new article be inserted:—

‘103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other than that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India, depute a Judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a proclamation of Emergency is in force, if such appointment is certified by the president to be necessary in the national interest.’ ”

[Dr. P. K. Sen]

On these occasions it will be necessary for the State to utilise the services and the mature experience (*Interruption*).

Shri T. T. Krishnamachari (Madras: General): May, I ask, Sir, if the Honourable Member's amendment can be moved, in view of the fact that amendment No. 1865 has been negatived by the House? The principle of that amendment is the same as that of amendment No. 1870.

Shri Jaspal Roy Kapoor : Amendment No. 1865 does not mention the words 'of profit'.

Mr. President : The mover added the words 'of profit'.

Dr. P. K. Sen : No, Sir. This has a very narrow scope and does not at all definitely say that kind of offices are barred. As a matter of fact it does not also mention that there may be cases of emergency where the President thinks that his ripe experience and mature knowledge should be utilised by the State, and on these occasions it would be quite proper and in the interests of the nation to appoint him to some of these posts. This has been more clearly brought out in the amendment I have submitted to this House.

The Honourable Shri K. Santhanam : Amendment No. 1843 was also to the same effect.

Dr. P. K. Sen : I think to a certain extent it may be said amendment No. 1843 covers the same kind of proposition. I leave it entirely in your hands as to whether it is not necessary in that view, or whether it is debarred from being considered by the House.

Mr. President : I think the principle enunciated in new article 103-A has been covered by the amendment referred to. There are, it is true, one or two additional matters also in this amendment. If the principle has been rejected, the question of considering ancillary matters does not arise. I would therefore let the matter be dropped, unless Dr. Sen insists upon moving it. But if he insists I shall have to put it to vote.

Dr. P. K. Sen : It is my desire that it should be discussed and a decision come to. If you think that, having regard to the fact that amendment, the question ends there.

Mr. President : As I have said, your amendment contains some additional factors. Technically speaking, they are not covered by amendment No. 1843. But the principle underlying it is the same as that in 1843. Therefore I would leave it to you to decide whether to press it or not.

Dr. P. K. Sen : I do press it, Sir.

Shri B. Das : I congratulate my Friend Dr. Sen, being an ex-High Court Judge, for the courage of his conviction in bringing forward such an amendment. Although my Friend Shri T.T. Krishnamachari had raised an objection that this amendment is out of order, I think he is out of order in raising that point of order. Sir, we Indians are a lawyer-redden people. Our lawyers frame our Constitution, control our politics and they think that the High Courts and the Judiciary are supreme and that no Judge can be challenged. Sir, we know that in a recent case the decision of a High Court Judge of Allahabad is under examination which shows that the Judges have feet of clay. We know the case of a Judge of the Chief Court of Lucknow who in his seventieth year showed that he can reduce his age by ten years. These are the characteristics of High Court Judges, which I repeat and affirm are the common man's viewpoint. We do not think that the British idea of maintenance of justice which was dangled before the people of India should continue to be dangled even in our Constitution. I did not move my amendments to restrict job-hunger on part of ex-High Court Judges. I think if clause 103-A, is passed it will reduce

the status of High Court Judges to the level of normal people and not make abnormal people of them. They think they are super-men and can do no wrong. But as a representative of the people, and not being a lawyer, I can say that the High Court Judges do things on the lines of their British predecessors and cling to British ideas. In another article—article 104—which will come up for consideration shortly, my honourable Friend Dr. Ambedkar, as under the old Government of India Act, wants to give the Chief Justice of the Supreme Court 5,000 rupees salary and other Judges, 4,000 rupees. They are Indians all and let me hope they are all patriots. If my honourable Friends the Ministers could accept Rs. 3,000 as salary, why should a High Court Judge claim Rs. 5,000 or Rs. 4,000? I am saying that no man, even when he is occupying the highest judicial post, should claim special privileges. They are not different from our Minister at the Centre who draw only Rs. 3,000. I think some of the Provincial Governments pay much less to their Ministers.

Another thing is that I have seldom seen a High Court Judge, barring those friends who come from Madras, wearing Indian dress. Two years have gone by after India become independent. Why is it that the Supreme Court Judges still cling to the old English practice and wear English costume? In the High Courts all over India also this is going on. In what way are they patriots? In what way are they going to maintain high standards of justice in India and create a new sense of social justice among the people? Sir, I am glad I got this opportunity whole-heartedly to support the amendment of Dr. P. K. Sen. I congratulate him once again that, being an ex-High Court Judge, he has the courage of his conviction to table such an amendment. Sir, I congratulate you, too, for having permitted it to be moved.

Dr. Bakhshi Tek Chand : Sir, the amendment which has been moved by Dr. P. K. Sen is not out of order. It raises a very important point and I would ask the House to consider it. One important difference between this amendment and some of the amendments which have already been considered is that it also deals with the case of a person who is holding the office of a Judge of the Supreme Court, that is to say, a Sitting Judge of the Supreme Court. In this connection, I would like to remind the House that there have been occasions on which a Judge of the Federal Court had been deputed, while holding that office, to duties which were entirely of a non-judicial character, to duties which were political, or diplomatic. A Sitting Judge was sent out to England as a member of War Council and again as a member of the War Cabinet, in spite of the protests of the Chief Justice, and while in England he took active part not only in political matters but also carried on propaganda of a highly communal character. It is very necessary that in the future Constitution provision should be made to see that such a thing does not happen again and Sitting Judges are debarred from being deputed to extra-judicial duties in this manner. This is the main difference between this amendment and the amendments which were moved and some of which have been rejected.

The Honourable Shri K. Santhanam : The words used are “has held”.

Dr. Bakhshi Tek Chand : The amendment says “a person who is holding or has held the office of Judge”. It will be seen that it contemplates two different cases. The first case is of “a person who is holding” the office of a Judge. With regard to this case, there has been no discussion and no amendment considered. Therefore the point of order does not arise. So far as the second part of the clause is concerned, it refers to “a person who has held” office of Judge of the Supreme Court and says that he shall not be eligible for appointment to any office, etc. With regard to them, no doubt we had certain

[Dr. Bakhshi Tek Chand]

amendments which were rejected, but in the amendment proposed by Dr. Sen there is the additional provision that the President may with the consent of the Chief Justice of India depute a Judge of the Supreme Court temporarily on other duties. That deals with the case of a sitting as well as of a retired Judge. The proviso further says that this article shall not apply in relation to any appointment made and continuing while a Proclamation of Emergency is in force, if such appointment is certified by the President to be necessary in the national interest. In cases of national emergencies, some exception may have to be made. That is the proviso suggested by Dr. Sen, If will be seen that this matter is not fully covered by the amendments which have already been considered. I submit, therefore, that the amendment of Dr. Sen is in order and should be considered.

The Honourable Dr. B. R. Ambedkar : I should like to dispose of this matter in as few words as possible. Before I do so, I should like to state what I understand to be the idea underlying this particular amendment. For the purpose of understanding the main idea underlying this amendment, I think we have to take up three different cases. One case is the case of a Judge of the Supreme Court who has been appointed to an executive office with no right of reversion to the Supreme Court. That is one case. The second case is the appointment of a Supreme Court Judge after he has held that post to an executive office of a non-judicial character. The third case is the case of a Supreme Court Judge being given or assigned duties of a non-judicial character with the right to revert to the Supreme Court. I understand that—my friend Dr. Sen may correct me if I am wrong—this amendment refers to the third proposition, *viz.*, the assignment of a Supreme Court Judge to non-judicial duties for a short period with the right for him to revert to the Supreme Court.

With regard to the first case that I mentioned, *viz.*, the appointment of a Supreme Court Judge to an executive office provide the Supreme Court Judge resigns his post as a Judge of the Supreme Court. I do not see any objection at all, because he goes out of the Supreme Court altogether.

With regard to the second case, *viz.*, the assignment of duties to a Supreme Court Judge who has retired, we have just now disposed of it. There ought to be no limitation at all.

With regard to the third case, I think it is a point which requires consideration. We have had two cases in this country. One was the case which occurred during the war when a Judge of the Federal Court was sent round by the then Government of India on diplomatic missions. We have also had during the regime of this Government the case where the Chief Justice or a Judge—I forget now—on one of the High Courts, was sent out on a diplomatic mission. On both occasions there was some very strong criticism of such action. My Friend, Mr. Chimanlal Setalvad, come out with an article in the *Times of India*, criticising the action of the Government. Personally I share those sentiments. I am, however, at present not in a position to accept the amendment as worded by Dr. P.K. Sen because the wording either goes too wide or in some cases too narrow. I am prepared to recommend to the Drafting Committee that this point should be taken into consideration. On that assurance, I would request him to withdraw his amendment.

Shri Jaspal Roy Kapoor : May I request that a decision on this clause may beheld over till tomorrow because many of us would like to study it carefully.

Mr. President : Dr. Ambedkar has told us that he is willing to refer it to the Drafting Committee for its consideration.

Shri Jaspal Roy Kapoor : It might stand over.

Mr. President : When it is referred to the Drafting Committee, it means that it stands over, because when it comes back again, it will come back in the form in which it is approved by the Drafting Committee.

The Honourable Shri Satyanarayan Sinha (Bihar: General): That will serve the purpose.

Pandit Lakshmi Kanta Maitra (West Bengal: General): If a specific, definite proposition is made by Dr. Ambedkar, we can dispose of it here.

Mr. President : It will come back from the Drafting Committee in a form which will cover the points that have been raised.

Then we adjourn till 8 O'clock tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Wednesday, the 25th May, 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 25th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

INDIA (CENTRAL GOVERNMENT AND LEGISLATURE) (AMENDMENT) BILL

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General): Sir, I beg to move for leave to introduce a Bill to amend the India (Central Government and Legislature) Act, 1946.

Mr. President : The question is:

“That leave be granted to introduce a Bill to amend the India (Central Government and Legislature) Act, 1946.”

The motion was adopted.

The Honourable Dr. Syama Prasad Mookerjee : Sir, I introduce the Bill.

REPORT OF ADVISORY COMMITTEE ON MINORITIES, ETC.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I have come before you to move for the consideration of the *Report of the Advisory Committee which met during this month for the last time. The Committee has, after completion of its work, been dissolved. The House will remember that in August 1947, probably on the 8th of August, a report was submitted by the Advisory Committee, and the Minority Committee taking into consideration the Advisory Committee's report then submitted its proposals advising this House to adopt certain political safeguards for the minorities by way of reservations of seats in the legislatures on the basis of population and also certain other safeguards.

Now when this report was made, the House will remember that it was at a time when conditions were different and even the effect of partition was not fully comprehended or appreciated. At that time even when the report was passed suggesting the acceptance of reservation of seats in the Legislature on population basis, there was difference of opinion. Well, a group of people of highly nationalistic tendencies led by Dr. Mookerjee, Vice Chairman of this House, from the beginning opposed such reservations in the Constitution. Rajkumari Amrit Kaur also at that time stoutly opposed these reservations, but the minorities then were apprehensive of getting the quantum of their representation due to them on basis of population; and the Advisory Committee, in spite of the difference of opinion, thought it necessary to allay the apprehensions of the minorities at that time, which they considered might be regarded as reasonable. The House will also recall that the representative of the Muslims in South India, Mr. Pocker, the no-changer and confirmed Muslim Leaguer, then proposed an amendment in this House when the proposals were submitted to the House, for introducing or continuing the

*Appendix A

[The Honourable Sardar Vallabhbhai J. Patel]

separate electorates, the effects of which have been fully known and felt all over the country and perhaps, known outside too. My proposals as Chairman of the Advisory Committee were then accepted by the House practically unanimously and a general sense of appreciation was expressed by the minorities when these proposals were accepted. At a later stage we had to meet again because our proposals were incomplete in so far as the East Punjab and the West Bengal provinces were concerned, because when the House passed the proposals in the August Sessions of 1947, the effect of partition was not felt or known and the vast migrations that took place were at that time in a process of continuation and the position of the Sikhs was practically uncertain at that time. So also in Bengal the effect of the partition was not fully realized, and both the Provinces were desirous of postponing the question till the conditions were fully settled and the effects were fully realized. At a later stage in December a Committee was appointed to consider this question. A sub-committee of five persons was appointed by the Advisory Committee in which our revered President was also one of the members; Pandit Jawaharlal Nehru, myself, Mr. Munshi and Dr. Ambedkar were the members of this Committee. This Committee met and made its report in February. When this report was made the representatives of the Sikh community wanted time to consider the report and consult their community in this matter. Also when the report was put before the Advisory Committee, the Muslim representatives, some of them, had changed their opinions after full reflection for a long period since the passing of the principles of the Constitution in August Sessions of 1947; they put forward the plea that all these reservations must disappear and that it was in the interests of the minorities themselves that such reservations in the Legislature must go. It was strongly pressed by the representative from Bihar and supported by other representatives. There was then a little difference of opinion and I was anxious, and so was the Committee, that we should do nothing to take a snatch vote on a question of such vast importance. As the Sikh representatives wanted time to consider their position, we naturally adjourned and met again, during the early part of this month.

When we met this time, we found a considerable change in the attitude of the minorities themselves. Dr. Mookherjee moved a motion for the dropping of the clause on reservation of seats in the legislature on population basis. When this proposal was moved, Mr. Muniswamy Pillai, who was representing the Scheduled Castes, moved an amendment to the effect that the provision for reservation, so far as the Scheduled Castes are concerned, may be continued for a period of ten years. The general opinion in the Advisory Committee was, which was almost unanimous, that this reservation so far as the Scheduled Castes are concerned, should be continued for that period and that Mr. Muniswamy Pillai's amendment should be accepted. The Sikh representatives brought in a proposal which, to a certain extent, was an improvement on the previous position. Whatever may be the object of that proposal, the Advisory Committee thought it fit to give due consideration to the proposal of the Sikhs, because the members of the Committee always felt a sort of responsibility for the susceptibilities and sentiments of the Sikh community which has suffered vastly by the partition of the Punjab. After a full debate, the Committee came to the conclusion that the Sikh proposal to fall in line with the dropping of reservation clause was, although diluted by another proposal which, in effect, gave them a sort of reservation on certain conditions, a great improvement. The Committee considering the whole situation came to the conclusion that the time has come when the vast majority of the minority communities have themselves realised after great reflection the evil effects in the past of such reservation on the minorities themselves, and the reservations should be dropped.

In a House of about forty members of the Advisory Committee, there was only one solitary vote against the proposal. So we thought that although these proposals were accepted by this House in August 1947, it was due to us and to the House that we should advise this House to reconsider the position and put before the House a proposal which is consistent with the proclaimed principles of this House for the establishment of a genuine democratic State based purely on nationalistic principles. Therefore, when we found the changed atmosphere, we considered it our duty to come before this House to revise this former decision, which was provisional as has been laid down by this House in several cases. It is under these circumstances that these proposals have been brought before the House.

So far as the Sikh community is concerned, there is only one proposal which in effect, does not really differ from the principles that have been laid down by the Advisory Committee, because the Advisory Committee also has accepted the amendment of Mr. Muniswamy Pillai that the reservation for the Scheduled Castes must continue. The Sikhs themselves have thought that certain classes of people amongst them, who have been recent converts, and who were originally Scheduled, Caste Hindus, are suffering from the disabilities which the Scheduled Caste Hindus are suffering from for the fault of the Hindu community. The Sikhs are suffering for the fault of the Sikh community and nobody else. Really, as a matter of fact, these converts are not Scheduled Castes or ought not to be Scheduled Castes; because, in the Sikh religion, there is no such thing as untouchability or any classification or difference of classes. But, as unfortunately in this country the Hindu religion is suffering from the evil effects of certain customs and prejudices that have crept into the society, so also, the reformed community of the Hindus, called the Sikhs, have also in course of time suffered from degeneration to a certain extent. They are suffering from a complex which is called fear complex. They feel that if these Scheduled Castes who have been converted to Sikhism are not given the same benefits as the Scheduled Castes have been, there is a possibility of their reverting to the Hindu Scheduled Castes and merging along with them. So, the House will realise, and I do not propose to conceal anything from the House, that religion is only a cloak, a cover, for political purposes. It is not really the high-level Sikh religion which recognises this class distinction. The Sikhs, today it should be recognised, have suffered from various causes and we have to regard with considerable tenderness of feeling in taking into consideration their existing state of mind and provide as far as possible to meet with that situation. And so when these proposals were brought to us, in fact, I urged upon them strongly not to lower their religion to such a pitch as to really fall to a level where for a mess of pottage you really give up the substance of religion. But they did not agree. Therefore, the utmost that we can do is to advise those people in their community who were wanting these safeguards to go into the classification of Scheduled Castes. These people have now agreed to be lumped into the Scheduled Castes; not a very good thing for the Sikh community, but yet they want it, and we feel, for the time being, we would make that allowance for them. Theoretically the position is logically correct. They will be all Scheduled Castes, the Ramdasis, and three or four others whatever they are, they will all be called one Scheduled Caste. The Sikhs may call them Scheduled Caste Sikhs. After all, in the eye of religion, in the eye of God and in the eye of all sensible people they are one. These advantages are these reserved for a class of people, and therefore, although there was stout opposition from the Scheduled Castes people, who also naturally feared, and who had a justifiable fear complex that if they agreed to this, or if the House accepts this position, there is really a danger of forcible conversion from their class to the Scheduled Caste Sikhs, we have accepted it. Now our object is, or the object of this House should be, as soon as possible and as rapidly as possible to drop these classifications and differences

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and bring all to a level of equality. Therefore, although temporarily we may recognise this it is up to the majority community to create by its generosity sense of confidence in the minorities; and so also it will be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community and community. This has created class and communal divisions and sub-divisions, which in their sense of fairness, they thought fit to create, apart from attributing any motives. We on our part, taking this responsibility of laying the foundations of a free India which shall be and should be our endeavour both of the majority—largely of the majority—and also of the minority community, have to rise to the situation that is demanded from all of us, and create an atmosphere in which the sooner these classifications disappear the better. Therefore, I will appeal to the House, particularly to the Scheduled Castes, not to resent or grudge the concession that is made in the case of the Sikhs, and I concede that this is a concession. It is not a good thing, in the interest of the Sikhs themselves. But till the Sikhs are convinced that this is wrong, I would allow them the latitude, consistent with what we think to be our principles of just dealings. So far as the other communities are concerned, I feel that enough time was given when we met in February in the Advisory Committee when these proposals were brought forward on behalf of the minorities, particularly the Muslims, enough time was given to consult their own constituencies, their communities and also other minority communities. It is not our intention to commit the minorities to a particular position in a hurry. If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them. So also it is far us who happen to be in a majority to think about what the minorities feel, and how we in their position would feel if we were treated in the manner in which they are treated. But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community (*hear, hear*). With these considerations, Sir, I move that the Report of the advisory Committee be taken into consideration, as under :—

“Resolved that the Constituent Assembly do proceed to take into consideration the Report dated the 11th May 1949 on the subject of certain political safeguards for Minorities submitted by the Advisory Committee appointed by the resolution of the Assembly of 24th January 1947.

Resolved further—

- (i) that notwithstanding any decisions already taken by the Constituent Assembly in this behalf, the provisions of Part XIV of the Draft Constitution of India be so amended as to give effect to the recommendations of the Advisory Committee contained in the said Report; and
- (ii) that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars be included in the list of Scheduled Castes for the province so that they would be entitled to the benefit to representation in the Legislatures gives to the Scheduled Castes.”

Mr. President : I have received notice of certain amendments. But I think those amendments will arise after we have dealt with this motion for consideration of the report. They will arise in connection with the second resolution which I think the Honourable Sardar Patel will move at a later stage. Is that the idea?

Mr. Z. H. Lari (United Provinces: Muslim): The second part is also part of the same motion. It is all one and the same. They have to be taken as a whole.

Mr. President : I take it that both the parts are moved and so we can take the amendments also at this stage.

Shri Mahavir Tyagi : (United Provinces: General): I would like to know, Sir, whether the motion for consider on of this report can be discussed generally, without taking up the amendments now. I want to know if we can have a general discussion on it.

Mr. President : There is only one motion, which is in two parts, and I have ruled that both be taken together. Therefore, the whole motion consisting of both the parts has been moved and we shall take the amendments, and then we can have discussion on the main proposition as also on the amendments.

Mr. Muhammad Ismail Khan (United Provinces: Muslim): Sir, before you call upon the movers of the amendments to move their motions, may I know whether the whole question as to how the minorities are to be represented in the legislature is open to discussion or merely the revision of the previous report on the subject of reservation of seats provided for the minorities.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I do not think that this question of my honourable Friend Mr. Ismail suggests that the whole gamut of this subject will be brought under discussion. The whole history of the question is not before the House. In the course of his speech of course honourable Members might make incidentally references to the circumstances that led to the change. But certainly we sitting here are not going to discuss all that has happened since 1947 as a substantive motion.

Shri Mahavir Tyagi : Sir, on a point of order I do not know whether the House can proceed with the discussion of this motion. The motion worded as it is does not warrant the moving of any amendments. This motion as it is, is not an amendment to the Draft Constitution at all. The motion is drafted in a manner which cannot be incorporated in the constitution. It requests the Drafting Committee to redraft the clauses so as to accommodate certain changes. Taking both the parts of the resolution as it is, it warrants only a general discussion and we cannot move amendments as of it were part of the Draft Constitution.

Mr. President : It is not as a part of the Draft Constitution that this Motion has been brought before the House. There were certain decisions taken by the Advisory Committee and by the House at a previous stage. It was thought that the report which has recently been made by the Advisory Committee should be first placed before this House for its consideration. If that report is accepted by the House then the necessary amendments to the Draft Constitution will be introduced at a later stage. At this stage we are only considering the report of the Advisory Committee dated the 11th of this month. The question of amendments to the Draft Constitution will arise at a later stage. This is only a general consideration of that report and because that report makes certain changes in regard to the decisions previously taken, these changes are also indicated in the second part of the Resolution. If these changes are accepted then the draft will be amended accordingly.

Shri Mahavir Tyagi : I take it then that it will be a sort of general discussion that we will have.

Mr. President : We will have the amendments to the Resolution and then the general discussion will follow.

Mr. Muhammad Ismail Khan : Sir, the whole question was discussed at the last meeting of the Constitution Assembly. The decision was reached that only

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reservation of seats for the minorities will be made. If the suggestion is that the reservations be done away with, does this then reopen the whole question as to how the minorities are to be elected to the legislatures? Or is the discussion merely to be confined as to whether reservation should be retained or not?

Mr. President : The report of the Advisory Committee confines itself only to the question of reservation at the present moment and therefore at the present stage we can only take that up.

Mr. Muhammad Ismail Khan : I submit, Sir, that any amendments going beyond that will be out of order.

Shri Jaspal Roy Kapoor (United Provinces: General): Sir, any decision which has been previously arrived at can be reopened only in accordance with rule 32 of the Rules of Procedure. That rule lays down that no question which has been once decided by the Assembly shall be reopened except with the consent of at least one-fourth of the members present and voting. Therefore, Sir, I submit that only such question can be reopened to which one-fourth of the members present today agree. When we come to the amendments tabled by Mr. Ismail the question will arise as to which parts of it are such in regard to which reconsideration is being agreed to by at least one-fourth of the members present today.

Mr. President : I do not think that question will arise. I am quite sure that more than one-fourth, in fact the majority of the House, are in favour of the changes.

Shri Jaspal Roy Kapoor : That is true, Sir, so far as the question placed before the House by the Honourable Sardar Patel is concerned. There can be no doubt absolutely that almost the whole House will agree to the reconsideration as recommended by Sardar Patel. As regards the question raised by my honourable Friend Mr. Ismail as to whether any other matter not incorporated in the report can be taken into consideration, my submission is that it can be taken, up for consideration only when 25 percent of the Members present here will agree.

Mr. President : We shall consider that when that question arises.

Mr. B. Pocker Sahib (Madras: Muslim): Sir, on the point of order raised, I would like to mention this. Under the present motion it is sought to take away the reservation which was decided upon previously by the House, and that reservation is based upon the fact that the minorities must have some method of representing their grievances. It is for the same purpose that the question of separate representation was also urged. When this reservation goes, the only chance of the minorities having their representation in the legislature also goes. Therefore the question of separate representation automatically arises on the consideration of this report.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Sir, I have to thank you first of all for giving me and my friends an opportunity to place before the House an important question in which the minorities, not only the Muslims but also the other minorities, are vitally interested. I shall first of all move the amendment that stands in my name and that of my friends.

Sir, I move:

(a) That sub-paragraph (i) of the second paragraph of the motion be deleted, and sub-paragraph (ii) be re-numbered as sub-paragraph (i).

(b) That after sub-paragraph (i) so formed, the following sub-paragraphs be added:—

- “(ii) that the principle of reservation of seats on the population basis for the Muslims and other minority communities in the Central and Provincial legislatures of the country be confirmed and retained; and
- (iii) that notwithstanding any decisions already taken by this Assembly in this behalf, the provisions of Part XIV and any other allied article of the Draft Constitution be so amended as to ensure that the seats reserved in accordance with sub-clause (ii) above shall be filled by the members of the respective communities elected by constituencies of voters belonging to the said respective minorities.”

Shri Jaspal Roy Kapoor : Sir, I had objected to the moving of clause (iii) of part (b) of this amendment in view of rule 32. We have on a previous occasion already taken a decision to the effect that there shall be joint electorates and there shall be no separate electorates at all. This decision can be reconsidered, I would submit, only when 25 per cent, of the members present today agree to it. I submit that rule 32 specifically stands in our way.

Mr. Mohamed Ismail Sahib : Sir, I submit that the whole question of the minorities has been reopened, as a matter of fact, by the report and the Resolution that are before us. Therefore, my amendment forms only a very legitimate part of that proposal which has opened the whole question. When that part of the decision of the Assembly which relates to the reservation of seats for the minorities is being reopened, the other part is also reopened. Therefore I do not think that there is any violation of any rule of the Assembly in this connection. Therefore I may now, Sir, with your permission go on with what I have to say on my amendment.

As I was saying, the Sub-Committee appointed to report on the minority problems affecting the East Punjab and West Bengal met and recommended on the 23rd November last year that the arrangements already approved by this Assembly in August 1947 for other provinces should be applied to those provinces as well and that no deviation was necessary. While considering this report the Advisory Committee reopened the whole question. The Advisory Committee thought that they could, with advantage, reconsider the question of reservation of seats for the minorities. Sir, I do not object to this action of the Committee at all. What I want is that the subject of minorities and of safeguards for them, including that of separate electorates which forms a very vital and natural part of this question, should also be reopened.

Mr. President : May I first dispose of this question of order which has been raised by Mr. Kapoor? Does any other Member wish to say anything on the point of order?

Mr. Z. H. Lari : Mr. President, the motion moved by the Honourable Sardar Patel seeks to re-open the question of representation of minorities and political safeguards for them. Once the question of representation of minorities in the Legislatures is re-opened, not only the question of removal of reservation, but also all cognate matters are necessarily re-opened. You cannot consider the question of removal of reservation of seats without considering in what manner the representation is going to be secured. Therefore, my submission is this that if the House agrees to take into consideration political safeguards for minorities, then it is open to any Member to move any amendment which relates to political safeguards and pertains to representation of minorities in the Legislatures. I, therefore, feel that all amendments given notice of are pertinent and should be allowed.

Pandit Balkrishna Sharma (United Provinces: General): May I have to your notice one fact, Sir? On the 27th August 1947, Mr. Pocker moved an amendment in the following form:

“That on a consideration of the Report of the Advisory Committee on Minorities, Fundamental Rights, etc., on minority rights, this meeting of the Constituent

[Pandit Balkrishna Sharma]

Assembly resolves that all elections to Central and Provincial Legislature should as far as Muslims are concerned, be held on the basis of separate electorate.”

This specific motion was defeated by the House. In view of that fact and in view of Rule 32 which regulates the proceedings of this House, I think that unless 25 per cent of the Member of the House give their consent, this amendment will be out of order.

Shri Mahavir Tyagi : Sir, on this point of order, I agree with what Mr. Lari has said. I feel, Sir, that by considering this report, we are going against the decisions which we have already taken. The point of order raised by my honourable Friend, Mr. Kapoor applies as much to the motion of Sardar Patel as it does to the amendment of Mr. Ismail. If a previous verdict of the Assembly can be revoked in the case of a motion, why should it not be revoked in regard to an amendment to the motion? Moreover, this is a very important subject and every opportunity should be given for reasonable amendments to be moved. On this vital matter I want a clear mandate from the representatives of the nation. Therefore, I submit, Sir, that such amendments must not only be allowed, but must be welcomed by the House.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, the amendment just now moved is a complete negation of this motion and I want your ruling as to whether it can be moved as an amendment at all?

Mr. Mohamed Ismail Sahib : Sir, I submit that when the House gave permission for Honourable Sardar Patel to move his motion, it has, I think, given permission for my amendment as well, because Sardar Patel's motion reopens a question which has already been decided by the House. When it reopens an important portion of that decision, Sir, I think the other portion also is thereby automatically reopened.

Mr. President : Two points of order have been raised in connection with this motion. The first is that the question of separate electorates has already been decided once by this House and it cannot be reopened, unless one-fourth of the Members express their consent to its reopening. The second point, which has been raised by Professor Shibban Lal Saksena, is that the amendment which is sought to be moved is a negation of the original motion and, therefore, it cannot be taken as an amendment.

On the first point, my view is that what Mr. Pocker moved at that time was an amendment or something in the nature of an amendment to the motion which was then before the House and his amendment was rejected by the House and the motion was adopted. Today we are going to have a motion which was then adopted reopened. Therefore, any amendment or anything which is in the nature of an amendment to that original motion is also open to discussion. I therefore rule that the first point of order raised is not sustainable and the amendment is in order.

As regards the second point of order, I think it is not a negative one because in the amendment itself there is another method which is suggested and therefore it is not a negative one. I rule that the second point of order is also not sustainable.

Mr. Mohamed Ismail Sahib : Mr. President, Sir, I was saying that while the Advisory Committee was considering the recommendations of the Special Sub-Committee appointed to go into the question of West Bengal and East Punjab, they re-opened the whole question of minorities of all the provinces. As I said, I have no objection whatever to this action of the Committee. I only want that the whole question of minorities and the political safeguards for them may be placed before the House once again so that it may at present when it is engaged in the final stages of passing the Constitution give maturer re-consideration to the subject.

This is a subject which affects the minorities vitally and therefore it is only appropriate that the House reconsiders the matter at this stage. Sir, the report of the Advisory Committee says—and this has also been explained by the Honourable Sardar Patel—that conditions have vastly changed since August 1947 when the House came to its previous decision. The report also says that it is no longer appropriate that there should be statutory reservation of seats for minorities except the Scheduled Castes and the Tribals. I admit that the conditions have changed, and suspicions and doubts and prejudices that were entertained have been disproved by this time the atmosphere has been cleared. The Muslims have demonstrated that those suspicions were unjustified and unwarranted. They have proved that they are in fore front in the defence of the country and in upholding the honour of the motherland. So, Sir, this is the change that has taken place in the country, but this change is not in favour of abolishing even the niggardly safeguards that were given to the Muslims and other minorities. On the other hand the change is for giving them better and real safeguards. That is my opinion. The conditions now prevalent show that the Muslims are a frank and open-hearted people, that they mean what they say and that they have proved what they have all along been saying, *viz.*, that they are as much loyal citizens of the motherland as any other section of the people.

Sir, to say that the Honourable the Prime Minister and the Honourable Sardar Patel and you also, Mr. President, are imbued with a high sense of generosity and justice is one thing. All sections of the population have got the utmost reliance upon you. That is one thing. But to say that every part of the personnel of the Government is imbued with the same sense of justice is another thing. As I said, the heads of Government are gentlemen with a sense of justice and generosity. But they cannot be everywhere. They cannot be in every place and always. Therefore things will happen in places which will give dissatisfaction and disappointment to certain sections of the people. Then, how are they to bring that to the notice of the Government? Can anybody say that things will go on in such a way that no section of the people will have anything to say about the affairs of the people as managed by every section of the personnel of the Government? Evidently no such claim can be made. Then, if anything happens, the people in a democratic State must have the opportunity and the right to make representations to the Head of the Government, and the Government generally.

Then, the report further on says that the Committee are satisfied that the minorities themselves feel that statutory reservation of seats should be abolished. I do not know how the Committee to be satisfied in that manner. So far as the Muslims are concerned, some members of this honourable House might have agreed to the abolition of reservation. I admit it, but then what is the nature of their agreement? What is the nature of any action of theirs with reference to the community which they seek to represent? Some of them have repudiated the ticket on which they were elected and on which they have come to the Assembly. Thereby they have demolished their representative character. Therefore, to take them as representing the views of the minorities of the Muslims, I think, is not fair. I know that there was canvassing for sometime past in connection with this question and now we have got the report before us.

Sir, I assert and say definitely that the Muslim, as a community, are not for giving up reservation. Not only that, they implore this House to retain separate electorates which alone will give them the right sort of representation in the legislatures. The Muslim League, which still is the representative organisation of the Muslim community, has more than once within this year not only expressed a definite view in favour of reservation of seats, but has also urged the retention of separate electorates. That is the position so far as the Muslim minority is concerned.

[Mr. Mohamed Ismail Sahib]

Now, if the majority community or the party in power wants to do away with any of these safeguards, that is one thing. But I submit that it is not fair to place the responsibility for doing away with such safeguards on the shoulders of the minority.

When we read the report and also other similar literature we got the impression that objection is being taken to the religious basis of the minorities. Indeed, in other countries, particularly of Europe, minorities are formed mainly on the basis of language and race, but here in our country the conditions are fundamentally different. Here one set of people differ from the other mainly on account of their religion. The difference in religion creates a difference in life and in outlook on matters and things connected with life. Man here in this country is measured in terms of his religion. Even the Scheduled Castes, I may say, are based only on religious beliefs. They have become a minority community on account of the religious beliefs that are current in this country. Sir, I do not think that there is any harm in basing the difference of one set of people from the others on religion. Anyway, that is the practice obtaining in this country and we cannot go away from it. When we say that one is a Hindu and when we say that another is a Mussalman, nobody can deny that there exists a difference between the two, but it does not mean that these two people must fly at each other's throat. This difference has to be adjusted and is capable of being adjusted. What we want is harmony not physical oneness or regimented uniformity. We do not want that the population of a country must be made up of the followers of only one religion or one set of beliefs. That is not the idea of the sponsors of unity. Unity really means harmony, the adjustment of things which are different with different groups of people not only in this country but also in other parts of the world. Harmony is possible only when all sections of people are satisfied, are contented. If in that way they find that they are having their rights, that they are not harassed, that they are being listened to and that they are being treated as human beings, harmony will come by itself. It is again and again said that separate electorates have been creating trouble and antagonism amongst people. Are separate electorates the cause of all these troubles, Sir? Now, elections have been going on for very many years in the past on the basis of separate electorates. If the mass of the people really resented this form of election, then there ought to have been trouble at the time of the elections more than at any other time. I want honourable Members of this House to tell me whether they have heard of such trouble or rioting or disturbance at the time of elections. The truth is that the mass of the people recognise that it is the right of these different sections of people to elect their own representatives. Therefore they do not resent it. I say that, because of this right of every section of the people to send their own representatives to the legislatures, people have been living on the whole happily together in the villages and elsewhere. It is not always, Sir, that people are flying at each other's throat. If it were so and if this system of separate electorates has been the cause of it, then it is at the time when that system is in operation, *i.e.*, during the election time that trouble should particularly arise. But then what is the cause of the trouble? It is the opposition, I should say, to any demand that the minority communities may make, and it is not, I think, the characteristic of the masses to oppose such demands but the characteristic of the political parties to do so because love of power is at the root of this attitude of the political parties. Sir, in other countries of Europe, special arrangements have been made for minorities, in countries like Poland, Yugoslavia, Bulgaria, Albania, Greece, Turkey and so on.

Shri M. Ananthasayanam Ayyangar (Madras: General): Are there separate electorates anywhere in those countries?

Mr. Mohamed Ismail Sahib : In Albania they have agreed to some separate electoral arrangement for the minorities, in that small country, a country of only ten lakhs of people, a small country with a small population. Even there they were not afraid that separate electorates will divide the country into smaller bits. They thought that it was a natural thing to do for the minorities. In other countries, it is not a question of separate electorates, but the minorities had the safeguards that they wanted. That is the point. They were given the safeguards which they were in need of under the conditions prevailing in those countries. In our country, under the conditions prevalent here, it is separate electorates that will give contentment to the minorities and will place them on a footing of equality with other sections of the people. It is for that reason that in this country we have been urging for separate electorates and we have been agitating for the retention of it. When special arrangements were made in the West for minorities in such matters as personal law, religious instruction etc. and in the matter of even electoral affairs in the West, it was done under the supervision and auspices of the great statesman of the world who were assembled in the League of Nations. If it was wrong, would these great statesmen of the world have agreed, that too after the first World War, to such special arrangements? They thought that there was nothing wrong in those arrangements. So much so, they even agreed in the case of the Ruthenians in Poland that they might have local autonomy. That was the view of the great statesmen of the world just when they had emerged from one of the greatest catastrophies. I mean, the first World War. So, Sir, there is nothing wrong if we ask for separate electorates in this country. Just at present there is also this difference with reference to this question. Previously our country was under foreign rule. It was said and said freely that the system of separate electorates was a device invented by the Britishers to divide the people and perpetuate their rule over them. But at present the foreigner is not here. Now we are an independent nation. It is only when people have separate electorate, the real representatives of the people having that system, can go and represent their views before the Government or in the legislature or before the majority community. What they want is only the right of self-expression. What they want is the right of being heard. The question which they may be agitating about may be decided in any way, but what is meant by separate electorates is only the right of self-expression and allied with it, the right of association. What harm is there, Sir, even now for the Assembly to hear me and to listen to my views? They may decide in whatever way they please, but should they be denied even this right of being heard? It is said that this separate electorate creates a spirit of separatism and hard words are being said about it. Hard words are no argument, Sir, I submit. This separate electorate is not separatism at all; it means the recognition of differences between one group of people and another; it means that this difference should be recognised and wherever those differences come into play the real representatives of the group of people who are subject to that difference ought to be heard by the authorities; that is what it means. Therefore, it is not really a device of separating the communities. It is really a device of bringing together people. As I said, one section of the people will go to the other section of the people, the minority community will go through their representatives to the majority community and to the Government and to the Parliament. Therefore, it is really bringing the people together and not separating them. Supposing you want to do away even with this difference between people and people I first of all want to ask you whether it is necessary. As I said unity does not consist in the regimented uniformity of all the people. Even in the present minorities and their difference cease to exist there will

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appear other differences and other minorities amongst the people. That is the nature of human beings. We have to face and meet such differences in the most suitable way and the most suitable way is one based upon giving contentment and satisfaction to the people concerned, of course, within legitimate bounds and limits. Therefore, I say it is not necessary to do away with such differences. It is neither right, because it will be a matter of dictation, if one group of people are asked to give up certain differences in their way of life.

Then, Sir, even supposing you persist in doing away with such differences, can you do it by ignoring them, because doing away with separate electorate means ignoring all the differences that exist between one group of people and another? Surely, Sir, ignoring them and trying to forget the differences is not the way to deal with them. It will create and breed a feeling of grievance, discontent and dissatisfaction amongst the people and this is not good to anybody or to anything.

Sir, the Schedule Castes have been given and rightly given the safeguard of the reservation of seats for them in the legislatures. They fully deserve it; they are a class of people who have been the victims of oppression, if I may say so, and so many difficulties for ages; and therefore, now when we are emerging into the world of freedom, it is only right that they should also be given the freedom of coming before the world and saying what they want to say. Therefore, Sir, this Committee has done the right thing in recommending the retention of the reservation of seats for the Scheduled castes. But when they according to the majority community form part of that latter community, they follow the same culture and same religion and when they are of the same race according to them, yet it was thought fit, Sir, that they should be given separate safeguard of the reservation of seats. When it is justified for them, Sir, is it not all the more justified in the case of other communities which are admittedly different from the majority community? Sir, this action may look like something like vindictiveness, but any arrangement based upon ill-will or vindictiveness cannot be a lasting one. I want the House to consider this aspect. The Muslims as well as the other communities want to contribute effectively and efficiently towards the harmony, prosperity and happiness of the country which is their motherland and for that purpose, they want to have equal opportunities with other people. They want to be an honourable section of the people of the land, as honourable as any other section; in the days of freedom they also want to have freedom of expressing their views. Sir, it may be said that they may express their views through the representatives elected by all the people put together. Supposing there is a difference of opinion between the minority community and the majority community, then will the representative of the majority community represent the different views of the minority, Sir? Such differences may not be many, but when there are such differences they are important and it is necessary and vital that the minority people should be satisfied on those matters.

Then, Sir, how are they to represent such matters if they do not have any representatives of their own? Then again it is said that the representatives elected by Muslims will represent only Muslim, it is communal electorate and therefore, the whole thing is tainted with communalism. I do not know what is exactly meant by Communalism itself. Even the report says that it is not always easy to define what is Communalism. If by Communalism you mean exclusiveness, fanaticism and such other things, of course, the Muslims are not for it. If to say that I am a Muslim or to say that I am a Christian is Communalism, then I do not know how to help it. How can a community help being a Muslim Community or a Christian Community? It is not a joke

for the minority communities always to be courting disfavour and criticism from the majority community. They also want to live as peacefully as any other section of the people, but then why do they insist upon this system of safeguards and the system of separate electorates and reservation of seats? Because they know it is only through this they can approach, make a real approach to the other people and thereby cement the harmony to which they are wedded. It is for that purpose the Muslims as well as the other minorities want this arrangement which I am pleading for and not for any other thing; and so, it is only reasonable that where their differences are concerned, they should be given an opportunity, a means of representing their views. Then it does not mean that in other matters, they cannot join hands with the other sections of the people. It is not so in actual practice. As a matter of fact every honourable Member of this House has been elected on a communal basis. For the Hindus the Muslims did not vote; for the Christians the Muslims did not vote and for the Muslims neither the Hindus nor the Christians voted, and so everybody has been elected on a communal basis. Does it mean that the honourable Members here are not able to speak for the whole people in most of the matters that come before this House? It has not warped their mind and it has not made any difference at all in dealing with matters of general import and therefore, it is not right, it is not logical to say that separate electorates really divide one people from the other. It is really this criticism, this assault on the cherished right of the people that creates this suspicion and discontent and dissatisfaction. If they are given this right, they are satisfied, they go the right way and they co-operate with the other people, and there is harmony in the land. This right they have been enjoying for a long time, from the time when features of parliamentary rule were introduced into this country. Therefore, I say that separate electorate instead of creating any trouble is really the means, the device of bringing about harmony amongst the people. It enables you, it enable the Government to know what the respective people have got in their mind and then enables you to cure those grievances and those troubles. If you do not listen to them, if you do not know what is really at the root of their discontent, you will not be able to apply the proper remedy in such a case. Therefore, it is really a means of cementing co-operation and unity among the people.

Another feature of the report is this: it says:

“Although the abolition of separate electorates had removed much of the poison from the body politic.....”

Shri B. Das (Orissa: General): Is there not any time-limit for the speeches? We must finish the debate today. If one Member is allowed to speak for more than half an hour, there are so many members who are very anxious to speak.

Mr. President : As this is the principle amendment, I have not interrupted the speaker. I hope Members will also keep their eye on the clock.

Mr. Mohamed Ismail Sahib : Perhaps this is the last time that I am pleading on behalf of the minorities over this important and vital matter. Therefore.....

Shri R. K. Sidhwa (C. P. & Berar: General): There are other Members who are anxious to speak. He has already taken too much time. (*Interruption*).

An Honourable Member : He must be given time to explain his position. (*Interruption*).

Mr. President : That is why I have given this time.....

Mr. Mohamed Ismail Sahib : I think you for the latitude you have given me. Even two hours will not be long for such a subject as that.

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I am quoting another statement from the report :

“Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism.....”

Sir, separate electorates have not been abolished. We are still under separate electorates. As I said, we all Members here have been elected under separate electorates. Reservation of seats as adumbrated in the Draft Constitution has not yet come into being. I do not know how the report says that this has removed much of the poison and how the reservation of seats does lead to a certain degree of separatism. Evidently, what they mean is that the knowledge that separate electorates have been abolished has removed a little of the poison. Here again, these are hard words. As I said, these hard words do not carry conviction and cannot be substitutes for arguments. This is what I want to submit. As I have already made out, separate electorates in their very nature are creating harmony and contentment amongst the people and enable the people to make their best contribution towards the happiness, prosperity and unity of the country. This knowledge has been there amongst the people—the knowledge that separate electorate is being abolished. Even then the people have been patient and peaceful. Why? Because they have got confidence that this august Assembly will still reconsider this question and will do them justice. Whatever that may be, I agree with one important point contained in this statement that there is now an atmosphere of good-will in the country. But that atmosphere has not been brought about in the manner suggested by the report. As I said, the trouble is not due to separate electorate or any other safeguard. The good-will is consequent upon the contentment which the people get through respect shown for their views and feelings.

Sir, I do not want to raise any controversy over the matter. I am a man of peace, and have always been working for peace and harmony. That has been acknowledged from various quarters. In this matter, I only reflect the character of my community. My community wants peace, and prosperity in the country; it wants harmony in the land. It is with that view, Sir, that I am speaking and I ask on behalf of my community that they may be given this fundamental right of representing their views before the legislatures and the Government so that they may be in a position to contribute their utmost and their best for the happiness, strength and honour of the country which is their motherland as much as it is of anybody else.

Sir, I move.

Mr. President : Mr. Lari. I hope Mr. Lari will bear in mind the suggestion made by Members to be brief.

Mr. Z. H. Lari : I would, Sir.

Mr. President, I express my humble concurrence with the approach of the special sub-committee appointed by the Advisory Committee on Minorities. That Approach is—to use their own words—that “the Constitution should contain no provisions which would have the effect of isolating any section of the people from the main stream of public life.” I concede a minority must aspire to be an integral part of the nation.

Mr. Tajamul Husain (Bihar: Muslim): The honourable Member has not moved his amendment.

Mr. Z. H. Lari : I know parliamentary practice. I will move it. Have patience. The minority must claim only such safeguards as are consistent

with this aspiration and are calculated to give it an honoured place in the governance of the country, not as a separate indifferent entity, but as a welcome part of the organic whole. I am no longer satisfied with sending some Muslim Advocates of certain causes. It is my ambition that my representative, be he a Muslim or a Hindu, shall have an effective voice in the governance of the country. In that view of the matter, I am positively opposed to separate electorates, and I do not favour reservation of seats in the legislature. The first is positively dangerous and the other ineffectual and has the taint of separatism. But I am not content with a negative approach. It is not enough to say that reservation must cease, that it is vicious, that separate electorates is bad. These must be a positive approach to ensure due recognition of the political rights of the minorities. I want this honourable House to approach this question in the light of difficulties encountered by minorities in other secular democratic States, like Switzerland or Ireland and to consider solutions sought and found there. And this is the reason why I move, Sir, and Mr. Tajamul Husain will be satisfied now—

“That in sub-paragraph (i) of the second paragraph of the Motion, after the words ‘the provisions of’ the words ‘article 67 and’ be inserted.

That in sub-paragraph (i) of the second paragraph of the Motion, after the words ‘in the said Report’ the words ‘with the addition that elections be held under the system of cumulative votes in multi-member constituencies and the modification that no seats be reserved for the Scheduled Castes’ be inserted.

That sub-paragraph (ii) of the second paragraph of the Motion, be deleted.”

My amendment merely means that there should be multi-member constituencies, of say two, three or four to be fixed by Parliament—resulting in allowing the minorities to group their votes. The solution—and I may say so with all respect, to disarm a section of the House, though it is a very meagre section—the solution that I have offered is not a Muslim League mixture, it is a solution which was made as far back as 1853 when it was advocated by Mr. Marshall in an open letter, “Minorities and Majorities, their relative rights” addressed to John Russell.

The Problem of minorities is not unique to India. In all lands and in all climes there have been minorities and they have had to suffer. A writer, adapting Shakespeare coined this epigram, “Minorities must suffer, it is the badge of all their tribe”. But I feel it is superficial. It is not a profound truth. To me it appears that justice to minorities is the bedrock of democracy. The reason is this. The twin principles of democracy are, one, that the majority must in the ultimate analysis govern, and second, it is the right of every individual to have some voice in sending his representative to a representative institution, and thereby have some share in selecting a government to which he owes and renders obedience. Those who have read the writings of Mill must have been impressed by his advocacy of fundamental principle of democracy, that every political opinion must be represented in an assembly in proportion to its strength in the country, and naturally so. Why is this Assembly here? The entire thirty crores of people cannot come and deliberate here. Therefore, there is the device of sending representatives. But if you adopt a method by which only 51 per cent of the people alone are represented in the legislature, it ceases to be the mirror of the nation. Now the question is, does the method of representation adopted by this House give effect to or rather does it implement the principle of democracy? At the very outset, with your permission, Sir, I will read to the House an observation of Lord Acton. He says,

“The one pervading evil of democracy is the tyranny of the majority, that succeeds by force or fraud in carrying elections. To break off that point, is to avert the danger. The common system of representation perpetuates the danger. Equal electorates give no representation to

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minorities. Thirty-five years ago it was pointed out that the remedy is proportionate representation. It is profoundly democratic, for it increases the influence of thousands who would otherwise have no voice in the governments and it brings men more near an equality by so contriving that no vote shall be wasted, and that any voter shall contribute to bring into Parliament a member of his own opinion."

Sir, it is this solution that I am advocating before this House. The House knows that at present in the countryside, there are three political parties—the Congress, the Socialists and the Communists. Two of them have already accepted this as the proper method of representation. On October 15th 1947, the National Executive of the Socialist Party adopted a resolution, in the course of which it says— I would again beg to be excused for quoting it—

"All elections should be by direct, secret, and adult suffrage, under a system of joint electorates. There should be multi-member constituencies, and voting should be according to the system of cumulative votes, thus providing for minority representation."

At about the same time, the *People's Age* contained an article about this representation, and the writer wrote thus:

"The establishment of adult franchise and joint electorates will be universally welcomed as laying the basis for a sound democratic solution. We should now appeal to the people on the basis of their common interests for a joint endeavour behind a common democratic programme. But the question still remains as to how to evolve a method of representation that would enable the minorities to elect the representatives in whom they have confidence and yet not breed separatism."

And then it says,

"The best, the most democratic and non-communal way of ensuring this is by proportionate representation, the electorate method that obtains in the new democracies like Yugoslavia and in many of the old ones. In this no communal reservation would be needed."

Now, Sir, I think the House has not forgotten the three series of Constitutional Precedents prepared by this Constituent Assembly under the able guidance of Mr. Rau. In these, this question of proper method of representation for the minorities was discussed. I hope the House has not forgotten those volumes. If you will kindly refer to Series I, on page 17, the author, or rather the compiler remarks:

"One of the best safeguards for minority rights and interests in the system of election by proportionate representation."

I hope one interrupter on those seats will be satisfied that he is not a Communist or Socialist. The matter is fully discussed in another volume, the third series, at the end of page 164. The compiler says:

"There is however general agreement among the critics of proportional representation that the application of the system is a necessity in the case of countries with self-conscious, racial or communal minorities."

There you find those who were charged with the duty of exploring the possible methods of representation of minorities in a non-partisan spirit and the two major political parties, one of them likely to come into power in the future, have accepted this principle of proportional representation.

If that is not enough, you may see what is the experience of other countries. We are not framing a constitution on an absolutely new slate. There have been constitutions before: there have been difficulties encountered before and there were minorities before. The most parallel instance is that of Ireland. May I ask the House to bear in mind that in Ireland there were two religions contending against each other—the Protestants and the Catholics. Ireland

too was divided as a result of agitation by the religious minorities with the result that there are two States in Ireland. At the outset both these countries adopted the system of proportional representation, Northern Ireland giving it up subsequently, where as it continues in Erie proper. What is the position there? A writer has summed up the position as follows:

“In Southern Ireland the religious question has ceased to be a dividing line in politics.”

In that part of Ireland where proportional representation exists the writer says that the religious question has ceased to be the dividing line in politics. The writer continues:

“The religious issue which used to be as bitter in the South of Ireland as in the North has ceased to be a feature in politics. There is no longer a Protestant Party and a Catholic Party. Far otherwise is it in Ulster. Proportional Representation was carrying out its beneficent work of appeasement there also. The Catholics and Nationalists were in a minority but were fairly represented and had no sense of grievance. The Catholics had some representation even in areas predominantly Protestant and *vice versa*. The abolition of proportional representation was followed by an outbreak of bitterness which is still to be found today.”

That is the actual experience of the working of proportional representation in one part of the country and absence of it in the other.

Those Members of the House who want to keep in touch with the politics of the day do, I believe, read the Round Table. In its issue of March 1948, while discussing the reasonableness or otherwise of proportional representation in Ireland the writer says:

“The proof of the pudding is in the eating and this system of election has not only enabled every substantial interest to retain representation, but has given us stable government. It has solved so far as solution is possible for us the crucial problem of reconciling justice to minorities and the right of the majority to govern.”

Here you have the instance of a country where similar circumstances prevailed, where agitation led to separation, where proportional representation has been tried in one part and give up in another. Is it not wise for us to take lesson from that experience which is similar to what prevails in our country?

Pandit Lakshmi Kanta Maitra : What is the population of Southern Ireland?

Mr. Z. H. Lari : Are you concerned with population or you concerned with the principle? You can easily consult the Year Book and find out the population.

The Honourable Shri K. Santhanam (Madras: General): Does he suggest that there is cumulative voting in Ireland now?

Mr. Z. H. Lari : Yes, there is proportional representation.

The Honourable Shri K. Santhanam : In the Irish constitution no voter may use more than one vote and the vote shall be by secret ballot.

Mr. Z. H. Lari : Which year do you refer to?

The Honourable Shri K. Santhanam : 1937.

Mr. Z. H. Lari : It is wrong. Read it again and you will find what I say. The issue is discussed fully in the Round Table. Please read it.

The Honourable Shri K. Santhanam : Please refer to the Constitutional Precedents supplied to you.

Mr. Z. H. Lari : The same thing happened in Switzerland. The House is aware that the canton was divided into three Constituencies one was mainly Protestant and the other mainly Catholic. The result was that in one part Catholics could not be represented and in the other the Protestants could not

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be represented. Proportional representation was introduced. Everybody knows that Switzerland is a happy family today, strong, democratic and secular.

The same thing has happened in Belgium. I may quote another writer again. He says:

“The non-representation of minorities in Belgium accentuated the racial, language and religious differences between Flanders and Wallony. Flanders were represented by Catholics only, the French speaking districts by Liberals and Socialists. With proportional representation members of all these parties are returned in both areas and this has brought in its train political consolidation of Belgium.”

According to the theory of democracy there should not be disenfranchisement of a minority, be it political, religious or social. If you look to logic you will find that where the election is by simple majority of 51 per cent, 49 per cent is left unrepresented. If you take realism into consideration you will see the necessity that election be so managed as to give representation to every section of the people and if you want to profit from experience you will find that in those countries where this problem arose the only solution they had was proportional representation. I would go further and say that the adoption of this method is in the national interest and that for three reasons.

1. Parliament must be the mirror of the national mind: otherwise it will not have the respect which is due to it. There are instance before where the minority has succeeded in electing the majority of the members of the House, where an election has led to the complete disenfranchisement of a section. I would point out the recent elections in United Provinces where the Socialists got about 35 per cent of the votes in 11 constituencies but not a single representative of theirs was selected. So far as the people are concerned it can be said with certainty that 35 per cent. were behind the Socialist Party but the system of election was such that that party went unrepresented absolutely. To that extent that House has fallen into disfavour and to that extent it ceases to be representative of the nation which it seeks to represent.

2. There will be no grievance for any minority. I am not one of those who believe that all the supposed or imagined grievances of a minority must be met. They must be reasonable. Their interests can be looked after so long as they are consistent with the national interest. The moment there is antagonism or conflict between their interest and the interest of the nation the minority must go to the wall. But where national interest is preserved or is not jeopardised or imperilled it is necessary to consult minority opinion. If you do that it necessarily leads to consolidation of the State. Therefore, the second advantage of proportional representation is that it will lead to the consolidation of the State.

3. If you have proportional representation you will have an opposition in the House. You will have a party not on a communal basis but based on large national issues. You will have a party which will co-operate with you so far as the integrity of the State is concerned, so far as the advancement of the prestige of the nation is concerned. It will at the same time correct you and keep you on the right path. As soon as you hold the elections you will have in the House an opposition conscious of the dignity of the nation, conscious of the necessity of defending the interests of nation and at the same time presenting a corrective to the majority in power. Therefore I say that the solution which I have offered— which is not my own as I have said, but which is age-old and which has been practised in so many countries—is the only sound one.

Now what is the criticism? Why don't you adopt it. As every Member of the House is aware proportional representation assumes different forms: there is the single transferable vote, there is the cumulative voting and there

is list system. I have suggested proportional representation by way of cumulative voting. Well, it may be said that it is only another form of separate electorate and that if you concede that, it amounts to conceding separate electorates. That was the criticism when I placed it before the U.P. Legislature. But you forget that conditions have changed from 1937. Take the case of the United Provinces where the Muslims are numerous. You are aware that in the U.P. there are 8 million Muslims, but their percentage is only 11 or 12 per cent. If you have three-member constituencies, nobody can be elected unless he gets 33 per cent. of the votes.

Therefore, this criticism that proportional representation is another form of separate electorate is, to say the least, very uncharitable. As a matter of fact, I have been elected by separate electorate here. What service do I do to my community? No doubt, I can come forward and air certain views, but does airing of certain views help my community? (*An Honourable Member*: It does) It does not. It only enables my Friends over there to make people bitter against me still further and to say that Mr. Lari has raised this question simply because it suits his community. But I want a representative, be he Sardar, in preference to Maulana Azad, provided I feel that in electing Sardar I have also a voice and that he is bound to respect my sentiments, because he has to come again for my votes.

But take the case of the U.P. The 10 per cent. of Muslims can easily be ignored. The test of a system is to be made at critical times, at a time when passions are running high—not when things are smooth. Therefore, my submission is that you should coolly consider the question whether apart from reservation of seats, apart from separate electorates, is there any democratic method which can ensure due rights to minorities—be it political, social or religious.

The spirit of accommodation has been the underlying tone of everything that has been done by us. Only the other day by endorsing the London decision you accepted the King as the link—a king whom you previously regarded as a symbol of Imperialism and oppression of our rights. That shows how accommodative you are. Should you not display that spirit of accommodation when you are dealing with a section of your own, whom you have agreed you cannot but have as an integral part of the nation? Why not try to console my feelings, if it is possible? As I have already said, national interests must reign supreme. If it can be pointed out that national interest cannot be served or it is in danger, I will be the first person to give it up.

Shri H. V. Kamath (C. P. & Berar: General): Why did you demand Pakistan?

Mr. Z. H. Lari : Well, if it is a personal question, I may tell my honourable Friend that I opposed the creation of Pakistan at the Delhi meeting of the Muslim League. But the question is this: is that question pertinent now? Are you not nursing old grievances? I am asking you in all fairness. You say you regard me as an integral part of the nation. But the moment you raise such criticisms you give away the whole show. You show that you do not regard me as a part of the whole, that you are still harbouring old suspicions. That is not in keeping with the spirit of accommodation displayed by you.

I am sure that in spite of all these interruptions of the kind over these, the heart of this House is very sound, at least the heart of the leaders of the country is very sound and that heart will see how the Muslim heart pulsates.

Mr. Ismail spoke of the Muslim League of Madras. Well, I am not here to enter into any controversy. But I must say that so far as the U.P.

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Muslim League is concerned, we have decided that the League will not take part in politics and the Madras Muslim League has ceased to be representative.

Now, Sir, if you concede that proportional representation has to be accepted, then my third amendment, namely reservation of seats for the Scheduled Castes should disappear is really consequential, because once you accept proportional representation there is no scope for any reservation for any community.

But may I pause here for a moment and say a few words in regard to this? If you take away the representation for the Muslims, but at the same time continue it for the Scheduled Castes, two questions arise: For an intelligent mind, possibly they may not be of value. But to sentimental minds they are of great importance. The Muslim man in the street will naturally say: "Well, the Scheduled Castes are a part of the Hindu community. There is no antagonism between the Hindus as such and the Scheduled Castes. Apparently you give representation to the Scheduled Castes, because you feel possibly that you will not be able to return sufficient number of Scheduled Castes to the Legislature. If the electorate is wide awake, if the electorate is conscious, if the electorate is aware of the necessity of having representation of every portion of that community then you cannot say that reservation is necessary. The reservation shows that you are not feeling strong on the point. There is a suspicion in some minds that possibly we will not be able to overcome prejudices of the Caste People and thereby ensure the quantum of representation of the Scheduled Castes." The Muslims will say "you have not got that confidence in regard to the Scheduled Castes who have always been part of you. What about the Muslims who are still regarded in certain places with suspicion"? And there was some ground for suspicion because as you rightly said Muslim India is tantamount to Muslim League India. That is true: I do not deny it. Why should you create the impression in the Muslim mind that while you are solicitous of the interests of the Scheduled Classes and are conceding representation to them, you do not care and you are not mindful of the interests of the Muslims and, although you say that the majority community will be generous and will consider it its duty to return Muslim representatives in enough numbers, you have not at all shown the same care and the same solicitude for the Muslims? It may be that the Muslims, you think, will be able to secure representation in spite of the majority.

That is the first consideration which must weigh with the Honourable Sardar Patel. He must consider it in the psychological background.

The second thing is this: If you concede the principle of representation by reservation of seats for Scheduled Castes, do you not accept that such reservation does not go against the national interests? If it goes, why accept it? If it does not, why do you say that the Scheduled Caste people have unanimously expressed the view that they want reservation? But was the Muslim view sounded on this question? I do not think the members of the Advisory Committee—I regret to say, it is another matter I would have expressed the same opinion in the Advisory Committee if I had been there, because I do not want reservation of seats—belonging to Muslim community have got any hold on the country and cannot possibly commit the Muslims to any line of action. If you want the true opinion of that community the proper thing to do would have been for Sardar Patel to convene a meeting of the Muslim Members under his Presidentship, place the facts before them and invite opinion. I personally do not think that any member of the house should go with the feeling that the vocal

members have their way and that they carry the day. I am a vocal member but other members are not vocal. I do not want that my colleagues should feel that I, without consulting them and under false pretence assured Sardar Patel that this is the position. Therefore I say there are two courses open. The first is not to give reservation of seats to anybody. That is in the national interest. But if you want to give it or take it away on the basis of the view of the minority concerned, then take appropriate steps to have the views of that minority ascertained. I say in fairness to my colleagues, who cannot express themselves as loudly as I do, that this course may be adopted. I proceed on the assumption that the past has been forgotten. Those who refuse to forget the past, I do not take notice of. I know that their number is small. If it were opinion of the majority it will be dangerous to ignore it. But knowing as I do, I proceed on the assumption that the past should be forgotten. I am here as an integral part of the Indian nation. In that capacity alone I advocate certain courses before this honourable House. It is for the majority to accept or reject what I say. History will judge who was right. Majority sometimes is in the wrong and minority need not necessarily be always in the right. But I have the satisfaction in my own conscience that what I say is proper and in the national interests of the community. I am satisfied that it is also in the wider national interest of the nation as a whole. On that basis I have made this motion before this honourable House. I appeal to the leadership of the country to consider the matter afresh. First you should consider whether it is not possible for them to adopt a method which has been practised by others and has been successful and has not endangered the stability of the State. That would I think solve the problem for all times to come. Let us have experience of this system for ten years. The Constitution can be changed any time. Why not accept if the minority say: 'Let us have proportional representation?' Why not have it for two elections? Are you going to bind the succeeding generations? You are not. Perhaps you will say, "Why not you try this?" It is a reasonable question. But I may point out that at that time possibly I may not be here. There is a great danger in that. But you try it for five years and if it works any danger to the integrity of the State, give it up. You formerly resolved to have reserved seats. Now you say, 'No'. What is there to prevent you from amending the Constitution six years hence? Therefore I say, be fair, be generous. (*Interruption*). If not generous, at least be fair. I appreciate the interruption. Generosity does not appeal to me also. It is the language of the weak and the imbecile. But fairness is the right of any citizen. Therefore I say, be fair. Let us consider the question and in doing so invite also neutral thinkers and politicians from Switzerland or other countries. Let us invite them to consider this question and, if they say that I am wrong, you may proceed as you like. But, for God's sake, do give a chance, not to me as a member of the Muslim community, but to me as a member of the Indian nation. Give them a chance to survive and to play their part in the larger interests of the country.

I have the very unpleasant task of opposing Mr. Mohamed Ismail Sahib so far as the question of separate electorate is concerned, because I have been feeling all along that my existence has been useless in this House. Having been returned on the separate electorate ticket I can say nothing more than that the Muslim community wants a particular thing. If I say anything which is in the interests of the nation as such, I am dubbed a communalist. Therefore I am now suggesting something which I have not tried, but which others have tried and given it a place.

Prof. N. G. Ranga (Madras: General): May I know, Sir, whether an argument is allowed to be repeated?

Mr. Z. H. Lari : My Friend is not aware of the art of speaking; otherwise he would not have said that things are not repeated. Things are repeated, but not *ad nauseum*. Therefore I said, be fair and consider the position as it is and then take a decision which will be conducive to the interests of all communities and to the nation and enhance the good name of the State to which we all belong.

Shri M. Thirumala Rao (Madras: General): I have got here a copy of the article on the Republic of Ireland. I do not find in it a single word of the quotation made by Mr. Lari.

Mr. President : If any Member wishes to quote that portion he may do so.

Shri M. Thirumala Rao : If I am called upon to speak I will do so.

Mr. President : The honourable Member may take his chance.

The next amendment, No. 5, is one of which notice has been given by several Members.

(Amendments Nos. 5, 6, 7 and 8 were not moved.)

Mr. President : Then there is another amendment of which I have got notice, by Shri Thakur Das Bhargava. There is notice of the same amendment by Mr. Nagappa and Mr. Khandekar.

(Both Mr. Nagappa and Pandit Thakur Das Bhargava rose to speak.)

Mr. President : I understand that the amendment of which Pandit Thakur Das Bhargava had given notice came first. Since his amendment came first, I will give him the opportunity to move it. (Addressing Mr. Nagappa) You can take your chance of speaking on it.

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

“That the following be added to the Resolution:—

‘The provision for reservation of seats and nominations will last for a period of ten years from the commencement of the Constitution.’”

Mr. President : Is this an amendment to the original proposition?

Pandit Thakur Das Bhargava : This is an amendment to an amendment.

An Honourable Member : But no amendment has been moved.

Pandit Thakur Das Bhargava : This is an amendment to an amendment. The practice in the House has been that when notice of amendments has been given, all the amendments are taken to be moved. That was the ruling given in the previous session. According to that, I have given notice of this amendment.

Mr. President : Strictly speaking, this is not an amendment to any amendment. If it is an amendment, it is an amendment to an amendment which you have not moved.

Pandit Thakur Das Bhargava : The practice is that amendments to amendments are allowed even when it happens to be an amendment to one's own amendment. That was the ruling by the Vice-President.

Mr. President : In dealing with the Draft Constitution, I ruled that I would accept amendments to amendments but not amendments to the original article, even though they may be given under the pretext of being amendments to amendments, if they are not given in time. On that basis I have been going on all

these days. I was not informed of any previous decision by the Vice-President when he was presiding. Therefore I gave that ruling and I am following that ruling since then. I do not accept amendments out of time, amendments, which are strictly speaking not amendments to amendments but amendments to the original article.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, this can be an amendment to an amendment, amendment No. 4, by Mr. Lari, that sub-paragraph (ii) of the second paragraph of the Motion be deleted. That means that he does not want to give reservation to certain classes of the Scheduled Castes. Pandit Bhargava wants that reservation should continue for ten years.

Shri Jaspat Roy Kapoor : May I submit.....

The Honourable Shri Ghanshyam Singh Gupta : I have not finished. Mr. Lari's amendment is that sub-paragraph (ii) of the second paragraph of the Motion be deleted. That means he does not want to have any reservation. Pandit Bhargava says that reservation should be there for ten years. So, this is an amendment to the other amendment. This is what I want to bring to your notice.

Shri Jaspat Roy Kapoor : I would respectfully submit that Mr. Bhargava's amendment be taken as perfectly in order because it is virtually an amendment to the other amendments which have already been moved by Mr. Mohamed Ismail Sahib and Mr. Lari. These amendments seek to amend the motion in a particular manner. All that Mr. Bhargava wants now is that the motion should be amended in a different manner. Both the previous amendments sought to amend the motion as placed before the House by the honourable Sardar Patel. Now Mr. Bhargava wants that the motion should not be amended in the manner which has been suggested in the two amendments which have been moved but in the manner in which he would not move it.

Mr. President : In that view and in the view which has been placed before the House by the Honourable Shri Ghanshyam Singh Gupta, I take it that it is an amendment to an amendment.

Pandit Thakur Das Bhargava : Sir, I move:

“That the following be added to the Motion:

‘The provision for reservation of seats and nominations will last for a period of ten years from the commencement of the Constitution.’”

I only formally move this. If I catch your eye, I propose to speak later on the resolution.

Mr. President : The amendments and the original motion are now before the House for discussion.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I congratulate the majority community and also the Minorities Advisory Committee that was appointed in order to go through the problem of the minorities in this country. Sir, there are three parties to this. Firstly, we have to congratulate the Honourable Sardar Patel on his wonderful achievement which could not be achieved by two centuries of British rule. He could do it within two years. Divisions were created by the Britishers in order to continue their rule over India perpetually. Now, that could not be done in two centuries has been done within two years. Now the minorities themselves come forward and say that they do not want any reservation. That is an achievement. The second party is the Minorities Advisory Committee and the third party is the minorities themselves. We have to congratulate all the three. Now, people

[Shri S. Nagappa]

may ask, "How is that you have not foregone your reservation?" I do not think we are getting reservation because we are religious minority. We are not a religious minority. We are an economic, political and social minority. We have got rid of two disabilities. Mahatmaji was kind enough to grant us two freedoms, social freedom and political freedom. Now, Sir, the majority community happens to be larger in number. You have seen where the Kauravas were hundred in number and Pandavas were five in number, they had an equal right to the kingdom. Though Lord Krishna failed in his last *avatar* to get independence or rather the due share in the administration of the country, yet in later generations Mahatma Gandhi achieved at the cost of his life the political freedom for Harijans; he not only achieved political freedom; but while we were hated, teased, tortured and ill-treated up to 1932, after 1932 the hatred was converted into affection. Some honourable Members have said that the Scheduled castes must have no reservation. Without asking us, this majority community has given us reservation. My honourable Friend Mr. Lari and other friends were saying: "Why should these Scheduled castes be given reservation?" We are not asking for reservation for our community. We are the people who have given protection to all the people. Three thousand years ago we gave you shelter. It is our community that gave protection to everybody. Our community does not seek protection. Well, Sir, the Britisher could not rule this country without us; the Muslims could not conquer this country without our cooperation and the Congress could not achieve freedom. It is only in 1942 that we joined the movement, and it is as a result of our joining it that we were able to drive out the Britishers. So, Sir, without our co-operation without our help no one in this country can exit. We are the right royal owners of the whole country and as the descendants of the oldest inhabitants of India, we have every right, but we are not so narrow-minded to drive others out. We have been giving protection; we have been tilling the soil; we have been toiling and mooling for the sake of others. Look at the sacrifice we have shown. We have been ill-treated for centuries and yet we have been sticking to our religion. There have been some scapegoats who have joined Sikhism and Christianity. But today seven crores of people continue to be in the Hindu religion and this only means the "suffering attitude", the sacrifice and toiling that denotes this community. So, Sir, I am not seeking protection of you, the majority community. I know you have 'one man, one vote'. After all, do you think that you are the majority community? I can convert you into a minority community. It is only a class question that comes into existence and not the casts question. When this is the case, I need not seek any protection. I am thankful to you for the protection given by you. When you are offering the hand of help, why should I reject it? We Scheduled Castes have not invaded this country from Arabia. We have not come here from outside and we do not have a separate state to go and live if we cannot absorb other people. We are not a separate nation; we are the blood and bone of the same religion, same culture, same custom; we are the true sons of the soil. How can we be treated differently? So let not my honourable Friend make use of us and our community to plead his cause. I would request them, if at all they have any affection for us, let us have reservation for our own sake. For our part we can safeguard our interests better than anybody else. Self-help is the best help; that is a slogan and it is true. They say: "Why should you require reservation?" Freedom is not complete unless and until it is full of the three aspects. The first is social, the second is political and the third is economic. That is most important and vital to independence. I know the whole country is lagging behind so far as the economic freedom is concerned, but much more is this particular community. Even today, here and now, I am prepared for the abolition of the reservation, provided every Harijan family gets ten acres of wet land, twenty acres of dry land and all the

children of Harijans are educated, free of cost, up to the University course and given one-fifth of the key posts either in the civilian departments or in the military departments. I throw a Challenge to the majority community that if they are prepared to give this much, I will forego the whole reservation. Let my Muslim friends know that we Harijan are not lagging behind in nationalism. It is we that have to fight more because it is our country. After all, you are the invaders, immigrants; you do not have as much interest as we have in this country and we are the people that produce the whole of the national wealth of country either by agricultural labour or by industrial labour. Unfortunately, just like the bees that gather honey, we work hard, but we are away from the honey; but the time will come and if you continue to be so selfish as you have been all these days, the same thing that was done to the Britisher will be repeated to you. What about you who have migrated from Central Asia, Mongolia and Manchuria? You will have to go back to your places. Even there you will be sent out. It is we that have a greater right than anybody else on the face of this country. So it is not a favour that you have done us, but you have rightly done it.

I have been telling you that the economic problem is the most important problem so far as this country is concerned. It is very easy question that can be solved if you make up your minds. You have been abolishing the zamindari all over the country. You have got lakhs and lakhs of acres of land. If you can give us, every Harijan family that is not possessing land; all the landless Harijans, at the rate of ten acres of wet land and twenty acres of dry land and educate the children to the University course, I am prepared to forgo the reservation. Here it is.

Shri Mohan Lal Gautam (United Provinces: General): Every Brahmin is prepared to become a Harijan if you give him ten acres of wet land and twenty acres of dry land.

Shri S. Nagappa : Even if the Brahmin is granted lands, then how to till? He has been having lands till now. He has to seek our protection; he has to employ us. It is something like entrusting *Rambha* to a *Napumsaka*. To my Brahmin friends I say; "What is the good of your asking for land? Land should be given to the tiller of the soil, he must be the owner of the soil. You do not want to own it for owning's sake. You must find utility for the property that you possess." It is no use my Brahmin friends saying: "I come forward and say I am prepared to be a Harijan." A Harijan cannot be converted, like a Christian or a Muslim. You must be a born Harijan, you must have birth as a Harijan; today you can become a Christian or a Muslim, the next day you can become a Sikh, if you grow a beard, but you cannot become a Harijan except by birth.

An Honourable Member : Very selfish !

Shri S. Nagappa : Do not think the Harijan community has been converting everybody. If you are prepared to take to the Harijan community, you must be prepared to scavenge and sweep. You do not want to do that and feel some dignity. You say "I am a Hindu and I cannot scavenge and sweep for others." You want to have the option: "I am for the heads, but not for the tails. If at all I lose, I must lose the tails and not the heads." Is this your principle?, I ask Mr. Mohan Lal Gautam who has been kind enough to offer to become a Harijan.

As regards my honourable Friend Mr. Lari's amendment, that the reservation for the Scheduled Castes should be abolished, I thank my honourable, Friend for giving this idea to the House. But, let it remain as an ideal; it cannot be put in action. After all is said and done today, let my honourable Friend Mr. Lari remember that once upon a time, if not today, some time ago, he was a Harijan. It is the Harijans that have contributed to all these communities.

Mr. Z. H. Lari : I would be glad to become a Harijan if I could get ten acres of wet land and twenty acres of dry land.

Shri S. Nagappa : If you can scavenge, you can become a Harijan. Nobody prevents you. Community has come according to duties; no one has been labelled that he is so and so. Only if you do the work of a teacher, you can be called a teacher. If you scavenge, you are a scavenger; if you sweep, you are a sweeper. If you are so fond of becoming a Harijan, the duties are also open to you. All the friends that are prepared to scavenge, sweep.....

Mr. President : Please confine yourself to the motion before the House. We all know the duties of the Harijans.

Shri S. Nagappa : Let me come to the point. My honorable Friends who have been jealous of my community, I hope will not be so for ever.

We have already abolished reservation. I ask where was reservation for this House. We were mixed with the Caste Hindus and they have elected us. We represent the Caste Hindus. I am today giving the law not to the Harijans alone, but to all the thirty crores of people. The Constitution is not made for my community alone. I have not been returned by my community alone. Therefore, in practice, we have abolished reservations. This Parliament, this Constituent Assembly, has been elected on the basis of joint electorates. This has been accepted in the case of Christians, Sikhs, Harijans and Hindus. Only my honorable Friends who were preaching the two-nation theory have been returned by their own people. I tell you, Sir, there are some short-comings. This good-will of the minority community has not been utilised by the majority community in a proper way. I can quote instances where they have gone back, where they have not been large-hearted. Take Madras where there are eighty lakhs of Harijans. According to the Cripps' proposal, for every million of the people, one representative should come. We are only seven. We would have been eight if there had been reservation according to the population. But it is a minor matter whether seven or eight are here; the work done is the same. Take Travancore. It is a State that is supposed to be the first and foremost so far as the Harijans are concerned. It is the first State that introduced Temple Entry. But, that State has failed to give representation to Harijans in the Constituent Assembly. Out of a population of sixty lakhs, thirteen lakhs are Harijans. These thirteen lakhs of Harijans have been ignored and four lakhs of Muslims have been given a seat. They have robbed Peter to pay Paul. That is why we want reservation. It may be stated that it is a State. Take the United Provinces. There are twelve millions of Harijans in the U.P. according to the Census of 1931. I find only six members from that province. What about Bengal? I am not in possession of the correct figures in Bengal. What about the Punjab? My honorable Friend Pandit Thakurdas Bhargava has been saying that there are eighteen lakhs of Harijans and four lakhs of Sikh Harijans, altogether making up a total of twenty-two lakhs. I find a solitary representative from the Punjab so far as the Harijans are concerned. According to the Cripps' proposal, there should have been two. Let us go to the States. What about Patiala State? Out of a population of thirty-six lakhs, nine lakhs are Harijans. There should have been at least one representative in this House. Take Madhya Bharat. Out of a population of seventy lakhs, seventeen lakhs are Harijans. When His Excellency the Governor-General visited that State, the Harijan represented to him, 'Sir, we are only three members in a House of seventy, though our population happens to be seventeen lakhs'. Look at the justice done by the majority community. We appeal to you, we do not claim, we appeal to their good sense, not only with folded hands, but also with bended knees, to do us justice. We crave for

mercy. After all, we are voiceless, our voice is feeble. In Madhya Bharat, there are only three members; in the Constituent Assembly, nil. Because of this selfishness of yours, you are compelling us to ask for reservation. This was your testing period. If you had been large-hearted, we would have been the first and foremost persons to come and say, 'we do not want any reservation'. The fault lies in you; not in us. That is why Mahatma Gandhi said, "for the sins committed against them in olden days by your fathers and forefathers, become Harijan sevaks to wipe off those sins". It is you who are on the wrong side. If there is a dispute between a *mandir* and a *masjid*, it is our throat that was offered at the altar. If there was any Hindu-Muslim riot, it is we that fought the battle. What is the reward we get? "All right, be toiling", this is the reward. "You were my watch dog; be my slave or serf", this is the reward. Are you justified in this? You could have done this all these days when we were ignorant. Mahatmaji has removed that ignorance. He has put enough patriotism, enough conscience into our minds. You may think that Mahatmaji is no more. But you must be aware that his spirit is everywhere; his soul is everywhere. We cannot see him today; but he is watching our doings. The Congressites who have been claiming to be the descendants of Mahatmaji know that he is watching this Assembly. I leave it to you. It is for you to abolish the reservation whenever you want. I have thrown the challenge. It is for you to accept.

As regards my honourable Friend, Pandit Thakurdas Bhargava, who claims the amendment to be his, namely, that the provisions regarding reservation of seats and nomination will last for a period of ten years, I would say this. We, almost all the Harijan Members of this House, sat together and the Honourable Pandit Nehru was kind enough to explain to us that in our own interests this will be the best thing. According to his advice we have come to a decision on this point. After all, this is a question that has to be reopened by Parliament. If, after ten years, our position happens to be the same as it is today, then, it is open to the Parliament either to renew it or abolish it. This does not prevent you from coming forward within the next five or ten years or even two years with an Act of Parliament saying "Harijans have been granted their demands, they are now on a par with others and they need not have this reservation of seats". It is open to you as it is worded today. Therefore, we accepted that the reservation should continue for ten years to come from the commencement of the Constitution.

I once again thank the honourable members of the Minorities Committee, the President of it, our Honourable Sardar Patel, who has taken so much trouble in order to safeguard our rights. I thank you, Sir, for the opportunity you have given me.

Mr. President : I would ask Members to confine their remarks to ten minutes.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, the Resolution moved by Dr. Sardar Patel is an important land-mark in the constitutional history of our country, and will be referred to by future historians and constitutional writers with enthusiastic applause. Sir, at the very outset, I desire to declare that I am in complete and wholehearted agreement with the Resolution (*Hear, hear*). Sir, in the short time at my disposal, I should try to touch only the main points. The original Resolution and the two principal amendments differ as well as agree in certain respects. According to the original Resolution, the reservations to Muslims is to be abolished. With regard to the amendment moved by Mr. Ismail Sahib, Muslim reservations are to be retained. Mr. Lari wants all reservations to be abolished. So the original Resolution and Mr. Lari's amendment agree that Muslim reservation should be abolished, and this is opposed to Mr. Ismail's amendment.

[Mr. Naziruddin Ahmad]

Then with regard to the Scheduled Castes, the original Resolution and Mr. Ismail's amendment require them to be retained, while Mr. Lari wants them to be abolished. With regard to Sikhs of the backward classes, the position is similar. Thus, Mr. Ismail's amendment and that of Mr. Lari are in all respects directly opposed to each other.

Sir, I think that the occasion when the Muslims in India accepted reservation of seats should be recalled. That was a time when the communal situation was very unsatisfactory, and some reservations seemed at that time to be necessary. But now the situation has vastly improved and is daily improving and there is, for a long time, much harmony between the two communities. I think that reservations of any kind are against healthy political growth. They imply a kind of inferiority. They arise out of a kind of fear-complex, and its effect would be really to reduce the Muslims into a statutory minority. Then, again, Muslim reservation is psychologically linked up with separate electorates, which led to so many disasters. Therefore I should submit that to carry on reservation would only serve to perpetuate the unpleasant memory of those separate electorates and all the embitterments, that accompanied them. I submit that it will be bad even for ten years.

Then, Sir, I believe that reservation of Muslim seats, specially now, would be really harmful to the Muslims themselves. In fact, if we accept reservation and go to the polls, the relation between Hindus and Muslims which now exists will deteriorate. The great improvement in the situation that has been achieved will be lost. The Hindu-Muslim relation of the immediate past will be recalled and feelings will be embittered. There will be dissensions between Hindus and Muslims—a thing which is highly undesirable, even if we consider it even from the purely Muslim point of view. This would again create divisions amongst the Muslims themselves. In fact, if seats are reserved, one candidate may be set up by Hindus and another by Muslims. Muslims will divide. They will flock to one candidate, or the other and this will lead to division among the Muslims themselves on a false issue. I therefore submit that reservation for Muslims would be undesirable. In the present context, when we have improved relations and with the abolition of separate electorates, it is illogical and an anachronism, and it is positively injurious to the Muslims and to the entire body politic.

Sir, reservation is a kind of protection which always has a crippling effect upon the object protected. So for all these reasons, I should strongly oppose any reservation for Muslims. Now, Mr. Lari's amendment is to the same effect, that there should be no reservations for Muslims, and I welcome it so far as Muslims are concerned. His amendment, however, is hedged in with the conditions that there should be cumulative votes. His argument was based mainly upon continental considerations. In Ireland, the fight between the two sections is everlasting. It dates-back from the very dawn of history and it is not going to end. But so far as Hindu-Muslim relation is concerned, there was only a temporary break in the cordiality between the two communities, and happily the old amity which had existed in the country from time immemorial, has again been established; it has again improved. The system of cumulative voting is not necessary, and it is extremely difficult to work. I do not think it is needed in the conditions present in India, especially among hundreds of millions of illiterate voters. I therefore submit that any kind of cumulative voting, or other intellectual abstractions of refinements of the kind are unnecessary. From the Muslim point of view alone, we do not want any reservation whatsoever.

Then, again reservation of seats to the communities was inevitably connected with separate electorates. With the removal of separate electorates,

reservation of seats would be absolutely illogical. If we contest seats, not reserved seats, the result would be that Hindus and Muslims would be brought nearer to each other. Although we are a minority—and that is a fact which has been very much stressed by Mr. Lari—I think it will be impossible for any Hindu candidate to ignore the Muslims. In fact, for one seat there will be at least two Hindu candidates, and in case of a contest, the Muslims will have an important role to play, and they may well be able to tip the scale, by playing the part of an intelligent minority, suitably aligning themselves with one side or the other. They will have a decisive voice in the elections. It may be that an apparently huge majority may at the end of the elections find itself defeated by a single vote. So no man who contests an election, however promising his prospects may be, can ignore Muslim votes. Therefore, the safety of the Muslims lies in intelligently playing their part and mixing themselves with the Hindus in public affairs. This will be a great advantage to both the communities, and without any reservations at the next election, Hindus and Muslims will freely associate with one another in the elections and in public affairs for the service of our motherland.

Those of my honourable friends who think that there should be reservations, have their eyes on the past. They are looking behind. But our eyes, the eyes of the Indian Muslims, should be facing the future. We should have a progressive outlook. Now, Indian politics contain a large number of subjects, none of which I can think of as having communal implications. In the Provinces there are the principal subjects—education, sanitation and local self-government. These subjects do not affect any community in particular or as such. Hindus and Muslims will have to stand side by side and work these subjects for the common welfare of our motherland.

In the Central sphere there are the industrial problems, irrigation schemes, the question of defence and external affairs and also the common problems of peace and order. There is nothing communal in these matters and every one is equally interested in them irrespective of his community or religion. I feel very strongly that religion should have nothing to do with politics; not that religion is to be ignored; but religion is a private matter and in public life we should cease to think in terms of communities. Whether in this Assembly or in public life outside, we are neither Hindus nor Muslims. In private life we should be devout Hindus or Muslims. So if we distinguish our outlook as between private and public life, there will be no trouble. The State should interfere as little as possible with the religious feelings of its citizens. They should be left untouched. If Muslims play their part well and intelligently, if they play their part faithfully and patriotically, their position will be respected.

With regard to other minorities I submit our position ought to be made very clear. There are the Scheduled Castes and the new Scheduled Castes among the Sikhs, there are the frontier areas, the Excluded and Partially Excluded Areas, and there is also the Anglo-Indian community. They would all be protected. The amendment of Mr. Mohamed Ismail Sahib will protect them all. But Mr. Lari would abolish them also. But the position of these minorities must be respected. It is a question of confidence in the electorate and in the system of government. If any of these minorities feels that it would not be protected unless it has been given reservation of seats, by all means let them have it. So far as the Scheduled Castes are concerned I think we have no grievance. It is a question of satisfying them. If they feel that they would be satisfied with reservation, let them have it, and in this respect Mr. Lari's amendment goes a bit too far and is an encroachment on the rights of other minorities. So also is the case with the Sikh Scheduled Castes. It is for them to say whether they would have the reservation of

[Mr. Naziruddin Ahmad]

seats or not : it is not for us to speak for them. It is not a question of logic or argument but it is a question really of creating in each sect or community a feeling of confidence and security that by a particular scheme, it would be treated justly and fairly.

So far as the Muslims are concerned we have had a debate in the West Bengal Legislature, where I find that the Muslim opinion against reservation of seats was overwhelming. For the election to the Union Boards etc., already the system of reserving seats has been abolished and Hindus and Muslims vote side by side as friends. What is more important is that the Hindus have to seek Muslim votes. This is a very potent and a welcome factor. The Muslims should be realists as they are expected to be and they must not have their eyes on the past. They should try as quickly as possible to adjust themselves to their new environments. If they show faith in the great Hindu community, I am sure they will treat them with fairness and justice.

Dr. H. C. Mookherjee (West Bengal: General): Sir, in considering whether the House should accept the recommendations of the Advisory Committee and the resolution placed before it by Sardar Patel there are two questions which, it seems to me, the House should ask itself. The first is: are we really honest when we say that we are seeking to establish a secular state? And the second is, whether we intend to have one nation. If our idea is to have a secular state it follows inevitably that we cannot afford to recognise minorities based upon religion. This to my mind is the strongest possible argument why reservation of seats for religious groups should be abolished and that immediately. So far as the idea of building up one nation is concerned I do admit that there are certain economically backward groups in every community and for them provision has been made in the directive principles adopted in December last.

Sir, I intend to place all my cards on the table and to say that personally I have the greatest possible objection to reservation for backward groups in the political sphere. I do admit that they deserve our sympathy and that they require economic safeguards but I do not see any reason why they should demand political safeguards. I do not see why a person belonging to a backward community should feel that his grievances cannot be placed before the legislatures unless he elects somebody in whom he has faith. Such an attitude to my mind shows that he has not as yet, as a member of a minority community, made up his mind to become a part and parcel of the nation. Still I do submit to the wisdom of our leaders and I support the Resolution, only because I hope the House will accept the amendment moved by Pandit Thakur Das Bhargava, to the effect that these reservations should have a definite time limit, that once for all we shall see their end at the end of ten years from the time that the Constitution comes into operation.

Sir, when the Constituent Assembly was dissolved in January last, though I had very urgent business in my own home. I intentionally stayed on here, because I wanted to find out the feelings of the country with regard to this question of the abolition of reservation. It was the dream of my life ever since my mother made it clear to me that I had two duties to perform. These two duties I promised to perform after touching her feet. One was to carry on the campaign against drink and drugs so long as there was life in me, and the other was to see the end of the communal business. Though she was not an educated woman in the ordinary sense of the term, she had witnessed the results of the cleavage introduced into the national life by the

Minto-Morley Reforms, under which the non-Muslims were separated from our Muslim brethren. She made me promise that if I ever entered public or political life I should devote myself heart and soul to the abolition of this communal electorates business. I am thankful that God has spared my life so that like the Prophet mentioned in the New Testament I can sing:

Nunc Dimittis "Lord, now lettest Thy servant depart in peace for my eyes have seen Thy salvation."

Sir, I tried to find out the views of the country. I may tell the House that it has taken ten years of unremitting hard work on the part of the Nationalist Christians all over India. I sent out a questionnaire and 42 letters were addressed to my people and replies were received from 35 of them. I have consolidated the replies and I find that the enquiries were made, among other sections of the people, by Nationalist Christians who were friendly with Hindus, Muslims, Sikhs and Scheduled Castes. Their replies consolidated show the following results.

So far as the masses are concerned my friends are united in saying that the masses do not want reservations. They say that they are interested in three or four things only. They want food, clothing, a shelter over their heads, medical aid and good roads. These are their demands. When they were specifically asked whether they wanted reservation, the reply in every case was as follows: "We know that we shall never enter the Legislatures; reservations do not concern or interest us." There all sections of the people were at one. Then came queries addressed to the lower middle classes, people who depend upon service to earn their living. Their reaction was that if there was any kind of reservation they would like to have reservation in jobs. This reservation business, Sir, to my mind, comes from the upper middle classes— people who have political ambitions. Then I sent forward a second set of questions in which I asked what were the motives for this demand for reservation. Two motives were assigned. The first and the foremost, in the view of my friends, was that most people have political ambitions—self-seekers after power, self-seekers after position and in fact people who want to take advantage of their positions in the different legislatures for their own selfish purposes. Such people, I say, Sir, are not wanted in free India. But at the same time it was admitted that there are certain people who really feel alarmed over the future of their communities. Such people want to come to the Legislatures, because they think that they can safeguard the interests of the groups to which they belong. These are people for whom I have respect. But when we have passed the different Fundamental Rights which guarantee religious, cultural and educational safeguards, safeguards which are justiciable, safeguards which can be decided in a court of law, I feel that the presence of people belonging to certain groups is not necessary. Then again, when I think of the directive principle that justice should be done to the classes which are backward socially and economically, I feel and I have every confidence that justice will be done to them. In my view the Scheduled Castes again do not require representation. But, as I have said, I bow to the wisdom of my leaders and I am, therefore, prepared to support this motion.

Now, the question is: Can the majority community be trusted? The majority community has been very generous to every one of the minority communities. That is my firm belief. I may tell the House, Sir, with your permission that when for about two months I had the honour to occupy the Chair which you are occupying today, I deliberately tested it for myself, whether we could trust the majority community. My Muslim, my Sikh and my Scheduled Caste friends will agree with me when I say that every opportunity was given to them by me so that they might voice forth their feelings and this was done with the permission, with the silent permission of the majority community. I may further tell the House that during these two months almost

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every day foreign observers came and some of them were free-lance journalists and others were people interested in religious and educational work and everyday they would come to my House and ask me: "Are you perfectly confident that the majority community is going to be fair?" I said, "Well, of course I think so; but I want you to watch for yourself and draw your own conclusions." There was a free-lance American journalist who quoted to me lines from the speech of Mr. Winston Churchill made at Manchester in which he talked about Brahmins mouthing Mill and Bentham and then denying freedom to their Scheduled Caste brethren in India. I told him that every Scheduled Caste member had a chance to voice his grievances. On that particular day Mr. Nagappa and Mr. Kakkan narrated their grievances to the House and there was not a single caste Hindu who denied the existence of certain grievances. At the end of that day's proceedings, two or three Caste Hindus stood up admitting all the charges and promising that every effort should be made to remove these social disabilities.

Sir, these things undoubtedly show that the minorities have nothing to fear from the majority community. I am firmly convinced from my own experience that it is the path of wisdom for the minorities to trust the majority community that if they want to live in peace and honour in this country, they must win its good-will. Our attitude in the past has not been very helpful. I do not want to go into details, but everybody will admit that the attitude of the minorities has not been at all helpful. Let us recollect how many times we used back-door influence in order to sabotage our nationalist movement. I shall not go beyond that. To the majority I say: "Once for all we are placing the responsibility of looking after us fairly and squarely on your shoulders." This is an opportunity which Providence has given to the majority community to prove by actual work, to prove by actual example that the protestations made so far are genuine and personally I have every reason to believe that they will not be found wanting.

Mr. President : I may say that I have again received a number of slips from Members who wish to speak. But I am not going to use the slips; I shall use my eyes.

Begum Aizaz Rasul (United Provinces: Muslim) : Sir, I come to give my whole-hearted support to the resolution moved by the Honourable Sardar Patel regarding the representation of the minority communities. Sir, I am sorry that I have to oppose the amendment moved by Mr. Ismail from Madras. The basis of his amendment is the retention of separate electorates. For my part I have from the beginning felt that in a secular state separate electorates have no place. Therefore the principle of joint electorates having once been accepted, the reservation of seats for minorities to me seems meaningless and useless. The candidate returned on the joint votes of the Hindus and Muslims in the very nature of things cannot represent the point of view of the Muslims only and therefore this reservation is entirely unsubstantial. To my mind reservation is a self-destructive weapon which separates the minorities from the majority for all time. It gives no chance to the minorities to win the good-will of the majority. It keeps up the spirit of separatism and communalism alive which should be done away once and for all. This reservation was for ten years only and to my mind these first ten years are the most crucial in the life of our country and every effort should be made to bring the communities together.

Sir, this is one ground on which I support the motion of the Honourable Sardar Patel.

The second ground on which I support it is that there is still a feeling of separatism prevalent amongst the communities in India today. That must go. I feel that it is in the interests of the minorities to try to merge themselves into

the majority community. It is not going to be harmful to the minorities I can assure them, because in the long run it will be in their interests to win the goodwill of the majority. To my mind it is very necessary that the Muslim living in this country should throw themselves entirely upon the good-will of the majority community, should give up separatist tendencies and throw their full weight in building up a truly secular state.

Sir, I will not go into the history of the events of the last two years. It is a very sad history and no one can deny that the Muslims living in this country have been the greatest sufferers as a result of the events that have taken place. Not only have their lives and property been in danger and full of insecurity, but their very honour has been at stake and their loyalties have been questioned. This caused great sense of frustration and mental depression. We want to finish with the past and we want that a new page should be turned over in which all communities living in this country would feel happy and secure. There is some fear in the minds of the Muslims that by doing away with reservations they will not be returned to the legislature according to the members of their population. This fear to my mind is baseless because I feel that when we put the majority community on its honour, it will be up to it to retain its prestige and honour and return members of the minority community not only in numbers to which they are entitled on a population basis but perhaps in greater numbers. I do not visualise any political party in the future putting up candidates for election ignoring the Muslims. The Muslims comprise a large part of the population in this country. I do not think any political party can ever ignore them, much less the Indian National Congress which has stood for the protection of minorities. Sir, I feel that we Muslims should pave the way for not only the introduction but the strengthening of a secular democratic State in this country. The only way in which we can do it is by giving up reservations that are meant for us and by showing to the majority that we have entire confidence in them. Then only I feel that the majority will realise its responsibility.

Sir, I would like my Muslim friends to visualise this position : If reservation of seats for Muslims remains, it would be tantamount to an act of charity on the majority community. They will say : 'Let us give them so many seats.' We will get the seats, but there will not be much good-will on the part of the majority in giving that. The idea of separatism will remain—but if we agree to have no reservation, the honour and prestige of the community as well as of the party that will be contesting the elections will be on test and I do not think that any party can ignore or can afford to ignore the minorities, especially the Muslims. In that event I visualise the Hindus going about not only to the Muslim but to their own brethren asking them to vote for the Muslims and return the Muslim candidate set up in this or that constituency. Which would be better, I would like to know : this reservation of seats which keeps up a division between the two communities or to be returned by the majority of Hindu votes, not because a seat is reserved for us but because our Hindu brethren went about asking the Hindus to return Muslims? I therefore feel that it is in the interests of both the communities that this should happen and this is the only way in which good-will and friendship can be created between the two communities. Trust begets trust and when we place a sacred trust in the hands of the majority—it is sure to realise its responsibility.

Sir, I come from the United Provinces where the Muslims are largest in numbers in any one province in India today. Having worked amongst the Muslim masses, men and women for ten years, I can claim to know something of the working of their minds. Muslims are backward educationally and economically, but as far as political consciousness is concerned they are very much alive today and have been so for sometime. I can say that the Muslims in the

[Begum Aizaz Rasul]

United provinces understand the state of affairs very well. They have realised that the changed conditions demand a change in attitude on their part. Therefore I feel that I am not in any way betraying the confidence of my electorate when I say that this attitude that I am taking today is absolutely in their interests and I know that the majority of Muslims of the United Provinces are behind me in this matter.

Sir, a friend remarked to me yesterday that Muslims are realists. I entirely agree. I think that they are a very realistic people. They are not a static people and they have no static ideas. They have always advanced with the times as Muslims history will show. Therefore, if today we demand the abolition of reservation of seats for the Muslim community I feel that we are entirely on the right path and want to proceed according to changed conditions.

Sir, those Muslims who wanted to go to Pakistan have done so. Those who decided to stay here wish to be on friendly and amicable terms with the majority community and realise that they must develop their lives according to the environments and circumstances existing here. I do not say that they have to change except in accordance with the aspirations of the other people living in this country. Sir, we do not want any special privileges accorded to us as Muslims but we also do not want that any discrimination should be made against us as such. That is why I say that as nationals of this great country we share the aspirations and the hopes of the people living here hoping at the same time that we be treated in a manner consistent with honour and justice.

Sir, sometimes the loyalty of the Muslims has been challenged. I am sorry to bring this up here, but I feel that this is the right moment to mention it. I do not understand why loyalty and religion go together. I think that those persons who work against the interests of the State and take part in subversive activities are disloyal, be they Hindus or Muslims or members of any other community. So far as that matter is concerned, I feel that I am a greater loyalist than many Hindus because many of them are indulging in subversive activities, but I have the interest of my country foremost at heart. I think I can say that of all the Muslims who have decided to live here. They only want to avoid struggle and strife, want security, want their mental attitude to develop that way. Sir, it is for the majority to infuse into the minds of the minority communities a feeling of confidence, good-will and security. Then only can loyalty accrue, because it is the condition of people's minds that creates loyalty. It is not the asking for it that makes for it. Therefore I feel, Sir, that in introducing this Resolution Sardar Patel has done the right thing, because he is giving the various communities the chance of getting together.

Another point, Sir. There are some Hindus and some Muslims also who think and are exercised over the fact that some seats may be lost to them by the abolition of reservation for minorities. I am sorry that they should think on those lines. The advantages of this abolition of reservation far outweigh the disadvantages of the loss of a few seats. I do not myself visualise any loss of seats because, as I have said, the parties, out of concern for their honour and prestige, will put up more candidates than are warranted on the population basis in order to ensure that the right number is returned. Today everything is moulded by public opinion, the India with its declared objective of a secular democratic state cannot afford to have any complaints against it on these grounds. Therefore I feel that the minorities, especially the Muslims, do not stand to lose in any way. Our Hindu friends might think that they might lose a few seats on that ground. I feel that they are thinking on the wrong lines. It is true that a much greater responsibility is now thrown upon

the majority because now it is up to them to see that the Muslims and the other minorities are returned according to their quota, but the majority must bear this responsibility. I feel that this will work so much towards harmony and good-will between the communities that this risk should be taken. For those Muslims who think that this is going to be harmful to them, I say that it is not going to be harmful because it will create better relationship between the two communities. Even if a few seats are lost to the Muslims, I feel that sacrifice is worth while if we can gain the good-will of the majority in that way.

In spite of the great and able advocacy of Mr. Lari of the principle of proportional representation, I was not impressed by it. He quoted the example of other countries. Those countries are highly advanced, politically and educationally. They are much smaller in area and in number, and to compare India with those countries is, to my mind, not a very feasible proposition. In India the principle of proportional representation and single transferable vote is understood by very few people. Even in the legislatures it cannot work properly because there are very few people who know how to work that out. Where there are lakhs and lakhs of voter, the principle of cumulative votes cannot work successfully because the electorate is so big and illiterate that it will be impossible to work that system out. The only solution to my mind is joint electorates without any reservation of seats. I feel that this is the only way in which we can get along together. We must once and for all give up all ideas of separatism and to my mind even this proposition of Mr. Lari keeps up that spirit alive. I feel, Sir, that there are so many evil forces at work in the world and in the world of Asia especially that these small things regarding reservations of seats will be very soon forgotten by us, because after all in the larger context of world affairs today, we have to see how India can retain its position of leadership in Asia as well as save itself from aggression and other subversive forces. We do not want our country to go the way China has done or the way Burma is threatened. Therefore we have to develop all our resources, material and moral, in order to make India a prosperous and strong country. Therefore to my mind these are matters which should be relegated to the background. We should now harness all our energies in order to make India prosperous and strong.

Syed Muhammad Saadulla (Assam : Muslim) : Mr. President, Sir, I will be giving out no official secret when I say that this vital question whether the Muslims will be benefiting by reservation of seats or by swimming in the general stream of no reservation was discussed informally by many Muslim Members of this House in December last. We could not come to any decision at the time and a suggestion of mine that we should consult our electorates was accepted. I do not know whether my other friends consulted their electorates but, I wrote to all the Muslim members of my party in the Assam legislature and they gave me the unanimous mandate of claiming reservation for the Muslims.

Mr. B. Pocker Sahib : The honourable Member says that all the Muslim Members of this House considered the question in December last. It is not a statement of fact.

Syed Muhammad Saadulla : I cannot help Mr. Pocker Bahadur. Perhaps he was absent from Delhi at the time when we held this meeting. Sir, the sorry spectacle I have witnessed today that even on this vital matter the handful of Muslim members could not come to any decision and that they were giving contradictory opinions on the floor of this House, makes me sad. The Minorities Advisory Committee in its sitting on the 11th May came to a momentous conclusion—I am afraid according to me, on very insufficient

[Syed Muhammad Saadulla]

material or data. The report which the Honourable President of the Minorities Advisory Committee has submitted to the Constituent Assembly is full of very sound maximum of politics. And I can personally testify, as I am a member of the Minorities Committee and have attended many of its sittings, although on account of a domestic trouble, I could not attend on the 11th of this month he has struck the right path and has often declared that as the Constituent Assembly has already decided to give reservation to as the Constituent Assembly has already decided to give reservation to different minorities in the open session of the House, it is up to the members of those minorities to declare unequivocally if they do not want that reservation. I think, Sir, this is a very correct attitude to take. I remember that on two previous occasions, the Honourable Sardar propounded this dictum. Unfortunately I find, Sir, that on the meeting of 11th May, when there were only four members from the Muslim minority present, only one supported the resolution moved by my honourable Friend, Dr. H.C. Mookherjee by speech another opposed by vote, thus canceling the support of one against the other, while one honourable member of the Cabinet-I refer to the Honourable Maulana Abul Kalam Azad took the very right stand of being neutral; and seeing that one Maulana was neutral the other Maulana, Maulana Hifzur Rahman, another member also remained neutral. Sir, if we are to push the dictum of the venerable Sardar Patel to its logical conclusion, he should have left this matter whether the Muslims wanted reservation or not to the Muslim members only. We only a handful and as has been already suggested by Mr. Lari, he could very well have asked the few members to meet him and express our opinion. The resolution that was moved in the Advisory Committee is by a non-Muslim. I have got great regard for Dr. H.C. Mookherjee, who has very many sacrifices to his credit. He is a super-patriot and is doing wonderful work for the abolition of alcohol and drugs as he himself has told us. He is also the Honourable Vice-President of this august Assembly, but I never knew him to represent the Muslims, and, therefore, he had no right whatsoever to move in the committee that even a short reservation of ten years that was accorded by the House to Muslims should be taken away, and I am sorry to find that although in the report, Honourable Sardar Patel said :

“At that meeting I pointed out that if the members of a particular community genuinely felt that their interests were better served by the abolition of reserved seats, their views must naturally be given due weight and the matter allowed to be reopened.”

He should have taken the logical course of consulting the Muslim members only, but without waiting to do that, on the solitary support of Begum Aizaz Rasul, he has thought fit to recommend to this House that reservation of seats for the Muslims should go. Personally I am not enamoured of reservation and so far as Assam is concerned, there is no necessity for reservation, but if we take India as a whole, we cannot but concede that the Muslim Minority can legitimately claim and it deserves reservation at least for a limited period. Let us take the population percentages. Orissa has got 1.5 per cent of Muslims; C.P. has got 5 per cent; Madras 7 per cent.; Bihar 11 percent.; the United Provinces 14 per cent.; Assam 24 per cent. It may be very well said : “What will reservation do in Orissa where there are 1.5 percent?” For the matter of that, reservation in any of the provinces will not jeopardize the majority community to any extent, for, even if all the Muslims combine, they cannot change the will, in the House, of the majority community, but the question of psychology comes in. We know an accomplished fact like the partition of Bengal was unsettled by psychology, by sentiment and persistence. Free India attained freedom very recently

and it still needs consolidation. She should try to pacify the distrust and remove the suspicion of every community, great or small. As has been said by very many speakers, we stand on the mercy of the majority community. I am at one with the Honourable Sardar Patel when he said that the majority community must comport themselves in such a way that the minority may feel no necessity for constitutional safeguards. Similarly, I request every Muslim friend of mine, who is now domiciled in the Dominion of India to give his unswerving loyalty and unstinted co-operation in the interests of the nation and the country. We have been nurtured under the system of separate electorate from 1906. For good or evil, we have been accustomed to that system (*Interruption*). There is an interruption from some colleague, who himself is a product of separate electorate. That honourable interrupter forgets that Members of this House have been returned on the system of separate electorate. I was elected to this House by the Muslim members only of the Assam Legislature. Similarly, my honourable friends, my colleagues, the Prime Minister and other Ministers from Assam were all elected by the votes of the Hindu members only. If this is not separate electorate, what else is it? But as has been said, times have changed. We must start give and take. I will request my Madras friends to give up their strong plea of separate electorates. I will request on the other hand, the majority community to rise to the occasion and give reservation to Muslim minority for a limited period. The previous speaker, my honourable Friend Begum Aizaz Rasul, said that reservation will not benefit the community in any way. I quite agree with her that without the help of the majority community's votes, the Muslims will not be able to return any one in whom they have confidence; the candidate must enjoy the confidence of both the Hindus and Muslims, yet reservation will have tremendous psychological effect upon the Muslim community. They at least will secure that one of them is in the Legislature to speak on their behalf, to safeguard their interests. Why deny this little bit of charity to the Muslims? Rise up to the occasion and show mercy; as the great English poet said "Mercy is twice blessed".

Sir, the question of reservation is implicit in the report itself. You admit reservation for the Scheduled Castes whose number is twice that of the Muslim minority community in India. You admit at least in two provinces the right of the Indian Christians for political safeguards or reservation. You admit it for the Anglo-Indian community. The only part where the recent report and the present resolution differs from the previous decision of the House is as regards the Muslims. I appeal to the House that they should not deny this safeguard when it is wanted by the minority concerned. If it is said that many members have said that they do not want it, let us take the majority view of the Muslim Members present here. If the Majority of the members say that they do not want it, I will be the first person to bow to the opinion of the majority.

One word more, and I shall finish. We say that we want to build up a strong democratic state. Democracy presupposes that every part of the population of the Dominion must feel that they have got a direct interest in the administration of the country. Administration of the country is divided into two parts. One is the legislature which selects the Cabinet and the other is the executive which consists of the Government servants. Unless you safeguard the interests of the minorities in some way or other, whether by reservation, or as suggested by Mr. Lari by way of multiple constituencies with cumulative votes, or in any other way, democracy will dwindle into oligarchy. That will be a sad day if India is converted into an oligarchy from the start of our existence as a free country.

Honourable Members : Closure, Sir.

Mr. President : We have only twenty minutes to twelve. I have already got a large number of names on slips; but as I have said, I am going to ignore the slips and I am going to use my eyes. Even when I try to use my eyes, I find about a dozen gentlemen standing in their places. One member has expressed his grievance that he does not catch my eye. I think that grievance is shared by many other members and his slip will not in any way influence me. So, I would like to know the wish of the House if they would like to have this discussion continued till tomorrow.

Many Honourable Members : Yes.

Mr. President : It seems that there are many Members who wish the discussion to be continued. The subject is important and I am inclined to agree with them. We can now go on with the discussion. Tomorrow, I think it will not take much time.

Honourable Members : The whole of tomorrow, Sir.

Mr. President : Why is it necessary? We have got other work, and important work too, to get through. Therefore, I think of limiting this discussion to some time, so that we may take up the next motion and after that we may take up the Draft Constitution. However, we shall consider that tomorrow; today, we propose to go on further.

Rev. Jerome D'Souza (Madras : General) : Mr. President, I am sure honourable Members of this House will agree with me that we are face to face with a decision of very grave importance, the ending of an experiment fraught with the gravest consequences to our country.

Sir, in Mr. Lari's very vigorous exposition of his case, one could understand one point clearly and that was that in working out democracy, some method should be found by which the minorities should not be ignored or swamped. It may be that this preoccupation was in the minds of those who introduced the principle of communal representation in our country. It is not for us to enter into their mind and pass judgment on them; but it is absolutely clear now that in trying to save democracy from some of those pit-falls, a very grave and a very serious deviation in political matters was made when political privileges were attached to minorities based on religious distinctions. The consequences of this are written large in the history of India during the last few years. It has ended, in the opinion of most observers in this country, in the division of our land. So, the country as a whole now realise that whatever be the immediate inconveniences or the number of dissentient voices that there may be, it is necessary to turn our path resolutely away from this deviation and set ourselves along lines which will bring no longer into the political life of our country distinctions based merely on religion.

Sir, the nationalists in India have always opposed the principle of separate electorates and I believe it was only in a spirit of compromise that they agreed at a certain stage to allow at least reservation with joint electorates. I am sure, Sir, that if the conditions at the time when this proviso was accepted were the same as they are now, there would have been far greater hesitation and much less unanimity in keeping this little vestige of the old arrangement. But, as many speakers before me have clearly brought out, the evolution of events and opinion in our country makes it necessary that this vestige too should be given up. One aspect of that evolution has been indicated by Dr. Mookherjee and that was the completeness, the generosity, the thoroughness with which individual rights have been safeguarded in the section of our Constitution devoted to Fundamental Rights, the way in which these Fundamental Rights are placed under the power and jurisdiction of the Supreme Judicature and the spirit in

which those provisions were passed by this House. That, and the multiple signs of goodwill on the part of the majority community which we have introduced have reassured minorities to such an extent that today very substantial majorities are secured for the proposition placed before us by the Honourable Sardar Patel. I do not deny that there are dissentient voices. But we have been in touch with our people up and down the country and I think I can say with certainty that as far as the Christian community is concerned, in the light of letters received and the public expression of opinion which we have heard, India as a whole is behind Dr. Mookherjee in his decision that there should be no reservation of seats.

Sir, I will not enter now into considerations of the evolution of a healthy nationalism in India in support of this proposition. Those are obvious grounds. The tragic developments in our country make it necessary that we should very resolutely turn from the path of communal separatisms. But, even from the practical point of view, there was something illogical and contradictory in this last vestige which we, at an earlier stage, sought to perpetuate. We were asked to secure representation for certain religious minorities and interests by reservation of seats for members professing that faith, but the representatives were to be elected in constituencies where probably the majority of the electorate would not belong to that faith. Now, Sir, either you accept the principle of representation for religious interests of minorities and ask those men to chose their own representatives or you give up the entire principle of representation on the basis of religion and not put us in the equivocal position of sometimes getting the professed representatives of a particular interest chosen by members who do not belong to that interest. That is the contradiction, that is the illogicality at the heart of this reservation which we wish to remove, and which the House is in a position to declare must disappear. This being so, it remains for me to make once again a most earnest appeal to this House to consider henceforth all kinds of special safeguards special reservation, special assistance to be given to backward groups, to be no longer on the basis of religion, but on the basis of individual merit, on consideration of individual deficiencies and need, bearing, no doubt in mind the social background, but essentially on the merits of the individual case. A man is to be assisted because he is poor, because his birth and upbringing have not given him the opportunity to make progress, socially, politically and educationally. Therefore, it should not matter whether he be a Christian, or a Muslim or a Hindu or a Brahmin or non Brahmin, or a Scheduled Caste member. Government like a truly democratic government with a paternal attitude towards all backward classes, will come to his help on the basis of his individual needs, and not on the basis of a communal or religious classification. Along this line, we have every hope that the democracy of new India will evolve in the way that it should evolve; and evolving this, it will give to others who have perhaps not succeeded well in applying the principle of democracy, an example which will be of profit not only to ourselves, but for social and international peace throughout the world.

Sir, I know that in thus giving up what seems to be last vestige of a safeguard on which the Christians and other minorities had counted—safeguards which were promised and which were considered to be certain to fall to their share until recently, I say, in giving up this, it is not we who are taking a risk. I venture to say that the national leaders and the majority community are undertaking a responsibility the gravity of which I hope they fully realise. In very grave and solemn words Sardar Patel has emphasised the responsibility of the majority community. From this day, it is up to them to see that men of all communities, provided they have personal worth, provided they are socially and politically progressive and acceptable to their association or to their organisation, receive a fair chance in the selection of candidates, and are given a fair deal in the course of election. This responsibility now, therefore of getting elected, if I may say so, passes

[Rev. Jerome D'Souza]

away from the shoulders of the minority and devolves upon the heads and shoulders of the majority. They are willing to accept it, if I can judge from the attitude of this House. We are willing and glad to accept their assurance, that to the best of their ability, they will stand faithful to the spirit of this pledge, and to the spirit of this compromise, so that we and they may join together today in celebrating the end of a political experiment which has meant so much unhappiness for our people and which is, at last, being ended by the free and willing vote of the elected representatives of Indian democracy. (*Cheers*).

I shall not say anything more than this. I hope and pray that the spirit which has inspired the utterance of Sardar Patel and the reactions of this House will continue to animate the political leaders and the majority organisations and the public of our country; and that along the lines of secular democracy, wisely and firmly traced out by our great leaders, this country, without distinction of caste and creed, will bring to the service of the motherland all the treasures of character and strength which each community possesses by virtue of its traditions. In this way Muslims and Christians, Hindus and Parsis and Anglo-Indians, will stand shoulder to shoulder and work out the prosperity and happiness of all our people, and lead the new Democracy of India to the glorious triumphs which Providence assuredly has in store for her.

Shri Jagat Narain Lal (Bihar : General) : Mr. President, Sir, I have come to support the motion and to oppose the amendments moved by Mr. Ismail and Mr. Lari. In fact, after the speeches of so many of the Muslims friends who have themselves opposed the amendments, and of my predecessor who has just spoken, it was not very necessary that I should come forward to oppose it, but I have only come to express one sentiment and that is, that after the bitter experience of the partition of India, there should be left any member in this House or anyone in this country who should think of separate electorates and should come forward and advocate them. It is a feeling of pain and of surprise which I could not help expressing here. After all the assurances of the past and of what is being done in the neighbouring country, that this State is going to be a Secular State, and will guarantee freedom of faith, worship and of thought, and that it is not going to recognise any religious distinctions for the purpose of conferring political rights, it does not seem proper, and it does not seem to be good for any community, for any minority community to come forward and advocate any sort of reservation whatever.

Mr. Lari came forward and talked of cumulative votes. He talked of the Third Series of Constitutional Precedents. But he could have seen from the same Constitutional Presidents—time is short, otherwise I would have read out the portions—how the U.S.S.R. by article 123, Switzerland by article 49, Germany by article 136, Yugoslavia, Finland and so on, have all declared that religion or religious distinction will have nothing to do with political rights whatsoever. Sir, the bitter fruits of separate electorates ever since they were advocated in 1906, all through the subsequent years, during the Round Table Conference, and now ending with the partition are all too well known to be recounted. I therefore humbly beg to oppose the amendments and also to say that after the assurances that have been given, that there is to be a secular State, there should not be any advocacy for reservation whatsoever. So far as the Scheduled Castes are concerned, repeated references have been made and specially by one of the previous speakers who asked, "When they have got it, why not we?" But let me point out once again that the Scheduled Castes have been given reservation not on grounds of religion at all; they form part and parcel of the Hindu Community, and they have given reservation apparently and clearly on grounds of their economic, social, educational backwardness.

Therefore, that analogy does not apply here. With these words, I beg to oppose the amendments and support the motion.

Mr. President : It is twelve o'clock. The House will adjourn till Eight o'clock tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Thursday, the 26th May, 1949.

[Enclosure I]

APPENDIX A.

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 11th May, 1949.

From

The Hon'ble Sardar VALLABHBHAI PATEL

Chairman, Advisory Committee on Minorities,
Fundamental Rights, etc.

To

The PRESIDENT,

Constituent Assembly of India.

DEAR SIR,

The Advisory Committee on Minorities, Fundamental Rights, etc., in their report dated the 8th of August, 1947, had recommended certain political safeguards for Minorities. These were accepted by the Constituent Assembly during the August, 1947 session, and have been embodied in Part XIV of the Draft Constitution. According to these recommendations, all elections to the Central and Provincial Legislatures were to be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population basis. This reservation was to be for a period of ten years at the end of which the position was to be reconsidered. There was to be no weightage, but members of the minority communities for whom seats were reserved were to have the right to contest general seats. The communities for whom seats were to be reserved were Muslims, Scheduled Castes and Indian Christians, the latter only so far as the Central Legislature and the Provincial Legislatures of Madras and Bombay are concerned.

2. I would recall to your mind at this stage that the Committee had observed in their report that minorities were "by no means unanimous as to the necessity, in their own interests of statutory reservation of seats in the legislatures". Nevertheless, the Committee has recommended reservation of seats "in order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature."

3. When the above recommendations were being considered by the Assembly, events were taking place, following the partition of the country, which made it impossible to consider the question of minority rights in East Punjab, particularly in so far as the Sikhs were concerned. This question of East Punjab was accordingly postponed; and also the question whether the right to contest unreserved seats should be given to minorities in West Bengal.

4. The Advisory Committee in their meeting held on the 24th February, 1948, appointed a special sub-Committee consisting of myself as Chairman and the—

Hon'ble Pandit Jawaharlal Nehru,

Hon'ble Dr. Rajendra Prasad,

Shri K.M. Munshi, and the
Hon'ble Dr. B.R. Ambedkar,

as members to report on these minority problems affecting East Punjab and West Bengal. This special sub-committee met on the 23rd November 1948 and presented a report to the advisory Committee. A copy of the report is attached as an Appendix.*

5. This report came up for consideration before the Advisory Committee at their meeting held on the 30th December, 1948. Some members of the Committee felt that, conditions having vastly changed since the Advisory Committee made their recommendations in 1947, it was no longer appropriate in the context of free India and of present conditions that there should be reservation of seats for Muslims, Christians, Sikhs or any other religious minority. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism and was to that extent contrary to the conception of secular democratic State. Dr. H.C. Mookerjee, Mr. Tajmul Husain, Shri Lakshmi Kanta Maitra and certain other members gave notices of resolutions seeking to recommend to the Constituent Assembly that there should be no reservation of seats in the Legislatures for any community in India. Shri V.I. Muniswami Pillai gave notice of an amendment to the said resolutions seeking to exclude the Scheduled Castes from the purview of the said resolutions. At that meeting I pointed out that if the members of a particular community genuinely felt that their interests were better served by the abolition of reserved seats, their views must naturally be given due weight and the matter allowed to be reopened. At the same time I was anxious that the representatives of the minorities on the Committee should have adequate time both to gauge public opinion among their people and to reflect fully on the amendments that had been proposed, so that a change, if effected, would be one sought voluntarily by the minorities themselves and not imposed on them by the majority community. Accordingly, the Committee adjourned without taking any decision and we met again on the 11th of May, 1949. At this meeting, the resolution of Dr. H.C. Mookherjee found wholehearted support of an over-whelming majority of the members of the Advisory Committee. It was recognised, however, that the peculiar position of the Scheduled Castes would make it necessary to give them reservation for a period of ten years as originally decided. Accordingly the Advisory Committee, with one dissenting voice, passed the said resolution as amended by Shri V.I. Muniswami Pillai in the following form:—

“That the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.”

It was further decided that nothing contained in the said resolution shall affect the recommendations made by the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and Excluded and Partially Excluded Areas (other than Assam Sub-Committee) with regard to representation of tribals in the Legislatures. The Committee also decided that the resolution should not affect the special provision made for the representation of Anglo-Indians in the legislature.

6. The Committee also accepted the unanimous proposal made by the Sikh representatives that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars, who suffer the same disabilities as other members of the Scheduled Castes, should be included in the list of Scheduled Castes so that they would get the benefit of representation given to the Scheduled Castes. Subject to this change and to the above mentioned resolution, the report of the special sub-committee appointed by the Advisory Committee was approved.

* Appendix B

7. As a result of the above decisions, the resolutions seeking to do away with rights of minorities to contest general seats in addition to reserved seats in Assam and West Bengal, of which notices had been given by some members of the Committee, were withdrawn.

8. The Committee are fully alive to the fact that decisions once reached should not be changed lightly. Conditions have, however, vastly changed since August 1947 and the Committee are satisfied that the minorities themselves feel that in their own interests, no less than in the interests of the country as a whole, the statutory reservation of seats for religious minorities should be abolished. The Committee accordingly recommend that the provisions of Part XIV of the Draft Constitution should be amended in the light of the decisions now taken.

Yours truly,
VALLABHBHAI PATEL,
Chairman.

[Enclosure II]

APPENDIX B

Report of the Special Sub-Committee referred to in paragraph 4 of the Advisory Committee's Report.

At a meeting held on the 24th February 1948 the Advisory Committee on minorities, Fundamental Rights etc. appointed a Sub-Committee consisting of Sardar Vallabhbhai Patel, as Chairman, and Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, Dr. Ambedkar and Mr. Munshi as Members, to report on certain minority problems affecting East Punjab and West Bengal. We met on the 23rd November and herewith present our report. We much regret that on account of his illness Dr. Rajendra Prasad was unable to be present during our deliberations and to give us the benefit of his counsel, but we understand from him that he is in complete accord with the conclusions which we have reached.

2. The Advisory Committee will recall that at a session held in August 1947 the Constituent Assembly considered the problem of what may broadly be described as political safeguards for minorities and came to the following conclusion:—

- (i) That all elections to the Central and Provincial Legislatures will be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population ratio. This reservation shall be for a period of ten years at the end of which the position is to be reconsidered. There shall be no weightage. But members of the minority communities for whom seats are reserved shall have the right to contest general seats;
- (ii) That there shall be no statutory reservation of seats for the minorities in Cabinets, but a convention on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935, shall be provided in a Schedule to the Constitution;
- (iii) That in the All-India and Provincial Services the claims of minorities shall be kept in view in making appointments to these services consistently with consideration of efficiency of administration; and
- (iv) That to ensure protection of minority rights an Officer shall be appointed by the President at the Centre and the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards.

These decisions were reached at a time when the effect of the Radcliffe Award on the population structure of the East Punjab and the West Bengal Provinces was not accurately known, and a tragic and immense migration of populations was taking place across the frontiers of the East and West Punjab. The Assembly accordingly decided to postpone consideration of the whole question of minority rights in the political field to be provided in the Constitution for Sikhs and other minorities in the East Punjab. They also agreed, at the suggestion of the representatives of West Bengal, to postpone consideration of the question as to whether minorities in that Province should have the right to contest general seats in addition to having seats reserved for them according to population strength.

3. The most important problem referred to us is the problem of the Sikhs. We have examined carefully the demands put forward on their behalf by different organisations and individuals; these vary from suggestions that no special constitutional safeguards are necessary to the very forthright demands of the Shromani Akali Dal. In the main these demands are—

- (i) that the Sikhs should have the right to elect representatives to the Legislature through a purely communal electorate;
- (ii) that in the Provincial Legislature of East Punjab 50 percent of the seats and the Central Legislature 5 per cent should be reserved for the Sikhs;
- (iii) that seats should be reserved for them in the U.P. and Delhi;
- (iv) that Scheduled Caste Sikhs should have the same privileges as other Scheduled Castes; and
- (v) that there should be a statutory reservation of a certain proportion of places in the Army.

It will be noticed that these suggestions are a fundamental departure from the decisions taken by the Assembly in respect of every other community including the Scheduled Castes.

4. It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the partition of the Punjab. The holocaust in West Punjab has deprived them of many valuable lives and great material wealth; moreover, while in these respects, the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had also to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our minds that the question remitted to us for consideration must be settled on different grounds.

5. The Sikhs are a minority from the point of view of numbers, but they do not suffer from any of the other handicaps which affect the other communities dealt with by the Advisory Committee. They are a highly educated and virile community with great gifts not merely as soldiers but as farmers and artisans, and with a most remarkable spirit of enterprise. There is, in fact, no field of activity in which they need fear comparison with any other community in the country, and we have every confidence that, with the talents they possess, they will soon reach a level of prosperity which will be the envy of other communities. Moreover, while, in the undivided Punjab, they were only 14 per cent of the population, they form nearly 30 per cent of the population in East Punjab, a strength which gives them, in the public life of the Province, a position of considerable authority.

6. We have come to the conclusion that we cannot recommend either communal electorates or weightage in the Legislature which are the main demands of the Shromani Akali Dal. In the first place they are not necessary for the well-being of the Sikhs themselves for the reasons we have stated above. Indeed it seems to us that under a system of joint electorates with reserved seats and with the right to contest additional seats the Sikhs are likely to get greater representation than is strictly warranted on the population basis where as on a system of communal electorates, their representation will be limited. The only way in which this representation could be increased beyond the population basis is to give weightage which means trenching compulsorily on what other communities legitimately regard as their right. In the second place, communal electorates and weightage are definitely retrograde from the point of view of the general interests of the country. The demands of the Dal are,

in principle, precisely those which the Muslim League demanded for the Muslims and which led to the tragic consequences with which the country is all too familiar. We feel convinced that if we are to build a strong State which will hold together in times of peace and war, of prosperity and adversity, the Constitution should contain no provision which would have the effect of isolating any section of the people from the main stream of public life. In this connection we would recall the following resolution passed by the Constituent Assembly at its meeting on the 3rd April, 1948 :—

“Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organisation which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the bona fide religious, cultural, social and educational needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken.”

It is not always easy to define communalism, but there could be little doubt that separate electorates are both a cause and an aggravated manifestation of this spirit. The demands of the Dal are thus wholly at variance with the considered judgment of the Assembly.

If the Constitution guaranteed special safeguards such as communal electorates, and weightage to the Sikhs we fear that it would be impossible to justify denying the same privilege to certain other communities. The detailed arguments may vary but the main approach will be similar. We would mention in this connection only the Scheduled Castes whose standards of education and material well-being are, even on Indian standards, extremely low and who, moreover, suffer from grievous social disabilities. They have contented themselves with the Provisions approved by the Assembly and referred to in paragraph 2 above. We cannot conceive of any valid argument which would justify the inclusion in the Constitution of safeguards for the Sikhs which are not available to the Scheduled Castes. The case of the Scheduled Caste is merely illustrative. We feel convinced that to accede to the demands of the Shromani Akali Dal will lead, by an inevitable extension of similar privileges to other communities, to a disrupting of the whole conception of the Secular State which is to be the basis of our new Constitution.

7. We recommend accordingly that no special provision should be provided for the Sikhs other than the general provisions already approved by the Assembly for certain minorities and summarized in paragraph 2.

8. The only reason why the Assembly postponed consideration of the question of giving to minorities in West Bengal the right to contest unreserved seats was that it was pointed out by the West Bengal representatives that the population structure of that Province was not known at that time. Although, on account of the recent exodus from East Bengal, any accurate estimate of the number of different communities in West Bengal is a matter of some conjecture, the broad picture is known clearly enough and we do not think there are any reasons why the arrangements already approved by the Assembly for other Provinces should not be applied to West Bengal.

VALLABHBHAI PATEL

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 26th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT OF ADVISORY COMMITTEE ON MINORITIES—(*Contd.*)

Shri R. K. Sidhwa (C.P & Berar: General): Mr. President. What a marvelous outlook and change in the meeting of the Minorities Committee of the 11th May 1949 as compared with the first meeting of the same Committee in 1947 ! It was asked here yesterday: what has happened since 1947 that has made this Committee revise its decision? I might inform the honourable House that at the first meeting it was not that the large majority of the Members were not opposed to any reservation of seats or that several of them—minus very few—were not for complete elimination of separate electorates and of reservation of seats also: but our leaders felt that if, just at the commencement of our freedom, we want the whole hog our position would be misunderstood and it might be said that the majority was going to trample down the rights of the minorities. Therefore, they stated that we have made a very good start by removing separate electorates. Let us work it for some time and give them a chance. Some of us did not share their view and we went into voting—though we were in a minority—for the abolition of the reservation of seats. We had to agree to the other view.

But what has happened since then? It was asked yesterday why a trial is not being given. But before we give a trial, what has occurred in the country? Communal incidents have played havoc in this country. I do not want to repeat what has happened. Everyone in this House knows what has happened. Due to that communal havoc, in our Parliament last year, we had to pass a resolution that no communal organization which has as its aims and objects the political rights and privileges of its members shall be recognised by Parliament. It was thirteen months ago that this resolution was passed and in my opinion this resolution should have been revised long ago but our leaders wanted the communal passions to subside. Thank God that somehow this Constitution was prolonged for its completion. Had it not been so, let me tell you that reservation of seats would have been a blot in our Constitution if it had remained. But thank God, Nature has played its part in the prolongation that has occurred and time has shown that reservations must go.

Now, if communal fracas has played such havoc. I do not understand why some want communal safeguards. How can there be any kind of communal safeguard now? It was present in the days when the British were here so that they could play their own game. Now they have gone there would be no cause for safeguard of anybody's rights. It has been our cherished desire for the last fifty years to see that this evil, that has played such havoc and which has been a kind of cancerous and poisonous element in our political life, should be done away with. Today it is a 'red letter' day and when this Constitution comes into law, it will be with pride that our nation will be remembered by

[Shri R. K. Sidhwa]

the nations of the world that in our Constitution we have kept no room for communalism and that we are in the true sense of the word a secular State.

My Friend, Mr. Muhammad Ismail, while arguing yesterday stated that without separate electorates the Muslims will not get justice and they will not get that representation which they desire. If my Friend, Mr. Muhammad Ismail even at this stage believes in the two-nation theory—communalism—then certainly he will have no place. But there are many persons like Mr. Lari, who told his co-religionists that “even at this stage you are talking of the two-nation theory and separate electorate: please forget all this.” Whatever other views Mr. Lari may hold, I can assure him that so long as there are Muslims like him, they will command confidence of the majority: but if there are persons like Mr. Muhammad Ismail they shall not have the support of the majority community and it is not surprising if he does not get it. In the Bombay Municipal elections, where they have joint electorates, with the support of the majority community many Muslims have come in. If the majority community had not supported the Muslim Candidates in Bombay the said candidates set up by the Congress would not have been elected. This is just an illustration. Dr. Mookherjee from his personal experience said that the majority community in the past has been generous. I say that in the case of my community there has not been any instance where we demanded any special political rights or privileges, we stand on our legs and on merits, we did not demand favours, and the major community of its own accord took good care of our work. Mr. Lari while making a beautiful speech stated that the majority community should be generous, fair and reasonable and Dr. Mookherjee stated that they had been. I can tell from my own personal experience as a member of the minority community that the majority community have been really generous. I am not exaggerating when I say that sometimes they have been more than generous. There is nothing to fear from the majority community if we are reasonable, if the minorities are reasonable in their demands and I can assure them that there will be no difficulty in getting a large majority of Muslims returned by the votes of the majority community.

Mr. Lari made a plea for the system of proportional representation. He said that that would safeguard the interests and the rights of the minorities and quoted some foreign countries like Belgium, Switzerland and even Ireland. I entirely agree with him that in a system of proportional representation the interests of the minorities are properly safeguarded. In our Congress Constitution for the purpose of electing the A.I.C.C. members the delegates have to use this system. But it must be remembered that the delegates from each province do not exceed 500. In a small group this system can be exercised. Besides, those who are acquainted with the system know that proportional representation is a cumbersome process and it has to be understood by an intelligent person. Mr. Lari wants to introduce this system in an electorate ranging from 50,000 to a lakh of voters. In Belgium and Switzerland there are hardly a few lakhs of population leave aside the small number of voters in their constituencies. In our country there are 40 crores of people and we have constituencies with voters numbering from 50,000 to a lakh. A system of proportional representation cannot work here. From the material supplied by the Constituent Assembly Office I find that in one country they experimented with this system and they had to revert to the majority ballot box system. In a general election this system can never work.

Mr. Ismail and Mr. Pocker who supported the resolution had very strong views regarding separate electorates. I might tell them that the Advisory

Committee has constantly changed from time to time. At the first meeting when we passed the resolution Mr. Khaliqzaman who was a member (he was also President of the Muslim League) supported it. Mr. Chundrigar was also a member of the Advisory Committee but they both have gone away to Pakistan. They were both parties to it, but believing in the two-nation theory they have gone away. How can you blame the majority community by saying that they had changed after making a decision which was acceptable to them? It is rather strange. Let them search their hearts and their conscience as to what they have done after having been a party to the resolution against the wishes of some of us. I was very much averse to reservation but I had to bow before our leaders and our Muslim friends. I said "give it a trial and you will soon give it up." The day has come and it is an auspicious day in the history of our constitution-making when we have to revise the former decision.

Syed Muhamed Saadullah yesterday stated that Dr. Mookherjee should not have made a reference to the Muslim community by saying that they were opposed to it. I wish Mr. Saadullah had said that to Mr. Ismail who in his amendment should not have stated that other minority communities should be given separate electorates. He has said that not only the Muslims but minorities should also be given separate electorates. What business had he to talk of other minorities in his amendment? If Mr. Mookherjee had no business to talk of the Muslims, what business had Mr. Ismail to tell me that I must have separate electorates, whereas my community is absolutely averse to separate electorates?

The proposition before us is of such a nature that every one, whatever community he may belong to, should welcome it and be proud of it. They should say that this resolution which is reversing the previous resolution which has created havoc in the country is going to play a predominant part in the history of the world by bringing everybody nearer for peace and goodwill. With these words, Sir, I support the resolution.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I want to oppose the amendments of Mr. Lari and Mr. Ismail. I do not think it is necessary to oppose Mr. Ismail's amendment in any great detail, because it belongs to an age which is past and I do not want to waste the time of the House over it.

Mr. Lari's amendment needs some attention. He has made out a plausible case and I have tried to work out the constituencies based on a system of proportional representation as well as on a system with cumulative voting as suggested in Mr. Lari's motion. The Muslim population is the largest in the U.P. and is 14 per cent. How can this system of cumulative voting secure for Mr. Lari and his community proper representation? There is no country in the world where this system prevails. Take for instance Gorakhpur. It has now a population of 24 lakhs and there will be three seats in it for the House of People in the new Parliament. The population of Muslims is 2 lakhs and they can pool their votes together for one candidate according to Mr. Lari's amendment. The two lacs of Muslims in the district will have one lakh Muslim voters and they can pool 3 lakh votes on one candidate and even then he will not win, because the remaining population of 21 lacs will have 11 lac voters and will be able to pool 33 lakh votes on the three rival candidates. Besides, a man having three votes, and giving them all to one person is an undemocratic principle which is not followed anywhere in the world. Besides, it will not secure the purpose which Mr. Lari has in mind. This system of cumulative voting is undemocratic, unscientific and gives one man the power to pool all his votes for one candidate, and even then cannot secure the purpose Mr. Lari has in view. Mr. Lari also wanted the country to give a trial to the system of

[Prof. Shibban Lal Saksena]

Proportional Representation. I myself believe in this System. It gives a fair representation to each group. But if we introduce it in our country just now, many difficulties arise in the way. To work this system properly, the electorate must be well educated, because the voter has to give his preferences and illiterate persons will not be able to understand the significance of the various preferences. They will have to say whom they prefer first, whom second and whom third. Even in small elections by our Constituent Assembly where the system has been adopted, it has been found that most of the members do not understand it. Only skillful experts can understand how it works. In Ireland and Switzerland where the system has been adopted the electorate is highly educated and no constituency exceeds 30,000 in Eire and 22,000 in Switzerland. Supposing we adopt this system in our country, what will happen? In the United Provinces, with a population of 560 lakhs, about ten Muslims should be elected to the House of People on the population basis. If under proportional representation, all Muslim give their first preference in equal numbers to ten selected Muslim Candidates and the whole province be one Single constituency, then alone these men can be elected. But a whole province with 560 lacs of population cannot be one constituency. At the most, the province can be divided into ten constituencies if Mr. Lari's purpose is not to be defeated. But then each of these ten constituencies each with 56 lac population should have an equal Muslim population which is impossible. If we do not increase the number of multi-member constituencies above ten, and all Muslims give their first preference to one particular Muslim Candidate in each constituency, then alone ten Muslim candidates will be returned, provided the Muslims are equally distributed in each constituency which cannot be the case. Mr. Lari's solution is a solution which cannot be realised in practice. Besides, such a delimitation of constituencies will give rise to many other complications, and you simply cannot form constituencies on that basis. Besides, no secrecy of ballot will remain. Illiterate people cannot fill their preferences and somebody must fill for them, thus destroying secrecy of ballot. I therefore think, that the system of proportional representation, however much it may have proved good in other small countries, will not achieve here the desired result, and is altogether impracticable. Mr. Lari comes from my district of Gorakhpur which had before partition a population of 40 lacs and only 4 lacs of them are Muslims. On this principle of proportional representation, the 2 lakhs of Muslim votes in Gorakhpur, will go to Mr. Lari. But if all Muslims vote for him that way, the others will not vote for him. That will be the natural tendency and communalism will come into play. Mr. Lari will not then be elected. I, therefore, think that this system will not secure what we want. It will give rise to communal feelings which we all want to destroy by the proposed arrangement.

Sir, this is a red letter day in the history of India, and the decision we are taking is a historic one. At last, we have been able to do away with this separate electorate system today after 43 years struggle. I hope hereafter the whole atmosphere in the country will change. The majority community is in honour bound to give proof of its sincerity by returning large numbers of Muslim Indian patriots at the polls. I am sure even larger numbers of Muslims will be elected if they come forward with public spirit and honesty and loyally serve the people and the country.

Mr. Lari told us yesterday that in the United Provinces the Socialists contested eleven seats and got about 30 per cent of the votes. I think his figure is incorrect. But let us assume it is correct. Under the arrangement

proposed by him if all the eleven constituencies were grouped in 4 constituencies and if for each constituency there were assigned four members, then the socialists would have had a chance. In Gorakhpur the population of the constituency was seven lakhs. So if four constituencies formed one multi-member constituency, the population of each would be about 28 lacs. Such huge constituencies would be extremely unwieldy and each would have about 15 lac votes. Only multi-millionaires and plutocrats would be able to contest from such huge constituencies and the common people would never be returned. Besides, the votes obtained by socialist candidates were not all for their socialist programme. Everyone angry with the Congress voted socialist. Under the system of proportional representation this result cannot be achieved.

On this great occasion I congratulate the Honourable Sardar Patel who has added another feather to his cap, by bringing about the abolition of reservations of seats except in one or two cases. His report will change the course of history in our country. Sir, the minority have agreed to this proposed and said that they do not want reservation of seats. I hope in ten years time even the Harijans will be in a position to rise to the occasion and give up this right of reservation. Then everybody will get proper representation without, distinction of caste or religion. At that time service, merit and ability will alone win votes, and all relics of our past slavery will have been buried deep.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I extend my wholehearted support to the Resolution before the House. In doing so I have to make a few observations. The Resolution tries to do away with all reservations for religious minorities. It is agreed that it is the birth-right of every section of the population, numerical or political minority, to have proper representation and a proper voice in the administration of the country. Nobody denies this and much less in a Secular State. But the only dispute is about the method of securing such representation. We have tried one method and that is the method of separate electorates and fixed proportions. We have given it a sufficiently long trial. We might differ as to whether all the catastrophe that we have experienced was due solely to the system of separate electorates or whether certain other factors contributed to it. But this much is common ground that separate electorates did create a cleavage among the various communities. We have given it a trial and now we want to live as one Nation—a harmonious whole. For that it is desirable that we should look to some other method. One such method has been proposed by Mr. Lari—the method of having cumulative votes. That is a wholesome measure. It can give representation to minorities and various interests. There is one difficulty that I feel about it, that in a vast country like ours, where ninety percent of the population are illiterate, it would not be a practical possibility to work for the present. That is the only difficulty that I feel. Otherwise I would have welcomed it. The Minorities Advisory Committee felt that reservation of seats would also promote communalism, would keep the communities separate, and therefore they have advised in their report that every reservation should go. Of course, it was a very good jump, a great jump, from separate electorates to which we were accustomed for so long a time to unadulterated joint electorates and therefore it was that the intermediate step was taken that there should be reservation. Now everyone of us feels that we should proceed towards a compact nation, *i.e.*, not divided into different compartments, and that every sign of separatism should go. In my opinion there is no harm if we give a chance to this new experiment that is suggested for ten years. If we find that it works well, if the minorities feel satisfied, that they are secure, there will be no further demand for any safeguards. But if they feel that they have not been treated well, that there

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has been some discrimination, I am sure the minorities would raise a louder voice for some other substitute and they will have a stronger case then. Therefore I think that we should give a fair chance to this new experiment that reservation for any religious minority should go. Everyone of us feels that we should contribute fully to the development of a compact nation, and the Sikhs—I assure everybody—want to contribute as best as they can towards this goal and therefore they are giving their full support to this Resolution.

I might submit here that by agreeing to this, the minorities are placing the majority to a severe test. A heavy responsibility would be cast on the majority to see that in fact the minorities feel secure. So far as I can make out, the only safety for the minorities lies in a secular State. It pays them to be nationalists in the true sense of the term. Rather it is the minorities who can work against any dilution of nationalism. But what we require is pure nationalism and not any counterfeit of it. The majority community should not boast of their national outlook. It is a privileged position that they have got. It is not their choice that they have that outlook. They should try to place themselves in the position of the minorities and try to appreciate their fears. All demands for safeguards and even the amendments that have been tabled here are the products of those fears that the minorities have in their minds, and I must submit here that the Sikhs have certain fears as regards their language, their script and also about the services. I hope that those fears can be removed easily by the executive government. The government should see that those fears are removed and there is a chance for the culture of every community to develop. Certain matters, so says the report of the Advisory Committee, can be left to conventions. This is correct. There need not be any mention of anything in the Draft Constitution. Personally I am in favour of deleting the whole Chapter on minorities' safeguards and I gave notice of an amendment to that effect long ago. Certain conventions have to grow and it will be the duty of the majority community to see that such wholesome conventions do take root to make the minorities feel secure during the transitional period.

Then, Sir, there is the second part of the resolution about the inclusion of four castes of Sikhs in the list of Scheduled Castes. The Honourable Sardar Vallabhbhai Patel has appealed to the House not to resent or to grudge this concession to the Sikhs. He was pleased further to remark—and he was very frank in saying that—“that religion was being used as a cloak for political purposes”, but in spite of it he appealed to the House that they should regard with tenderness the feelings of the Sikhs as they have suffered from various causes. The Sikh community is certainly grateful to the Sardar, to the Minorities Advisory Committee and to the House for all these concessions and for their sympathetic attitude. But I must be failing in my duty if I do not submit that I have a different view-point on this particular question. We were told that the Sikh religion does not acknowledge any discrimination on account of caste and that for securing certain political rights for the section, the Sikhs are sacrificing certain principles of their religion. I am afraid I think otherwise because, when we say that all safeguards for religious minorities should go, it would only be a natural corollary to that. If we give concession and certain privileges, certain rights to the Scheduled Castes simply because they are backward socially, economically and political and not because they are a religious minority, then other classes, whatever their religion, whatever the professions of their religion, who are equally backward socially, economically and politically, must also be included in the list. So my submission is that it ought to have been done long ago that these classes also, because they are backward, were

included in the list along with their other brethren of the Scheduled Castes, and it should not have been considered as a concession.

Shri B. Das (Orissa: General): Blame Sardar Ujjal Singh for it.

Sardar Hukam Singh : But in spite of it the Sikhs are not less grateful for it. If it is a concession, they are grateful for it. If they are entitled to it, then too they are grateful. They feel that one demand of theirs on which they were very serious has been met. They hope that other small things also would be considered favourably so that they could feel satisfied and could walk shoulder to shoulder with other progressive forces to the cherished goal that we have before us.

Mr. Muhammad Ismail Khan (United Provinces: Muslim): Sir, I give my unstinted support to the revised decision of the Advisory Committee which has done away with reservation of seats, which only kept alive communalism and did not constitute an effective safeguard. With the vast superiority of the majority community in the number of voters, they could have had no difficulty in using this device for their own ends by electing men of their own choice and I, therefore, congratulate them that they have not thought fit to take advantage of this device.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, Sir, we cannot hear the honourable Member distinctly. He is not at all distinct.

Mr. Muhammad Ismail Khan : Sir, as I seldom take part in the debates of this Assembly, probably I have not acquired the necessary aptitude of speaking through this microphone and so my voice does not adjust itself readily. I am very glad that this decision has been taken and I welcome it. Why? Because this reservation of seats would only keep alive Communalism and would be ineffectual as a safeguard for the Muslim minorities or for the matter of that for any other minorities. I congratulate the majority community, that they have not taken advantage of their superiority in numbers, by utilising this device for their own purposes. The Muslims have been thinking for some time that this reservation was wholly incompatible with responsible Government and I may say that when Provincial autonomy was introduced in the provinces for the first time the Muslims soon began to realize the separate representation was not going to be an effective safeguard for the protection of their interests. Not only did they realize it but even before that the Muslims were not their convinced of the adequacy of this safeguard. I think it will be recalled that when Mr. Jinnah put forward his famous fourteen points, he contemplated that if certain safeguards demanded were conceded elections in future would be by means of joint electorates. For some time the Muslims have been thinking that with the inauguration of responsible Government separate electorates would be out of place. I would like to point out to my friends from Madras who insist on separate electorates, the circumstances and conditions which gave birth to that system. At that time when separate electorates were claimed, there were no direct elections to the legislatures. The members were elected to the legislature by the members of the Municipal or District Boards. There were no statutory safeguards in the Constitution. A foreign Government was in power and had an official bloc in the legislatures and the Muslims were able to use the separate electorates for their own purposes, but as I said just now as soon as Provincial autonomy came, they very soon found that separate electorate was no safeguard for their interests and they were doomed to remain in Opposition which led to frustration. My honourable Friend Mr. Muhammad Saadulla has said that this reservation of seats had been given away by the

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solitary vote of Begum Aizaz Rasul. May I remind him in this connection of a meeting which was held ten or twelve months ago in which many Muslim members of this Constituent Assembly took part in which it was decided that we should take steps to do away with reservation. So Begum Aizaz Rasul in casting her vote was not casting a solitary vote, but she did so on behalf of those people who had taken part in that meeting. I do not say that Sir Sayed Saadullah agreed with it, but there were ten or twelve members present who agreed that they should take steps to have this reservation done away with.

Now I would like to point out to my friends who insist on separate electorates for the purpose of safeguarding their rights that, in the Constitution today, we have justiciable fundamental rights prescribed, in the Constitution. We can vindicate our rights in future not in the legislature, but in the Supreme Court and I say that that forum is much better from our point of view. In the legislatures party feelings run high and disinterested consideration is seldom given to such matters, but with the statutory safeguards provided for in the Constitution, we have nothing to fear and our cultural, religious and educational associations should keep a vigilant eye and see that those rights are not infringed or curtailed by appealing to the Supreme Court of judicature. In future I trust the Muslim members will be able to speak on behalf of their constituencies as authoritatively as the other members. That is why I want to do away with Communalism in the shape of separate electorates so that when they come here they can speak with the same authority as any other member and as a representative not only of the Muslims but also of the majority community. There is no half-way house between separate representation and territorial electorates. Reservation was an ineffective method for the protection of communal rights and I therefore give my unstinted support to this decision which does away with it. I wish to point out to my Madras friends that even twenty years back the Muslims were thinking of giving up separate electorates provided certain safeguards were provided and conceded, but in the Constitution that was framed, for instance, in the act of 1935, no safeguards were given. The responsibility for the protection of their rights was entrusted to the Governor of the provinces by the Instrument of Instructions, but today the conditions are different. Here we have got statutory safeguards. Why then do we want separate representation? How will it help us? Would it not do always keep us from joining other parties? After all, with communal electorates, you would have to have a communal organization to put up candidates and frame a programme and policy for their work in the legislatures which means that the present state of affairs would continue and keep alive communalism in its worst form. Would this lead to the establishment of harmonious relations? No. I therefore think that we should give up this system although many of us who have been nurtured in the old traditions find it hard to part with rights which we have so far enjoyed. We are doing all this not for ourselves, but for the future generations of Muslims in this country. The best thing is to trust the majority. Even if we have separate electorates or reservation of seats, how are we going to prevent the majority from imposing its own decision? Merely making speeches will not save you. You will have to join some party or other if you are not to be isolated and on conditions which that party may impose. Moreover we desire that our State should be non-communal and secular. Here is an opportunity and we should grasp it. Let us not stand in the way of the emergence of a really secular and non-communal State. I support the motion.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. President, Sir, this resolution has my warmest support. The report to which the resolution refers

is the result of the supreme efforts made by our honourable, revered and beloved leader Sardar Vallabhbhai Patel. This is one of several achievements, the credit for which must go to him entirely during recent times.

Of course, there are some reasons to complain here and there. I have also a reason to complain. But, the sum total of this resolution is this: the moment this resolution is translated into action, we will be paving our way to realise the dream of building a secular State, a composite Indian Nation. These communal troubles which have disfigured the history of India during the last few years will, I am sure, be a thing of the past.

I do not know how far minorities play a part in other parts of the world, so far as politics is concerned. But, in India, the problem of minorities has played a considerable part since the British rule. There are two kinds of minorities, as you all know in India. There is one kind of minority which, on account of the tallness of the stature, of its people the tallness of these figures and of the fact that they can take care of themselves in any part of the world, generally inspires terror in the minds of other minorities and even in the minds of the majority. There is another kind of minority, which inspires pity in our minds who constantly remind us of the folly which we had committed in the past and the treatment which we have accorded to them in the past, for which they have lots of reason to complain. To that minority we have to make amends. I am glad to be able to say that this report has given its due consideration to the minority which really deserves pity and sympathy and encouragement and has not, for the time being, been given that attention for which the other kind of minority was clamouring for some time.

I wish in this connection to draw the attention of the House to the conditions prevailing in the province of Assam. There, the population figures stand thus. Caste Hindus form 39 per cent of the population ; Muslims form 23.6 per cent of the population; Tribals form 32.4 per cent of the population. I am not going to ask one question. When the population stands thus, is it necessary to reserve any seat for any community? I ask, when there is no majority community at all, when the difference between the so-called majority community, that is the Caste Hindus, and the Tribal community, as we find from the figures is only six per cent, is this reservation of seats necessary for any community there? I hope the House will consider this. Could you not make an experiment in that province where there is such a small difference between the different communities, of not having any reservation of seats at all? If ultimately it is your intention to do away with reservation, why not start that experiment in a province where the margin of difference between the different communities is so small? That is the point which I would ask the House to consider.

My honourable Friend Mr. Saadulla was complaining, as I could understand, that there was no reservation for Muslims in that province. If there was no necessity for reservation of seats for the Muslims in any province, certainly Assam is one such. Because, there, the percentage of the population of Muslims is as high as 24 per cent, as stated by him. I would, Sir, take this opportunity of denying that the Muslims of our province really demand any reservation of seat. On the other hand, there are several members of his own constituency of Muslims in the Assam Legislative Assembly, who certainly repudiate the suggestion for any reservation of seats. As the majority of Muslim members in this House do not agree to have any reservation of seats, I suppose it is idle for any one to talk of reservation of seats for Muslims in Assam.

I want to draw the attention of the House to a demand made by the Honourable Mr. Lari for multiple member constituencies and cumulative voting. That, Sir, I am afraid, will destroy the very object of this resolution. If the

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Muslims or any community knows that in the future they can have their own seat if they combine on the ground of religion or community, then, the evil of communalism will still linger. Wherever there is a multi-member constituency, the Muslims will combine themselves and they will secure a seat for themselves. Wherever there are lesser number of Hindus or any other community in any particular area, they will combine amongst themselves and the whole idea of unity will be destroyed by having multi-member constituencies and cumulative voting.

Another point to which I should draw the attention of the House is whether it would be desirable, in view of the population figures which have been given, to allow any community for whom seats have been reserved, to contest for the general seats. Let us examine the position for a moment. The Caste Hindus are only 39.6 per cent the tribals are 32.4 per cent. If, in addition to this, the people of the tribal areas are allowed to contest the general seats, then some of these general seats, at least will go to the tribal people. Is it desirable, I would ask the House to consider, to allow these tribal people to contest general seats? But I must be fair and say here that the figures of tribal people mentioned, i.e., 32.6 per cent, may not be quite correct. I am told that some of the population in the tea-gardens, which is covered or included in this figure are actually in the plains, and will come to the general seats. In that case, I will advocate that this figure ought to be changed, that is to say, if it is correct that a portion of this population of about ten lakhs are really not tribal population but have been wrongly included in the tribal figure, then the whole figure may have to be revised.

Mr. President : May I point out that we are not dealing with the question of tribals. We are concerned only with the others. Therefore the honourable Member should confine himself to the general question of reservation, leaving out the tribes. When the time comes, he may bring up his point, if necessary, but not at this stage. Otherwise I will have to allow others also to speak about the tribals which I do not want to.

Shri Rohini Kumar Chaudhari : I stand corrected, Sir, So I once more express my felicitations about the report and we are particularly very happy that the reserved seats have been kept for the members of the Scheduled Castes. We all hope that in no distant time—we need not wait even for ten years, but even before that—the so-called Scheduled Castes people will be progressing rapidly and that they will be equal to any other community in this country.

With these words, Sir, I support the Resolution.

Mr. Frank Anthony (C.P. & Berar: General): Sir, at the end of para 5 of the Report submitted by Sardar Patel to this house is a sentence which has specified that this Resolution does not affect the provisions granting representation to the Anglo-Indian community; and it is because of this, Sir, that I stand here to express my sense of gratitude to the Advisory Committee, guided by Sardar Patel, for this generous and understanding gesture. I should be shirking the truth if I did not admit that there were many occasions during the sessions of the Minorities Sub-Committee, and many occasions during the sessions of the Advisory Committee, when I was deeply and even unhappily anxious. I know, Sir, that autobiographical details not only savour of egotism, but they tend to irritate. But I have in representing my community, been inspired by what has been an article of faith, a belief that this community, whatever its past history, has its real home in India, That it can know no other home, that it can only find a home in all its connotations if it is accepted, and accepted cordially, by the peoples of this country. Sir, when discussions on minority rights were on the anvil, there were two questions that I asked myself. Would the leaders of India be able to forget and forgive the past? And the

second question was, if the leaders of India can forget, and forgive the past, will they go further and be prepared to recognise the special needs and difficulties of this small, but not unimportant minority? Sir, today, I am able to say, with a sense of inexpressible gratitude, that the leaders of India have shown that they were not only able to forget and forgive the past, but they were also able to recognise and accept the special needs and difficulties of the community which I have the privilege of leading. I believe that in making this gesture to this small community, the Advisory Committee has been uniquely generous. When we were discussing these problems, very often I felt that in the minds of the majority of the members of the Committee were questions, not put in so many words, but nevertheless there were questions which animated their attitude towards my request, and these questions took perhaps the uniform form, "Why should you on behalf of the Anglo-Indians ask even for equality of treatment? Can it not be said of your community that not only have you not given a single hostage to the cause of independence, but perhaps have joined with the reactionary forces intended to retard the cause of Indian independence?" Those were questions which were perhaps postulated behind the minds of the majority of the members, and I realised that this was a hurdle. Sometimes I felt that it was an insuperable hurdle. In spite of that, not only did my community receive recognition as one of the Indian minorities, but it was accorded further special treatment, and its special difficulties were recognised and catered for. Sir, in this connection, I wish to place on record my sense of gratitude—I find it impossible to express it adequately—to the attitude of the Chairman of the Advisory Committee, Sardar Patel. From some speeches in this House, the impression might have been gathered that the Advisory Committee was animated by motives of wresting from the minorities what the minorities wanted or thought was necessary. I am here to refute that suggestion. There were many people who argued with unerring logic, who argued with even an implacable sense of reasonableness, that the request put forward by the minorities should not be accepted in the larger interests of the country. When I listened to them, I often felt that the minority's requests would never be accepted, because on the basis of logic, on the basis even of reasonableness, on the basis of national integration, many of the request put forward by the minorities were not tenable. But fortunately, I say fortunately we had a person like the Sardar as the Chairman. I saw him brush aside, sometimes brusquely, arguments which were unanswerable on the basis of logic, arguments which were irrefutable on academic and theoretical grounds and he made it clear over and over again to us in the Advisory Committee that this attitude was inspired not by logic, not by strict reasonableness, not by academic theories, but by an attempt to understand the real feelings and psychology of the minority mind. He made it quite clear that the principle on which he was working was this. It is not necessary so much to measure what we do by the yardstick of theory or of academic perfection, but what is much more important is that whatever the requests of the minorities be, if they are not absolutely fantastic then that request should be met to the maximum extent; because if there is a fear, real or imagined, it is better in the larger interests ultimately of the country to assuage that fear, and to look at it from the point of view of minority psychology. And that is why we have these provisions granted to us, provisions perhaps which we had no right to ask for, on a strictly logical or academic basis.

Sir, as one who understands minority psychology and the difficulties of minorities for a long time, I have sometimes regarded it an impertinence for the representative of one minority to preach to another minority, to attempt to say to that minority "Such and such a thing is good or bad for you". So I will not attempt to say anything which may savour of preaching to my Muslim friends. But I do want to say this, that whatever decisions were reached in the Advisory Committee were reached so far as all the other minorities were concerned as a result of unanimous agreement.

[Mr. Frank Anthony]

But what could the Advisory Committee do? There was nothing we could do when different Muslim representatives spoke with different voices. Even in this House there have been differences of opinion. The Advisory Committee was, therefore, left with no alternative but, in view of this confusion and medley of Muslim opinions, to come to a decision which was unanimously supported by all the other minorities and which also found support from many of the Muslim representatives. Sir, may I say this about the decisions of the Advisory Committee? They represent no imposed decisions; they represent decisions which have been arrived at as a result of friendly understanding, compromise and unanimous agreement. I believe in bringing these decisions to fruition Sardar Patel has helped—as perhaps none else in the past few years could have done—to bind the minorities with hoops of steel to the cause of national integration and progress.

Sir, some people still feel that no safeguard should have been incorporated in the Constitution even for the interim period. I feel otherwise. I feel that it was a good thing, that it was a salutary thing, that we have prescribed a limited number of years. I tell my friends who are anxious for complete integration immediately: “Ten years represent but a fractional moment in the history of a great nation.” We have not yet reached the goal of a secular democratic state. It is an ideal—I hope it is not a distant ideal. Our road to that goal may be marked by ups and downs; but if during our march to it we have given some safeguards to the minorities I feel that it is a salutary and a healthy thing in order to tide these minorities over this transition period.

Sir, there is a feeling, particularly among journalists from other countries, that today the minorities in India are being oppressed, that minority representative either do not, in fact, represent the minorities or they are petrified by a sense of fear and regimentation and do not speak of or express that fear which is in their hearts. I have never suffered from any sense of fear. I have never, in the expression of my views, been subjected to any regimentation. May I say this that minority representatives today are not stooges of any particular party? When we say that we genuinely feel that we have been generously treated we mean it and it is not the result of any regimentation or fear. At the same time, we are under no sense of illusion. We do not indulge in flattery. Well, I have heard the representatives of some minority communities say that everything in the Indian garden is not perfect; for the matter of that, what can be perfect in any garden? There are causes for misgivings, yes. Today I see in certain provinces precipitate policies being followed—policies which, I feel, are inspired by ill-concealed communal motives. I see in them the new communalisms linguistic and provincial, more dangerous, communalisms much more mischievous in their potential than the old dead religious communalism. I see in them communalism raising their many any their hydra-heads. I see those most ardently wedded to this new communalisms flogging the dead horse of religious communalism, stalking behind it while riding their own hobby-horses of linguistic and provincial communalisms. We see, Sir,—I say it without any offence—we see members of this great party who technically are members of the Congress, but spiritually are members of the R.S.S. and the Hindu Mahasabha. Unfortunately, I read speeches day in and day out by influential and respected leaders of the Congress Party, who say that Indian independence can mean only Hindu Raj, that Indian culture can only mean Hindu culture. These are causes for misgivings, yes. But which great nation in its path to greatness will not have ups and downs? The main point is this—that we have set our goal and are sailing in the right direction. We have set our goal as a secular and democratic State. And may I say this in passing. Let us not once again indulge in shibboleths and make shibboleths do for facts; let us not proclaim loudly that we are already a secular democratic State when this is an idea

which is yet to be achieved. But, as I have already said, we have set our sails in the right direction. As the Prime Minister said at a meeting the other day at which I was present, in accepting the abolition of reservations and limiting it for a period of ten years, the majority community and above all the leaders have expressed faith in themselves, to achieve what they believe. It is an act of faith on their part. It was not inspired by any intention to do away with anything which the minorities wanted. It was an act of faith made by the majority community in agreement with the minority communities. I believe that India can achieve her full stature only as a secular State. Any attempt to go back to the past, any attempt at revivalism must inevitably shrivel the potentialities and stunt the growth of this great country. And may I say this, that in our march towards the goal—it is still a goal—the minorities must be in the vanguard. Any minority which thinks that it can flourish on sectarianism is asking for ruin and death.

And, Sir, may I, before I end, refer in passing to another thing. Some people say, “Oh, Anthony, in spite of your grandiose opinions, of your grandiose sentiments, if you feel so strongly, why don’t you drop this prefix ‘Anglo’?” Well, I say “The word ‘Anglo-Indian’ may be good or bad, but rightly or wrongly it connotes to me many things which I hold dear.” But I go further and say to the same friends of mine “I will drop it readily, as soon as you drop your label, the day you drop your label of ‘Hindu’ .” The day you drop the label of “Hindu”, the day you forget that you are a Hindu, that day—no, two days before that—I will drop by deed poll, by beat of drum if necessary the prefix “anglo” because, believe me that when we all begin to drop these prefixes or labels, not only by paying lip-service to them, not only by making professions about them, but when we really feel them in our hearts, when we by our actions, not by our professions, equate these to our beliefs in a secular State, that day will be welcome first and foremost to the minorities of India, who by that time will have forgotten that they are minorities and that they are Indians first, last and always.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, there has been such an abundance of goodwill shown towards this motion that it is hardly necessary for me to intervene in support of it. But I have felt the urge to do so because I wish to associate myself with this historic turn in our destiny: for, indeed, it is a historic motion that my colleague, the Deputy Prime Minister has put before this House. It is a motion which means not only discarding something that was evil, but turning back upon it and determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation.

Now, all of us here, I believe, are convinced that this business of separatism, whether it took the shape of separate electorates or other shapes has done a tremendous amount of evil to our country and to our people. We came to the conclusion some time back that we must get rid of separate electorates. That was the major evil. Reluctantly we agreed to carry on with some measure of reservation. Reluctantly we did so for two reasons: Reason No. 1 was that we felt that we could not remove that without the goodwill of the minorities concerned. It was for them to take the lead or to say that they did not want it. For a majority to force that down their throats would not be fair to the various assurances that we had given in the past and otherwise, too, it did not look the right thing to do. Secondly, because in our heart of hearts we were not sure about ourselves nor about our own people as to how they would function when all these reservations were removed, we agreed to that reservation, but always there was this doubt in our minds, namely, whether we had not shown weakness in dealing with a thing that was wrong. So when this matter came up in another context, and it was proposed that we do away with all reservations,

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except in the case of the Scheduled Castes, for my part I accepted that with alacrity and with a feeling of great relief, because I had been fighting in my own mind and heart against this business of keeping up some measure of separatism in our political domain: and the more I thought of it the more I felt that it was the right thing to do not only from the point of view of pure nationalism, which it is, but also from the separate and individual view-point of each group, if you like, majority or minority.

We call ourselves nationalists, but perhaps in the mind of each, the colour, the texture of nationalism that is present is somewhat different from what it is in the mind of the other. We call ourselves nationalists—and rightly so—and yet few of us are free from those separatist tendencies—whether they are communal, whether they are provincial or other: yet, because we have those tendencies, it does not necessarily follow that we should surrender to them all the time. It does follow that we should not take the cloak of nationalism to cover those bad tendencies.

So I thought about this matter and I came to the conclusion that if at this stage of our nation's history, when we are formulating this Constitution, which may not be a very permanent one because the world changes, nevertheless which we wish to be a fairly solid and lasting one, if at this stage we put things into it which are obviously wrong, and which, obviously make people look the wrong way, then it is an evil thing that we are doing to the nation. We decided some time ago in another connection that we should have no truck with communalism or separatism. It was rightly pointed out to us then that if that is so, why do you keep these reservations because this itself will make people think in terms of separate compartments in the political domain.

I would like you to consider this business, whether it is reservation or any other kind of safeguard for the minority, objectively. There is some point in having a safeguard of this type of any other type where there is autocratic rule or foreign rule. As soon as you get something that can be called political democracy, then this kind of reservation, instead of helping the party to be safeguarded and aided, is likely actually to turn against it. But where there is a third party, or where there is an autocratic monarch, or some other ruler, it is possible that these safeguards may be good. Perhaps the monarch may play one off against the other or the foreign ruler. But where you are up against a full-blooded democracy, if you seek to give safeguards to minority, and a relatively small minority, you isolate it. May be you protect it to a slight extent, but at what cost? At the cost of isolating it and keeping it away from the main current in which the majority is going,—I am talking on the political plane of course—at the cost of forfeiting that inner sympathy and fellow-feeling with the majority. Now, of course, if it is a democracy, in the long run or in the short run, it is the will of the majority that will prevail. Even if you are limited by various articles in the Constitution to protect the individual or the group, nevertheless, in the very nature of things in a democracy the will of the majority will ultimately prevail. It is a bad thing for any small group or minority to make it appear to the world and to the majority that “we wish to keep apart from you, that we do not trust you, that we look to ourselves and that therefore we want safeguards and other things”. The result is that they may get one anna in the rupee of protection at the cost of the remaining fifteen annas. That is not good enough looked at from the point of view of the majority either. It is all very well for the majority to feel that they are strong in numbers and in other ways and therefore they can afford to ride rough-shod over the wishes of the minority. If the majority feels that way, it is not only exceedingly

mistaken, but it has not learnt any lesson from history, because, however big the majority, if injustice is done to minorities, it rankles and it is a running sore and the majority ultimately suffers from it. So, ultimately the only way to proceed about it—whether from the point of view of the minority or from the point of view of the majority—is to remove every barrier which separates them in the political domain so that they may develop and we may all work together. That does not mean, of course, any kind of regimented working. They may have many ways of thinking; they may form groups; they may form parties, but not on the majority or minority or religious or social plane, but on other planes which will be mixed planes, thus developing the habit of looking at things in mixed groups and not in separate groups. At any time that is obviously a desirable thing to do. In a democracy it becomes an essential thing to do, because if you do not do it, then trouble follows—trouble both for the minority and for the majority, but far more for the minority.

In the present state of affairs, whether you take India or whether you take a larger world group, the one thing we have to develop is to think as much as possible in larger terms; otherwise we get cut off from reality. If we do not appreciate what is happening, the vast and enormous changes happening elsewhere which really are changing the shape of things, and cut off our future almost completely from the past as we found it, if we stick to certain ideas and suspicions of the past, we shall never understand the present, much less the future that is taking shape. Many of our discussions here are inevitably derived from the past. We cannot get rid of them. None of us can, because we are part of the past. But we ought to try to get ourselves in connected from the past if we are to mould the future gradually. Therefore, from every point of view, whether it is theoretical or ideological or national or whether it is in the interests of the minority or of the majority or whether it is in order to come to grips with the realities of today and of tomorrow which is so different from yesterday, I welcome this proposal.

Frankly I would like this proposal to go further and put an end to such reservations as there still remain. But again, speaking frankly, I realise that in the present state of affairs in India that would not be a desirable thing to do, that is to say, in regard to the Scheduled Castes. I try to look upon the problem not in the sense of a religious minority, but rather in the sense of helping backward groups in the country. I do not look at it from the religious point of view or the caste point of view, but from the point of view that a backward group ought to be helped and I am glad that this reservation also will be limited to ten years.

Now I would like you to think for a moment in a particular way just to realise how the present is different from the past. Think of, let us say, five years ago which is not a long time. Think of the problems that you and I and the country had to face then. Make a list of them and then make a list of the various problems that this honourable House has to consider from day to day. If you do this you will see an enormous difference between the lists. The questions that are before us demanding answer, demanding solution show how we have changed for good or for evil. The world is changing; India is changing, not alone politically. The real test of all change is, what are the problems that face us at a particular moment. The problems today are entirely different from the problems that five years ago faced us in any domain, political, economic or in regard to the States. If that is so we have to tackle problems in a different way, no doubt holding on to the basic ideals and the basic ideology that has moved us in the past, but nevertheless remembering that the other appurtenances of those ideologies of the past have perhaps no function today. One of the biggest things in regard to them is this one of separate electorates, reservation

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of seats and the rest. Therefore, I think that doing away with this reservation business is not only a good thing in itself—good for all concerned, and more especially for the minorities—but psychologically too it is a very good move for the nation and for the world. It shows that we are really sincere about this business of having a secular democracy. Now I use the words ‘secular democracy’ and many others use these words. But sometimes I have the feeling that these words are used today too much and by people who do not understand their significance. It is an ideal to be aimed at and every one of us whether we are Hindus or Muslims, Sikhs or Christians, whatever we are, none of us can say in his heart of hearts that he has no prejudice and no taint of communalism in his mind or heart. None or very few can say that, because we are all products of the past. I do not myself particularly enjoy any one of us trying to deliver sermons and homilies to the other as to how they should behave, or one group telling the other group whether of the majority or of the minority, how they should do this or that in order to earn goodwill. Of course something has to be done to gain goodwill. That is essential. But goodwill and all loyalty and all affection are hardly things which are obtained by sermonising. These develop because of certain circumstances, certain appeals of the minds and heart and a realisation of what is really good for everyone in the long analysis.

So now let me take this decision—a major decision—of this honourable House which is going to affect our future greatly. Let us be clear in our own minds over this question, that in order to proceed further we have, each one of us whether we belong to the majority or to a minority, to try to function in a way to gain the goodwill of the other group or individual. It is a trite saying, still I would like to say it, because this conviction has grown in my mind that whether any individual belongs to this or that group, in national or international dealings, ultimately the thing that counts is the generosity, the goodwill and the affection with which you approach the other party. If that is lacking, then your advice becomes hollow. If there, then it is bound to produce a like reaction on the other side. If there were something of that today in the international field, probably even the great international problems of today would be much easier of solution. If we in India approach our problems in that spirit, I am sure they will be far easier of solution. All of us have a blend of good and evil in us and it is so extremely easy for us to point to the evil in the other party. It is easy to do that, but it is not easy to pick out the evil in ourselves. Why not try this method of the great people, the great once of the earth, who have always tried to lay emphasis on the good of the other and thereby draw it out? How did the Father of the Nation function? How did he draw unto himself every type, every group and every individual and got the best from him? He always laid stress on the good of the man, knowing perhaps the evil too. He laid stress on the good of the individual or group and made him function to the best of his ability. That I think is the only way how to behave. I am quite convinced that ultimately this will be to our good. Nevertheless, as I said on another occasion, I would remind the House that this is an act of faith, an act of faith for all of us, and act of faith above all for the majority community because they will have to show after this that they can behave to others in a generous, fair and just way. Let us live up to that faith.

(Mr. Tajamul Husain came to speak).

Shri Rohini Kumar Chaudhari : On a point of order, Sir, you called Mr. Tamizudin Khan and not Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar: Muslim): Let the honourable Member better change his glasses. The Chair called Mr. Tajamul Husain and I am Mr. Tajamul Husain.

Mr. President, Sir, reservation of seats in any shape or form and for any community or group of people is, in my opinion, absolutely wrong in principle. Therefore I am strongly of opinion that there should be no reservation of seats for anyone and I, as a Muslim, speak for the Muslims. There should be no reservation of seats for the Muslim community. (*Hear, Hear*). I would like to tell you that in no civilised country where there is parliamentary system on democratic lines, there is any reservation of seats. Take the case of England. The House of Commons is the mother of parliaments. There is no reservation of seats for any community there. No doubt they had reservation of seats for the universities but even that has been abolished. What is reservation, Sir? Reservation is nothing but a concession, a safeguard a protection for the weak. We, Muslims do not want any concession. Do not want protection, do not want safeguards. We are not weak. This concession would do more harm than good to the Muslims. Reservation is forcing candidates on unwilling electorates. Whether the electorates wants us or not, we thrust ourselves on them. We do not want to thrust ourselves on unwilling electorates. The majority community will naturally think that we are encroaching upon their rights. We do not want them to think that. We must exert ourselves. Separate electorates have been curse to India, have done incalculable harm to this country. It was invented by the British. Reservation is the offspring of separate electorates. Do not bring in reservation in the place of separate electorates. Separate electorates have barred our progress. Separate electorates have gone for ever. We desire neither reservation nor separate electorates. We want to merge in the nation. We desire to stand on our own legs. We do not want the support of anyone. We are not weak. We are strong. We are Indians first and we are all Indians and will remain Indians. We shall fight for the honour and glory of India and we shall die for it. (*Applause*). We shall stand united. There will be no divisions amongst Indians. United we stand; divided we fall. Therefore we do not want reservation. It means division. I ask the members of the majority community who are present here today:— Will you allow us to stand on our legs? Will you allow us to be a part and partial of the nation? Will you allow us to be an equal partner with you? Will you allow us to march shoulder to shoulder with you? Will you allow us to share your sorrows grief and joy? If you do, then for God's sake keep your hands off reservation for the Muslim community. We do not want any statutory safeguard. As I said before, we must stand on our own legs. If we do that, we will have no inferiority complex. We are not inferior to you in any way, Do not make us feel inferior by giving us this concession. I say emphatically there is no difference between you and me. Because we worship the same God by different names, in a different way, that is no reason why we should be considered a minority. We are not a minority. The term 'minority' is a British creation. The British created minorities. The British have gone and minorities have gone with them. Remove the term 'minority' from your dictionary. (*Hear, Hear*). There is no minority in India. Only so long as there were separate electorates and reservation of seats there was a majority community and a minority community.

I ask the majority community not to distrust the minorities now. The minorities have adjusted themselves. I will give you a concrete example. You remember the Hyderabad incident; you remember that before you took police action against Hyderabad, what happened. The majority community were afraid that there would be rioting of the Muslims if action was taken against Hyderabad. I was first man to speak about it about a year and half ago in the Central Legislature. I criticised the Government of India. I am sorry Sardar Patel was not present at that time when I was dealing with his portfolio, but my honourable Friend Mr. Gadgil was in charge. I criticised the action of the Government; I told them that they were absolutely mistaken in thinking

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that the Muslims would rise; they would adjust themselves. I said to them: "You march an army against Hyderabad and within a couple of days, you would take the whole of Hyderabad." I made a long speech and after my speech was over, there was a reply by the Honourable Minister in charge, Mr. Gadgil. He never spoke a single word about it and he never replied to my criticism, but I asked him: "You have replied to everybody's criticism. Why not mine? I asked you to march an army against Hyderabad; you would take Hyderabad within a couple of days and there would be no rioting." Mr. Gadgil said: "You are perfectly right and we will do it."

I appeal to all minorities to join the majority in creating a secular State. In the new state of things, I want that every citizen in India should be able to rise to the fullest stature and that is why I say that reservation would be suicidal to the minority. I want the minorities to forget that they are minorities in politics. If they think they are minorities in politics, they will be isolated. If they are isolated, the feeling of frustration will cripple them. I do not want to remain a minority. Do the minorities, I ask, expect to form part of the great nation and have a hand in the control of its destinies. Can they achieve that aspiration if they are isolated from the rest of India? The minorities if they are returned as minorities, *i.e.*, by reservation of seats can never have an effective voice in the affairs of the country. They can never form a Government. Disraeli could never have formed a Government and could never have become the Prime Minister of England had there been reservation of seats for the Jews in England. I want the minorities to have an honourable place in the Union of India. National interests must always be placed over group interests. The minorities should look forward to the time when they could take their place not under communal or racial labels, but as part and parcel of the whole Indian community.

Now, Sir, with your permission, I want to say a few words with regard to the speeches made against the motion of Sardar Patel. I take first Mr. Muhammad Ismail of Madras. He wants separate electorate. I appeal to him not to ask for charity. Asking for separate electorates is nothing but asking for charity. I tell him that the consequences will be terrible. The majority community will never trust you then. You will never be able to exert yourself. You will be isolated, you will be treated as an alien and your position will be the same as that of the Scheduled Caste. You are not poor like the Scheduled Castes, you are not weak, you are not uneducated; you are not uncultured; you can always support yourself. You have produced brilliant men. So do not ask for protection or safeguard. You must have self-confidence in you. You must exert yourself you must get into the Assembly by open competition. The times have changed. Adjust yourself. You admitted yesterday in your speech that the atmosphere is better now. I entirely agree with you that the atmosphere is better now. I appeal to you, do not spoil that atmosphere. Improve it, but do not spoil it and if you insist on separate electorate, you will spoil atmosphere very badly. If you get separate electorates, it will again become as bad as before. Say to yourself, Mr. Ismail, that you are an Indian first and an Indian last. Then you will forget all about separate electorates. You will never think of it again.

I will tell you, Sir, that when I had sent in my amendment to clause 292 that it should be deleted, that there should be no reservation of seats, then several Muslim friends of mine, who were for reservation of seats asked me. "Do you realize that the mentality of the Hindus is such at present that if there were no reservation of seats for the Muslims, the Muslims can never succeed?" That honourable gentleman for whom I have got great esteem told me: "Look at us. We have always been with the Congress; we have been to jail and all

that. No doubt we will get a ticket from the Congress; many Muslims will get tickets from Socialists and Communists and from other organisations, but what about the electorates? They will never elect you and they will never elect us. So, if there is no reservation, no Muslims will get in because of the mentality of the Hindus." I told him, Sir, what I am telling you now. I said that I entirely agreed with him that the mentality of the Hindus is such at present. I say to Mr. Ismail also that as long as there is reservation of seats or separate electorate the mentality of the Hindus will never change. You do away with these two things and the mentality will automatically change. I do not want to go into the history of this mentality. I am not going to apportion blame as that will take a long time and you have allotted me a short time and I want to be brief and finish my speech within that time. You all know how the mentality of the Hindus became such, but we have to live in this country, we must change their mentality and it is our duty to change their mentality and the only way the mentality can be changed is to become a part and parcel of the Indian Union. You should say that they are no longer our enemies and then they will be like brothers to us.

Now, Sir, with regard to Mr. Lari, he does not want separate electorates; he does not want reservation of seats; he has condemned both the systems and he says that both the systems are dangerous. He has said that, and I entirely agree with him. He has always opposed separate electorates, reservation of seats and the partition of the country. He is right. But he wants cumulative voting, that is, proportional representation by means of a single transferable vote, or something like that. My honourable Friend, Mr. Saksena has told us that it is a very cumbrous system of mathematical calculations; I am not dealing with that now. The only thing I want to say is that Mr. Lari wants to get into the Assembly by the back door. For example suppose there is a constituency that has to elect four candidates for the House of the People, and there are five candidates. One will be defeated and four will be elected. Out of these five, four are Hindus and one is a Muslim. The votes of the Hindus will be divided among the Hindus and there will get elected. The Muslim will get in on the Muslim votes. Again separate electorates, again reservation of seats. I should like to say to my honourable Friend Mr. Lari if I may say so, that this is worse than separate electorate, as the method is not clean. It is not straightforward. I quite understand Mr. Mohamed Ismail's view when he asks for separate electorates. That is a straightforward method. What is this back-door method of Mr. Lari. I do not understand. I am sure the Muslims do not like these crooked methods; they want a straight, honourable fight. In spite of the fact that Mr. Lari has always openly opposed Pakistan, separate electorates and reservation of seats he still feels inferiority complex. I would ask him to shed this inferiority complex. The country will change for the better.

Last of all, I come to the speech of my honourable and esteemed friend, for whom I have very great regard, Sir Saadulla, the Ex-Premier of Assam. He complains before us that the majority of the Muslim members of the Advisory Committee on Minorities Fundamental Rights etc., did not support the resolution that there should be no reservation of seats for the Muslims. I have already told you, Sir, that I have very great esteem and regard for the Ex-premier of Assam, but I am afraid I must differ from him on this point. I sent my resolution to the Committee to the effect that there should be no reservation of seats. My resolution was discussed under the Chairmanship of the Honourable Sardar Patel. I spoke on my resolution. Begum Aizaz Rasul supported me. Maulana Azad was present there; he did not oppose me. The only person who opposed me was my honourable friend Jafar Imam, from Bihar. There too, I had a majority: Begum Aizaz Rasul. Maulana Azad and myself as against one. The meeting could not be finished and was adjourned

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sine die. Then it was held on the 11th of this month. I wanted to attend that meeting, particularly because my resolution was there. I wanted to move it again. But I never received notice of the meeting. The notice was lying in Delhi; it never reached me. If I had got notice of the meeting, I would have attended it. When I came to Delhi, I learnt that there was the meeting that day. I was happy to learn that the substance of my resolution had been accepted though I was absent. I sent a statement to the Press why I could not attend the meeting that day and it was published in all the papers. Sir Saadulla could not attend the meeting; I do not know why. That meeting was attended by four honourable members: Maulana Azad, Maulana Hifizur Rahman, Begum Aizaz Rasul and Mr. Jaffar Imam. Maulana Azad and Maulana Hifizur Rahman did not oppose my resolution that there should be no reservation of seats. Every member of this House does not speak. If he opposes, he opposes. If he does not speak, but says "I vote for it", then he is with it. Maulana Azad was present. If he wanted to oppose, he would have opposed. The two Maulanas did not oppose Begum Aizaz Rasul supported my resolution in substance. The resolution was moved by my honourable Friend Dr. Mookherjee. It was the same as my own. Begum Aizaz Rasul supported it. My honourable Friend Mr. Jaffar Imam opposed it. If the Maulanas were not with my resolution, they would have sided with Jafar Imam. They said nothing. Votes were taken. There was a clear majority. The Honourable Sardar Patel, I understand, declared that the Muslims were in favour of the motion in spite of the two Maulanas remaining silent. It means that they were with me: three to one voting: there was a majority.

I believe,—I do not remember exactly—there are seven Muslim members on the Committee. Only two are opposed to my resolution; five are with me. The two who are against me are my Hon'ble friends Sir Saadulla and Mr. Jafar Imam. The five who are in favour are, Maulana Azad, Maulana Hifizur Rahman, Begum Aizaz Rasul, Mr. Husseinboy Laljee and myself. Mr. Laljee's views are well known. He opposed Mr. Jinnah. I know his views. In fact, he wrote to me once, "For God's sake do something to remove reservations." Therefore, I had an overwhelming majority. There was another member Syed Ali Zaheer. He is now an Ambassador; I know his views. He is also of the same view as I am.

The next point of my esteemed Friend Sir Saadulla is this. He says, 'let us take the vote of the Muslim Members here.' That is a challenge thrown to us. I accept the challenge. I may remind my honourable Friend Sir Saadulla that when the Muslim members came here to Delhi for the first time there was a meeting of all the Muslim members in Western Court. All of them were present. I was the first man to have got up and said that there should be no reservation of seats. I sent my resolution to the Constituent Assembly when you, Sir, were presiding. I regret to say, except one, not a single member supported me. I found that the Muslims wanted reservation. So, I did not move my resolution. That was the first meeting in which the Muslims were against me. The next meeting was in the house of Nawab Muhammad Ismail, about which he also has told you, in 18, Windsor Place. There my view was accepted by an overwhelming majority. The same Muslim members who were present in the Western Court were present here also, and it was passed by an overwhelming majority that there should be no reservation of seats. See how the time had changed. The only member who opposed it was my honourable Friend Sir Saadulla. He is honestly of that opinion; I respect his view. I hope he will respect my view. He said, 'no there must be reservation of seats'. But, one thing he said: 'personally I am not in favour of reservation, but the Muslims want it'. Most humbly I wish to tell him that he is wrong. The Muslims do not want it. Sir Saadulla was the only opposing member. Then there was the Madras group.

They are a group by themselves, Sir, I understand their opinion. They have throughout been saying, "No reservation, but separate electorates; let us have separate electorates." At the Western Court, they said, "let us have separate electorate;" at Nawab Ismail Sahib's place also they asked for separate electorates and here also they ask for separate electorates. They are welcome to their opinion. But that there should be no reservation was passed by an overwhelming majority. All of us were present. And after that I sent in my amendment saying that the whole section be deleted or that there should be no reservation for Muslims.

Mr. President : Time is up.

Mr. Tajamul Husain : I will finish soon. My resolution was for pure and simple joint electorates. Sir Saadulla is of the opinion that, though he personally does not want it, the people want separate electorates. I am assure him that he is not correct. The people do not want it.

Mr. President : The Honourable Member will please look at the clock. He has taken much time.

Mr. Tajamul Husain : I have to say all this because the challenge has been thrown. I will finish in a minute. I have here a list of all the members. Briefly it shows that there are 31 members from the Provinces and 2 from the States, making a total of 33 Muslims. Out of these, 4 are from Madras and I must say that many of the members are permanently absent. As they have migrated to Pakistan, especially all the members from the Punjab, they have gone, and out of the 5 from Bengal 3 have migrated. Now, coming to the list, 4 from Madras are for separate electorates. There are only 23 members on the roll of the Constituent Assembly. As I said, 4 are of separate electorates, 4 for reservation of seats,— 2 from Bihar and 2 from Assam, 1 for cumulative votes, and the view of one member is not known *i.e.*, of Mr. Husain Imam. I had discussions with him, but I do not know his views. So we find that out of the 23 members on the roll of the constituent Assembly, 4 are for separate electorates, 4 for reservation of seats 1 for cumulative voting, 1 unknown and 13 entirely for joint electorate, with no reservation of seats. If you add those who are not with me, they will come to only 10 and we are 13, and if I add Mr. Lari who too is not for reservation of seats or separate electorates, our number would be 14. Actually today there are 15 members present. And of them, 4 are for reservation of seats, 3 for separate electorates and the rest 8 are with me. Even then I have a majority.

Sir, I am finishing now. I only want to add this, I would ask the majority community, not to thrust reservation on the Muslims. If you honestly and sincerely believe that it is a wrong thing, for god's sake, do not give us reservation. You knew that separate electorate was a wrong thing for the Muslims and for India, and you never consulted the Muslims. Sir Saadulla did not raise the objection that the Muslims were not consulted, and he accepted it, and why? Because honestly it was believed to be a bad thing for the country. We now say, "do not make us a minority community. Make us your equal partners, then there will be no majority or minority communities in India."

Now, finally I may be permitted to say one thing and that is a very serious thing which I have not spoken yet on the floor of this House. But I feel there are some people strongly and vehemently opposed to me, and therefore I must give a warning. As you know, Sir, among Muslims there are two sections, call them sub-communities if you like, they are Shias and Sunnis. Out of the 31 members from the Provinces, I have the honour to be the sole Shia in this House. Out of the 2 members from the States, it is fifty, fifty, as one comes from one State and he is Shia and the other is a Sunni. And I would like to tell you

[Mr. Tajamul Husain]

that throughout the Shias have been opposing separate electorates, and have been opposing reservation of seats. They have always been nationalists. I was president of the Bihar Provincial Shia Conference for ten years, and throughout we have consistently said that we want joint electorate, pure and simple. Recently on 31st December 1948, there was the All India Shia Conference, the 35th session in Muzaffarnagar in U.P. which was presided over by Sir Sultan Ahmed, whom everybody knows. And the resolution was unanimously passed there that there should be no separate electorates and no reservation of seats. I went from her to attend the conference, and I will read out just a portion from the Presidential Address :—

“The Draft Constitution provides that Reservation of Seats for Minorities will continue for ten years from now, by way of allowing handicap. It has been conceded in a kindly spirit of tolerance and fellow feeling and according to current principles of safeguarding the rights of minorities. From this point of view is it perfectly intelligible. But to my mind it appears that the disease of separation is thereby suffered to be prolonged and the germ will continue to be at work for these ten years, with all its after-effects, however mildly it may operate. This reservation in a sense is a measure of dealing softly with a long standing prejudice and curing a trouble as imperceptibly as possible and avoid creating any impression of lack of sympathy on the part of the majority legislators. Could we however not take courage in both hands and abolish even separation of seats along with its greater evil the separation of electorates? Let no separation linger in any form, however innocent. Let us grow into a full bloom of trustfulness and oneness, allowing no speak of, no suggestion whatever of separatism leaving no visible trace of the ways of alienation that made us unfriendly and uncompromising in the past. We should wake up once for all in the glowing dawn of a great living and the historic atmosphere of a new freedom and fellowship may well be expected to give us the boldness to accept a complete code of co-operative life.

There is another ground why this speck of separatism should not be perpetuated. Other minorities will also be encouraged to demand it. Minority within a minority must be logically entitled to it and thus, far from adding and aiding unity, it will only serve to promote separatism and create sectional strife, leading to untold religious, social and political complications. Reservation carries with it as a corollary the maintenance of a communal political organisation and this must be avoided at all costs.”

Mr. President : That will do please.

Mr. Tajamul Husain : Only one minute more. I have to say something very important.

Mr. President : No.

Shri L. S. Bhatkar (C.P. & Berar: General): *[Mr. President, Sir, on this auspicious occasion I too want to place my views before this Assembly. I wholly accept and welcome the proposal moved in this House by the Honourable Sardar Vallabhabhai Patel yesterday in the form of a report. India is very fortunate in having respectable and dignified leaders like Sardar Patel. They have fully solved to their credit the great problems with which the country was confronted. Some days back everyone would have taken it as an impossibility that the method of communal and general representation would end in India.

Sardar Patel has, however, removed this impossibility and actually brought about the abolition of communal representation and for this all Indians ought to be extremely grateful to him.

This Constituent Assembly has declared time and again that India is a secular State. If in spite of this high ideal the communal representation had continued in the country the Constituent Assembly would not have been able

*[] Translation of Hindustani speech.

to fulfil its objective. This Constituent Assembly could not have absolved itself of this blame. It is only because of the confidence of Indians enjoyed by Sardar Patel that communal representation has been eradicated from the Constitution and seats have been reserved for ten years for the Scheduled Castes only.

I have no hesitation in saying that if we had removed even this provision from the Constitution, it would have been for the better. But because the Scheduled Castes are poor, uneducated and suffer because of their status in society and because of the prevailing social customs, it would have been unjust not to provide for them some special facility in the Constitution. It has been done because they are not capable of uplifting themselves. I hope that during the coming ten years the Scheduled Castes would be able to make progress with the co-operation of everyone amongst us and then it would be unnecessary to continue the special facilities we have granted them today. But the co-operation of other people is necessary to achieve this object. This proposal of Sardar Patel turns our thoughts to Mahatma Gandhi. The scheme envisaged in this proposal is in fact based upon the Poona Pact evolved by Mahatma Gandhi.

I know that we have very little time today and therefore I do not want to prolong my speech. I wanted to express my views about many things, but I would now say only this much that even now in no province the Scheduled Castes are receiving as much help as the Government of India wants to give them. It is necessary to make arrangements for their free education, for giving the financial aid for education and for providing government service to those who are educated among them. There are at present difficulties in making these arrangements and no heed is paid to them. This creates discontent among the people which in the long run takes a political form to the detriment of the country as a whole. But I am confident that Sardar Patel will soon remove these difficulties also.

In conclusion, I once more thank Sardar Patel and extend my full support to his motion.]

Mr. President : As will be seen by honourable Members I am allowing time to the speakers of minority communities to have their say.

Shri Mahavir Tyagi (United Provinces: General): Sir, what about those persons who have differences with the proposal? They must also have their chance.

Mr. President : I have given chances also to those who wanted to speak against the resolution.

Sardar Sochet Singh (Patiala & East Punjab States Union): Sir, I take this opportunity to extend unqualified support to the motion moved by the Honourable Sardar Vallabhbhai Patel. The inclusion of backward sections among the Sikhs in the category of scheduled classes for all political purposes is a happy decision over which the Minorities Advisory Committee deserves to be congratulated. It is a matter for regret that the Sikh society could not altogether succeed in eradicating class and sectional distinctions which it was meant to wipe out. The deep-rooted and age-long class consciousness prevailing among the sister communities had a great deal to do with the existence and prevalence of this unhappy state of affairs among the Sikhs, but taking things as they are, the Advisory Committee could not do better than to recommend and this House to accept the extension of the same rights and privileges to members of the scheduled classes regardless of whether they profess this religion or that. The recommendation is doubly welcome on account of the removal of discrimination which should not have been allowed to continue particularly on the basis of religion. I maintain that the Advisory Committee could not do otherwise, if

[Sardar Sochet Singh]

as advance consistent with the establishment of a secular State had to be made. The Sikhs are not alien to the conception and experience of a secular State. The State of Maharaja Ranjit Singh, though not a democracy, was secular in concept and practice inasmuch as a large proportion of his ministers and high government functionaries were Hindus and Muslims. The court language too was Persian. Paradoxically enough, the Sikh Raj was not a theocratic Raj and reflected hundred per cent. secularity and cosmopolitanism of the times. The Sikhs are essentially a democratic people and will always feel more at home in a genuinely secular atmosphere.

I am happy that the undemocratic demands regarding special safeguards, reservations, weightages and protection have not been taken into account. The Sikhs are an enterprising, energetic and hard-working people who do not dread competition in the open market whether it is in a spheres political, economic or administrative. We can rub shoulders with our countrymen in every walk of life. We do not want to move, in tin shoes and breathe in heated or air conditioned chambers. We who have, by sheer dint of national deeds and services, earned the title of protectors of Indian culture, civilisation and social order against the tyranny of alien rulers of the times should not feel very happy at the prospect of placing ourselves in the position of soliciting protection. Apart from the point of self-respect and prestige which matter a very great deal where Sikhs are concerned, I venture to ask, against whom do we seek protection? Protection against our countrymen who have been our comrades-in-arms in the country's battle against foreign rule? Protection against democracy for which our faith has struggle and fought for centuries? Protection against Hindus for whose sake Guru Teg Bahadur willingly and cheerfully laid down his life in this very capital of India? The Sikh religion and society have fulfilled an important historical role in this country and are sure not only to hold their own but to serve the essential purpose for which these were created by the Gurus in all difficult times which the country may have to face in future. I do not agree with those of my co-religionists who think and feel that after the attainment of independence by our country, the Sikhs have outlived their usefulness and have now to be lodged and preserved in the sanctuary of safeguards, protection, reservation and weightages. I spurn that idea. The undemocratic and outmoded devices which were struck upon by the Britisher to prolong and stabilise his hold on the country should be courageously smashed and buried. Communal outlook and representation are the least suitable for minorities as they are calculated to perpetuate their unfavourable position in relation to the majority. Our religion is not vulnerable in any respect, and it is lack of appreciation and comprehension of its basic virtues and merits to suggest that it is in danger in it is in native land and atmosphere: As long as faith in one God, liberty, equality and brotherhood of man, courage to oppose tyranny and aggression against the poor and down-trodden, and the upholding of moral law at the risk of life are needed in this world, the Sikhs with their ideals of service and self-sacrifice and faith will have an honourable and honoured place in the scheme of human affairs. What the Sikhs wanted was social justice and proper understanding of their legitimate aspirations which happily they have received abundantly at the hands of the architects of India's destiny—I mean the Honourable Pandit Jawaharlal Nehru and the Honourable Sardar Vallabhbhai Patel. It is the statesmanship and large-hearted sympathies of these noble souls which have made it possible for the Sikhs to shed their isolationist and communalistic tendencies and enjoy an equal partnership with other communities in the prosperity of the country. The constitution of the country makes full provision for the equality of treatment that the Sikhs seek and they would therefore be prepared and determined to cast their lot

with their countrymen Hindus, Muslims, Christians, Parsees and others. They have got a fair field and no favour that they sought. The question of language and linguistic provinces and re-settlement of refugees will, I believe receive due consideration in the appropriate forums and the competitive system of recruitment to services will give us equal opportunity with our countrymen to attain the attainable on merit and fitness.

The Sikhs must feel rightly proud and happy that the Indian National Congress have been drawing freely upon the history and methods of the Gurus in its struggle against the British Raj. Under the inspiration, superior wisdom and guidance of the Father of the Nation, the Congress religiously observed and followed the principle and practice of non-violence taught and practised by the Sikh Gurus from the first to the ninth, and in the recent past employed the alternative method of "Police action in Hyderabad" and "resistance to aggression in Kashmir" on the lines indicated and pursued by Guru Gobind Singh who enunciated dictum.

meaning thereby that when all peaceful means fail it is legitimate to unsheath the sword. I am sure, with the establishment of more harmonious relationship among the faiths and communities in the new set-up of our country, there will be more and more opportunities to think alike and work together in the service of the country and its people. With these words, I commend the motion for the acceptance of the House.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I have come forward today to give my entire support to the motion of Sardar Patel. I am really glad to do so, because recently I have had occasions to differ from him, though very reluctantly.

Sir, I opposed the principle of reservation of seats at a time when the Congress Party was in its favour. At that time the excuse put forward by the Congress Party was this, "We do not like this method of reservation of seats, but we have to show some concessions to the Muslims, and, therefore, we want to retain it for at least ten years." Even then I said—I am reading from the Official Report of the proceedings of the 4th January 1949, "We refuse to accept any concession. In case the majority party, or the Congress Party, accepts reservation of seats, its claim of creating a secular State and of putting an end to communalism would be falsified."

Now, while giving my entire support to this motion, I come to the amendments proposed by some of my Madras friends. My opposition is based on the fact that they want to revive the Muslim League. The Muslim League is no more. Mr. Mohammad Ismail is proclaiming the existence of the All-India Muslim League. I ask, "Where is that Muslim League?" Let us once and for all decide that we will not have any communal parties among us. If we are to establish a true democratic State, then there is no room for any religious or communal parties. As everybody knows, democracy means majority rule and therefore it follows that minorities will have to submit to the decisions of the majority. Now, sir, what is the reason for minorities submitting themselves to the decisions of the majority? They do so on the supposition that it would be possible for them at some future date, with the change of public

[Maulana Hasrat Mohani]

opinion in their favour they may occupy the seat of Government and in that case the erstwhile majority will become a minority and the minority will become the majority. So this democratic system can work only with political parties. If we have only communal parties or parties based on religion, the whole object of democracy will remain unfulfilled. If we have Muslim Parties, Christian Parties and Sikh Parties, then what will be the result? How can they expect to become the majority party under a democratic system of Government? When they cannot become the majority party, it is hopelessly absurd to allow the formation of parties on communal or religious basis. Therefore it is no use on the part of my friends from Madras or the Sikhs, Christians or Parsis to form communal parties. Under democratic Government they must form political parties. My advice to my Muslim friends has always been to discard communalism once for all. When there is no reservation of seats, they will be compelled either to form a distinct political party and work in coalition with other political parties or be annihilated. They will have no place in public life. I submit that the Muslims should form a distinct political party called the Independent or the Independent Socialist party. I would prefer to call it the Azadi party allied to the party organised by my Friend Shri Sarat Chandra Bose. They can form a coalition party with that left-wing party. In that case only my Muslim friends can expect to take part in democratic Government. Even if the Nationalist party is in the majority it will be possible for this coalition party to become the majority at some future date. In that case, the Congress or the Nationalist Party will become the minority. Unless and until we do that, there is no hope for any minority which does not want coalition with left-wing parties. No single party, socialist or communist or other if it wants to oppose and come forward and contest elections against the Nationalist Party, can succeed. We have the example of the Socialist Party's defeat in the United Provinces. Therefore it is necessary for political parties other than the Nationalist party to form a coalition if they want to become the majority party and run the administration. In that case, if we form political parties there will be the question of safeguarding the interests of political minorities. It is here I have to support my Friend Mr. Lari. His proposal for creating safeguards is not for any Communal Party but for a political party. The political party may be socialist or communist or Forward Bloc. If they do not allow even this concession of proportional representation, even a party like the Socialist Party who got 35 per cent. of votes in the elections in the United Provinces, could not get single seat. My position is quite different from that of Mr. Lari on one point. He seems to suggest that if this concession is granted, if the political parties are allowed proportional representation, he would not have any reservation of seats. If they do not allow even this concession then it seems that he will either change his opposition or become a neutral in this respect. He said so. My position is quite different. I say that even if they do not allow any proportional representation, I do not want reservation of seats for the reason that before long, if there is a coalition among the left-wing parties, the Nationalist party itself will ask for his proportional representation. The Nationalist Party will then cry for proportional representation. In case many of the left-wing parties unite, it will not be possible for the Nationalist Party to beat them at the polls. The coalition left-wing parties will be in a majority, though they may not be in a position to outvote the Nationalist. In that case I say we should not bother about that. But the time is coming when it will not be a coalition of Independent parties, but the Nationalist Party itself will be compelled to come forward and ask for this concession of proportional representation.

I am very much surprised to see Mr. Saadullah, with all his experience as Prime Minister of a Province, saying that the matter should be decided by the

votes of the Muslims in the House. I think that this proposition is ridiculously absurd. We have before the House the proposition of Sardar Patel and the House has got the right to vote on it. In the circumstances I am surprised to see Mr. Saadullah making a suggestion of that kind. I know that some of the Muslim Members of this House are for reservation of seats. I say it does not matter. I do not care if the majority is for or against it. But if we allow this question to be decided by the exclusive votes of the Muslims, then it will be on the face of it ridiculously absurd. It will mean that we are not going to make an end of this communalism. It will mean also that we will have to decide the other questions also by separate vote. This is surely absurd. I do not know how a man of his experience has managed the courage to propose such an absurd thing. With these few words I entirely support the motion of Sardar Patel.

Shri Mahavir Tyagi : Sir, I wish to put on record my appreciation of the proposal which has been made by our great leader, Sardar Vallabhbhai Patel, who is known for his firmness and resolve. After completing his work of political consolidation of India, he is now taking up communal consolidation. I think that the proposal put by him before the House today goes a long way to achieve that objective; but I would like Sardar Patel to throw some light on certain points. With that object I requested you, Sir, to give me a few minutes.

The first thing that I want to say before the House is that I am glad that the Mussalman friends here, practically all of them have supported the motion for the withdrawal of reservation, and for representation to be on unadulterated non-communal lines. It is fortunate, Sir, that they are of this opinion today. There is, however, one thing that the Muslims should note and it is this: When we are switching on to representation from communal to national lines, it cannot be absolutely ideal in the first one or two elections. There might be occasions when Muslims might lose seats because they are giving up their reservations. Let the Muslims know that it will be very difficult for them to get any seat as Muslim under the present conditions of the country. There must be set-backs for them, so long as the rest of India does not feel one with them. They will have to justify by their behaviour that they deserve retaining the seats that they now have. It will take time. In the achievement of this objective, even if the Parliament goes temporarily without any representation of Muslims, I would not be sorry for it, because after the next one or two elections, elections will be fought on the basis of merits and services and not of community. Therefore, when Muslims agree to do away with communal representation or reservation of seats, let them be conscious that they are going to suffer immediately and lose for the time being their representation in all the legislatures. It will not be easy for them to come in such numbers as they have been coming so far. I hope the learned members of that community are fully conscious of this fact when they support this motion.

Another point that I want to emphasise is about the Scheduled Castes. Sir, originally when the scheduled castes were given separate representation, Mahatma Gandhi had started his fast in protest. Now we have it seems, accepted the idea; but when it was first introduced, everybody was shocked. Nobody liked it and when Mahatma Gandhi gave his ultimatum of fast unto death the Prime Minister of England addressed a letter to Gandhiji dated September 8, 1933 in which he said:—

“Under the Government scheme the depressed classed will remain part of the Hindu community and will vote with the Hindu electorate on an equal footing but for the first twenty years, while still remaining electorally part of the Hindu community, they will receive through a limited number of special constituencies the means of safeguarding their rights and interests that, we are convinced, is necessary under present conditions.”

[Shri Mahavir Tyagi]

You will see, Sir, that when the idea of giving separate reservation to the scheduled castes was first introduced, the intention was that it should last only for twenty years. After that period they were expected to become absolutely one with the Hindus. It was in the year 1933 and now it is 1949. So it is only a few years less than twenty. According to the old scheme of the British Government reservation for the Scheduled Castes should go in 1952, why are we now giving it a further lease of ten years? Again, Sir, if we look at the list of Scheduled Castes, there are so many included in it. We have had the experience of separate reservation for Scheduled Castes. Fasts must be faced as they are. The term "Scheduled Castes" is a fiction. Factually there is no such thing as 'Scheduled Castes'. There are some castes who are depressed, some castes who are poor, some who are untouchables, some who are down-trodden. All their names were collected from the various provinces and put into one category "Scheduled Castes". In spite of the category being a fiction it has been there for so many years. Let us look at the way these castes are represented. There are hundreds of castes included in the List, but if you look at their representation in every province you will find that only one or two castes are represented. Those who have got predominance are mostly Chamars, I would say. In the U.P. it is the case. It is the case in the Punjab also. I want to know how the Koris or the Pernas or the Korwas or the Dumnas have benefited by reservation. It is all a fiction, Sir. How is Dr. Ambedkar a member of the Scheduled Castes? Is he illiterate? Is he ill-educated? Is he an untouchable? Is he lacking in anything? He is the finest of the fine intellectuals in India and still he is in the list of scheduled castes. Because he is in the list and because he is a genius, he will perpetually be member and also a Minister, he will always be their representative. Moreover, Sir, he has lately married a Brahmin wife. He is a Brahmin by profession and also because his in-laws are Brahmins. They are others like my Friend, Professor Yashwant Rai. What does he lack? There are thousands of Brahmins and Kshatriyas who are worse off than these friends belonging to the scheduled castes. So by the name of Scheduled Caste, persons who are living a cheerful life, and a selected few of these castes get benefit. This is no real representation. No caste ever gets benefit out of this reservation. It is the individual or the family which gets benefited. So, Sir, while we are doing away with representations and reservations, while we are doing away for good with this caste system, why should we allow it even for ten years? Does not our past experience show that out of the hundred and one scheduled castes only a few get any representation? Then why are so many castes linked with the chariot wheel of the Scheduled Castes? They are simply voters; they do not get any benefit, and even if any member of a caste in India comes up and gets elected how does the Community benefit, I do not understand. I could understand if instead of castes, classes were given reservations. To say that it should be a casteless society, I can understand. Society can be casteless, but society cannot be classless. So long as the country does not decide to make the society classless, classes must exist and therefore, classes must have their representation. Sir, to make the whole nation one party, I am afraid, will not be a practical idea. Minorities must exist and must be provided for. There will be no peace so long as minorities are not provided for. I do not believe in the minorities on community basis, but minorities must exist on economic basis, on political basis and on an ideological basis and those minorities must have protection. In this sort of a wholesale decision, the minorities will get little representation. I would suggest that in the place of the Scheduled Caste, the landless labourers, the cobblers or those persons who do similar jobs and who do not get enough to live, should be given special reservations. By allowing caste representations, let us not re-inject the poisonous virus which the Britisher has introduced into our body politic. I would suggest Sir, that instead of the so called Scheduled Caste, minorities be protected, if you like, on class basis. Let cobblers,

washermen and similar other classes send their representatives through reservations because they are the one who do not really get any representation. As a matter of fact even after passing the motion which Sardar Patel has put before us, I am afraid the tiller of the soil will not as the conditions are get any representation. The villager is nowhere in the picture. It is the urban citizen alone who gets the protection. It is not the toilers of the soil but the soilers of toil who are benefited. Persons who irrigate paper with black ink get the representation and not those who irrigate the land. These literate mediocres create fear and do nothing productive, but these tillers of the soil and producers of wealth are mostly those who are illiterate and therefore they are deprived of their due share of representation. Thus the nation is perpetually mis-represented by men of law, literature and letters. The 'Pen' rules over the 'Plough'. The creators of wealth are those who are without education and those persons will remain as such. They were slaves before and will remain slaves today and even after your passing this Constitution. If you want to help those down-trodden classes, then, Sir, the best thing would be to keep some safeguards for them. We should forge a law which would bring those illiterates into this House. As a matter of fact there is hardly a single Kisan member of the Constituent Assembly of the type of which 80 per cent of Kisans live in India. Unless those very Kisans come here as they are, India will not be properly represented. I therefore, submit, Sir, that the Scheduled Castes should now go and in place of Scheduled Caste, the words "Scheduled classes" be substituted so that we may not inadvertently perpetuate the communal slur on our Parliaments. In fact the Untouchables had only some social disabilities. Now all the Governments have passed enactments removing those social disabilities and among those persons who come here as the representatives, I fear, there is not one who has any social disability about him. The Scheduled Caste man can marry a Brahmin girl and there is no disability. I say, Sir, in the name of Scheduled Castes a few individuals are getting the benefit. Let the House dispassionately consider the situation as it is, take advantage of the experience that we have gained for the last so many years of what the 'Scheduled Castes' have actually meant. And then make up our mind as to whether or not we could substitute this communal representation by giving reservations to classes who would mostly be the same voters but with a better title and a healthier outlook.

An Honourable Member : Is the honourable Member moving his amendments?

Shri Mahavir Tyagi : Sir, I am not moving any amendment, because it is not the time to move one. I will move the amendments when the article comes up for consideration. This is only a general discussion. I will come out with my amendments when the occasion arises. This is not the occasion for amendments Sir, and I want to take two opportunities to discuss this issue. Sri, the method of representation as envisaged in this Draft Constitution is very good, because it does away with the communal virus altogether, but at the same time shall we take into account the fact that if the Muslims were not returned, what will be our position?

Pandit Thakur Das Bhargava (East Punjab: General): Why do you assume so?

Shri Mahavir Tyagi : Because I know; I do not live in the air; I am a man of the people and I know the Hindu mind and also the Muslim mind. Let the nation know it. The Muslims already know that they will not be returned for some time to come, so long as they do not rehabilitate themselves among

[Shri Mahavir Tyagi]

the masses and assure the rest of the people that they are one with them. They have been separate in every matter for a long time past and in a day you can't switch over from Communalism to Nationalism. There is a class of Muslims who always went with power and that class can talk in any manner they like, but for the real Muslims it would take some time to switch their mentality from Communalism to Nationalism. This separation and isolation was of their own earning, they have enjoyed its fruits so long; now they should be ready to face set-backs. So the proposal put forward by Mr. Lari seems to me to warrant our consideration. He suggested that we can have cumulative system of votes in a plural constituency. There is no intricacy about it. As against this, the system of representation by the single transferable vote is extremely intricate. This cumulative vote is a very easy affair. Suppose there is a plural constituency of four seats. I have four votes and a Muslims friend has also four votes. I have the liberty either of distributing these four votes to four persons or give all the four votes to one candidate or three to one and one to another or two to one and two to another. I will either distribute or if I so choose I might give all the four votes to a candidate of my choice; and in that manner the minority can also have some say—not only the Muslim minority but even the socialist and the communist minority.

Suppose there are shopkeepers in an urban constituency and there the consumers decide to send their representative. So if the consumers choose to cast all their four votes to their representative, they can push their candidate up. This is a method which without any communal representation without any consideration of caste or class gives a sense of security to all types of minorities. Yet you still maintain the label—pure nationalism. In this way you can accommodate the minorities of today and the coming minorities of tomorrow. I will suggest that the House might consider whether the cumulative voting system will not do. In that case, we do not need to reserve any seats for any caste and, at the same time, we give them an opportunity to send up their candidates. This has been in practice in many other countries with success too. Therefore, I would commend strongly that this cumulative voting system be considered. Let this also be allowed for ten years. The reservation for the Scheduled Castes may therefore go; the Sikh representation may go; the Muslim representation may also go. We may have representation of all these people without bringing any slur on our Nationalism. This is a most practicable method.

This is all I have to say. Only a word more. I wish to congratulate my honourable friends here, Sikh representatives, Muslim representatives and the Christians representatives, who have readily come forward to accept the withdrawal of reservations. I hope the country will appreciate the great offer, historical offer that they have made. The electorate will always be considerate to the sporting offer that has been made and I am sure the country will feel grateful to the minority who have come forward under the influence of a patriotic spirit to give up their reservations.

With these words, I commend that there should be no reservation of any community or caste and the minorities may be given protection by the cumulative vote.

Col. B. H. Zaidi (Rampur-Banares State): Mr. President, I am grateful indeed for the opportunity you have granted me to make my first speech in this House during the course of this historic debate.

Sir, it has given me very great pleasure, and I know that this pleasure would be shared by every section of the House, that representatives of the minorities, and the representatives of the Muslims also, have given

proof as never before of a sane, sound, balanced, patriotic outlook. It augurs well for the future. I am sorry, Sir, that perhaps, the only exceptions are a few friends from the South. Old traditions take a long time to die out. For nearly forty years, the Muslims were used to the props and crutches provided to them by the British. We came to love these prop and crutches. Many a patient who has lost the use of his legs and is given crutches will stick to them and would like to lean on them even when some good surgeon has given him back the use of his legs. These generally wish to cling to their crutches. Crutches is not the right word; I should say, stilts because, stilts not only support you, but also give you artificial height. If we throw away these stilts, not only do we need to trust to the strength of our legs but also we are reduced in height. We were given some artificial importance in this country. It was an importance which was nothing more than an illusion. We wish to cling to that illusion, to the mere emptiness of it. I hope that in course of time, not in the distant future but in the very near future, even those friends will come to realise that their truest friend and not their ill wisher was a man like the Honourable Sardar Patel, and other leaders who are shaping the destinies of this country.

I will give the reasons. The best thing that the Sardar could do if he was not a friend of the Muslims would be to allow them to cling to their crutches. It would make them cripples for the rest of their lives. It would lead to degeneration and demoralisation out of which there would be no cure. What is he doing? It is not only for India that a right step has been taken—Even for the minorities, the best thing is being done. We are given the use of our legs. We are being taught the lesson of self-reliance. Would any person possessing any self-respect, any pride, any manliness in him, cling to artificial safeguards? Is it not against his grain, does it not go against his self respect to ask for, to plead for, and to cling to, artificial props and safeguards? Are these really safeguards? Do they provide the safety? Do they serve the ends we have in view? After all, what would be the surest guarantee for a happy, prosperous and honourable future for the Muslims of this country? In my humble opinion, only two things will spell their salvation. The first and foremost is self-reliance, strength from within, self-respect, faith in themselves, in their destiny and their creator. The Second is faith and trust in their own brethren, the majority community. If, Sir, we could be given safeguards which would deprive us of that trust and the confidence of the majority community, if something we ask for is conceded by this Parliament, by the leaders, but the bulk of the majority community are given offence by that, if some suspicion lingers in their minds, if they are not pleased, what safeguards can stand us in good stead? What is the use of paper safeguards? The real safeguard is reliance on our own strength and trusting to the goodwill friendliness brotherly feeling, and justice even generosity, of our own brothers, who are really our own kith and kin.

If there is any suspicion in the minds of the members of my community or members of any minority community in our country in the good faith of the Hindus, it can only be based on two things: either the bitter experience of the present generation or the teachings of Indian history. So far as the present generation is concerned, when did any minority in this country leave their future and their interests in the safe keeping of the majority community? We never trusted ourselves, and never trusted our brothers. We trusted only a third party. Therefore, when was the occasion in the history of the last one hundred years when we can in fairness turn back and point to one single example when our interests have been betrayed by the majority in this country? The occasion never arose. There was no question of their

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feeling a responsibility for our future and our interests when we were really neither looking to them, nor looking to our own strength, when we were looking to a foreign power, which in its own interests was dividing us and making cripples of us.

Where the experience of the present century is no guide, we may turn to history. If the Hindus in this country have given proof of narrow mindedness, bigotry, persecution of minorities, then, certainly we shall be justified in entertaining some sort of fear about our future. What does a study of history reveal? So far as I know, there has been no occasion in the history of India when the Hindus have persecuted a minority. They have turned themselves from a minority into a majority on one occasion. When Buddhism was reigning supreme in this country, when the Hindus were in a minority, they gradually saw to it that from a minority they converted themselves into a majority. But as against the Buddhists there were the Jains who were a minority. There were the Syrian Christians, the Parsis, and many others. Indeed, India has given asylum and protection to a number of minorities, and the only example I can think of, the only unhappy episode in the history of India was the fate which Buddhism met in the land of its own birth, but it can hardly be called persecution of a minority. The present generation, I suppose is atoning for that, and we are now going back to Buddhist symbols and in our flag, in our national emblems we are giving a place of honour to something from which we ran away, something which we did not sufficiently honour at that time. So, whether in the light of history or in the light of the immediate experience of the present generation, I feel that the minorities have no grounds to fear that they will not get goodwill, friendliness and fair-mindedness on the part of the majority community.

What is our experience in this House? I am not a frequent comer to this House. But whenever I come, I am particularly struck by one thing—the great toleration, good-humour and friendly encouragement to members of every section of opinion and to the members of the minorities. Even in the minority there is a gentleman who is in a minority of one, ever since I have come here. There is my Friend Maulana Hasrat Mohani who is in a minority by himself. But even in his case I have found this House indulgent and full of friendliness and good-humour. So whether it is in this House or whether it is in the actions of the Congress Party, in the leadership of the country, we see no sign of any thing except breadth of outlook and toleration and broad-based democratic feeling underlying everything. But even if the majority community did not rise to the occasion, the safest thing for the minority community is to ask for no safeguards. I would rather wait till the conscience of the majority community was awakened. The only thing which can safeguard the future is reform of the inner spirit. Sir, this is not the only country in which there is the minority problem. In other countries and at other times there have been minorities and minority interests. Even in England, the treatment of the minority was not always what we might imagine it to be. As a student I had occasion to go to the Action Library one day and in that library, I saw a tablet with some words from Lord Morley, the friend of Action. I came to know from the tablet that Lord Action being a Roman Catholic was denied admission to the Cambridge University simply because he was a Roman Catholic, and later on in life, the same University asked Lord Action to do them the honour of accepting professorship of the same University. Things broaden down in course of time. What brought about the safeguarding of the interests of the Roman Catholics? They were not allowed admission to the universities, nor into the civil services. What were the forces which brought about this liberalisation in the British outlook? Certainly not agitation on the part of the Roman Catholics, not safeguards granted to them, but the conscience of England, the British conscience was pricked and they felt

sorry that they were not giving a square deal to their own Roman Catholic brethren. In recent history, what brought about the abolition of slavery? Was it agitation on the part of the slaves or any safeguards granted to them by anyone? No, it was the awakened conscience of the various countries where slavery was flourishing. Sir, I will leave the future of the minorities to the goodwill and fair-mindedness of the majority community, in which I fully believe. But even if it were not there, I would wait for the blossoming of this toleration and fair-mindedness. I would wait, whatever the cost, for the growing conscience among my own countrymen, for there can be no future for this country except on the basis of true democracy and fair opportunity for all. My Friend Mr. Tajamul Husain said, "Let there be no minority in this country." Well Sir, there is one minority in this country which has always been, and which is existing in every country, and will go on existing, and that is the minority of the good and the just, of the people who are humane and liberal-minded, and who work for the regeneration of mankind and for the progress of humanity. There is that minority today in this country, and to that minority Sardar Patel and the Prime Minister of India, and you Sir, who adorn the Chair, belong, and the Members of this House. I hope. That is the minority which stands for the establishment of unalloyed democracy and justice and a progressive and radical outlook in this country. If the minorities have any fears, let them go and join this glorious and eternal minority of the very best people in our country, who are the salt of the land, and in the hands of these people, not only the destiny of India but the destinies of the minorities are safe. Let us, if we are conscious of our own weakness, and if we are faint-hearted, join this minority and strengthen their hands and our future is assured. (*Cheers*)

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General) : Sir, when I was first appointed Chairman of the Advisory Committee on Minorities, I was really trembling and I took up the jobs with a heavy heart, because I felt the task was immensely difficult, owing to the history of the past so many years of foreign rule. When I took up that job, I had to undertake it at a time when conditions in the country were extremely difficult and all classes of people were full of suspicion; there was hardly any trust amongst many sections of the people. Yet I can say that the moment power was transferred, a gradual transformation began to take place and it gave me considerable encouragement. I began to sense a feeling of gradual growth of trust and mutual confidence.

Now, Sir, the first time when in the Minorities Committee we came to the decisions giving certain political safeguards by way of reservations and when those proposals were put before the House, I had brought them with a very great degree of consent or concurrence of the minority communities. There was a difference of opinion from some progressive nationalist-minded leaders, such as Dr. Mookherjee who from the beginning opposed any kind of reservation or safeguards. I am sure he will be happy today to find that his ambition is being fulfilled.

Well, when I brought those proposals and place them before this House, there was another group of people who had found it difficult to get out of the mire in which they had gone very deep. Here a proposal was brought forward

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by one friend from Madras, for reservation and for communal electorates. Now when the separate communal electorate motion was moved, it was supported by the great Muslim leader, who swore loyalty to the Constitution in this House and immediately after packed off to Karachi. He is now carrying on the work of the Muslim League on that side. He has left a legacy here—a residuary legacy perhaps in Madras. Unfortunately, there is still a very large amount of funds belonging to the old Muslim League, which was the All-India Muslim League, which has yet to be settled, and some of our friends still claim that they might get some big chunk of those funds if they still persist in continuing the old League here. Even if the money, or a good portion of it, could be brought here, I doubt if it would do any good to those who get it. Those who claim that in this country there are two nations and that there is nothing common between the two, and “that we must have our homeland where we can breathe freely”, let them do so. I do not blame them. But those who still have that idea that they have worked of it, that they have got it and therefore they should follow the same path here, to them I respectfully appeal to go and enjoy the fruits of that freedom and to leave us in peace. There is no place here for those who claim separate representation. Separate representation, when it was introduced in this unfortunate country, was introduced not by the demand of those who claim to have made those demands, but as Maulana Muhammad Ali once said, it was a “command performance” that has fulfilled its task and we have all enjoyed the fruits of it. Let us now for the first time have a change of chapter in the history of this country and have a “consent performance”. I want the consent of this House and the consent of all the minorities to change the course of history. You have the privilege and the honour to do it. The future generation will record in golden letters the performance that you are doing today I hope the trust that the step that we are taking today is the step which will change the face, the history and the character of our country.

We have the first amendment—the main amendment which was then rejected in the August Session of 1947—moved by the same group. I do not know whether there has been any change in their attitude to bring forward such an amendment even now after all this long reflection and experience of what has happened in this country. But I know this that they have got a mandate from the Muslim League to move this amendment. I feel sorry for them. This is not a place today for acting on mandates. This is a place today to act on your conscience and to act of the good of the country. For a community to think that its interests are different from that of the country in which it lives, is a great mistake. Assuming that we agreed today to the reservation of seats, I would consider myself to be the greatest enemy of the Muslim community, because of the consequences of that step in a secular and democratic State. Assume that you have separate electorates on a communal basis. Will you ever find a place in any of the Ministers in the Provinces or in the Centre? You have a separate interest. Here is a Ministry or a Government based on joint responsibility, where people who do not trust us, or who do not trust the majority cannot obviously come into the Government itself. Accordingly, you will have no share in the Government. You will exclude yourselves and remain perpetually in a minority. Then, what advantage will you gain? You perhaps still think that there will be some third power who will use its influence to put the minority against the majority and compel the majority to take one or two Ministers according to the proportion of the population. It is a wrong idea. That conception in your mind which has worked for many years must be washed off altogether. Here we are a free

country: here we are a sovereign State: here we are a sovereign Assemble: here we are moulding our future according to our own free will. Therefore, please forget the past: try to forget it. If it is impossible, then the best place is where your thoughts and ideas suit you. I do not want to harm the poor common masses of Muslim who have suffered much, and whatever may be your claim or credit for having a separate State and a separate homeland—God bless you for what you have got—please do not forget what the Muslims have suffered—the poor Muslims. Leave them in peace to enjoy the fruits of their hard labour and sweat.

I remember that the gentleman who moved the motion here last time, in August 1947, when asking for separate electorates, I believe, said that the Muslims today were a very strong, well-knit and well-organised minority. Very good. A minority that could force the partition of the country is not a minority at all. Why do you think that you are a minority? If you are a strong, well-knit and well-organised minority, why do you want to claim safeguards, why do you want to claim privileges? It was all right when there was a third party: but that is all over. That dream is a mad dream and it should be forgotten altogether. Never think about that, do not imagine that anybody will come here to hold the scales and manipulate them continuously. All that is gone. So the future of a minority, any minority, is to trust the majority. If the majority misbehaves, it will suffer. It will be a misfortune, to this country if the majority does not realise its own responsibility. If I were a member of a minority community, I would forget that I belong to a minority community. Why should not a member of any community be the Prime Minister of this country? Why should not Mr. Nagappa who today challenges the Brahmin be so? I am glad to hear that the ownership of 20 acres of land does not entitle him to be a scheduled caste man. "That is my privilege" he said "because I am born a scheduled caste man. You have first to be born in the scheduled caste". It gladdened my heart immensely that that young man had the courage to come before the House and claim the privilege of being born in the Scheduled Caste. It is not a dishonour: he has an honourable place in this country. I want every scheduled caste man to feel that he is superior to a Brahmin or rather, let us say, I want every scheduled caste man and the Brahmin to forget that he is a scheduled caste man or a Brahmin respectively and that they are all equal and the same.

Now our Friend Mr. Saadulla from Assam claimed that he was not disclosing a secret when he said that they has met in December or in February to consider the question whether reservation were in the interests of a minority or not or whether they were in the interests of the Muslims or not. Now may I ask him: Did I suggest to him to consider the question? Why did they meet to consider the question, of there was not the imperceptible influence of the elimination of foreign rule in this land? How did they begin to think that reservations may or may not be better for them? Spontaneously the thought has been growing, it has been coming on the minds of people who previously were asking for the partition of the country. That is the first fruit of freedom. You have got a free mind to think now and therefore you begin to feel that what you have done in the past may perhaps not be right. And that fact was represented before the Minorities Committee. When Dr. Mookherjee moved his motion, it was Mr. Tajamul Husain from Bihar who stood up and moved an amendment that reservations must go. He was challenged in the Committee whether he had consulted the other members of the Muslim community, and he quoted chapter and verse from the representatives of the provinces whom he had consulted. Yet we did not want a snap vote. I said that I would advise the Advisory Committee to hold over the question and ask all members of the minority communities to consult their constituencies and find out what they really wanted. Nearly four months after that we me and unfortunately Mr. Saadulla was not present or he did not appear and so the opinions that he

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had gathered remained with him. He did not even communicate them to us. He said that there were only an attendance of four there of whom (I do not know whether he has consulted Maulana Azad or not) he says that Maulana Azad remained neutral. He claims to know Maulana Azad's mind more than I can do. But I can tell him that Maulana Azad is not a cipher: he has a conscience. If he felt that it was against the interests of his community he would have immediately said so and protested. But he did not do so, because he knew and felt that what was being done was right. Therefore if Mr. Saadulla interprets his silence as neutrality he is much mistaken, because Maulana Azad is a man who has stood up against the whole community all throughout his life and even in crises. He has not changed his clothes and I am sure if he has claimed or worked for partition and if he had ever believed that this is a country of two nations, after the Partition he would not have remained here: because he could not stay here if he believed that his nation was separate.

But there are some people who worked for separation, who claimed all throughout their lives that the two nations are different and yet claim to represent here the remaining "nation". I am surprised that Mr. Saadulla claims to represent the vast masses of Muslims in this country now. How can he? I am amazed that he makes the claim. On the other hand, I represent the Muslims better than he ever can. He can never do that by the methods that he has followed all his life. He must change them. He says that he is not enamoured of reservations: Assam does not want it. Then who wants it? Is it the Muslim of India? Is that the way that this House is to decide this question? He says that if in this House the votes of the minority or the Muslims are against his proposal then he will accept the verdict. Well, he has seen the opinion of the Muslims in this House. Then let him change his opinion.

We are playing with very high stakes and we are changing the course of history. It is a very heavy responsibility that is on us and therefore I appeal to every one of you to think before you vote, to search your conscience and to think what is going to happen in the future of this country. The future shape of this country as a free country is different from the future that was contemplated by those who worked for partition. Therefore I would ask those who have worked for that to note that the times have changed, the circumstances have changed and the world has changed and that therefore they must change if they want salvation. Now I need not waste any time on the question of separate electorates.

Our Friend Mr. Lari has put in another amendment. He says that the Committee's approach was right. I am glad he admits that. There is no point in a committee meeting with a wrong approach. The Committee left the question to the minority. We did not take the initiative. When I first drafted the proposals for reservation of seats for the minorities I tried to take the largest majority opinion of the minorities on the Committee with me. I did not want to disturb the susceptibilities of the minorities. My attempt as representative of this House has continuously been to see that the minority feels at ease. Even if today any concession is made it is with the sole object of easing the suspicions of even the smallest group in this House, because I think that a discontented minority is a burden and a danger and that we must not do anything to injure the feelings of any minority so long as it is not unreasonable. But when Mr. Lari says that we must introduce the system of proportional representation. I must tell him that it is not anything new. Its origin was in Ireland and it is now in vogue in Switzerland and some other countries.

I may point out to Mr. Lari that Ireland is not equal to one district of the United Provinces. Gorakhpur district alone is bigger than Ireland. Ours is a vast country with masses of people. We have introduced adult franchise here where there is so much illiteracy. Therefore even this simple system of direct vote is frightening. That being so, it is not easy to introduce complications of this nature. In this Constitution to introduce such complications is very dangerous. Therefore, if he is satisfied that reservation is bad then let him not try to bring it back by the backdoor. Leave it as it is. Trust us and see what happens. A month ago at the election to the Ahmedabad municipality I noticed that all the Muslims contested jointly under the system of joint electorates and, although they were opposed by people financed by the League, everyone of them got in and the Scheduled Castes got one more seat than their quota. Free and unfettered election has proved that any kind of impediment by way of reservation or other things is bad for us. If we leave the thing to be settled by the majority and the minority among themselves they will do so and it will bring credit to all. Why are you afraid? Yesterday you were saying, you are a big minority well organised. Why are you afraid? Make friends with others and create a change in the atmosphere. You will then get more than your quota, if you really feel for the country in the same manner as the other people. Now I do not think so far as the Muslim case is concerned, there is any other point remaining to be answered. Most of the able representatives of the Muslim community here have exposed the claims made by the other representatives. I need not therefore say more about this.

Now the other case is that of the Sikhs. I have always held the Sikh community with considerable respect, regard and admiration. I have been their friend even though sometimes they disclaimed me. On this occasion also I did advise them that if they insisted I will give it to them and induce the Committee to agree. But I do feel that this is not in their interests. It is for them to decide. I leave it to them to ask for this concession for the Scheduled Caste Sikhs does not reflect credit on the Sikh community. They quoted Ranjit Singh who gave such help to the Scheduled Castes. What empire did they hold, the Scheduled Castes? They have been the most down-trodden people, absolute dust with the dust. What is their position today in spite of all our tall talk? A few people may be bold and courageous. But 10,000 of them in three days were converted into Christians. Go to Bidar and see? Why, is it a change of religion? No, they were afraid that for their past association with the Razakars in their crimes they will be arrested. They have committed some offenses. They thought that they have the big Missions to protect them from arrest. This time conversions took place among the Scheduled Castes. But, apart from conversions, I ask you, have you ever gone and stayed for an hour in a scavenger's house? Have they any place which they can call their homelands, though Mr. Nagappa said: "India is mine?" It is very good. I am proud of it. But the poor people are oppressed continuously and have not been saved yet and given protection. We are trustees. We have given a pledge in Poona under the Poona Pact. Have fulfilled that pledge? We must confess we are guilty. And I may tell you for your information that thousands of them in other parts of the country want to come back, but are not allowed to. They cannot come back and, unfortunately, we are unable to help them. That is what the Scheduled Castes are. They are not people who keep *kirpans*. They are a different lot. But to keep a *kirpan* or a sword and to entertain fear is inconsistent. This may react detrimentally to your cause. I do not grudge this concession to the Sikhs. I will ask the Sikhs to take control of the country and rule. They may be able to rule because they have got the capacity, they have got the resources and they have got the courage. In any field, either in agriculture, in engineering or in the

army, in any walk of life you have proved your mettle. Why do you begin to think low of yourself? That is why I am asking the Scheduled Caste people also to forget that they are Scheduled Castes. Although it is difficult for them to forget it, it is not difficult for the Sikhs to do so. Therefore, when you acknowledge with gratefulness the concession that we have given, I am grateful to you. In this country we want the atmosphere of peace and harmony now, not of suspicion but of trust. We want to grow. India today is suffering from want of blood. It is completely anaemic. Unless you put blood into its veins, even if we quarrel about concessions of reservations, we will get nothing. We have to build up this country on solid foundations. As I told you, I was trembling on the day I was appointed as Chairman of this Committee but I felt proud and today also I feel proud—and I hope the House will feel proud—that we are able to bring about almost unanimity in removing the past blots in our Constitution (*hear, hear*) and to lay, with the grace of God and with the blessings of the Almighty, the foundations of a true secular democratic State, where everybody has equal chance. Let God give us the wisdom and the courage to do the right thing to all manner of people. (*Cheers*).

Mr. President : I will now put the amendments one by one to the vote. First, the amendment of Mr. Mohamed Ismail. The question is:

“(a) That sub-paragraph (i) of the second paragraph of the motion be deleted and sub-paragraph (ii) be re-numbered as sub-paragraph (i).

(b) That after sub-paragraph (i) so formed, the following sub-paragraphs be added:—

(ii) that the principle of reservation of seats on the population basis for the Muslims and other minority communities in the Central and Provincial legislatures of the country be confirmed and retained; and

(iii) that notwithstanding any decisions already taken by this Assembly in this behalf, the provisions of Part XIV and any other allied article of the Draft Constitution be so amended as to ensure that the seats reserved in accordance with sub-clause (i) above shall be filled by the members of the respective communities elected by constituencies of votes belonging to the said respective minorities.”

The amendment was negatived.

Mr. President : I will now put to vote the amendments of Mr. Lari paragraph by paragraph. The question is:

“That in sub-paragraph (i) of the second paragraph of the Motion, after the words ‘the provisions of’ the words ‘article 67 and’ be inserted”.

The amendment was negatived.

Mr. President : The question is:

“That in sub-paragraph (i) of the second paragraph of the Motion, after the words ‘in the said Report’ the words ‘with the addition that elections be held under the system of cumulative votes in multi-member constituencies and the modification that no seats be reserved for the Scheduled Castes’ be inserted.”

The amendment was negatived.

Mr. President : Then there is the amendment which was moved by Pandit Thakur Das Bhargava.

Pandit Balkrishna Sharma (United Provinces: General): I think the mover accepts the amendment.

The Honourable Sardar Vallabhbhai J. Patel : Yes, Sir, I accept the amendment.

Mr. President : The question is:

“That the following be added to the Motion:—

‘The provisions for reservation of seats and nominations will last for a period of ten years from the commencement of this Constitution.’ ”

The amendment was adopted.

Mr. President : The question is:

“That the original Motion as amended by Pandit Thakur Das Bhargava’s amendment which has been accepted be adopted.”

The motion, as amendment, was adopted.

Mr. President : The House stands adjourned till 8 O’clock, tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Friday the 27th May, 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 27th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Pandit Balkrishna Sharma (United Provinces: General): Mr. President, Sir, may I with your permission draw your attention to one of the important matters in regard to the issue of new coins in our country? Our trouble is that the Indian Parliament as such is not sitting these days and the Constituent Assembly is the only supreme body which is in session. Now, the whole question regarding the issue of new coins is being discussed, I believe, in the Finance Department and I have been informed that certain decisions also have been taken in this regard. The question of the issue of coins is of great importance and I have been informed that not even the Finance Committee so far has been taken into confidence in regard to the design of the new coins. Particularly, I have been informed that the English alphabets find a prominent place in the new coins even though there is one Asoka Stambha and though the effigy of king has been done away with. I would, therefore, request you, Sir, to be pleased to give an opportunity to this House to consider this question, and if necessary, to call in the Honourable the Finance Minister for this purpose.

Mr. President : I am afraid we cannot take up this question in this House. We are here for the purpose of preparing the Constitution and the question which is raised by the honourable Member really belongs to the legislative side of the House and I would suggest that he might take it up there or, as the Assembly is not sitting, he might take it up with the Government.

ADDITION OF PARA. 4-A TO CONSTITUENT ASSEMBLY RULES (SCHEDULE)

The Honourable Shri N. Gopalaswami Ayyangar : (Madras: General): Mr. President, Sir, I rise to move :

“That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:—

‘4-A. Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.’”

Sir, very few words are really needed from me to commend this motion to the House. Kashmir is one of the States which under the rules framed for the composition of this Assembly have to be represented in the House. Rules have been framed as to how this representation could be secured. But though Kashmir acceded to the Indian Dominion so far back as the end of October 1947, this representation has not materialised. Honourable Members will remember that the conditions in Kashmir have been in a fluid state all these months. The accession itself was asked for by the Ruler of Kashmir; it was supported by the largest political party in the State, and the Governor-General accepted the accession. As I said, that acceptance was somewhere about the end of October 1947.

[The Honourable Shri N. Gopaldaswami Ayyangar]

Before I go to the Rules, I must point out that all States which have acceded to the Indian Dominion have been included in the Schedule to the Constituent Assembly Rules. One of these States is Kashmir. Again, in the Draft Constitution that has been placed before the House, in Part III of Schedule I, honourable Members will find Kashmir as one of the States which would be put into that Schedule. But, so far as representation goes, the procedure has undergone changes from time to time on account of the difficulties that cropped up in respect of implementing the rules that were originally framed for the return of State's representatives to this House. The lost of such rules is contained in Rule 4 of the Constituent Assembly Rules that are now in force. In this rule, the seats allotted to the States have to be filled up, not less than half by the elected members of the legislatures of the States concerned, and the remainder to be nominated by the Ruler himself.

So far as Kashmir is concerned, the number of seats allotted under these rules to this State is four, that is to say, one for every million of the population. If this rule is to be followed, not less than half of this number would have to be elected by the legislature. There is, under the Constitution of Kashmir, a legislative Assembly which is called the Praja Sabha. Elections to this Assembly took place about the months of December 1946 and January 1947 and this Assembly came into existence soon after these elections were over. There was one meeting held within two or three months thereafter, which was convened for the purpose of passing the budget of the State. All this happened before the transfer of power and the change in the status of Indian States that took place after the transfer of power. After the 15th of August 1947, Kashmir stood by itself till, somewhere about the end of October 1947, it acceded to India. There has been no meeting of this Praja Sabha since about April 1947. From October 1947, honourable Members are aware that there was a great deal of disturbance owing to the raids that were made on the western portion of Kashmir State and all that followed. The conditions have been very difficult.

Now, this Assembly has not been in existence since then. It exists perhaps on paper; but it is dead. In October 1947 accession took place. Soon after that took place, the Maharaja set up an emergency administration the head of which was Sheikh Mohammed Abdulla, the leader of the most popular party in Kashmir. In March 1948, he substituted for this emergency administration what he called a popular interim Government, consisting of a Council of Ministers. He called Sheikh Mohammed Abdulla to accept the office of Prime Minister and left it to him to choose his colleagues. This Government was to work on the principle of joint responsibility. In the Proclamation that he issued setting up this new Government, he made no reference to Praja Sabha, but called upon this new Government, as soon as peace had been restored, to convoke a National Assembly which should proceed to frame a Constitution for the State. At present, the old Praja Sabha is dead; the new National Assembly has not come into existence, because of conditions not having settled down to that level of peace and tranquillity, and also of economic and political equilibrium which alone can justify the convoking of the National Assembly.

In these circumstances, we have to choose a method by which we could get representatives into this Assembly taking the present facts into consideration. I take it honourable Members will concede that it is very important that Kashmir, which is now a part of India, should be represented in this Assembly. I wish that representation had been brought about much earlier than now; but various things have conspired to prevent that, but we are today in a position to bring to this House four persons who could be said to be fairly representatives of the

population of Kashmir. The point that I wish to urge is that, while two of these representatives would in any case under the present rules be persons who could be nominated by the Ruler, we are suggesting that all the four persons should be nominated by the Ruler on the advice of his Prime Minister. The Prime Minister happens to represent the largest political party in the State. Apart from that, we have got to remember that the Prime Minister and his Government are not based upon the Praja Sabha which is dead, but based rather upon the fact that they represent the largest political party in the State. Therefore, it is only appropriate that the head of this Party who is also the Prime Minister should have the privilege of advising the Ruler as to who would be the proper representatives of Kashmir in the Constituent Assembly. That is why we have made this suggestion. Under the circumstances, that is about the best that could be done. It would produce a certain amount of intimate relationship between this Constituent Assembly and the Government and people of Kashmir. Those representatives would come here and take part in the further proceedings of this House. As honourable Members are aware, most of the articles relating to the provinces and States are yet to come up for consideration and it is only right that Kashmir should have the opportunity to participate in the discussions which will finalise those articles.

I do not wish to say much more now. However, one small point I should like to clear up in view of one of the amendments of which notice has been given. It has been suggested that instead of Kashmir, we should substitute Jammu and Kashmir. Jammu and Kashmir no doubt describes the State better. But the reason why in this particular motion I have used the word Kashmir is that that word has been used in all statutory enactments and rules that have so far been framed in which this particular State has had to be mentioned.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I would like to know Sir, if the word "Kashmir" includes or means both Jammu and Kashmir?

The Honourable Shri N. Gopaldaswami Ayyangar : Kashmir means Jammu and Kashmir. In the Government of India Act, for instance, if you will look at the Schedule giving the names of the States, it will be found that this State is described as Kashmir. In the Draft Constitution, the Schedule mentions the State as Kashmir. In the list that is attached to the Constituent Assembly Rules, it is already described as Kashmir. So I think it would be best in these circumstances to use only the word "Kashmir" and both the amendment and the word that I have used mean exactly the same thing. I would therefore, request honourable Members to let this description of the State as Kashmir stand, because if you change it, we shall have to change other things which are already in our Statutes and Rules.

Pandit Lakshmi Kanta Maitra : May I interrupt the honourable Member? The motion contemplates that four seats will be allotted to Kashmir and that they will be returned to this Constituent Assembly. The honourable Member explained just now that the word "Kashmir" means, as in all other Statutes and Acts, Jammu and Kashmir. It is contemplated to have four representatives. I want to know whether it is contemplated to have these representatives in such a way that Jammu and Ladakh are also represented by these nominees?

The Honourable Shri N. Gopaldaswami Ayyangar: "Kashmir" in this motion means the whole of Jammu and Kashmir, the sovereignty over the whole of which still remains with the Government of that State. The idea is that four persons should be chosen who can be trusted to represent the interests of the whole State, not only Jammu and Ladakh, but I believe a person who can represent the interests of even the Mirpur-Jammu area— if the Prime Minister

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chooses to nominate him as being a person who can represent the interests of the State as a whole—it would not bar such a person being recommended by him. So really what we are contemplating to do is this. We do not recognise anything that might have happened as a result of the military operations which have recently been suspended. But what we really want is to bring into the Assembly persons who will represent the State as a whole. And the Prime Minister, the person who represents the Government as also the largest political party, he is in our opinion, the best person to make recommendations the Ruler who will nominate on such recommendation. Sir, at this stage, I do not wish to say anything more. I move.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to oppose the motion and for good reasons, if you will allow me.

Mr. President : You can oppose it after the amendments have been moved. There are certain amendments of which notice has been received, and.....

Maulana Hasrat Mohani : Sir, will you allow me to express my opposition here and now? I do not want to wait for the amendments, because my opposition has nothing to do with the amendments.

Mr. President : I think we shall take the amendments to the motion, and then after the amendments have been moved, when the whole question is discussed, Maulana may take his chance.

Mr. Kamath may move his amendment.

Shri H. V. Kamath (C. P. & Berar: General): My amendment being of a verbal nature, in view of what Mr. Ayyangar has said just now, I do not move the amendment, but I hope you will be so good as to let me catch your eye later on, as I wish to speak on the motion.

Mr. President : I make no promise. Prof. Shah may move his amendment.

Maulana Hasrat Mohani : I have to point out that I want to oppose this motion in the sense that I do not want that you should allow the opportunity to move things at this stage.

Mr. President : You can oppose the motion at that stage. But at this stage, we shall take up the amendments first. They will be moved and after that, you can have your say.

Prof. K. T. Shah (Bihar: General): Mr. President, Sir, I beg to move:

“That in the proposed paragraph 4-A, the word ‘all’ be deleted.”

“That in the proposed paragraph 4-A, before the word ‘Kashmir’ wherever it occurs, the words ‘Jammu and’ be inserted.”

“That in the proposed paragraph 4-A, for the words ‘may be’ where they occur for the first time, the words ‘may pending the holding of a plebiscite, under the auspices of the United Nations’ Organisation, and without prejudice to the result of that plebiscite, be’ be substituted.”

“That in the proposed paragraph 4-A, for the words ‘by nomination’ the words ‘by election by the Praja Sabha of the State of Jammu and Kashmir’ be substituted.”

“That in the proposed paragraph 4-A, for the word ‘nominated’ the word ‘elected’ be substituted.”

“That in the proposed paragraph 4-A, the words ‘by the Ruler of the Kashmir on the advice of his Prime Minister’ be deleted.”

Mr. President, Sir, I am fully conscious of the seriousness and delicacy of the task I have taken upon myself in.....

Pandit Balkrishna Sharma : May I request the honourable Mover of the amendment to read out to the House how the motion would read, after his amendments?

Prof. K. T. Shah : Yes, it will read thus:

“Notwithstanding anything contained in para. 4, the seats in the Assembly allotted to the State of Jammu and Kashmir may, pending the holding of a plebiscite under the auspices of the United Nations Organisation, and without prejudice to the results of that plebiscite, be filled by election by the Praja Sabha of Jammu and Kashmir and the representatives of the State to be chosen to fill such seats may be elected.”

I was saying Sir, that no one can be more aware of the seriousness and delicacy of the task I have taken upon myself in tabling this amendment, and in advancing arguments that I have to place before this House to convert it to my view-point. Being so aware of the gravity of this task and its delicateness, I assure, you, Sir, that I shall not use a single phrase or expression, nor gesture, nor tone which would, in any way in the least import passion or prejudice in the arguments. I am aware that this subject is coloured very deeply by lone-standing prejudice. I am aware, Sir, that there will be deep feeling on the matter, and therefore, so far as it lies in me, I assure you again, Sir, that I shall not use a single expression, nor one gesture which might give rise to any feeling unbecoming this House and unwarranted by the seriousness of the case.

Before I proceed to develop my arguments, Sir, may I in all humility, place before this House something like my credentials to speak on this subject.

Sir, I have been acquainted with Kashmir State and its governance for now something like fifteen or more years. I have known the principal parties concerned in this matter by first-hand knowledge and working with them. I have helped—in however small a way it may be,—to shape what is called the ‘new Kashmir’ from the day that it was in draft form, when the present Prime Minister was good enough to come down to Bombay and consult me on the matter for fifteen days. I had also the honour to be invited to be a Planning Adviser to the preceding Government of Kashmir, in connection with which I had to visit Kashmir State, study the situation and know its people, know its administration, from not merely the superficial tourist’s stand-point, but from the stand-point of a close student of affairs. A bookworm as I may be. I had some opportunity to know these first hand.

I have, perhaps to my own misfortune, been associated with this matter even after the developments of the last few years; and in the course of this argument, I shall try and place before you, Sir, certain considerations which I trust will show you, that if I say anything on the subject I am not saying it from merely superficial newspaper headline knowledge of the matter, but from some close study, close observation and personal knowledge of the subject with which we are dealing.

Sir, after this Preface let me now proceed to the amendment that I have suggested. I have, Sir, in the first place, suggested, that the word “all” be omitted. After all the definite article would remain; and that would include all, even without our using that expression. It, is however, not a merely drafting change that I am suggesting. There is, as you will perhaps see when I go on with the further development of my theme, there is some significance attached to the idea that the word “all” at any rate be omitted.

Sir, I have next suggested that the nomenclature be changed, and the State be described more correctly as the “State of Jammu and Kashmir.” That is the

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official title of the State; and in an official document like this I do not see any reason why we should not give the correct description, the proper title of the State. It is once more, I assure you, Sir, not a mere matter of terminology, or nomenclature, or mere verbal emendation. As I shall show you, there is some significance in this matter, which makes it more than ever necessary that you should not omit the other part, and, if one may say so, the first part of the title of that ancient State.

By calling it the State of Kashmir only you are perpetrating or perpetuating an error, which according to the honourable the Mover, has apparently happened in all our documents. May I ask, Sir, if we have made a mistake in the first instance if we have been carried away by the importance of one section of the State, by the importance of the personages connected with that part of the State, is that any reason why we should forget the other and no less important part of the State, and in this formal document continue to perpetuate that mistake, and speak only of “ Kashmir”, when we really mean “ Jammu and Kashmir”?

It is admitted, Sir, it is common knowledge, it is a fact not denied by the honourable the Mover of this resolution, that that is the correct name of the State. And those at any rate who remember the campaign of the present Prime Minister of the State in connection with ‘Quit Kashmir’ will realise that in the sequence of events that have happened, it is liable, if you describe it in this manner, to be gravely misunderstood wherever such nomenclature is allowed to be used; and our public records will be disfigured to that extent.

Sir, as you will see later on here is a matter which is not, as my honourable Friend Mr. Kamath suggested, merely a matter of verbal change, There is a significance attached to it which I hope this House will realise as we go on. The State of Jammu and Kashmir is correctly described as Jammu and Kashmir because, so to say, there are two States in one Kingdom, just as Scotland and England were two States under the First of the Stuarts. The King was King James the Sixth of Scotland and King James the First of England. There were two Crowns worn by one person. In regard to the State of Jammu and Kashmir until about the communal rising of 1933, it was for all practical administrative purposes actually divided into two provinces more or less distinct, though under the same Ruler.

I trust I have said enough to demonstrate to the House that the matter of nomenclature is not merely a matter of verbal emendation; that it has behind it a significance, a significance, in the sequence of events, not confined only to this House or to this country. It has repercussions outside this country, as I will try to show later on; and, therefore, we must be very careful in every word that we use, so that our expression, our nomenclature, our whole wording is in conformity with the situation and the correct facts.

Next, Sir, I come to a very difficult and delicate matter, namely the suggestion that the election be, pending the holding of a plebiscite under the auspices of the United Nations Organisation and without prejudice.....

Dr. B. Pattabhi Sitaramayya (Madras: General): I wish to raise a point of order, Sir, at this stage. The reference to the plebiscite and to the United Nations Organisation has nothing whatever to do with the representation proposed to be given to the Kashmir State in this motion. I think this amendment should be ruled out of order.

Mr. President : What has the honourable Member to say on the point of order?

Prof. K. T. Shah : It has been the declaration of the highest authority in India also that the accession of the State made by the Maharaja, who was the complete constitutional head on the day that that accession was agreed to, was subject to confirmation by the result of the plebiscite.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): That is absolutely incorrect—cent per cent incorrect. I am amazed, surprised and astounded that such a statement is made by Professor Shah.

Prof. K. T. Shah : If I am wrong I am open to correction. We ourselves have accepted the United Nations decision to hold this plebiscite and an Administrator has been appointed. If I am wrong I am in your hands.

Mr. President : The point is whether the accession was conditional. The accession, so far as I understand from the Prime Minister was unconditional and complete. The result of that accession may be altered as a result of the plebiscite, but the accession as such was complete and final. Therefore the question of the accession does not arise.

Prof. K. T. Shah : I am not for a moment suggesting that the representatives of Jammu and Kashmir should not come here; nothing of the kind.

Pandit Balkrishna Sharma : The point of order that has been raised by Dr. Pattabhi Sitaramayya seems to be very pertinent, inasmuch as this resolution is the Constituent of the act of accession which the Government of India and the Constituent Assembly have accepted; and, therefore it is only in relation to that that we are here making provision for the representatives of Jammu and Kashmir to sit in our Assembly. It has absolutely nothing to do with the plebiscite. As the Prime Minister has pointed out, the accession was complete and without any reservation on the part of the Maharaja. That the result of the accession may probably be upset by plebiscite has nothing whatever to do with the proposition we are considering now.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): I entirely agree that this part of the amendment is out of order. We have to see whether it has any bearing on the proposition. If it has no bearing on the main proposition the amendment must be ruled out of order. From the information that has been given by the Honourable the Prime Minister and from the information that you, Sir, were pleased to convey, it is clear that the accession of Kashmir was unconditional. Now when the accession was unconditional, the question of plebiscite has no bearing. The main proposition says that the seats in the Assembly allotted to the State of Kashmir shall be filled by nomination and the representative of the State to be chosen to fill such seats may be nominated by the Ruler. It places no time-limit; it places no condition. Such a condition cannot be placed because the accession was unconditional as we were just informed. By presuming a thing which is not in existence and which is not warranted by facts now brought to the notice of the House, I humbly submit that this amendment is surely out of order.

Mr. President : I am inclined to agree that the point raised by Dr. Pattabhi Sitaramayya is a solid and valid one. The accession of Kashmir was unconditional and what we are concerned with here is the representation of that State in this Assembly. When the plebiscite will take place and what the result of the plebiscite will be, we are not concerned with here. We are only concerned with the representation of the State in this House. The method suggested has found favour with the Mover. The honourable Member may move his amendment with regard to the method, but he cannot put

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down any condition with regard to the status of the Members who will be returned to this House. Those members will sit as any other Members without any condition being attached to their status or tenure. So that part of the amendment is ruled out of order.

Prof. K. T. Shah : I bow to your ruling, Sir, and therefore shall confine myself to the other part of the amendment, which naturally would suffer inasmuch as it was an integral part of my argument. I shall nevertheless try and make the argument as much self-contained as I possibly can, notwithstanding the lopping off of a very integral part of my amendment.

The next amendment, Sir, suggests that the representatives be elected by the Praja Sabha of Jammu and Kashmir. Sir, it is an admitted fact that representation of the States is secured, as the honourable the Mover himself was pleased to declare, partly by election and partly by nomination by the Ruler. Moreover we have allowed nineteen months or more to elapse between the date of the accession and the present suggestion that the representatives may be chosen. I am aware, Sir, that there have been circumstances, there have been developments which have made it difficult, if not impossible, to secure the representation of Kashmir in this Assembly.

Wherever there were popular legislatures, they were allowed to elect half the number of representatives, the other half being nominated by the Ruler. Why should that salutary principle be departed from in this case? As the honourable the Mover himself said the Praja Sabha of Kashmir was elected in 1946-47 and, therefore, it is still within its normal life.

Shri R. K. Sidhwa (C. P & Berar: General): Does it exist? What is its strength?

Prof. K. T. Shah : It may be that not all the members may be within the jurisdiction where the King's writ runs. That, however, does not upset the technical position that the legislative body of Jammu and Kashmir exists, and that body has a right, according to the precedent which we have followed in these matters in the past, to elect at least half the number of representatives. I do not know why a departure should be made in the case of Kashmir alone.

Now in the original motion, the whole of the representatives of Kashmir are required to be nominated and that too nominated on the advice of the Prime Minister. We have taken it for granted that that Government or that authority represents the majority of the Kashmir population. That would have been of course evident had any new elections taken place. But circumstances have changed and the Nationalist party has come to power. The fact must be remembered by the House that the population of Jammu and Kashmir, put together, is something like 76 per cent Muslims and 24 per cent Hindus, including Dogras and other non-Muslims. It is for the House in its wisdom to decide whether, given this composition of the population given this course of events that have happened in the meanwhile, whether it is possible that the election could take place on a fair basis even while the frontier itself is in danger; and even while, though the "cease-fire" has been declared, truce has not yet been signed and peace has not yet returned to the State. The danger to Kashmir, or rather the danger to India from any untoward happening in Kashmir is left more to the imagination of the House than any words of mine can describe.

While I am unwilling at this moment to complicate the issues in this manner, I should explain to the House the gravity of the consequences that may occur. I am bound to place before this House this question that if we depart from the

practice of election, partly of election and partly of nomination by the ruler at his own will and not as is here required wholly by the ruler, on the advice of his Prime Minister, it is a matter for the House to say.

I realise, and I am prepared to say frankly to the House, that my amendment suggests not the same practice as was followed in the past with regard to the other States. I have been driven to suggest that it should be wholly election because of the extraordinary circumstances of the situation. Had the situation been in the State as normal and peaceful as in other cases, had the situation been uncomplicated by any third party intrusion in the matter, I would have certainly followed the same precedent; and required that at least part of the representatives should be representatives of the people chosen by their representatives in a proper form. But as the situation is there today, with all the complications that have arisen, all the representatives of the people must be elected. That is my submission. I am not asking too much when I say that we shall not be departing from democratic principles, or idea or justice, or prudence or wisdom in this matter if we say that the people of Kashmir, and the people of Kashmir alone, shall elect all the representatives to this House. If this party claims to represent the entire or at least a large majority of the people of Kashmir, then there is no reason to fear that they cannot send their representatives according to their wishes. They need not, therefore, shrink the suggestion I am making of calling upon the representatives to be elected and not nominated.

In this matter I am constrained to point out that the developments all along in the history of Jammu and Kashmir in the last three and a half years should not be overlooked. You must not overlook the agitation that was started in February 1946 whereby a responsible party or the leader if the responsible party had started a campaign of 'Quit Kashmir' and in consequence thereof events developed and created all the difficulties that have since ensued. I do not like this House to be a party to anything that might look as if it was a surrender to one man's wishes, that nothing can be done until the Maharaja is removed or complete power is handed over to him. Whether or not he holds the complete confidence of all the people of Kashmir has yet to be proved. I am aware that he may have a large following; but at the same time, if you want proof beyond the possibility of doubt, there is no reason why you should not send invitations for an election even under the limited franchise that is prevailing. If you have adult franchise that would be better. But even under the limited franchise of 1946, if you hold an election you will get the true representatives of the people.

You must also not forget that the events that have happened have interested the other countries and the sister Dominion and those outside with interest in the matter. That being so they will not take any decision unilaterally made by us, without demur. If you want to have peace restored, if you want to live in peace with your neighbours, you should not give needless occasion for them to say that here you are purchasing a design and committing an act and taking steps whereby your own declarations, and, what is more, whatever interests the others may have, are being jeopardised. If that is going to be a slur on the good name of this country, and its claim to stand always for the people or for those who are oppressed, then I think it is not too much to demand that the representatives in this case should be wholly elected, and should be the true reflex of the people of Kashmir in all that they may be pleased to say in this House as regards the interest of that State whenever that portion of the Constitution is reached.

Mr. President : Your amendment is that there should be a fresh election and that the Sabha should elect the representatives.

Prof. K. T. Shah : I only say that they should be elected.

Mr. President : You also say that the Sabha should send representatives. If so, how does the question of general election arise?

Prof. K. T. Shah : I say that they should be elected by the Sabha.

Mr. President : If it is the rump of the Sabha, what is the change?

Prof. K. T. Shah : I suggest that it would be better if they were elected by adult franchise. But that is not to be. If you want to get the true reflex of the popular opinion in Kashmir, then you should have that through the Praja Sabha which is the legislature of the State though it may be very unpleasant for us to do so.

Sir, in this connection I feel it my duty to place before the House one or two considerations. We only recorded last week the ratification of our closer association with the British Commonwealth. And if we now complete this act, the two events together carry their own significance.

Secondly I would like the people in this House to realise that the position of Kashmir as it is.....

Pandit Balkrishna Sharma : May I know from the honourable Mover of the amendment when the elections to the Sabha took place?

Prof. K. T. Shah : In November or December 1946.

Pandit Balkrishna Sharma : Was there snowfall in Kashmir at that time?

Prof. K. T. Shah : I do not know that. The elections are held in winter.

Pandit Balkrishna Sharma : The present Prime Minister was then in prison.

Prof. K. T. Shah : He was not the Prime Minister then. He was in prison.

Pandit Balkrishna Sharma : Where are the present members of the Sabha?

Prof. K. T. Shah : I do not know that. You must ask the post-office in Kashmir.

Shri R. K. Sidhva : Does the honourable Member know whether the Praja Sabha exists now, where it exists, what its strength is, where the members are?

Prof. K. T. Shah : The Praja Sabha should know the addresses of its members. Whether the members can collect together or not I do not know. The members may be available or may not be available. As least a quorum may be available to constitute a meeting of the Praja Sabha, if you want to consult the Praja Sabha, if you want to know the opinion of the people of Kashmir. If you do not want, then this motion may be passed.

Pandit Balkrishna Sharma : Is the honourable Member aware that some or most of the members of the Praja Sabha have gone over to Pakistan and those that remain are working for Pakistan? Is he aware of it?

Prof. K. T. Shah : I am not aware. Some have gone.

Mr. President : It will save time if there is no interruption.

Prof. K. T. Shah : I thought I should answer questions put by honourable Members, but I will ignore questions in future.

Two or three more points I would like to place before the House. First, I would like the House to remember the composition of the population of Kashmir, its geographical position, its connection and the possibilities that may happen there. I think the House is aware that we have spent so far something like one hundred crores on Kashmir. What are we getting in return? We have spent—I do not know—how many lives in Kashmir. We are still not out of the wood to the extent that normal conditions, and perfect peace have been restored and normal constitutional progress may be resumed.

The Honourable Shri Jawaharlal Nehru : I strongly protest against the remarks made by the honourable Member. Here we are not discussing the future of Kashmir.

Mr. President : We are discussing only the resolution. The honourable Member is not justified in making remarks on subjects which are not covered by the resolution.

Prof. K. T. Shah : I submit, Sir, that I would not go into those questions. I will not make even those remarks. I will only conclude by saying that this is a very serious matter. The House must bear in mind....

An Honourable Member : What do you mean by serious?

Prof. K. T. Shah : I cannot tell you what is serious, how it is serious.

Shri Jaspat Roy Kapoor (United Provinces: General): The serious thing is that the honourable Member is so ignorant about Kashmir that he even does not know who and where the members of the Praja Sabha are.

Prof. K. T. Shah : The matter is of sufficient importance for the House to take all the aspects of it into consideration and then come to a decision on it. Sir, I move.

Mr. President : Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): I am not moving my amendment, Sir.

Mr. President : We may now take up the discussion of the motion and the amendments.

Shri H. V. Kamath : Mr. President, Sir, there can be no two opinions in this House that we are all jubilant that very shortly representatives from what is in the words of our Prime Minister the Lovely land of Kashmir, the beauty of which persists in the midst of much spoliation and desecration, will take their seats in this august House. The importance of the subject that we are discussing today cannot be over-estimated. My Friend, Professor Shah, first moved his amendment seeking to substitute. "Jammu and Kashmir" for "Kashmir". May I point out to him that after what was said about this matter by the Honourable Shri Gopaldaswami Ayyangar, the amendment reduces itself to merely one of a drafting character. The Honourable Shri Gopaldaswami Ayyangar assured us that though the word "Kashmir" only was used, what was meant was the whole State. If Professor Shah takes the trouble of turning to Part III of the First Schedule of the Draft Constitution, he will find that this State is referred to as merely Kashmir. After this, there is no scope, there is no justification for the amendment moved by Professor Shah. To my mind, some points arise in connection with the motion moved by the Honourable Shri Gopaldaswami Ayyangar and I would request that in his reply he may kindly throw some light on them. Firstly, we have not been told—at any rate I did not hear—how many members or representatives from this State will be nominated by the Ruler on the advice of the Premier to take their seats in this House.

The Honourable Shri N. Gopaldaswami Ayyangar : I mentioned four.

Shri H. V. Kamath : I am sorry I did not hear that. The number of members is four. I hope we will stick to the population figures that were returned at the last census. In this connection the point arises whether not merely Jammu and Kashmir but also Ladakh—I mean the entire territory including Mirpur and Poonch, will be represented. The Honourable Shri Gopaldaswami Ayyangar said that till a few months ago the situation in Kashmir was somewhat fluid, but now it is being stabilised. It is very happy news for us, very welcome news. There is every reason for gratification that the situation is getting fast stabilised. There have been divergent rumours and reports in the press about certain areas in Kashmir formerly held by Pakistan and what was wrongly called the Azad Kashmir forces. The resolution of the U.N.C.I.P.....

Pandit Balkrishna Sharma : Sir, may I draw your attention to the fact that this sort of remarks may be considered as out of order. We are not discussing the whole gamut of Kashmir.

Mr. President : I was just going to draw his attention to the fact that this sort of remarks is wholly irrelevant. We are now only concerned with the sending of four representatives of this House from Kashmir.

Shri H. V. Kamath : I bow to your ruling. I will not dilate on that point any further. I will take the next point and that is the composition of the representation from Kashmir to this Assembly. I was never at any time in my life for separate electorates. I never supported at any time separate electorates which have been the basis on which elections in this country and even to this House were held. We are all very well aware that under the Cabinet Mission Scheme members were elected to this House on the basis of separate electorates. I was very unhappy when that took place. I hoped at that time that that situation would come to an end very soon. Only yesterday we completed the task which we began sometime last year or a few months before that, that is to say the work which we began eighteen or twenty-one months ago, by reason of which we did away with separate electorates.

Mr. President : There is no question of separate electorate in this.

Shri H. V. Kamath : I am coming to that point. The point was referred to by Prof. Shah about the population in Kashmir, about how many Hindus are there, how many Muslims and how many Sikhs. From every province they elected members to this House in July 1946, The basis of representation was one member per million of the population, of the province or state, that is to say for a province like C. P. and Berar which had 160 lakhs of non-Muslims and about 10 or 12 lakhs of Muslims there were 16 non-Muslims of Hindus sent to this House and one Muslim. Here the population of this State which will shortly be represented in this House, is, I believe about 10 lakhs or thereabout of Hindus and the rest Muslims. In conformity with the decision which we have adopted only yesterday and during the last few months, I for one, would be happy if for this new nomination we did away with the separate outlook. I would welcome if the whole of Jammu and Kashmir were represented by all Hindus, if necessary, or all Muslims, provided you get the best men available on the spot. I hope that considerations of communal representation will not guide or affect the matter of nomination of these representatives from Kashmir to this House. That would be completely in conformity with the stand that we have taken, the decision we have taken in this House on this matter of separate electorates.

Mr. President : May I point out that so far as the representation of the States in this House is concerned, there has never been any question of representation by communities. So far as the States are concerned, all the members who have come here irrespective of the community to which they belong, unlike the members of the provinces. Therefore, that question does not arise here.

Shri H. V. Kamath : As we were elected under the Cabinet Mission Scheme, I hope there would be one policy, one method adopted for representation of all the States and I hope that in the case of Kashmir, there would not be departure from the method adopted for the States, in contradistinction to the provinces.

Then, Sir, there is one other point, which I would like the honourable Mover of the motion to clarify when the time comes. In the last November—December session of this Assembly, I raised a point when the rules were being amended, as to whether and when all the States that are still unrepresented in this House will be duly and suitably represented. This is the last session, to my mind, of the Constituent Assembly and the most important one for that reason: and we would have been very happy indeed if the whole of India with all the States who have integrated with it or acceded to it, were represented in this Assembly.

Dr. P. K. Sen (Bihar: General): On a point of order, Sir, the honourable Member is again digressing and his remarks do not bear upon the motion at all.

Mr. President : I am inclined to think that reference to other States is unnecessary and irrelevant.

Shri H. V. Kamath : I thought that Kashmir as a State which has acceded to the Indian Union was on a par with other States which have acceded to the Indian Union, and in that light I was going to.....

Mr. President : So far as I am aware all the States which have acceded have already come in except Bhopal and Kashmir. As far as Hyderabad is concerned, I do not know in what stage of accession it is, but so far as the other States, about whose accession there is no doubt, they have all come in except Kashmir and Bhopal and steps are being taken today to bring in Kashmir.

Shri H. V. Kamath : As far as Hyderabad is concerned.....

Mr. President : That question does not arise now. It is not necessary; I shall inform myself later on.

Shri H. V. Kamath : The Home Minister, Sardar Patel, told us last Budget session about the position as regards Hyderabad, and as Kashmir is naturally on a par with other States that have acceded to the Indian Union. I only hoped—I do not insist—that all the States that have acceded to the Indian Union would be represented in this House.

Shri R. K. Sidhwa : The matter of sending representatives to this Assembly is a simple one. Why extraneous matter is brought in by the honourable Member, I fail to understand.

The Honourable Shri Jawaharlal Nehru : The honourable Member is a master of irrelevancy. He does not quite understand what has happened. Nearly all the States which have acceded are represented here except Kashmir.

Shri H. V. Kamath : Mr. President, You yourself said that Bhopal has acceded and still is not represented here. I do not know whether I am irrelevant or somebody is forgetful. Here, Sir, I have got a tabular statement where the total number of members present in this House at present is given.

Mr. President : What is the point?

Shri H. V. Kamath : Sir, I only wanted to say that still there are twenty-one members to take their seats in this House and I hope that steps would be taken early to see that all these 21 members including those from the States of Jammu and Kashmir will take their seats in this House during this very important session. I wonder whether the interruptions were at all necessary. I was not going to dilate any further, and I am sorry if the Prime Minister misunderstood the trend of my argument, and thought fit to interrupt me. There is one last point, Sir, and I have done. I do not know why the Prime Minister is getting impatient.

The Honourable Shri Jawaharlal Nehru : Depressed.

Shri H. V. Kamath : I would try to cheer him before I end my little speech. The last point is this. (Interruption). Mr. Balkrishna Sharma will have his chance, I hope.

Mr. President : What is the point?

Shri H. V. Kamath : The last point is this. In yesterday's issue of an important Daily of this city, there was a report that the Maharaja of Kashmir was going on a short holiday and somebody else would act as Regent. I hope, Sir, that this resolution which we are going to pass today will be implemented before such a rumoured change takes place, and the members will be nominated by the Ruler of Kashmir on the advice of his Prime Minister before he leaves the State on a short holiday.

Lastly, I would have been happy if the person referred to as the Prime Minister here has been designated otherwise. There is only one Prime Minister in India. I am told there was a recent circular issued to all provinces—I do not know about the States—that the Chief Ministers there should be designated either as Chief Ministers or as Premiers and that the title Prime Minister should be reserved only for the Prime Minister of the Indian Union. Therefore, I would have been happy if the Honourable Mr. Gopaldaswami Ayyangar, who moved this motion, had used the term "Premier" in place of "Prime Minister", because I feel that it conflicts with circular issued by the Government of India to all the provinces quite lately.

These are the points which I hope the mover of the motion would clarify in his reply to the debate. I hope we will be able to welcome our friends from Kashmir in this House at a very early date.

Maulana Hasrat Mohani : Sir, I am not opposing this motion of Mr. Ayyangar on the ground that it wants the Kashmir representatives to be nominated, nor on the ground that some of my honourable Friends have tabled amendments, some wanting that 50 per cent. should be elected and 50 per cent nominated. I do not care whether cent. per cent. are elected or nominated. But what I object to is this. I do not know, of course; but I do not see any necessity for sending any Kashmir representatives to this Constituent Assembly at this stage. Pandit Nehru got angry because he says that this accession has been complete and there is no doubt about that. He says that Kashmir has acceded to India and therefore they have every right to ask for their representatives to be sent here to this Constituent Assembly. While I need not quarrel on that subject, I have to ask a question from my Friend, Mr. Ayyangar. I accept this contention of the Prime Minister that this accession has been complete although I am doubtful whether he is absolutely right in this. Because, he himself not once or twice, but many times, has said that this accession depends on the final decision of the plebiscite, of

the votes of the Kashmir people. Of course, now, he has made up his mind; he has created difficulties and his move is that this plebiscite will never take place and therefore he says that this accession is complete and there is no doubt about it. Even admitting that, I ask Mr. Gopaldaswami Ayyangar why he should anticipate the decision of the Government of India and why should he come forward at this stage to propose this thing. I say, why at this stage. Because, generally we find that in all those States which have acceded to India, invariably the Rulers of those States, have been pensioned off and the administration has been taken over by the Indian Government or some provincial Government. I do not know what is in the mind of the Prime Minister or the Government of India, as to what will be that status of the Kashmir Government. After accession, will he also be pensioned off and the administration of Kashmir taken over by the Government of India? Is that so? Then, I say that this thing has not yet been decided and if this has not yet been decided, then, I think that there is no status for the Maharaja of Kashmir for the present and therefore this question of his nominating representatives for the Constituent Assembly does not arise. I say that the whole thing is premature. Unless and until you decide the status of the Kashmir Government and the status of the Maharaja, it is hopelessly absurd to set down any proposal of this kind. It is on this ground that I totally object to this motion. I think he should not be allowed to move such a motion at this stage.

The Honourable Shri Jawaharlal Nehru : Sir, this very simple motion of my honourable colleague has led some members to refer to almost all connected matters, not with this motion, but in regard to Kashmir, and so we have been led to think of this vast and intricate and difficult problem of Kashmir. It is a little difficult in this context to confine oneself to the simple proposition that has been placed before the House. Nevertheless, I do not intend to go beyond that proposition; nor do I think need this House go beyond it although several members may be tempted to do so.

The proposition before the House is a very simple one. Now, I say that I have a vast admiration for the erudition and learning of Professor Shah. Nevertheless, I have followed with some surprise not only what he has said today, but what he has said and done in regard to Kashmir for a number of years. I have been also connected with Kashmir in many ways and, in a sense, I belong to Kashmir more particularly than to any part of India. I have been connected with the fight for freedom in Kashmir and I know about the various groups, various people, various individuals from the Maharaja down to humbler folk there. And so, if I venture to say anything in this House, I do so with far greater authority than Prof. Shah can presume to have on the subject. I speak not as the Prime Minister, but as a Kashmiri and an Indian who has been connected with these matter. It amazed me to hear Prof. Shah propose that the so-called Praja Sabha of Kashmir should send representatives to this House. If Prof. Shah knows anything about Kashmir, he should know that there is nothing more bogus than the Praja Sabha in Kashmir. He ought to know that the whole circumstances under which the last elections were held were fantastic and farcical. He ought to know that it was boycotted by all decent people in Kashmir. It was held in the depth of winter, to avoid people going to the polling booths. And winter in Kashmir is something of which probably Members in this House have no conception of. An honourable Member asked me about winter, and whether it was snowing. But when it snows in a cold country, it is called warm weather. In winter it is 20 to 30 degrees below snowing weather. The election was held when the roads were impassable, when the passes could not be crossed; in fact, it was just not possible for the voters to go. But apart from that, when the National Conference of Kashmir, in spite of difficulties, difficulties including that of their leaders being in prison, including Sheikh Abdullah and others, in spite of

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all that, when they decided to contest these elections, then their candidates were arrested, many of them, and all kinds of obstacles were put in; and it was quite clear that they would not be allowed to stand. So they decided to boycott it and they did boycott it, with the result that the whole national movement of Kashmir boycotted those elections, just as the national movement in 1920 boycotted elections in India. And it was an amazingly successful boycott. Of course people got in. By boycotting you cannot keep another man out; but the percentage of voting was so very small—I forget the exact fraction—it was almost negligible; and the type of people who got in were the type who had opposed the freedom movement throughout, who had done every injury possible to the idea of the freedom of Kashmir till then. And subsequently some of them, when Kashmir adopted this new status and became much freer than it ever was, they subsequently sought refuge in Pakistan. Now that is the kind of body referred to; it is a bogus body; it is really no body at all. It is a disembodied spirit. It does not meet. It does not do anything and many of its members are not just traceable. And now Prof. Shah calmly, tells that the Praja Sabha can elect Members to this honourable House; it is a monstrous proposition.

I admit that it is not desirable for any Member of this House to come by nomination or be selected by some narrow process; but unfortunately many of us here, from the States I mean, have not come exactly as we should have liked them to come. They have been sent, partly by nomination, partly by election, by election again, by bodies which are not often properly constituted; but we had to take things as they were, and we wanted them here to help us in this work of constitution-making. So though the process suggested for Kashmir is not ideal, yet I do think that it is a better process than has been adopted in regard to many States in India. It is a process where you get a popular government with the representative of the popular party at the head of it, recommending to the Ruler that certain names should go. Even from the point of view of democracy, that is not an incorrect process. It is not 100 per cent. correct; but the House should see what better method you can suggest. I can understand Maulana Hasrat Mohani, and I am inclined to agree with him that it would have been—if I heard him correctly—it would have been better and more graceful for us to have had the representatives of Kashmir here much earlier. But we did not do it. It was our fault, may be it was other people's fault; but whatever the reason, we did not do it. But is that a reason why we should continue the error in the future? During the next two or three months, or however long this House meets, when we are going to finalise this Constitution, it is desirable for us to give every opportunity to the representatives of the Kashmir State and of any other State, to come here and participate, even though they have not done so up to this stage. So I submit that the motion moved by Mr. Ayyangar is the only way out of this difficulty.

I would suggest to him and beg of him to accept a small change in the wording of the motion. What he has put down is perfectly correct, he has put down "Kashmir", as it occurs in the various Acts, etc. He has taken it naturally from these enactments. But because there is a slight confusion in people's minds, it would be better to describe it a little more fully as "Kashmir State" and then putting within brackets, the words "otherwise known as the State of Kashmir and Jammu". No doubt, so far as the proposition that people should be entitled to come from Jammu and Kashmir is concerned, I think it is up to us to give them every opportunity to do so. And secondly, so far as the method is concerned, I can think of no other, and no fairer method than what has been proposed in this motion.

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, the question may now be put.

Mr. President : The question is:

“That the question be now put.”

I take it that that is the wish of the House.

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I have really very little to say. But I think a few words have to be said about one or two observations that were made by my honourable Friend, Maulana Hasrat Mohani. He doubted whether the Prime Minister's description of this accession as being complete is altogether correct. I maintain that it is perfectly correct. The accession was offered by the Maharaja and it was accepted by the Governor General of the time. I have a copy of that document before me. It is an absolutely unconditional offer. But my honourable Friend referred to what has happened since and I know my other honourable Friend Prof. Shah also seemed to imply what the Maulana contended. Now the correct position is this. The accession is complete. No doubt, we have offered to have a plebiscite taken when the conditions are created for the holding of a proper, fair and impartial plebiscite. But that plebiscite is merely for the purpose of giving the people of the State the opportunity of expressing their will, and the expression of their will, will be only in the direction of whether they would ratify the accession that has already taken place—not ratify in the sense that that act of ratification is necessary for the completion of the accession, but if the plebiscite produces a verdict which is against the continuance of accession to India of the Kashmir State, then that we are committed to is simply this, that we shall not stand in the way of Kashmir separating herself away from India. In this connection, I should like to draw the attention of the House to the Provisions of the Indian Independence Act under which, when a State accedes and subsequently wishes to get out of the act of accession, thus separating itself from the main Dominion, it cannot do so except with the consent of the Dominion. Our commitment is simply this, that if and when a plebiscite comes to be taken and if the verdict of that plebiscite is against India, then we shall not stand in the way of the wishes of the people of Kashmir being given effect to, if they want to go away from us. That is all that it means. So I maintain that the statement that the accession at present is complete is a perfectly correct description of the existing state of things.

Then he asked why should representatives be brought in at this stage. We are not bringing them into this House for the purpose of placing there seal on the act of accession. We are giving them an opportunity for the exercise of the rights which they have obtained by virtue of the fact then accession has already taken place. We are making a new constitution which affects not merely the Union as a whole but affects the units of the Union and Kashmir, on account of the fact of accession, is at present a unit of that Union. In fashioning the constitution for the whole Union it is only right that representatives of all units should find seats in this Assembly.

I think I need not to reply at length to my honourable Friend Prof. Shah's objections. They have been dealt with already by the Honourable the Prime Minister. I would only say this. There has been a delay no doubts. Prof. Shah seemed to suggest that the cease fire took place some months ago and he could not understand why this step was not taken immediately after. A cease fire only suspends military operations and takes some time before things settle down

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sufficiently for us to see our way through. I believe I am correct in saying that the first meeting of this Constituent Assembly as a constitution-making body after the cease fire suspended military operations and things began to settle down is the present one. I do not think we can be convicted of delay in bringing this proposition forward at this meeting.

I do not think I need reply to the other points in his speech but there is one amendment of which he has given notice and has pressed which I should deal with. He wants the omission of the word "all" in paragraph 4-A. The word "all" was put in deliberately, because in the present rules there is provision for a certain proportion of the number of seats being nominated to by the Ruler himself without reference to anybody else. Now what we are suggesting is that not merely a proportion but all the seats should be nominated by the Ruler and in doing so he should be guided by the advice of his Prime Minister. That is the only reason why the word "all" has been put in there. I think there is no harm in retaining the word.

As to the other amendment which he has proposed to the word "Kashmir" the Prime Minister has already suggested that we might perhaps make this clear. I would, with your permission, Sir, be willing to propose an amendment to the effect that after the words "State-of Kashmir" the following words shall be inserted within brackets "otherwise known as the State of Jammu and Kashmir". If that is acceptable to the House my motion may be passed in that amended form.

There is only one other point to which I need make any reference at all and that is the one raised by my honourable Friend Mr. Kamath. He seemed rather perturbed by the use of the expression "Prime Minister" in this connection. He would rather like the word "Premier" to be substituted. Unfortunately here I am unable to comply with his suggestion, because the head of the Council of Ministers in Kashmir is by the Constitutional Statute of the State itself known as Prime Minister and so long as that is there we have got to respect the expression that is used in the Kashmir Constitution.

Perhaps I might also refer to the other point, namely election by the people, which my honourable Friend Prof. Shah suggested. General elections directly by the people are not possible in the present conditions of Kashmir. But if his suggestion was that, even on the limited franchise that was in force before, we could do something in this direction, that also would mean a general election for the purpose of getting together a Praja Sabha and such elections are not possible today. So, my contention is that there can be no direct election of these representatives of the people under the present conditions of Kashmir and those elections will have to be held even if you have to find a new Praja Sabha. The best course in the circumstances is the one I have suggested.

I hope the House will carry this motion.

Mr. President : The suggestion which has been made by the Honourable Prime Minister has been accepted by the mover, *viz.*, that after the words "State of Kashmir" within brackets the words "otherwise known as the State of Jammu and Kashmir" be inserted in the original proposition. If that is accepted by the House, then I shall take up the other amendments.

The question is:

"That after the words 'State of Kashmir' in the proposed paragraph 4-A, the following words within brackets be inserted, *viz.*, 'otherwise known as the State of Jammu and Kashmir'."

The amendment was adopted.

Mr. President : The question is:

“That in the proposed paragraph 4-A, the word ‘all’ be deleted.”

“That in the proposed paragraph 4-A, before the word ‘Kashmir’ wherever it occurs, the words ‘Jammu and’ be inserted.”

“That in the proposed paragraph 4-A, for the words ‘by nomination’ the words ‘by election by the Praja Sabha of the State of Jammu and Kashmir’ be substituted.”

“That in the proposed paragraph 4-A, for the word ‘nominated’ the word ‘elected’ be substituted.”

“That in the proposed paragraph 4-A, the words ‘by the Ruler of Kashmir on the advice of his Prime Minister’ be deleted.”

The amendments were negatived.

Mr. President : The question is:

“That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:—

‘4-A, Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir (otherwise known as the State of Jammu and Kashmir) may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.’”

The motion was adopted.

DRAFT CONSTITUTION—(*Contd.*)

Article 104

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I would request that article 104 be postponed.

Article 105

Mr. President : Then I shall proceed to article 105.

(Amendments Nos. 1879 and 1880 were not moved.)

Mr. President : The question is:

“That article 105 stand part of the Constitution.”

The motion was adopted.

Article 105 was added to the Constitution.

Article 106

Mr. President : Article 106

(Amendments Nos. 1881 and 1882 were not moved.)

Mr. President : There is an amendment to this amendment. Since the main amendment is not moved I suppose this amendment drops.

Shri T. T. Krishnamachari (Madras: General): It is covered by amendment No. 1883 to which I shall move my amendment.

Mr. President : So much the better.

Mr. Tajamul Husain (Bihar: Muslim): Sir, may I with your permission move this amendment for Mr. Naziruddin Ahmad?

Mr. President : Yes.

Mr. Tajamul Husain : Sir, I move:

“That in clause (1) of article 106 after the words ‘High Court’ where they occur for the second time, the words ‘duly qualified for appointment as a judge of the Supreme Court’ be inserted.”

If at any time there is no quorum of the Judge of the Supreme Court to hold a Session, the Chief Justice may consult the Chief Justice of the High Court concerned and ask him to attend the sitting of the High Court as an *ad hoc* Judge for such period as may be found necessary for the Judge of the High Court to be nominated by the Chief Justice of India. No argument is necessary. The Judge who sits as an *ad hoc* Judge in the Supreme Court must be duly qualified for appointment as a Judge of the Supreme Court: otherwise he cannot sit.

Shri T. T. Krishnamachari : Sir, I shall with your leave move amendment No. 124 in List VI. Sir, I move:

“That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words ‘Chief Justice may’ the words ‘with the previous consent of the President and’ be inserted.”

The wording of this amendment is fairly simple as the House will understand that article 106 provides for the appointment of *ad hoc* Judges by the Chief Justice; that is, a Judge of any High Court may be requested to cooperate with the Chief Justice of the Supreme Court and sit in any of the Benches constituted by him to decide any particular case. Well, the article as it now stands means that the Chief Justice can do it without any reference to the Government of the day. I think, Sir, that the position is not quite as it ought to be for the reason that while the appointment of any of the Judges of the Supreme Court, including the Chief Justice, is done by the Executive, any addition to the Court should not be made without any reference to the Executive whatever. Of course, there are administrative and financial problems that might arise by the Chief Justice making a request to any of the High Court Judges of any State to co-operate with him in this manner, and even the propriety of the occasion demands that the Chief Justice should not act except in consultation with the head of the Executive. Therefore, Sir, I have moved that the words “with the consent of the President” should be put in. Actually, it will not be a very difficult matter to obtain his consent, as in most cases it will be a formal matter. Also, there is this safeguard, namely, there are occasions when the Supreme Court has decided matters which have a political flavour. The possibility of any political bias being exercised by the Chief Justice in the matter of the selection of an *ad hoc* Judge to help to decide any particular case can also be partly obviated by this safeguard. The history of the Judiciary in America has been almost a history of how politics has influenced the attitude of the judiciary. Any student of the American Constitution would know that politics has influenced to a very large extent the decisions in constitutional cases by the Supreme Court of America. There is undoubtedly need for a safeguard for providing that the Executive shall have some say in a matter like this and if they really feel that the selection of a particular Judge is not proper, it is probable that the attention of the Chief Justice might be invited to that particular aspect of the matter.

It is not merely to provide against a contingency like the one I have mentioned but also to conform to the proprieties involved in a matter like this that I have moved this amendment. I hope the House will have no difficulty in accepting it. Sir, I move:

The Honourable Dr. B. R. Ambedkar : I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

Mr. President : There have been two amendments moved. Both have been accepted by Dr. Ambedkar. I will now put them to the vote.

Mr. President : The question is:

“That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words ‘Chief Justice may’ the words ‘with the previous consent of the President and’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (1) of article 106, after the words ‘High Court where they occur for the second time, the words ‘duty qualified for appointment as a judge of the Supreme Court’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 106, as amended, stand part of the Constitution.”

The motion was adopted.

Article 106, as amended, was added to the Constitution.

Article 107

Mr. President : Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

Shri Jaspal Roy Kapoor : I am not moving amendment No. 1886 as there is another amendment on the same lines.

Mr. President : Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

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

“That in article 107 the words ‘subject to the provisions of this article’ be deleted.”

Those words are quite unnecessary.

Shri T. T. Krishnamachari : I move:

“That in article 107, in line 3, after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

Sir, the purpose of this amendment is much the same as that of the amendment moved by me to the earlier article and accepted by the house. This article deals with the attendance of retired judges in the sittings of the Supreme Court. For the reasons mentioned by me earlier it will be necessary for the Chief Justice to obtain the previous consent of the President, before inviting any such person to act as a Judge of the Supreme Court.

(Amendment Nos. 1889 and 1890 were not moved.)

Mr. President : We have now the amendments and the article for discussion.

The Honourable Dr. B. R. Ambedkar : I accept amendment 125 moved by Shri T. T. Krishnamachari.

Mr. President : The question is:

“That in article 107, in line 3, after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That in article 107 the words ‘subject to the provisions of this article’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 107, as amended, stand part of the Constitution.”

The motion was adopted.

Article 107, as amended, was added to the Constitution.

Article 108

Mr. President : Article 108 is for the consideration of the House.

Shri H. V. Kamath : Mr. President, I move:

“That for article 108, the following be substituted:—

‘108. The Supreme Court shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint.’ ”

The article as it stands is in my humble judgment, not happily worded. For the first time since we commenced the article by article consideration of the Constitution we have come across an article which lays down that a particular organ of the State shall meet at a particular place. We have passed already important and articles such as article 69 fixing the venue of meetings of the Houses of Parliament and article 48(4) fixing the official residence of the President. I am sure there are other articles concerning the place where certain bodies or organs of State are supposed to meet. But none of these articles specifies the name of any particular place where that organ of the State should meet. Why, may I ask Dr. Ambedkar, does he feel it necessary to specify in this article that the Supreme Court shall meet in Delhi? The entire Constitution is silent on the point of India's capital. There is nowhere any mention of the capital of our country in the Constitution. There was even an amendment in this House, which however was not moved, but I am told that my friends are pursuing that matter in another way. There have been frequent references to the necessity of desirability of a change in the capital of India. Anyway, without prejudice to that, notwithstanding any attempt that may be made in this direction, I propose to deal with this question here purely on merit. When the whole Constitution is silent on this point, why should we import this mention of the capital, of Delhi, in this article? Is it not far more desirable or happier to leave the choice of the venue of the Supreme Court to the Chief Justice and the President of the Indian Union? Certainly they are best fitted to judge this matter and I am sure that under the Constitution where we are going to elect a President of the Indian Union and have an eminent legal and juristic authority for the Chief Justiceship, I see no reason why we should specify in the Constitution that the Supreme Court should meet at a particular place. There is no valid reason at all for specifying Delhi in this article for that purpose. It may be that the Supreme Court might meet in another place; even if Delhi is to be the capital, they may decide for various reasons that they should meet in another place, I therefore think that the mention of Delhi in this article is unnecessary.

Just another point, Sir, The article as it stands reads as follows: “The Supreme Court shall be a court of record”. What the Supreme Court will be and will not be are matters which have been exhaustively dealt with in the preceding and succeeding articles. The term “court of record” is a borrowed

phrase and we need not use it here. Therefore my amendment lays down that the Supreme Court, shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint. Sir, I move my amendment and commend it for the acceptance of the House.

Mr. President : There is an amendment to this article, No. 3 of List No. 1, notice of which has been given by Mr. Gadgil.

(The amendment was not moved.)

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

“That for amendment No. 1891 of the List of Amendments, the following be substituted:—

“That for article 108, the following articles be substituted:

‘108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.’ ”

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

(Amendment Nos. 1892, 1893 and 1894 were not moved.)

Shri Jaspat Roy Kapoor : Mr. President, Sir, I beg to move:

“That in amendment No. 126 of List VI which has just been moved by Dr. Ambedkar, in the proposed article 108-A for the words ‘shall sit in Delhi or at such other place or places’ the words ‘shall sit at Delhi and/or such other place or places’ be substituted.”

Should, however, this amendment not meet with the approval of the House, I would like to move, in the alternative,—

“That in amendment No. 126 of List VI in the proposed article 108-A after the word ‘places’ the following words be inserted ‘or in Delhi and at such other place or places.’ ”

If my first amendment is accepted, the amended article would read thus:

“The Supreme Court shall sit in Delhi and/or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint.”

Shri T. T. Krishnamachari : Will the honourable Member please make it clear whether there should be a stroke or a hyphen after ‘and’.

Shri Jaspat Roy Kapoor : There should be a line between the two. If my second amendment is accepted, the article would read thus:

“The Supreme Court shall sit in Delhi or at such other place *or places in Delhi at such other place or places* as the Chief Justice of India, with the approval of the President, from time to time appoint.”

Sir, my reason for moving this amendment is that I believe that the proposed article 108-A does not really convey the meaning which it is intended to convey, and if it does, then I think it is obvious that an anomalous position is created thereby and the capital city of Delhi is being treated in a very unfair manner. The proposed article, as it stands, means that the Supreme Court shall sit in Delhi or at any other place in the alternative, which of course implies that it shall not then sit in Delhi at all. It means further that even if the Supreme Court holds its sittings in half a dozen places in the country, Delhi shall not be one of those places. Delhi and other places would, therefore, be mutually exclusive for the purposes of the sittings of the Supreme Court. I believe it is not the intention of the Honourable Dr. Ambedkar or even of Mr. T. T. Krishnamachari who appears to be the joint author of this amendment, that this article should be capable of this interpretation. Then, Sir, as regards the anomaly that arises out of it, I have to submit that it means that so long as the Supreme Court

[Shri Jaspat Roy Kapoor]

sits in Delhi, it will not have the right or the privilege to hold a circuit court anywhere else in the country. The Chief Justice may consider it necessary in the interests of his work or in order to give necessary facilities to the litigant public to hold circuit courts in different parts of the country. Even if the Chief Justice thinks that in view of the fact that large number of cases have accumulated, say from Madras or Bombay and in order to dispose of those cases or in order to give necessary facilities to the litigants so that they may not be put to the inconvenience of coming all the way to Delhi, it is necessary to hold circuit courts in Madras or Bombay, it will not be open to the Chief Justice to do so. Of course, if he is so disposed he can resort to a little device but then it will be so inconvenient and even ridiculous. He can shift the Supreme Court to a place very near Delhi, say Shahdra or some other new refugee township if the honourable the Minister for Rehabilitation is so disposed to accommodate the Chief Justice, and after shifting the Supreme Court to a place nearby, he can of course hold circuit courts in Bombay, Madras, or Calcutta as necessity may arise. Now, Sir, I submit that this anomalous position should not be allowed to stand. With regard to the injustice to Delhi itself, I submit that the present draft implies that even if the Supreme Court holds its sittings in half a dozen places it shall not be open to the Supreme Court to have even a circuit court in unfortunate Delhi. It means that either Delhi will have the privilege of having the sittings of the Supreme Court exclusively within itself, or it will not have even the facility of having a circuit court there. Either Delhi will be the monarch of all it surveys or it shall be thrown into oblivion. Sir, I cannot understand the logic of it, and, may I say, I cannot understand even the absurdity of this position. If behind this article there is the intention of anybody to remove the seat of Supreme Court from Delhi to some other place, I submit it should be said so in a straightforward and frank manner and that proposal should not be allowed to be brought in this rather back-door manner. But I believe, it is perhaps not the intention of the authors of this amendment, and I should not, therefore dilate on that aspect of it; and since it is perhaps not the intention of the authors, I would submit that it is necessary that this amendment should be amended in the manner in which I have suggested, so that it should be open to the Chief Justice of the Supreme Court to arrange for the holding of the sittings of the court either at Delhi or at some other place or places or both at Delhi and at other place or places. I hope, Sir, that this necessary amendment would be acceptable to the Honourable Dr. Ambedkar and also to the House.

Shri T. T. Krishnamachari : Mr. President, Sir, not being a lawyer, I am rather nervous to contradict my honourable Friend Mr. Jaspat Roy Kapoor, who has moved an amendment to the amendment moved by Dr. Ambedkar. But I think Sir, I do understand this foreign language to the extent that it is possible for a foreigner to understand, and I am afraid that I am unable to appreciate the necessity for making a simple clause, such as 108 happens to be now, into a very complex and difficult clause such as it would be if the amendment of Mr. Jaspat Roy Kapoor is accepted.

Sir, I quite agree with the need for a certain amount of elasticity in regard to the place at which the Supreme Court will have to operate in the future; it may be, it would operate in Delhi or at some other place, or it would operate in Delhi and at some other place, that is precisely what my honourable Friend, Mr. Jaspat Roy Kapoor wants. If the court is to be fixed at Delhi it must also be possible for the Chief Justice to arrange for sittings elsewhere to make it a sort of peripatetic court, if it is necessary and he thinks that if in the event of the headquarters of the court being changed, it must be possible for the Court

to sit at Delhi in the same manner as it would sit in some other place, if the headquarters were Delhi itself. I think that is quite covered by the position of the words at the end of article 108-A as it now stands. It reads: "The Supreme Court shall sit in Delhi and at such other place or places." It certainly does not mean that the Supreme Court shall sit at either Delhi or at such other place; it does not preclude the possibility of the Supreme Court sitting at Delhi and at some other place, and so far as the construction of the wording is concerned, I do not think it is much of a legal technicality, but it is really a matter of language and the fears that are expressed by my honourable Friend, Mr. Jaspat Roy Kapoor are, I think, entirely unfounded and all the contingencies that he wants to import into a situation that might arise by a construction of article 108-A is provided for as the clause stands today. Sir, I think there is no point in putting "and/or" with which I am very familiar in any contract form or in a bill of lading or some such document covering a commercial transaction, where the possibility of an alternative being provided is very necessary, but it has no legal sanction whatever and I think, we cannot put in "and" and "or" and we cannot put a stroke in between "and" and "or" as an alternative one for the other and we cannot have both "and" and "or" simultaneously as the language would again be defective. I think the House may rest assured that the framers of this amendment had in view the contingencies which Mr. Jaspat Roy Kapoor has in mind and they felt convinced and they are also assured by persons competent to assure them that the article 108-A as it now stands will cover all possible contingencies. There will be difficulties if the amendment as envisaged by Mr., Jaspat Roy Kapoor is accepted. Sir, I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I have listened to the argument of Mr. Jaspat Roy Kapoor as well as the argument of Mr. Krishnamachari. As the words stand, I am of the opinion they are certainly ambiguous and they are not clear. Certainly one could argue that the word "other" qualifies both 'place' and 'places'. This amendment, as it stands can be construed in to saying that the Court shall either sit at Delhi and if it sits at any other place except Delhi, then there can be no circuit court at Delhi. If the word "other" qualifies the word "places" then the court can sit at other places except Delhi. I thought that Mr. Krishnamachari would clear away this ambiguity but after hearing him, I am of the opinion that this amendment is certainly ambiguous. I do not think that the authors of this amendment meant to convey that Delhi shall be a place, which in the words of Mr. Jaspat Roy Kapoor, will either be a monarchical or a forbidden place. My humble submission as I understand the position today is the Government has not decided to leave Delhi. Delhi is the Capital and today we should make it sure that Delhi will be the place where the Supreme Court shall sit, I do not know if in any other country the Supreme Court of country sits at any place other than the Capital. As long as Delhi is the Capital, the proper place for a Supreme Court is at Delhi. Moreover, it is a court of record; it is a court which must have some permanent seat and Delhi is the proper place where it can have its permanent seat; there can be no doubt about it, but if at any other time the Capital is going to be changed, there will be no difficulty in amending this part of the Constitution or if it is to be provided, even today then it will be better provided if you adopt this amendment along with the second amendment of Mr. Jaspat Roy Kapoor, because then it will be open to the authorities to see that the place of the capital is changed, and while it is changed, Delhi is not deprived of its right of having a circuit Court, if it is so necessary. I for one do not understand how the Supreme Court will at one and the same time sit at Delhi and in any other place or places. In my

[Pandit Thakur Das Bhargava]

humble opinion a court can be said to sit at a place where it has got a permanent seat. There is no reason to think that if a Supreme Court sits in a bench or as a circuit at some other place, it can be said that that court is sitting at that place alone. A court should be deemed to have a permanent seat and to sit at the place where it has got a permanent seat. It is necessary to avoid this ambiguity. If Mr. Krishnamachari thinks that the words 'and/or' can only be used in a conveyance or a contract and he has not seen it in a treaty or a legal document, then, the amendment of Mr. Jaspat Roy Kapoor is quite clear, and that amendment should be accepted.

The Honourable Dr. B. R. Ambedkar : Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the high Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words 'a court of record' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where the court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, "or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint" then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent words are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor, I think the answer given by my Friend Mr. Krishnamachari is adequate and I do not propose to say any more.

Shri H. V. Kamath : May I ask one question, Sir? In the view just now enunciated by Dr. Ambedkar that the litigants should know the place where the Supreme Court will sit, and that the question of capital has not yet been settled and the court may have to sit in some other place or places, what is the point in specifying Delhi at all?

Mr. President : I think the question was put by the speaker in his first speech and it has been answered. Whether he is satisfied with the answer or not is a different question. The question has been answered.

Shri Jaspal Roy Kapoor : May I seek a small clarification from Dr. Ambedkar? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. A circuit court is only a Bench.

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

Shri Jaspal Roy Kapoor : I beg leave of the House to withdraw my amendment, Sir.

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

Mr. President : Amendment No. 126.

Shri T. T. Krishnamachari : May I suggest, Sir, that as it relates to two articles, it will be better to put them separately?

Mr. President : Yes. I put the first part of amendment No. 126.

The question is:

“That for article 108, the following article be substituted:

‘108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.’ ”

The amendment was adopted.

Mr. President : I am putting the second part.

The question is:

“108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint.”

The amendment was adopted.

Mr. President : I think that covers the amendment of Mr. Kamath. I need not put that.

Shri T. T. Krishnamachari : That covers the entire proceedings so far as this article is concerned.

Mr. President : So, I shall put the article, as amended by Dr. Ambedkar’s amendment.

The question is:

“That article 108, as amended, stand part of the Constitution.”

The motion was adopted.

Articles 108 and 108-A were added to the Constitution.

Articles 109 to 114

Mr. President : The motion is:

“That article 109 form part of the Constitution.”

The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because

[The Honourable Dr. B. R. Ambedkar]

these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule I. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part I. If that happens, then, there will be no necessity to introduce these reservations in these articles 109—114. I suggest these may be held over.

Mr. President : We will pass them over for the present.

Article 115

Mr. President : The motion is:

“That article 115 form part of the Constitution.”

The first amendment is No. 1937 of Mr. Kamath. That is negative and it is ruled out as an amendment. Amendment No. 1938. Dr. Bakshi Tek Chand, you have given notice of an amendment to this amendment. You move your amendment first?

Dr. Bakshi Tek Chand (East Punjab: General): Mr. President, Sir, the amendment which I am going to move is an amendment to amendment No. 1938 in the List of Amendment Vol. I. According to that amendment to amendment No. 1938...

Mr. President : You may first move the original amendment and then the amendment to the amendment.

Dr. Bakshi Tek Chand : Very well, Sir, I will first move amendment No. 1938 as printed at page 197:

“That in article 115, before the words ‘in the nature of’ the words ‘including those’ be inserted.”

To this amendment a verbal alteration is suggested, and that is:

“That in article 115, for the words ‘or orders in the nature of the writs’ the words ‘orders or writs, including writs in the nature’ be substituted”.

This amendment will bring the phraseology of article 115 in line with article 25 which has already been passed by this House in the last session. Article 115, as drafted by the Drafting Committee, reads as follows:

“Parliament may, by law, confer on the Supreme Court power to issue directions or orders *in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari*, or any of them for any purposes other than those mentioned in clause (2) of article 25 (which relates to the enforcement of fundamental rights) of this Constitution.”

It will be seen that the article as drafted limits the power of Parliament to invest the Supreme Court with power to issue writs in the nature of those specifically mentioned and to none other. The amendment seeks to make the article more comprehensive so as to enable Parliament to enact laws empowering the Supreme Court to issue writs, directions, orders or writs including those mentioned in the drafted article 115. Hereafter it may be considered necessary to empower the Supreme Court to issue writs other than those which are mentioned in the article. The House will agree that it is not desirable to place such restrictions on the power of Parliament. Moreover as I have already said, in article

25, which deals with the power of the Supreme Court to issue writs, with regard to justiciable fundamental rights, this phraseology has already been adopted. Clause (2) of article 25, as passed by this House reads:

“The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate for the enforcement of any of the rights conferred by this Part.”

To bring the phraseology of article 115 in line with that of article 25, I move this amendment, and commend it for the acceptance of the House.

Mr. President : Amendment No. 1939, in the name of Dr. Ambedkar.

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

“That in article 115, the words and brackets ‘(which relates to the enforcement of fundamental rights)’ be deleted.”

The words are superfluous.

Mr. President : No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr. Naziruddin Ahmad is also of a drafting nature and need not be moved. No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything?

We shall now put the amendments.

I will first take Dr. Ambedkar’s amendment No. 1939.

The question is:

“That in article 115, the words and brackets ‘(which relates to the enforcement of fundamental rights)’ be deleted.”

The amendment was adopted.

Mr. President : Then I put Dr. Bakshi Tek Chand’s amendment to amendment No. 1938.

The question is:

“That in article 115, for the words ‘or orders in the nature of the writs’ the words ‘orders or writs, including writs in the nature’ be substituted.”

The amendment was adopted.

Mr. President : That becomes the original amendment now. I put the amendment as amended to the House.

The amendment, as amended, was adopted.

Mr. President : Then I put the article, as amended by the two amendments one of Dr. Ambedkar, and the other of Dr. Tek Chand to vote.

The question is:

“That article 115, as amended, stand part of the Constitution.”

The motion was adopted.

Article 115, as amended, was added to the Constitution.

Article 116

Mr. President : Now, we take up article 116. The first amendment is No. 1943, standing in the name of Mr. Kamath. It is ruled out, being a negative one.

No. 1944 is not even of a drafting nature, being only regarding punctuation.

[Mr. President]

There is no other amendment to article 116. I shall put the article to the vote of the House :

The question is:

“That article 116 stand part of the Constitution.”

The motion was adopted.

Article 116 was added to the Constitution.

Article 117

Mr. President : We then come to article 117.

(Amendment No. 1945, was not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move:

“That in article 117, for the words ‘all courts’ the words ‘all other courts’ be substituted.”

So if this is accepted, the article will read thus:

“That law declared by the Supreme Court shall be binding on all other courts within the territory of India.”

I have no doubt in my own mind that this article does not seek to bind the Supreme Court by its own judgments. What is intended by the article is, I am sure, that other courts subordinate to the Supreme Court in this land shall be bound by the judgments and the law declared by the Supreme Court from time to time. It will be unwise to bind the Supreme Court itself, because in order to ensure elasticity, in order to enable mistakes and errors to be rectified, and to leave room for growth, the Supreme Court will have to be excluded from the purview of this article. The Supreme Court may amend its own judgments, or its own interpretation of the law which it might have made on a previous occasion and rectify the errors it has committed earlier. Therefore I feel that the intention of this article would be correctly and precisely conveyed by saying that the law of the Supreme Court shall be binding on “all other courts” within the territory of India.

Sir, I move.

(Amendments Nos. 1947 and 1948 were not moved).

The Honourable Dr. B. R. Ambedkar : Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court should be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

Shri H. V. Kamath : Then why not say “all other courts”?

The Honourable Dr. B. R. Ambedkar : “All courts” means “all other courts.”

Mr. President : The question is:

“That in article 117, for the words ‘all courts’ the words ‘all other courts’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 117 stand part of the Constitution.”

The motion was adopted.

Article 117 was added to the Constitution.

Article 118

Mr. President : Article 118.

(Amendments No. 1949 and 1950 were not moved.)

Mr. President : The question is:

“That article 118 stand part of the Constitution.”

The motion was adopted.

Article 118, was added to the Constitution.

Article 119

Mr. President : Amendment No. 1951 is ruled out.

Shri H. V. Kamath : Sir, the point which I wish to raise in my amendment No. 1952 is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may withhold its opinion. I believe what is meant is that when once the President refers the matters to the Supreme Court for its opinion there is no option for the Supreme Court. If that is not meant then the language is right. But if it is meant that once the President refers a matter to the Supreme Court, it must report its opinion thereon to the President, then the word “shall” must come in. I wanted a clarification on that point.

The Honourable Dr. B. R. Ambedkar : The Supreme Court is not bound.

Shri H. V. Kamath : Then I do not move my amendment.

Mr. President : Amendment No. 1953 is ruled out and 1954 is verbal.

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

“That in clause (2) of article 119, for the word ‘decision’ the word ‘opinion’ and for the words ‘decide the same and report the fact to the President’, the words ‘submit its opinion and report to the President’ be substituted respectively.”

Sir, I originally sent this as two separate amendments but they have been listed as one. If this is accepted by the House the relevant clause of this article would read as follows:—

“The President, may notwithstanding anything contained in clause (i) of the proviso to article 109 of this constitution refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion, and the Supreme Court shall thereupon, after giving the parties and opportunity of being heard, submit its opinion and report to the President.”

If we read carefully clause (i) it will be found that what is referred to is the “opinion of the Supreme Court” on any matter which the President may deem it necessary or fit to refer to that court.....

The Honourable Dr. B. R. Ambedkar : May I request you, Sir, to hold over this article 119, because it has also reference to articles 109 to 114 which we have decided to hold over.

Shri H. V. Kamath : Then, Sir, I shall reserve my right to move the amendment later on.

Article 120

(Amendments Nos. 1956 and 1957 were not moved.)

Mr. President : The question is:

“That article 120 stand part of the Constitution.”

The motion was adopted.

Article 120 was added to the Constitution.

Article 121

The Honourable Dr. B. R. Ambedkar : I would request Sir, that this article be allowed to stand over.

Article 122

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

“That for the existing article 122, the following be substituted:—

‘122 *Officers and servants and the expenses of the Supreme Court.* (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of services of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.’”

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage:

“That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:—

‘Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.’”

Mr. President : There is an amendment of Mr. Kapoor to this amendment.

Shri Jaspal Roy Kapoor : It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendments Nos. 1968 and 1969 were not moved.)

Mr. President : So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

Shri T. T. Krishnamachari : Sir, I would like to say a word. There is one particular point in Dr. Ambedkar’s amendment to which I would like to invite the special attention of this House. I refer to clause (3) which makes the administrative expenses of the Supreme Court, including salaries, allowances and pensions payable to or in respect of the officers and servants of the court a charge on the revenues of India. Sir, I want to draw the attention of the House to this particular clause, because it has been the intention of some of us that all items chargeable to the revenues of India should be brought in under one particular article, namely, article 92 if I remember aright. The only reason why this particular clause has been allowed to come in here is the fact that article 92 has been passed over—it has not been considered

by the House. So I would like to say that the House might perhaps at the appropriate time, when article 92 is being considered, permit a transposition at that stage of all clauses similar to this one—clause (3)—wherever it occurs, whether here, or in the matter of the Speaker's establishment or in the matter of the Auditor-General's establishment or in the matter of the Public Service Commission, should be brought under one head, so that people will know, at any rate the future legislators will know, what are the items which are sacrosanct and which are a charge on the revenues of India.

The second point is this. While I undoubtedly support the amendment moved by Dr. Ambedkar, I think it should be understood by the Members of this House, and I do hope by those people who will be administering justice and also administering the country in the future that this is a safeguard rather than an operative provision. The only thing about it is that a matter like the employment of staff by the Judges should be placed ordinarily outside the purview of the Executive which would otherwise have to take the initiative to include these items in the budget for the reason that the independence of the Judiciary should be maintained and that the Judiciary should not feel that they are subject to favours that the Executive might grant to them from time to time and which would naturally influence their decision in any matter they have to take where the interests of the Executive of the time being happens to be concerned. At the same time, Sir, I think it should be made clear that it is not the intention of this House or of the framers of this Constitution that they want to create specially favoured bodies which in themselves becomes an *Imperium in Imperio*, completely independent of the Executive and the legislature and operating as a sort of superior body to the general body politic. If that were so, I think we should be rather chary of introducing a provision of this nature, not merely in regard to the Supreme Court but also in regard to the Auditor-General, in regard to the Union Public Service Commission, in regard to the Speaker and the President of the two Houses of Parliament and so on, as we will thereby be creating a number of bodies which are placed in such a position that they are bound to come into conflict with the Executive in every attempt they make to display their superiority. In actual practice, it is better for all these bodies to more or less fall in line with the regulations that obtain in matters of recruitment to the public services, conditions of promotion and salaries paid to their staff. My own little experience of what is happening in regard to bodies of a similar nature, though not fortified by a constitutional provision of this kind, is that it does not do any good to have separate compartments in public service. What happens usually in this. If promotions and all matters of the nation are confined within the small area or the small ambit of a particular body, it often happens that the person who comes to the top of the Executive position in that body stays put for all time if that particular post is not brought into the cadre of the general services of the State, whether Central or Provincial; there will be a lot of inconvenience in having a sort of bottleneck into which a particular person who rises to the top of this narrow cadre finds that he will not be able to get out of it except by dismissal or removal; whereas, if the establishment of these particular bodies forms part of the general service and person employed therein who is found unsuitable in any one department can be transferred to another sphere of activity. It would stand to reason that it would be better to make it clear in passing that this article would not really operate as a bar to exercising full freedom by the authorities concerned of the powers given under this section. Nevertheless, it should be made clear that it is not the intention of the framers of the Constitution and this House that these bottlenecks should be created and that these bodies should function irrespective of the needs of the time and irrespective of the conditions that operate in the other services. It might happen that in the general service there may be a reduction of salaries, and if the Chief

[Shri T. T. Krishnamachari]

Justice says 'no' to a request of the Executive to fall in line on the ground that what happens to the executive departments is none of his concern, that so far as his department is concerned he will not permit a reduction of salaries, it will mean that we are helping to keep this body apart from the general services and it will be a source of conflict. So as the Executive and the services are much concerned, I do hope that the mere fact of putting these special officers like the Chief Justice and the Auditor-General in a privileged position will not mean that they will have to exercise their right in entirety but that such a position is a safeguard against a possible misuse of the power that is given to the Executive when there is need for them to expand their services, or in the matter of recruitment and so on. With these remarks, I think the proposition moved by my honourable Friend, Dr. Ambedkar, might go through.

Shri K. M. Munshi (Bombay : General): Mr. President, I heartily support the amendment (No. 1967) moved by my Friend Dr. Ambedkar and take this opportunity once again to emphasise what I said while opposing Professor Shah's amendment the other day, that this Constitution, though it has not accepted the doctrine of the separation of powers, has maintained the independence of the judiciary to the utmost possible extent. Any fear therefore that this independence will not be maintained because we have not accepted the doctrine of separation of powers is an entirely unfounded one. It must be and I hope it will be the duty of the House at all times to maintain the independence of the judiciary.

My friend who spoke last supported the amendment which I also support. But he will forgive me if I do not associate myself with some of the remarks that fell from him. A judiciary is an independent organ of the State. I entirely agree with him that we cannot have kingdoms within kingdoms. The legislature, the executive and the judiciary are all organs of the State which must be maintained in their proper and respective places in a wholesome Constitution and therefore it is necessary, as stated in the clause, that the appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct. Those officers are doing work in connection with the administration of justice. They are not officers who can be transferred to the executive side or to other Departments and it is essential that the cadre of such officers who are associated with the administration of justice should have its undiluted loyalty to the judiciary which it serves. The qualifications also are likely to be different. In this respect the provision with regard to reference to the Public Service Commission is wholesome. It will mean that there will be no favouritism in the matter of appointments. Once a person is appointed to the staff of the judiciary he must continue to be associated with the department. Therefore clause (1) is very important.

The amendment moved by Shri T. T. Krishnamachari is necessary, because so far as the financial burden is concerned, it can only be decided by the legislature. After all, the Parliament is responsible for the finances of the country and therefore the salaries, allowances and pensions must receive the approval of the President, *viz.*, the party in power. But we must safeguard the matter in this respect in a way that the independence of the judiciary will always be maintained.

In this connection I may draw the attention of the House to the comments made in a Memorandum submitted by the Federal Court and the

Chief Justice of the provincial High Courts. What they have stated is this:

“Thanks to the system of administration of justice established by the British in this country, the judiciary until now has in all matters played an independent role in protecting the rights of individual citizens against encroachment and invasion by the executive power. Unfortunately, however, a tendency has of late been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, right and authority which, unchecked, will be most unsatisfactory.”

Well, the whole provision in this amendment is intended to prevent any whittling down of the status or dignity and the powers that they possess. It is essential that in a democracy the judiciary must be there to adjust the differences between citizen and citizen, between State and State and even between the Government of India and the State. If that independence is not secured, I am sure we would soon drift towards totalitarianism. I know that the country is passing through a crisis and naturally large powers have to be taken by the executive to preserve our national existence. But, at the same time the line of demarcation between a democratic method of preserving national existence and a totalitarian method should not be lost sight of. In that connection the independence of the judiciary demarcates the line between the democratic method and the totalitarian method. I am sure the provision of this Constitution will sufficiently guarantee the independence of the judiciary. With these words I support the amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after the speeches of my Friends Messrs. Krishnamachari and Munshi which the House heard just now, very few words are necessary to commend both the parts for the acceptance of the House.

There are two principles involved: One is that you must be able to maintain the independence of the judiciary and unless the judiciary has sufficient control over its own establishment its independence may become illusory. If the establishment looks for preferment or for promotion to other quarters, it is likely to sap the independence of the judiciary. But at the same time, it has to be recognised that the judiciary and its establishment would have to draw their allowances and their salaries from the public exchequer. The ultimate person who will be affected is the taxpayer. Therefore, while on the one hand you must secure the independence of the judiciary, the interests of the taxpayer on the other hand will have to be safeguarded in a democracy. That can only be done by giving sufficient control to the Government of the country which is responsible to the House of the People in the matter of finance. The effect of the present provision is that every time the expenses are not subject to the vote of the House. That is a good thing. It is made a primary charge on the public exchequer. The second effect is that the court concerned will have complete control over its appointments. At the same time this provision safeguards the interests of the public and of the Government in so far as the Government is representative of the public for the purpose of securing the finance of the country. That is, if there is to be an increase in the salary, the Chief Justice or other Judicial authority cannot take a line of his own. The problem actually arose in Madras at the time of the First Congress Ministry. The Chief Justice of the Madras High Court took up the position that the High Court stood on a different footing from the other establishments under the control of the provincial Government. The Cabinet differed from him and decided and he could have complete control over his establishment, but that in regard to the general scale of salaries, etc., he should fall in line with the others. This is a very fundamental principle. Whenever you are dealing with a question of salary or emoluments of a particular functionary you must adjust it to the general financial system of the country.

[Shri Alladi Krishnaswami Ayyar]

You cannot secure special privileges for any particular class of the government servants or government officers or even sometimes of judges, without considering the general public economy and finances of the country. All the three principles have been secured by the original proposition as well as by the amendment which has been placed before the House. Under those circumstances I submit that both amendments may be accepted by the House as being consistent with the maintenance of the dignity and independence of the judiciary and at the same time securing the interests of the common taxpayer.

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. President, Sir, it is sometimes said that all the arguments were in favour of the plaintiff but the decree has gone against him. That is what I felt when I read the amendments and also heard the arguments of my Friend Mr. Alladi Krishnaswami Ayyar and the others who spoke before him. They want that the Supreme Court should be absolutely independent of the Executive and that the salaries of the judges ought not to be left to the vote of the legislature from time to time. This article 122 gives the jurisdiction to the Chief Justice for fixing of the salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court. This is sought to be modified by this amendment. Here in the clause as it stands, the Chief Justice need not take the approval of the President. It says "in consultation with the President". Therefore the Chief Justice is at liberty, consistent with his own independence and the independence of his officers to fix their salaries and allowances. The word "consultation" is deliberately used here. Now they have given this amendment to remove the word "consultation" and put in the word "approval". "Approval" is quite different from "consultation". It is now open to the President to block it. But who is the President to do it? Under the Government of India Act the Governor-General need not consult anybody and it was absolutely in his discretion to do anything he liked. Here in this Constitution the President means "in consultation with his Ministers". Therefore what really will happen is the Chief Justice will have to dance to the tune of the Minister for the time being. It may be said that the Cabinet as a whole will advise the President. In the Cabinet the Minister of charge of Law or Law and Order will have the controlling voice. The voice of the Minister is normally the voice of his Secretary. Therefore the Chief Justice of the Supreme Court will have to dance to the tune of a mere Secretary in the Home Department or the Law Department. What this amendment means is that he will be at the beck and call of the Ministry and so-called independence of the judiciary will be taken away. Therefore I do not see how this amendment is consistent at all with the principle of the independence of the judiciary and I do not see the wisdom of it. After this clause was originally framed, the framers have changed their opinion and they want to bring this clause into line with the provision in the Government of India Act. Section 216 of the Government of India Act as adapted refers to this matter.

"The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the revenues of the Dominion, and any fees or other moneys taken by the court shall form part of those revenues."

Section 242(4) proviso (b) reads:

"Rules made under the said provision (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the Governor-General."

They want to copy that provision. The Governor-General as representing the King, wanted to have absolute jurisdiction over all departments in this country.

including judges of the High Courts and the Federal Court. Why should we copy that provision? I am not in favour of this amendment. This amendment is not consistent with the principle of the separation of the judiciary from the executive, to which we are all committed and by which all of us stand.

Then, Sir, as regards clause (2) making the expenses of the Supreme Court including all salaries, etc., chargeable on the revenues of the Union, there was some doubt raised in some quarters whether it should be chargeable only in respect of the salaries of the judges or in respect of the salaries, etc., of other officers and servants also. It was claimed that if this is done, there will be many islands, various autonomous authorities created. The Supreme Court is an autonomous body, regulating its own affairs, including the salaries and pension of its officers. This is one set. The Auditor-General is the second set. The Public Service Commission is the third set. Therefore some people who wanted that Parliament should have control from time to time wanted to remove this clause also. I do not agree with that view. This clause ought to stand, for this reason that when with the one hand you have allowed the Chief Justice to regulate the salaries and pensions, with the other hand you cannot allow Parliament to interfere with these from time to time. If you do that, the whole thing will become nugatory. Even now, it is not too late and I would urge the honourable the Mover to reconsider this decision. If, however, he thinks that it should stand, I am not opposing this amendment. I am agreeable to this amendment.

Pandit Thakur Das Bhargava : *[Mr. President, Sir, I oppose the amendment regarding the approval by the President.

Every constitution provides for three basic requirements, viz., firstly, an independent judiciary; secondly, a legislature, and thirdly an executive. It would be a mistake for one to ask as to which of the three is of greater or lesser importance, because all the three, though independent in their respective spheres are component parts of the body politic of the State. A constitution, wherein a fully independent judiciary is not provided for, can never guarantee individual liberty to the people. However, we should examine the powers we have provided for the judiciary in our constitution and this would enable us to know whether it is proper or not to give such power to it. If you refer to article 109 which has not been taken into consideration as yet, you will find its wording to be rather significant. It confirms the provision that the Government of India will itself appear before the judiciary either as plaintiff or as defendant. Naturally it is clear from the words of that article that the Federal Government and the States would be appearing as parties to suits before the Supreme Court. Besides, if we refer to the other articles in the constitution, if we read the articles 7-20 dealing with Fundamental Rights or go through various other articles, it will be clear to us that the Supreme Court is the foundation stone of our liberty. It would never be right and proper to subordinate the powers of the Supreme Court to an individual entrusted with the powers of an executive nature. The previous article 102 has stated in plain words "The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President." I would respectfully submit Sir, if the words 'approval of the President' are added here, it will destroy the independence of the judiciary. It can never be desirable to do so. The demand for the addition of these words betrays a fear that the judiciary might increase to such an extent the salaries of its employees as may not be acceptable to the Government. But I can say that similar apprehensions may be expressed by the officers of the judiciary with regard to the use of his powers by the President. Again it may be suspected with equal force that the legislature would arbitrarily increase the number of

*[] Translation of Hindustani speech.

[Pandit Thakur Das Bhargava]

Ministers. To entertain such doubts about the President or the Chief Justice indicates that we do not have complete confidence in them. I beg therefore, to submit that it is not proper to trifle with the powers of the Chief Justice in this way. I appeal Sir, that the judiciary must be given the same status that the Legislature and Executive have got. On their co-ordination depends our future, our liberty and every other thing which we want to develop in our hand. If we trifle with the powers of any of them it may land us in a number of difficulties. The judiciary might negative all our liberty; the legislature might enact laws which might cripple the judiciary and similar apprehensions might arise in respect of the executive. Our welfare, therefore, lies in their co-ordination. There is no cause for suspicion in this respect which can justify the addition of the words 'with the approval of the President'. As regards the provision in Section 242 of the Government of India Act, I would submit that we are not concerned with what the old Government wanted to do. What we are concerned with today is that our judiciary should be entirely independent so that we can rely on it. For that it is essential that it should work independently and the President or the Legislature may not be able to interfere with it. It is, therefore, essential that its rights should not be reduced. As we are providing that the salary of the President would be a charge on the Government revenue, so also the salary of the Chief Justice should be a charge on the revenues of India. Similarly the expenses incurred on all the officers, whose independence is essential for the proper working of this Constitution, should also be charged on the revenues. Once you have provided a sum for them, the Chief Justice should have power to spend it as he likes, and the Legislature and Executive should not be able to interfere in that.

You have just passed the Directive Principles in which you have laid down that you want the separation of judiciary and the executive. I want to ask as to how you can effect it, if you do not allow the Chief Justice and his Department full liberty to spend. Do you want that for every petty post the Chief Justice will have to say it is essential and then send the proposal to the President, who ultimately means the Prime Minister and his Chief Secretary in that ministry and the Secretary etc. will comment as to whether the posts are necessary or not? Will it be proper that the Chief Justice should write for every post like this? There is no reason for you suspect that the one person in whose hands you would place the duty of maintaining the independence of India would not be duly discharging his duties. I respectfully submit that the underlying idea of these amendments is that we are apprehensive that the Chief Justice may spend too much money or contravene the constitution. There is no cause for such suspicion. We have seen in India that even under the British rule when the Judiciary was their own, it did not care for the executive. Do we not know that our Federal Court had invalidated section 26 of the Public Safety Act? If you wish that in this country we should have the same freedom as we have hitherto, or rather that we should have more independence it is essential that the status of the judiciary should not be lower than that of the Executive or Legislature.

The Members of the Assembly might remember that at the time of discussion on article 15, the question had arisen whether the judiciary would have the right to say, once a law has been enacted by the Legislature, that it is in accordance with justice or not, as is the convention in America where the judiciary can express its opinion whether a law of the Legislature is legal or not so far as the life and personal liberty of an individual is concerned. At that time the question under consideration was whether the judiciary should be given

so much power that it can even declare that any law enacted by the Legislature is not proper and valid. As such questions arise before you and as the House was, in a way, in favour of the proposal, I hope that in future too when any question arises, in this connection, the House would support the rights of the judiciary. When we want to give so many rights to the judiciary, I respectfully submit, that we should also not, owing to any fear, provide that for the posts of petty servants, the Chief Justice will have to depend on the Executive. This amendment is not proper and I oppose it.]

Shri Jaspal Roy Kapoor : Mr. President, Sir, I must confess that I do not feel happy either at the phraseology of this article 122, or at the idea underlying it. Sir, I yield to none in my desire that the judiciary of the country should be absolutely independent of the executive, but I think the independence of the judiciary must be confined only in respect of the administration of justice and under the garb of the independence of the judiciary, we should not go on empowering the judiciary to do things which fall ordinarily within the jurisdiction of the Executive or the Parliament. According to article 122, we are going to invest the Supreme Court, the Chief Justice and such of its other judges as may be nominated by the Chief Justice, as also some subordinate officers of the Supreme Court as may be nominated by the Chief Justice, with the right and authority of appointing many important persons, of filling up many important posts in the Supreme Court. I do not think Sir, there is any necessity for investing the Supreme Court with powers in respect of all these appointments. Then, Sir, we are not only going to invest the judiciary with this power, but we are going to give this power in an absolutely unfettered manner. Let us see what clause (1) says: "Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judges or officer of the court as he may direct," and then it goes on: "Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission."

Now, Sir, it is well and good that this proviso is being incorporated herein, but I feel, that in the place of the word 'may', there should have been the word 'shall'. The proviso should have definitely provided for consultation with the Union Public Service Commission. As I interpret it, it is liable to mean that the President may or may not make rule providing for consulting the Union Public Service Commission. For, it says, 'Provided that the President may by rule require.....'. It does not mean that in all cases the Public Service Commission must necessarily be consulted. I would, therefore, have very much wished that it should have been made obligatory that the views of the Public Service Commission shall always be taken into consideration.

Coming to clause (2), we find that in the proviso it is laid down that the salaries, allowances and pensions payable or in respect of such officers, etc., shall be fixed by the Chief Justice of India in consultation with the President. Of course, wisely enough I should say, Sir, the Honourable Dr. Ambedkar has today moved an amendment to the effect that in place of the words "in consultation with", we should have the words 'with the approval of' the President. This after-thought of course is a welcome thing. But, I submit that it would have been much better if all these appointments were originally to be made by the President himself. The proviso, as it stands, means that at the outset it is the Chief Justice or some other person nominated by him, who shall apply his mind to this subject. He will select some persons, fix their salaries and allowances and he shall, thereafter, simply put the whole thing before the President for his approval. Now, Sir, this is placing the President in a rather awkward and embarrassing position. If a proposal comes from such a high dignitary as the Chief Justice, the President will feel great

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delicacy in not readily accepting those suggestions. Ordinarily therefore, he will think, "why should I come in conflict with the Chief Justice in these matters? Let him have his own way", though, if it were originally left to the President, his decision may have been probably very much different. I think, therefore, that it would have been much better that in this provision we should have had it laid down that all these things shall be decided by the President himself, and not by the Chief Justice with the approval of the President.

Then I come to clause (3) of this article. According to this clause, the rights and privileges of the Parliament are being encroached upon. The clause lays down: "The administrative expenses of the Supreme Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India and any fees or other moneys taken by the court shall form part of those revenues." I specifically draw the attention of the honourable Members of the House to the words, 'shall be charged upon the revenues of India'. The implication of this clause is very serious, and of a far reaching character. It means that Parliament shall have absolutely no voice in this matter, and whatever the monetary proposals in respect of these appointments they shall not at all come before Parliament, and they shall stand accepted by the Government automatically, and the Parliament shall have absolutely no voice in the matter, and that this will not be subject to the vote of the Parliament at all. I see absolutely no justification why these salaries and allowances, etc., should not be subject to the vote of Parliament. I can quite understand that we should have such a provision with regard to the salaries and allowances of the Judges. That we have already provided when we passed the relevant articles in respect thereto. But, so far as even the ordinary chaprasi of the supreme court is concerned, even so far as the ordinary punkapullar of the Supreme Court is concerned, his salary shall not be subject to the vote of Parliament. Why? We should not suspect others; but we should trust ourselves too. If we are asked to trust others, let us not be told that we should not trust ourselves. We trust the Judges of the Supreme Court in many important respects; let us trust the Parliament also to do the right thing in the matters of fixing salaries etc. If a power is not necessary to be conferred on the Judges of the Supreme Court, why should we thrust it upon them and divest ourselves of our own rights and privileges? The salaries of its subordinate officers should certainly be subject to the vote of Parliament and should not be out of the jurisdiction of Parliament. Take for instance, the chief Justice of the Supreme Court places before Parliament.....

Mr. President : The honourable Member has taken much time. I do not think it is necessary to prolong the discussion. We are nearing twelve o'clock.

Shri Jaspat Roy Kapoor : I am finishing, Sir, Supporting the Supreme Court places a huge budget extending over a crore of rupees or more. If Clause (3) stands as it is, Parliament shall have absolutely no control over that and the whole amount would have to be granted to the Supreme Court. It is said that we should not expect the Supreme Court to make such absurd proposals. I admit they will not indulge in absurdity. But, there are certain things which are within the special knowledge of Parliament which may not be within the knowledge of the Supreme Court. The financial position of the country is within the special knowledge of the Parliament. The Supreme Court Judges being ignorant of the actual financial position of the country may draw up budgets involving very huge expenses. For these reasons, I submit that this article is not very well conceived, nor properly worded.

Shri Krishna Chandra Sharma : (United Provinces: General): Sir.....

Mr. President : I hope the honourable Member will not take more than five minutes. I want to close the discussion of this article today.

Shri Krishna Chandra Sharma : Much has been talked about the independence of the judiciary. I do not quite understand where that question arises. There is nothing to restrict the independence of the judiciary so far as the article of the amendments are concerned. The original article 122 was that the Chief Justice of India will fix the salaries and allowances, etc., in consultation with the President. The amendment seeks only to substitute the word 'approval' for consultation. As my honourable Friend Mr. Jaspat Roy Kapoor said, it is not a question of independence or dignity of the Chief Justice of India. It is simply a question of the finances of the country. The President knows much better about the finances of the country and in accordance with the finances of the country, he will fix the salaries and allowances. There are other people in the administration of the country who would be putting in almost the same amount of labour, with the same capacity and qualification. Necessarily the same type of work with the same capacity, ability and qualification should carry similar salaries, allowances, pensions and other emoluments. So the question of independence of or the question of having any restriction or restrained whatsoever on the independence of the Judiciary does not arise at all. The appointment of the officers of the Court is entirely in the hands of the Supreme Court Judges and that should be so, because they have got to get work from these officers. In certain cases, when the President shall think fit, he is empowered to lay down rules that in certain classes of services, the Public Service Commission would be consulted, and there is no question here also of doing anything derogatory to the dignity and prestige of the Chief Justice. It is a question of State Policy, for the administration of the whole country. And so I commend both the amendments, for the acceptance of the House.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T. T. Krishnamachari very aptly called an "*Imperium in Imperio*". We do not want to create an *Imperium in Imperio*, and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, if they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Imperium in Imperio*, and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers, who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on the proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the

[The Honourable Dr. B. R. Ambedkar]

approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "consultation with the President," left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—I am sorry it is section 242 sub-clause (4)—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—I do not say that it will happen—but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal

legislature. So that if the executive differed from the Chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the Chief Justice an adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

Mr. President : I shall first put to the House Dr. Ambedkar's subsequent amendment to his original amendment.

The question is:

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:—

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.' "

The amendment was adopted.

Mr. President : Now I shall put Dr. Ambedkar's amendment No. 1967 as amended. The question is:

"That for the existing article 122, the following be substituted:—

'122. *Officers and servants and the expenses of the Supreme Court.*—(1) Appointments of officers and servants of the Supreme Court shall be made by Chief Justice of India or such other judge or officer of the court as he may direct.

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other money taken by the court shall form part of those revenues.' "

The amendment was adopted.

Mr. President : The question is:

"That article 122, as amended, stand part of the Constitution."

The motion was adopted.

Article 122, as amended, was added to the Constitution.

Article 123

Mr. President : The consideration of article 123 will stand over for the reason for which Article 109 to 114 have been held over.

The Assembly then adjourned till Eight of the Clock on Monday, the 30th May, 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 30th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

INDIA ACT, 1946 (AMENDMENT) BILL

The Honourable Dr. Syama Prasad Mookerjee (West Bengal : General) : Sir, I beg to move :

“That the Bill to amend the India (Central Government and Legislature) Act, 1946, be taken into consideration by the Assembly at once.”

Sir, this Bill seeks to amend the India (Central Government and Legislature) Act of 1946 which was passed by the British Parliament on the 26th March 1946. The Object of this amendment is two-fold. First, it seeks to place cotton, (including ginned and raw cotton and cotton seeds) as one of the commodities which may be centrally controlled. In the second place, it seeks to define coal beyond any doubt and to lay down that coal includes coke and other derivatives of coal.

I shall deal with the second point first. Coal has been under Central control for the last few years and also coke and other derivatives of coal. Recently there have been one or two judicial decisions which have laid down that technically, coke does not come within the definition of coal. The matter was referred to the Law Ministry and we have been advised that it will be safer to amend the Act, give it a retrospective interpretation, and provide beyond all doubt that coal includes coke and all derivatives of coal.

So far as cotton is concerned, when the Defence of India Rules were in operation cotton was a Centrally controlled commodity. Later on as the House will recall, all the powers which were vested by the Central Government and the Central Legislature under the Defence of India Rules lapsed. A special amendment of the Government of India Act was made in March 1946, which I am here now asking your permission to amend further, giving certain powers to the Government of India for a limited period to legislate, if necessary, in respect of certain commodities.

Now these commodities normally fall within the provincial sphere. They were put in the Concurrent List. In other words, if the Central Legislature thought it wise that these commodities should be controlled centrally, that could be done for a period not exceeding five years. The list of such controlled commodities as the House will recall includes eight items : foodstuffs, cotton and woollen textiles, paper, petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron and steel and mica. Now at one stage it was thought that raw cotton also was included within the description of cotton and woollen textiles. But later on it was pointed out that cotton and woollen textiles meant cotton textiles and woollen textiles. If it meant cotton and woollen textiles, then cotton textiles would go out of the purview of such a definition : which of course would become an absurd thing. Cotton, therefore, as the law at present stands, is a commodity which can be dealt with in the provincial sphere and in that sphere alone. Last year, after textile

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control had been re-imposed, it was the unanimous opinion of the provinces and other parties involved that cotton also had to be controlled. We had no legal power to do it. We therefore drafted a Cotton Control Order and asked the provinces to pass legislative measures in pursuance of such control order. Some provinces did so and some provinces delayed. Then the States also came into the field and it took us quite a considerable time before we could persuade all the States to adopt a similar measure. Later on when it came to giving executive directions for enforcing such control order, a lot of complications arose because the Central Government had not the legal power to pass legislation or to take executive action. The matter was referred to the Provincial Governments and the Provincial Governments now all agree that it will be desirable to put cotton as one of the centrally controlled commodities. Of course, whether cotton will continue to be controlled or not, will depend on various factors which may change from time to time.

My main object today is to ask for an amendment of this Parliamentary Act which this House alone can amend and not the Central Legislature, so that, if the Central Legislature so desires, cotton may become a controlled commodity. After this Bill has been passed into law, then another Bill will have to be passed by the Central Legislature in order to include cotton as one of the commodities in the Essential Supplies Act, which already governs the eight commodities I have mentioned already. This is a simple and non-controversial measure which has not evoked any amendment from any Member of the House. I hope the motion will be accepted without discussion.

Mr. President : The question is :

“That the Bill to amend the India (Central Government and Legislature) Act 1946, be taken into consideration by the Assembly at once.”

The motion was adopted.

Mr. President : There is no amendment. So I will put the clauses to the vote of the House.

The question is :

“That clauses 1 to 4 stand part of the Bill.”

The motion was adopted.

Clauses 1 to 4 were added to the Bill.

Mr. President : The question is :

“That the Preamble and the Title stand part of the Bill.”

The motion was adopted.

The Preamble and Title were added to the Bill.

The Honourable Dr. Syama Prasad Mookerjee : Sir, I move that the Bill, as settled by the Assembly, be passed.

Mr. President : The question is:

“That the Bill, as settled by the Assembly, be passed.”

The motion was adopted.

DRAFT CONSTITUTION—(Contd.)

Article 124

Mr. President : The House will now take up the consideration of the Draft Constitution—article 124.

There is an amendment (No. 1974) of Mr. Naziruddin Ahmad to the heading of this Chapter.

As it relates to the heading, we can pass it over.

I see that there is an amendment to add a New Part by Shri Gopal Narain No. 1973.

(The amendment was not moved.)

Now Amendment No. 25 of List for the Third Week may be moved.

Shri T.T. Krishnamachari (Madras : General) : Mr. President, Sir, I move :

“That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, for the word ‘Auditor-General’ wherever it occurs, (including the heading) the words “Comptroller and Auditor-General” be substituted.”

The reason for this amendment is fairly simple. The function which the Draft Constitution imposes on the Auditor-General is not merely audit but also control over the expenses of Government. Undoubtedly the term ‘Auditor-General’ has been all along used in the 1935 Act to include both these functions. But as it is quite possible that we might empower Parliament to enlarge the scope of the work of the Auditor-General, it was thought fit that the nomenclature of the Auditor-General, should be such as to cover all the duties that devolve on him by virtue of the powers conferred on him by the Draft Constitution. The issue is fairly simple. It is merely a matter of a name which covers the duties now carried on by the Auditor-General and will be carried on by him in the future. I hope the House will find no difficulty in accepting this amendment.

Mr. President : Then there is amendment No. 130, also of Shri T.T. Krishnamachari.

Shri T.T. Krishnamachari : There is another amendment to 1975.

Mr. President : You have given notice of amendment No. 130.

Shri T.T. Krishnamachari : It is merely expanding the scope of amendment No. 1975. Either No. 1975 may be moved now or I will move my more comprehensive amendment.

Mr. President : Mr. B. Das may move amendment No. 1975.

Shri B. Das (Orissa : General) : Sir, I move :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

Sir, this amendment I have given because the Auditor-General, like the Chief Justice of the Supreme Court, is to be appointed by the President and therefore it is essential that the words “by warrant under his hand and seal” should be introduced.

Mr. President : Amendment No. 130 may now be moved.

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :—

(1-a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe

[Shri T. T. Krishnamachari]

before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.' ”

Sir, this is more or less consequential to the amendment moved by my honourable Friend Mr. B. Das. The Office is now being ennobled by the appointment being made by warrant under the hand and seal of the President. As actually this procedure is followed only in the case of such appointments where the officer concerned has also to take an oath, it is felt that the lacuna may be remedied by the addition of the clause now proposed.

Mr. President : Amendment No. 1976 is not moved, as the House has already disposed of the principle underlying this amendment in connection with some other appointments in the Union.

Amendment No. 1977 is disallowed as of a drafting nature.

(Amendment No. 1978 and 1979 were not moved.)

Amendment No. 1980 is covered by another amendment moved by Shri T.T. Krishnamachari.

Then there are the two amendments to clause (4). One is 25-A of List I.

Shri T.T. Krishnamachari : This is now superseded by No. 131 of List II.

Sir, I move :

“That for amendment No. 25-A of List I of Amendments to Amendments, dated the 28th May 1949, the following be substituted :—

“That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :—

(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.’ ”

Sir, this is in substitution of clause (4) of article 124 and amplifies the idea contained therein. It also provides that the Auditor-General shall not merely consult the President but shall obtain his approval in regard to the fixing of the salaries, allowances and pensions payable to or in respect of members of his staff. All these hinge on the executive discretion of the authorities concerned, as they might affect the principle of parity with the other services under the Government of India. This is non-controversial and is merely an improvement on the present draft. I hope the House will accept it. Sir, I move.

(Amendments Nos. 25-B and 1981 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :—

‘(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.’ ”

Sir, the principle is exactly the same as in clause (5) of article 124, and the variation merely is that it covers the administrative expenses of the office of the Comptroller and Auditor-General, which in reality will mean certain ex-

penses like contingencies, travelling expenses, etc., so that it really makes the picture complete. Nothing new has been put in. Sir, I move.

(Amendment No. 1982 was not moved.)

Mr. President : Now, the original article and the amendments moved are before the House for discussion.

Shri R.K. Sidhwa (C.P. & Berar : General) : Mr. President, Sir, I have got only a very few remarks to make in connection with this article and the amendments moved thereto. The Post of the Auditor-General is so very important that I will give it the first place so far as the financial provisions of this Constitution are concerned. The Auditor-General should be always independent of either the legislature or the executive. He is the watch-dog of our finances and his position must be made so strong that he cannot be influenced by anyone, howsoever great he may be. From that point of view I am very glad that certain amendments have been moved whereby the position of the Auditor-General has been made very strong. To that extent I welcome the amendments and also the article as duly amended. I also do not want that the Auditor-General should be responsible to the legislature, but I find that the amendment just now moved by my Friend, Mr. Krishnamachari, says :

“(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.”

I take strong exception to this amendment by which the expenses of the Auditor-General and his office are made chargeable on the revenues of India. The system of charging certain things to revenue existed under the 1935 Act under extraordinary circumstances, when the Secretary of State ruled this country. Now, we are ruling our country; we have done away with the British rule. As I said, the Auditor-General should be placed above the influence of anybody, but Parliament should not be deprived of its right to consider the question of his and his office's salaries and allowances. When we have a legislature responsible to the country, I fail to understand why this old system of charging certain items to revenue should continue. This would mean that the House will have no right of voting on these subjects. We shall no doubt have the right of discussing it, but this alone will not do. Under the new Constitution, we should do away with the system of charging anything to revenue. I therefore desire that this part of the article should be deleted. While as I said I entirely agree that the Auditor-General should be made absolutely independent, I take very strong objection to this amendment which has been moved by Mr. Krishnamachari.

Shri B. Das : Sir, I do feel happy at the way this article 124 has been amended. I have been a member of the old Parliament for twenty-three years under the foreign rule, when the Secretary of State used to appoint the Auditor-General. Later during the war the Finance Member of the Government of India began to dictate terms to the Auditor-General. He was told that he was not to report against anything which did not agree with the whims and whimsicalities of the Finance Department. The Auditor-General was debarred from reporting any irregularities against the European officials of the time. After twenty-three years of hard suffering which some of us went through, we have thrown out the British rule. Therefore, it is necessary for the maintenance of the integrity of the Government of India and high moral principles of the employees of the Government of India in public expenditure that the Auditor-General should be placed in the status wherein we have placed the members of the Federal Public Service Commission and also the Chief Justice of the Supreme Court of India. It is a happy day that the

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Drafting Committee thought fit and changed the draft by these two amendments, which have been moved by my honourable Friend, Mr. T.T. Krishnamachari.

I am surprised that my honourable Friend, Mr. Sidhva, did not agree on the matter of “charged” expenditure. Mr. Sidhva perhaps had forgotten under the British rule by orders of the Secretary of State more than 75 per cent, of the revenues of India were non-voted. Under the new dispensation there are certain functions of the Government which must remain “charged”. Then he forgot that in the demands for Budget grants which have to be passed in the Parliament the interest on borrowed money is a charged expenditure. There are certain other items which are charged. The expenditure of the Governor-General now and later, of the President, is charged to Government. The members of the Legislature are not debarred from criticising the Governor-General’s extravagance or the extravagance of the Auditor-General or the Supreme Court. We have already placed on the charged list especially the Supreme Court. Why should we fight shy in placing the Auditor-General on the charged list, so that he knows the supply sanctioned by Parliament? The amendment which my honourable Friend, Mr. T.T. Krishnamachari has moved says :—

“Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President”.

Our chosen Cabinet elected by the very Parliament is there. Then the President who functions as the mouth-piece of the Cabinet will see.....

Shri R.K. Sidhwa : Then make everything chargeable.

Shri B. Das : You will have to accept the “charged expenditure”. There are other items which should not be interfered with by Ministries, because every Ministry today always exceeds its sanctioned expenditure and resists any Budget control and any financial control. Surely, my honourable Friend, Mr. Sidhva knows that 118 crores worth of supplementary estimates came on the 31st of March 1949 for sanction by Parliament. So, if the Auditor-General and the staff are not placed at a certain high level, it will be very difficult for them to discharge the responsibility that the Constitution Act imposes on the Auditor-General or, similarly on the Federal Public Service Commission or on the Supreme Court Judges. Therefore, certain items of expenditure should remain “charged”, as also the interest charges, so that the executive need not interfere. Of course, Parliament can interfere by raising debates and discussions and nobody will deny that right to my honourable Friend Mr. Sidhva. I have great pleasure in supporting the amended article 124.

Shri Biswanath Das (Orissa : General) : Sir, the amendment proposed by my honourable Friend, Mr. T.T. Krishnamachari represents the compromise between two opposite points of view. Before I proceed to justify the amendment moved by my honourable Friend, it is better that I place before honourable Members a picture of the activities of the Auditor-General and the Controller.

It would be wrong to say that any power, prestige or responsibility of the Legislature has been limited or restricted by the proposals brought forth by the amendment proposed by my honourable Friend. We have to realize that it is the Legislature that is competent to pass laws. The interpretation of law is being left to the judiciary. Sir, it is the Assembly that sanctions money to be spent by the executive and the executive is the proper authority to spend monies as are sanctioned by the Legislature. Who is the authority that is to audit whether the money sanctioned by the Legislature has been spent properly? To discharge this onerous responsibility, a new authority has been created under

the law by the Legislature and that authority is no other than the Auditor-General. Having thus defined the functions of the executive and the Auditor-General in a definite and specified manner, the question arises as to how is the Auditor-General to function. Sir, I will just now refer to amendment 25-A to article 124 which has been moved just a few minutes ago, which lays down that all appointments to the staff of the Comptroller and Auditor-General shall be made by him or such person as he may direct. This gives power to the Auditor-General to re-appoint the existing staff. Then we come to (4a) which give him power to appoint additional staff that may be required for the purpose. Regarding this, I again invite the attention of honourable Members to the proviso which specifically restricts the powers of the Auditor-General even by the Head of the executive, namely the President of the Indian Republic. I will read it for the benefit of the Members of the House.

“Provided that the rules made under this clause shall so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.”

Even here, I for myself would have desired to wipe off this proviso because it mars the independent action, and independence to that extent of the Auditor-General by putting him in a position where he has to depend on the executive for getting approved the rules that relate to salaries, allowances or leave. To this extent the Auditor-General, instead of being independent of the executive, is made dependent on the executive. Therefore, my honourable Friend, Mr. Sidhva will please see that the amendment proposed by Mr. T.T. Krishnamachari represents merely a compromise. You have reserved to yourself the approval of the President, the Head of the executive, which means approval of the Cabinet, and which means the authority of the Legislature behind the Cabinet to the rules framed regarding salaries, allowances, leave or pensions. Therefore, nothing more is called for. The proposed charged amount is something different, absolutely different from that which has been provided under the Government of India Act of 1935. The British Parliament have made provisions anticipating that there may be conflict between the legislature, and the executive with the Governor-General, but here there is absolutely no conflict contemplated. I will again invite the attention of honourable Members to article 125 which reads : “The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament.” On the other hand it will be seen that the Auditor-General and Comptroller is absolutely left to the mercy of the legislature. Provision for a charged amount has been made only to avoid a clash and deadlock in future in the operation of the responsibilities of the Central Executive and the Auditor-General. Therefore, the provision is a sane one, is a necessary one, is a very desirable one and represents not one view, but merely a compromise view of the two conflicting sets of views.

With these words, I support Mr. Krishnamachari's amendments.

Mr. President : I do not think any further comment is necessary on this.

The Honourable Dr. B.R. Ambedkar : (Bombay : General) : Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles relating to the Auditor-General in this House, assigns to him. Personally speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the judiciary

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—he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not giving him the same independence which we have given to the Judiciary, although I personally feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course of the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of appointment of officers and servants of the Supreme Court. I see both from the original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not possess the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From that point of view, I should have thought that it would have been proper in the interest of the people that such a power should have been given to the Auditor-General. But, sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

Coming to the amendments, I accept the amendments moved by Mr. T.T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments certainly to a large extent improve the position of the Auditor-General which has been assigned to him in the Draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments, Mr. Sidhva seems to have a complaint. If I understand him properly, his complaint was that the expenses of the Auditor-General should not be made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable Friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India the mere fact that that has been done does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might have been discontented or some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List I, 1975 of Mr. Das, 130 of Mr. T.T. Krishnamachari, 131 of Mr. T.T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

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

The question is :

“That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, of Part V for the word ‘Auditor-General’ wherever it occurs, (including the heading) the words ‘Comptroller and Auditor-General’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

The amendment was adopted.

Mr. President : The question is :—

“That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :—

- ‘(1a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.’”

The amendment was adopted.

Mr. President : The question is :

“That for amendment No. 25-A of List-I (Third Week) of Amendments to Amendments, dated the 28th May 1949, the following be substituted :—

“That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :—

- ‘(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.’”

The amendment was adopted.

Mr. President : The question is :

“That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :—

- ‘(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.’ ”

The amendment was adopted.

Mr. President : The question is :

“That article 124, as amended, stand part of the Constitution.”

The motion was adopted.

Article 124, as amended, was added, to the Constitution.

New Article 124-A

Mr. President : Article 124-A notice of which has been given by Professor Shah.

Prof. K.T. Shah (Bihar : General) : Sir, I beg to move :

“That the following new article be added :—

‘124-A. The Auditor-General shall be appointed from among persons qualified as Registered Accountants or holding any other equivalent qualifications recognised as such, and having not less than ten years’ practice as such Auditors.’”

Sir, this is very important because the practice has been all along, ever since the Finance Department has been organised, to have the Auditor-General appointed from the members of the Civil Service. The members of the Civil Service have a particular type of education, and develop a particular outlook which does not necessarily have specific reference to the duties and functions of an Auditor-General. If we wish the duties of the Auditor-General to be carried out with efficiency and completeness that is necessary for the proper audit of our accounts, I think it is important to lay down qualifications which will provide for practical experience and technical knowledge in the person appointed as Auditor-General. The system of Government accounting is on the basis of actual cash receipts and disbursements closing on a giving date but in view of the large commercial undertakings that the State is beginning to be committed to and in view also of the variety of dealings that the State has to enter with businessmen, contractors and so on, I think it is important that the audit of accounts should be by those who are familiar with the business practices and as such are able to give efficient service. I have laid down qualification of a Registered Accountant as the minimum, though actually according to the latest legislation these will be described as Chartered Accountants having certain years’ practice. The important point however is that they must have technical qualifications and also practical experience of auditing accounts. The promotion from service of transfer from the ordinary public services, whether called Indian Administrative or Indian Civil Service is I think, not suitable for purposes of this highly specialised appointment. Just as in regard to the judicial appointments we have required special training and experience and not mere membership of the services, so here too I suggest that it would be important if we lay down in the Constitution certain qualifications requiring the necessary technical training and practical qualifications. The actual amendment is in this respect a modest one requiring not more than ten years’ practical experience but in practice the appointment, if the amendment is accepted, would be from amongst top men. The income from practice of such men is under present conditions very high, perhaps far higher than the State would be able to pay but at the same time the status, dignity, respect and importance that would necessarily be attached to such office would make it attractive even to men of that eminence, just as judicial office is also attracting the legal practitioners with the highest income. I accordingly commend this motion to the House.

Mr. President : Does anyone wish to say anything?

Shri T.T. Krishnamachari : Mr. President, Sir, I must say that Professor Shah’s amendment is an original one and quite in conformity with ideas prevalent in the commercial world but I am afraid it is out of tune completely with existing practice in the matter of the appointment of the Auditor-General in this country and elsewhere. Actually the man who is an Auditor-General is not an accountant *per se*. He has a number of other duties to perform and in so functioning he has got to have a knowledge of the entire administration and I think the present method of appointment of Auditors-General in India is perhaps the best. We had some very good Auditors-General who were administrators and who had been in the Finance Department and who have functioned as Accountants-General in various places and who had held other important responsible positions, so that it is not merely a question of arithmetic or accounting knowledge that is necessary but a comprehensive knowledge of

the entire administration. From that point of view I think the House will readily concede that the view taken by Professor Shah, however plausible, is extremely narrow. A person who has got the qualification of only Registered Accountant and nothing else, which will probably be the case if you rule out administrative experience, will not suit as an Auditor-General. Having some experience of Registered Accountants myself I do not think it is a type of work that is impossible for anybody else who has got a comprehensive knowledge of administration and accounting to get to know. All the knowledge of a Registered Accountant is certainly known to a person who holds the position of an Auditor-General in the Government of India or Accountant-General and I see no reason why I should support Mr. Shah's view and ask the House to accept his amendment which if anything will upset the arrangement that now exists and will make it very difficult for the future Government to choose an appropriate person to function as Auditor-General. Sir, I oppose the amendment.

Shri Lakshmi Narain Sahu (Orissa : General) :* [Mr. President, I support the amendment moved by Prof. K. T. Shah on this ground that if a man working as an Auditor-General does not know the work of auditing how can he appointed as an Auditor-General. We have passed the Chartered Accountants Bill. According to it, only that man shall be a registered Accountant who has carried out audit work for at least ten years, otherwise not. And those who have been doing the Government audit work for ten years or more (*sic*) will perhaps be left out; but those who are G.D.A.'s will have to work for one year to become registered accountant. We have placed so many limitations over them only with a view that our audit work may be carried out efficiently. Hence the man, who would be our topmost auditor, must have some degree and standard of auditing. I cannot understand how he can be appointed if he does not possess any degree. I, therefore, support the amendment of Prof. K.T. Shah and feel that it should be accepted.]

Mr. President : I do not think there is anybody else wishing to speak on the motion. I shall now put it to vote.

The question is :

“That the following new article be added :—

‘124-A. The Auditor General shall be appointed from among persons qualified as Registered Accountants or holding any other equivalent qualifications recognised as such, and having not less than ten years’ practice as such Auditors.’ ”

The amendment was negatived.

Article 125

Mr. President : Then we come to article 125, to which there is amendment No, 1984, standing in the name of Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I ask for your permission to omit all reference to local authorities in my amendment. If you permit me to do so, my amendment will read as follows :—

“That in article 125, for the words ‘and of the Government of any State’, the words ‘the Government of any State or any other authority’ be substituted.”

The object of my amendment is to provide that Parliament should have the power to confer additional duties on the Comptroller and Auditor-General. We are creating corporations now, and we have already created the Damodar Valley Corporation. We shall, doubtless, create more such corporations in future. So far as I remember, the Damodar Valley Corporation Act, while it allows the

*[] Translation of Hindustani speech.

[Pandit Hirday Nath Kunzru]

Corporation to get its accounts audited by auditors appointed by it, also permits Government to impose any duties on the Auditor-General in that connection that it likes. I want, Sir, that this position should be maintained, particularly as the number of such corporations is going to increase. The Indian Railway Enquiry Committee have recommended the establishment of a Railway Authority for the management of the Railways. If it comes into existence, this Authority will control property worth six or seven hundred crores, and expenditure running into about two hundred crores. Since all the property under the autonomous corporations will belong to the Government, it is necessary that Parliament should have the power, should it so desire, to assure itself of the soundness of the financial position of the authorities created by it, by asking the Auditor-General to perform such duties in connection with the examination of their accounts, as it thinks proper. It may not be necessary for Parliament to do so. But it should have the power to direct the Auditor-General to examine the accounts of the corporations created by it. The State has invested, or will invest crores upon crores of rupees in these corporations; and it should not, therefore, be compelled by law to depend upon the reports submitted by auditors appointed by these corporations. Now, this does not mean any distrust of these corporations. I do not wish to cast any reflection on the honesty of the members of these corporations or the auditors appointed by them; but as a general principle, I want that the power of the Auditor-General should be capable of expansion so that Parliament may have an independent authority at its disposal in order to satisfy itself of the soundness of the management of the authorities created by it.

I hope, Sir, that this amendment, which is in accordance with what has been done already in connection with the Damodar Valley Corporation Act, will be accepted by the House.

(Amendments No. 25-D and No. 1985 were not moved.)

Mr. President : Amendment No. 1986, by Dr. Ambedkar.

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

“That for the Explanation to article 125, the following Explanation be substituted :—

Explanation.—In this article, the expression ‘law made by Parliament’ includes any law, ordinance, order, bye-law, rule or regulation’ passed or made before the commencement of this Constitution and for the time being in force in the territory of India.’ ”

The House probably will remember that the functions of the Auditor-General are regulated not by law made by Parliament, but by Ordinance, order, bye-law, rule or regulation, etc., made by the Governor-General, under the powers conferred upon him by the Government of India Act, 1935. Consequently, in order to keep alive the ordinances, orders, by-laws, rules and regulations made by the Governor-General, it is necessary to amplify the explanation so as to include these orders also.

Shri R. K. Sidhwa : Mr. President, Sir, this article relates to the duties and powers which will be prescribed by Parliament for the Auditor-General. Now, Sir, we have just passed an article conferring independent powers, to a great extent, on the Auditor-General. Now, this article leaves it to Parliament to make laws in connection with many other matters. While I welcome the independence of the Auditor-General—and I entirely agree with what Dr. Ambedkar said, and I give him credit for adding the word “Comptroller” to the Auditor-General, so that he may have all the powers as far as audits are concerned,—I fail to understand why for certain other important powers, Parliament has been asked to make laws. To give one illustration at present, the Auditor-General has no right to pass a bill beyond the Budget grant. There

is a law to that effect made by the Executive. Despite that, if a Ministry exceeds the budget grant and the Auditor-General brings it to the notice of the Minister concerned, the latter asks the Auditor-General to pass the bill, because the Minister believes that he enjoys the confidence of the House and if the item is brought as a supplementary grant before the Assembly it would be granted. At present despite the rule the Auditor-General is helpless. He simply puts the rubber stamp of audit objection and at the instance of the Minister concerned passes the bill. So the object of the rule made by the executive is frustrated by the Auditor-General over-riding the rule, because he also feels that the Minister enjoys the confidence of the House and therefore he feels why should he object to the item. Sir, if the Minister feels that because he enjoys the confidence of the House he could make the Auditor-General pass the bill, it would be a mockery of democracy. It will not be a government of the people, for the people and by the people. Because the Minister enjoys the confidence of the people it does not mean that he should flout the decision of Parliament. That is a very important point and I want it to be put into the Constitution that the Auditor-General shall not pass any amount which is beyond the budget grant. As I said the other day, from my experience, 130 crores of rupees, not a small amount, was passed as a supplementary grant on the 31st day of March and the House passed it helplessly; though every Member was opposed to it, they did not want to embarrass the Ministry. If such a provision was in the Constitution nobody would have dared, nor the Auditor-General, nor the Minister, nor the House to flout the Constitution. Laws may be flouted, rules or regulations may be flouted but the Constitution cannot be flouted. I therefore expect my Friend Dr. Ambedkar to consider this matter and give the Auditor-General the fullest power and not allow anybody to interfere with him. If you allow 130 crores to be passed on the ground of emergency (Rs. 130 crores is one third of the total amount of the budget). It would be very regrettable and undesirable.

I entirely agree with the amendment of my Friend Mr. Kunzru. I would go further and state not only local authorities but local bodies should also be included. From my experience of twenty-seven years I can state that the control over the accounts of local bodies is absolutely a failure. If any local body wants the assistance of the Auditor-General and his staff, it should be allowed. The local bodies are in a rotten state, and the loan of a staff by the Auditor-General, would improve matters.

With these words I hope that Dr. Ambedkar will consider the first point I have suggested.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, the amendment move by Mr. Kunzru wants to provide for the Auditor-General's powers to cover not only the accounts of the Governments but also of several independent corporations and other bodies. So far as the article is concerned there is a provision by way of an explanation which makes it possible for the Parliament to give authority to the Auditor-General over any particular organisation or body and make suitable provisions in the laws of Parliament promulgated from time to time. This Explanation has now been amended by an amendment proposed by Dr. Ambedkar and by this amended explanation not only any existing laws but also ordinances, bye-laws, rules and regulations passed before the commencement and for the time being in force are included.

Besides this we have the following words "as are or may be prescribed by or under any law made by Parliament", and they occur in the main body of the article. In view of this I do not think the amendment that has been proposed is necessary. After all the purpose is that not only the Government's accounts but the accounts of all these important bodies that will come into being from time to time shall be under proper audit and that aim will be fulfilled by the laws and unless any regulations that may be passed by the Parliament. It would

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be set up to the Parliament to see whether the authority of the Auditor-General is necessary and to make adequate provision for the same. Therefore it is not necessary to include in this article local bodies and all other miscellaneous corporations and organisations. I therefore submit that since the article has adequate provision for this purpose there is no need to accept the amendment moved by Pandit Kunzru.

My Friend Mr. Sidhva drew the attention of the House to the importance of the office of the Auditor-General and wanted a provision that at any time the Auditor-General shall not permit any expenditure over and above the budget provisions. I think that provision is also unnecessary. We have had the experience of last year when the budget estimates were not respected to the extent they should be. That was however an exceptional happening and I do not think any democratic Parliament will permit its recurrence. In any case the rule that no government or organisation or executive shall exceed the amount of expenditure provided in the budget is a well-understood one and it is not necessary to make provision regarding it in the Constitution. It is a most fundamental rule that the budget provision shall be respected and no expenditure in excess of the budget provision shall be made. I do not think it is necessary to include it in the Constitution. If at any time this salutary and fundamental principle is disregarded or violated by the executive the Parliament should be alert enough to punish it adequately.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of my friend Mr. Kunzru I am prepared to accept it provided he is prepared to drop the words "or any local".....

Pandit Hirday Nath Kunzru : I have dropped them.

The Honourable Dr. B. R. Ambedkar : Because local audit is a matter which is within the control of the Provincial Governments. But the addition of the words "other authority" I think may be necessary or even useful. As he has himself said the policy of the Government of India today is to create a great many corporations to manage undertakings which it is not possible to manage departmentally and consequently it is necessary that the Government of India should make some provision for the audit of these corporations. That being so I think it is desirable to vest the Central Government with power to allow the Auditor-General to audit even the accounts of all such authorities. Subject to the modification I have suggested I am prepared to accept the amendment.

With regard to the point made by my Friend Mr. Sidhva that many of these rules with regard to the duties of the Auditor-General are made by the executive and therefore, since by the amendment which I have suggested we are continuing to give these powers the same operation which they had before, we are practically investing the Executive with the authority to prescribe the duties of the Auditor-General. Obviously, there is an incongruity in the position, in that an officer who is supposed to control the Executive Government with regard to the administration of the finance should have his duties prescribed by rules laid by the Executive. Now, the only reply that I can give to my honourable Friend, Mr. Sidhva, is this that these provisions have been taken bodily to a large extent from the provisions contained in section 151 of the present Government of India Act, 1935, which deal with the custody of public money, and section 166 which deals with the rules made by the Governor-General with regard to the duties of the Auditor-General. Under the scheme of that Act the rules were required to be made by the Governor-General in the exercise of what is called his individual

judgment, that is to say, he would not be required to take the advice of his Ministry in making these rules. To that extent the rules made by the Governor-General prescribing the duties of the Auditor-General would undoubtedly be independent of the Executive. Today we are not vesting the President with any such power of independent judgment so that if any modification in these rules were to be made by the President he would undoubtedly be acting on the advice of the Ministry of the day, that is to say, the Executive. I admit that to that extent there is a certain amount of anomaly, but I do hope that my honourable Friend, Mr. Sidhva, who, I hope, will continue to function as a Member when the new Parliament is constituted, will take on himself the earliest opportunity of urging Parliament to change the position and to convert the rules into laws made by Parliament.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The motion was adopted.

Mr. President : The question is :

“That for the Explanation to article 125, the following Explanation be substituted :—

‘Explanation.—In this article, the expression ‘law made by Parliament’ includes any law, ordinance, order, by-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India.’”

The amendment was adopted.

Mr. President : The question is :

“That article 125, as amended, stand part of the Constitution.”

The motion was adopted.

Article 125, as amended, was added to the Constitution.

Article 126

Mr. President : Article 126.

(Amendment No. 1987 was not moved.)

Mr. President : The question is :

“That article 126 stand part of the Constitution.”

The motion was adopted.

Article 126 was added to the Constitution.

Article 127

Mr. President : Article 127.

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

“That in article 127, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

It is only a formal amendment.

Mr. President : The question is :

“That in article 127, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 127, as amended, stand part of the Constitution.”

The motion was adopted.

Article 127, as amended, was added to the Constitution.

New Article 127-A

Mr. President : Then there is notice of an amendment for adding a new article, article 127-A—that is amendment No. 1989 by Professor Shah.

Prof K. T. Shah : Sir, the principle of this having been rejected by the House earlier, I do not want to move it.

Article 128

Mr. President : Article 128.

Mr. Naziruddin Ahmad has given notice of an amendment regarding the heading of the Chapter; that we shall leave out now.

Amendment No. 1991 is a negative one and cannot be moved.

1992 is of a drafting nature, I think.

Shri T. T. Krishnamachari : Sir, the word “State” has been current right through; so the amendment need not be accepted.

(Amendments Nos. 1993 and 1994 were not moved.)

Mr. President : So, there is no amendment to article 128.

The question is :

“That article 128 stand part of the Constitution.”

The motion was adopted.

Article 128 was added to the Constitution.

Article 129

Mr. President : There are a number of amendments. To begin with, there is an amendment by Mr. Naziruddin Ahmad relating to the heading of the Chapter. We shall leave it over.

(Amendments Nos. 1996 and 1997 were not moved.)

Shri Lakshmi Narain Sahu : *[Mr. President, I move :

“That the following be added at the end of article 129 :—

‘of whom there shall be at least one from each of the States of Part I of the First Schedule.’ ”

*[] Translation of Hindustani speech.

I mean to say that there should be one Governor from each of the States. It means that, in all the provinces constituted by us, each should have one of its men as Governor. Unless it is done the self-respect of each and every province could not be maintained. Therefore, I would like to introduce that every province should have at least one man as Governor. If the election is held it will take place there, otherwise he would be selected out of the panel. If he is not appointed as a Governor in his own province he can be appointed as such in some other province.

I come from Orissa and I find that in the present Central administration we have no representation in the services. All provinces are there in foreign services, but we have no share in it as yet. This makes us limited to such an extent that our provinces cannot make any progress. I, therefore, want that sufficient attention should be paid to this.

Shri R. K. Sidhwa : May I know whether the Mover wants that the Governor should be from that very province?

Mr. President : I understand what he means is this. There shall be one Governor from each State, though he may be posted to another province.

The next amendment stands in the name of Pandit Lakshmi Kanta Maitra. He is not moving it. So only one amendment has been moved to this article.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, I do not know how far it will be permissible for me to express the views I hold dear to my heart. I feel that there is no necessity for a Governor in any province of India. The Commissioner of a Division may be brought under the administrative superintendence, direction and control of the Centre. Vest more powers in the hands of the Divisional Commissioners. I feel that the existence of a legislature, a Ministry, and a Governor is harmful in the interest of all the provinces.

Sir, nobody knows more than you, how Provincial administrations are being run these days. I understand that what I am saying runs counter to the accepted principles of provincial autonomy, federalism and democracy. I plead for a change of attitude. When we accepted provincial autonomy, we were under British rule. We then raised that slogan in order to oust British power from India. We knew well that the British people were not prepared to give any concession or power at the Centre. The provinces were the weakest link in the chain. Even there they did not vest full autonomy. They had reserved powers in their own hands. Now the times have changed. Provincial autonomy means distrust of the Centre. This distrust was justified at that time because at the Centre there was foreign rule. Now we have got freedom. How is it possible or desirable or necessary now to vest powers in the hands of the Provinces and appoint a Governor who has got practically no power? He is a mere puppet. If so, why should we have these Governors?

One thing more, Sir, before I conclude. Now it is well recognised that the doctrine of separation of power has been exploded. This doctrine has got not only relevance to the question of separation of judiciary from the legislature and the executive, it has got a vital bearing upon the whole question of federalism. It means separation of powers. If the doctrine of separation of powers has been exploded, then the whole federal structure crashes, crumbles and goes down. I feel that by not hurrying through the Constitution since 1946, we have stood to gain. Now it has been stated that we must hurry up, because we have taken too much time. By taking too much time in passing the Constitution, we have managed to do certain things which we would have been unable to do if we had passed the Constitution in 1946 or 1947. Firstly, the States have been integrated. This would not have been possible if we had passed the Constitution in 1947. Such Constitutional changes it is not easy to make.

[Shri Brajeshwar Prasad]

The Constituent Assembly has the power to change or make any new law. Sardar Patel has been able to integrate the Indian States, form new States, dissolve certain units and merge the States with different provinces. Secondly, if we had passed the Constitution in 1947, the provision for the reservation of seats for the different minorities in India would have been incorporated in it. By waiting, we have achieved what in 1947 appeared to be impossible.

Sir, I feel that the whole Chapter, Part VI of the Constitution should not be hurried through. We are quite content with the present Government of India Act. We have got the power to amend it to suit our changing needs and conditions. Today within five minutes the Honourable Dr. Mookerjee was able to get a Bill passed here. If it had been in a different House, it would have probably taken a few hours to pass it. I do not see any reason why we are in such a great hurry to pass the Constitution. Probably we look more to international opinion and to the opinion of our Anglo-American friends, to the opinion of the capitalist press and to the opinion of those who have no sympathy with our national aspirations and hopes. I hope more emphasis is laid upon the existing conditions in India. What is today required is that there should be rapid improvement in the economic condition of the poor people and in the removal of illiteracy. Instead of doing these things we are trying to impose a new Constitution on the people and waste public money on elections. I, Sir, oppose article 129.

Dr. P. S. Deshmukh : Sir, I rise to support the point of view just placed before the House by my honourable Friend. It is known to many Members of the House that it was with this intention that I had given notice of a resolution. In that resolution I wanted that the basis of our Constitution should be altered from semi-unionistic and semi-federalistic to a proper unitary system. It was with that end in view that I had given notice of a resolution by which I wanted that the present condition of world politics made it imperative that India should be a well-knit, homogeneous and powerful nation so that she may play a prominent and decisive part for the maintenance of world peace. I then in my resolution stated the various causes that led me to that conclusion. Some people will say : 'Why was this not pressed when we were drafting the Constitution? Fortunately or unfortunately the present administration has made apparent the pitfalls and the dangers of the present basis of the Constitution far more than anybody could have or did anticipate or imagine. Actual experience has shown that the present Constitution has many dangers ahead and I think it will be for the good of India if we could avoid those dangers and take a somewhat revolutionary decision to do away with the present basis of the Constitution. And where was the present basis of the Constitution laid? It was not laid in Delhi. It was not laid anywhere in India. It was laid in Britain and it was intended to meet a far different situation than the one with which we are faced at the present day. The draft Constitution is a mere reproduction of the Government of India Act of 1935. The ever-increasing demands of Mr. Jinnah, separate electorates, reservations & weightages, the existence of tiny little States spread over the whole length and breadth of India, that was the problem that we were trying to meet and to solve by meeting several times in London in Round Table Conferences and it was for meeting the political exigencies of that situation in India that the framework of the Constitution which we are trying to copy at present was really shaped and hammered. I think that this Constitution and the principles underlying it are entirely foreign to the genius of our people and I have been all along urging that we must search our hearts and find out a political solution for the administration of our country in a way which will be more suited to the genius of people of this country. We do not now have the abstacle of the States in our way. We do not have the intransigence of the Muslim League in our way. Under

these circumstances why should we not take the only logical step and decide upon a unitary type of constitution by which we will have the fullest co-operation of our people, by which we will be able to harness the energies and intelligence of the Indian people as a whole and by which we will be able to build the Indian nation far more quicker and at the expense of much less energy than would be the case if we retain the fundamentals of this Constitution?

The main point, Sir, which I have urged in this Resolution is the apparent instability of the Ministries in the States, Unions and in the provinces. We read everyday in the papers, almost every morning, of some conflict or other between the various provinces and of lack of co-operation with the Centre. We have had the instance of the Agricultural Minister complaining bitterly, when we were meeting as the Legislative Assembly, that he was not receiving the co-operation of the provinces in regard to the increase in our food production. There is a similar complaint with regard to the rehabilitation of the refugees. There are also questions about the systems and methods of provincial taxation. Only this morning's paper told us about the incidence of the sales tax imposed by the various provinces. I am told on reliable authority that whatever article comes to the C.P. is charged sales tax in the province of Bombay because it has necessarily to go through that province, and the same article is again charged with a sales tax in the C.P. also. Apart from this, Sir, there are many financial issues over which we will talk for days and days before we can come to any decision. We get proposals from the provinces which are diametrically opposed one to the other. There are perpetual demands for greater subsidies from the Centre.

Then there is the question of linguistic provinces. We know that the whole country at the present time is agitated over this issue. We have had one or two Committees appointed to go into the question but unfortunately instead of making an improvement in the situation, the situation is worsening to the sorrow of many thinking people. Now, so long as we want provinces to be maintained, we cannot but grant linguistic provinces. We might with difficulty, after using all the influence that our leaders command, be able to stave off or postpone this issue of linguistic provinces for a short time but certainly and surely linguistic provinces will be there and even if my Friend, Mr. Munshi, does not want Bombay to be included in Samyukta Maharashtra, he will never be able to prevent it. So, my solution for all these difficulties,—and the greatest difficulty of them the demand for the creation of linguistic provinces over which people's minds are exercised to such an alarming extent,—is to take away the autonomy of the provinces. When once you do this, all quarrels and jealousies will disappear. The quarrels are there and the jealousies are there only because the provinces are there. When there is only one government at the Centre, there is only one legislature, one Ministry and one law, all these quarrels and jealousies will disappear and it would also be possible then to harmonise all these demands and claims in such a way that no difficulties will remain. So from all these points of view, I would very much request the honourable Members of this House to search their hearts and see if the unitary system is not the only logical, suitable and practicable system of government for this country. After all, federalism is consistent only with the desire of the people to have union and not unity. But in India everybody desires unity, not only union. That being the general feeling of people, I do not think it will be wise on our part to brush aside my resolution by saying that it is too late to adopt any fundamental change in our Constitution. When once the principle is accepted, the whole Constitution will become very simple. The whole Constitution can be hammered out with complete satisfaction to all within about two or three weeks. Even if we are not able to do so, there will not be any difficulty because so long as the unitary system is there, you will have all the subjects with the Centre and there will not be any necessity for discussing

[Dr. P. S. Deshmukh]

what should be concurrent, what should be provincial and what should be Central. I want all honourable Members to think seriously and say whether this is not for the good of India, for India emerging as a strong nation and not having to go through all the dangers and ultimately coming to the same thing. If we do not accept this proposal now, it will come fifteen years hence I have not a shadow of doubt about it. Then it will be rather too late. By that time there will be so much time lost; so many quarrels, enmities and antagonisms may arise in the whole of India that although you will come back to the unitary system but it will be too late. All these fruitless sacrifices and tribulations, will all be saved if you adopt the system now. Therefore I would urge all honourable Members of this House to give more thought to this proposal and see if it is not possible for them to accept it. It is not too late to mend even today.

Mr. President : I would ask honourable Members to confine themselves to the article which is under discussion. I have allowed Dr. Deshmukh to express his views on the larger question because I know he has held those views all along very strongly. I have given him an opportunity to express those views but beyond that we should confine ourselves to the article under discussion.

Shri R. K. Sidhwa : I am very glad that you have given the ruling because several times I wanted to stand on a point of order but I thought that I should not take the odium. After we have decided on the broad principle of this Constitution, both the speakers previous to me were out of order. That is my humble submission. You have now made the position very clear. Otherwise I would have taken fifteen minutes to refute those arguments. I hope, Sir, no other Member will be allowed to say anything on this matter. Dr. Deshmukh took the opportunity to express his views on his resolution which was ruled out by the Steering Committee.

Now, Sir, coming to Mr. Sahu's amendment, his amendment states that each province should be given an opportunity to send a Governor. I sympathise with the idea that every province should have the opportunity to send Governors to the various provinces. While I entirely agree with the present procedure of appointing Governors not from the same province but from some other province, I do feel that each province should have this right provided they possess persons of merit and qualifications to become Governors. That should not be ignored; otherwise Governors must not be sent from only one or two provinces. While I entirely agree with this argument, I do feel it is not proper to put an amendment in the Constitution and it should be left as it is. The subject will come hereafter when we take up the question of the appointment of Governors and then we might discuss the matter further. Sir, while I agree with the views expressed that each province has got able men to govern, it should be borne in mind when the appointments are made that the various provinces are not forgotten. Despite my views, I do not like this amendment to go into the Constitution.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, I want to make it perfectly clear to the honourable Members of my party as well as to the honourable the Chief Whip that I oppose this amendment which has been moved by Mr. Sidhva.

Mr. President : He has not moved any amendment.

Shri Rohini Kumar Chaudhuri : I am sorry; I refer to Mr. Sahu. Mr. Sidhva's name is in my mind because he made a very astounding proposition today. He goes to the length of saying that every province has able men. If he looks at the facts, he will find that he is completely mistaken. Is there any able man in Assam? If there was any able man, he would have found a place

either in the Ministry or in the State Ministry or Sub-State Ministry or in any governorship of a province. If there was any able man in the province of Assam, he might have found his way to place outside India, either in an Embassy or in some such post. There are no such able men in Assam. There are eminent judges in India and those judges have decided that there is not a single person in Assam who is able either to act as a Governor or be appointed in the Ministry or in the State Ministry or in an Embassy. Secondly, is there any able man in Orissa? Is there any one in Orissa any man from Orissa who has found a place in any important place either in the Ministry or in an embassy or holding the post of a Governor? You must admit that you cannot say. You cannot say that the persons who are responsible for choosing people for these appointments are not found responsible persons or who do not exercise sound judgment; you cannot say that, and therefore, the proposition which is laid down by my honourable Friend, Mr. Sidhva is absolutely incorrect. We must wait. Able men must be born; they must be qualified and they will in due time take their places in these provinces.

Then, Sir, I oppose my honourable Friend, Mr. Sahu, on the ground that his amendment is absolutely premature. If article 131 is accepted by this House, namely, that the Governor in every province shall be elected, in that case you can get your Governor from your own province. If in a province no man of the province is elected as a Governor, then it is the province which has to blame itself. The only possible way, as far as I can see, for getting a man of a province raised to a position to a Governor, will be to allow that post to be an elected one. If an election is held automatically, I suppose ten to one, you will get one of the men of the province elected to that post. Otherwise you will never get that position. I also oppose Mr. Sahu's amendment on the ground that his argument is absolutely wrong, for supposing the post, instead of being elected, is held by person nominated, then what will be the position? I can challenge him that instead of one for each province, if you say three for each province, you will not get it; so long as it remains to be a nominated office, there is very little chance.

Mr. President : May I point out that the question of election or appointment is not before the House yet? This article does not deal with the method of the appointment of the Governor.

Shri Rohini Kumar Chaudhuri : I most respectfully submit that Mr. Sahu's amendment is quite premature for if the post is an elected one, then the question of a man coming from some other province does not ordinarily arise, because, if he is elected, the men of that province will elect a man of the same province ordinarily and therefore, that question does not arise. The amendment of Mr. Sahu would only arise in case it is presumed that this office will not be an elected office; in that case only this arises and in that case we can say that in filling up the post by nomination care should be taken to see that each province gets a share in the position of Governor. So, I say on the ground, I oppose the amendment of Mr. Sahu, which is premature now.

Well, Sir, so long as you lay down that the office will be a nominated one you cannot expect every province to get a share. Let us look at actual facts at the present moment : The Bombay people have three posts as Governor, the U.P. and Delhi have three Governors whereas important province like Bihar and Bengal have not any Governor of their own; and in Bengal there is none at present, even though there was, of course, Mrs. Sarojini Naidu, who was a Bengali and therefore, I submit that if you give it entirely to nomination, you must leave it to the pleasure of the person who nominates and you cannot lay down a condition that you must nominate from every province; and although I oppose the motion of Mr. Sahu, I am in entire sympathy with him and I

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think till we settle this policy regarding nomination, the claims of each province will be certainly satisfied.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : The question is :

“That the question be now put.”

The motion was adopted.

Mr. President : I shall put the amendment to vote.

The question is :

“That the following be added at the end of article 129 :—

‘and of whom there shall be at least one from each of the States of Part I of the First Schedule.’ ”

The amendment was negatived.

Mr. President : The question is :

“That article 129 stand part of the Constitution.”

The motion was adopted.

Article 129 was added to the Constitution.

Article 130

Mr. President : Amendment No. 2000 is of a drafting nature.

Prof. K. T. Shah : Sir, I beg to move :

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amended article would read thus :

“The Executive power of the State shall be vested in the Governor and shall be exercised by him accordance with the Constitution and the law.”

There is a considerable force in the substitution suggested by me in this amendment. The Constitution should make it imperative upon the Governor to use his powers in accordance with the Constitution and the law, that is to say, on the advice of his Ministers, as provided for in the subsequent clauses and in other parts of the Constitution. The Governor has a considerable number of powers, not necessarily those for which Ministers are responsible to the legislature, but other powers as well to be exercised in his discretion, so it is said. I suggest that, under the new system that we are inaugurating, in the democratic regime that we are establishing under this Constitution, it is but right and proper that the Executive head of a State shall use his powers in accordance with the law and the Constitution, that is to say, on the advice of his Ministers where such powers or actions in accordance with those powers are likely to involve any item of ministerial responsibility. It is not merely a verbal change I have suggested; it is an important change in principle and I hope it will command itself to the House.

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I beg to move :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

Sir, if the amendment is accepted, the article would run thus :

“The executive power of the State shall be vested in the Governor and may on behalf of the people of the State be exercised by him in accordance with the Constitution and the law.”

The intention of moving this amendment is quite obvious and simple. I want that the Governor while exercising his powers in the province, must do so on behalf of somebody and that somebody is nobody but the people of the province. Therefore, I think it is necessary that this should be mentioned in the Constitution that the Governor ought to exercise the power on behalf of the people of the State.

With these words, I move.

(Amendment No. 2003 was not moved.)

Mr. President : Amendment No. 2004; is it not of a drafting nature?

Mr. Naziruddin Ahmed (West Bengal : Muslim) : No, Sir.

Mr. President : If you consider it to be substantial, you may move it.

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

“That in sub-clause (a) of clause (2) of article 130, for the words ‘transfer’ to the Governor any functions conferred by any thing existing law on the words ‘authorise or empower the Governor to exercise any power of perform any functions which by any existing law are exercisable or performable by’ be substituted.”

Sir, the existing context says,

“Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law or any other authority;”

My objection is to the expression “*transfer to the Governor any functions*”. I submit that functions really adhere to certain offices and functions are never transferred. All that you can do is to empower certain other persons to exercise certain functions of powers attached to a particular office. ‘Function’ as has been defined in Murray’s Oxford English Dictionary is “a kind of action proper to a person.....being the holder of any office”. I think functions really are a part of the powers exercisable by a person in office. I have therefore attempted to suggest that nothing in this article shall authorise or empower a Governor to *exercise any power or perform any functions* which by any existing law are exercisable or performable by other authorities. The words “transfer of functions” would be improper. I cannot say that the amendment is not at all of a drafting nature; it partakes of an amendment of a drafting nature. But I think the word ‘transfer’ is not suitable with reference to ‘functions’ and that is why I have thought it fit to draw the attention of the House to this.

(Amendment No. 2005 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

Mr. Naziruddin Ahmed : Sir, article 42 is in another context.

Mr. President : The question is :

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (a) of clause (2) of article 130, for the word ‘transfer’ to the Governor any functions conferred by any existing law on’ the words ‘authorise or empower the Governor to exercise any power or perform any function which by any existing law are exercisable or performable by’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 130 stand part of the Constitution.”

The amendment was negatived.

Article 130 was added to the Constitution.

Article 131

Mr. President : As regard this honourable Members will see that there are two alternatives suggested by the Drafting Committee. The amendments are relating to either the one or the other alternative. So I think the best way is to take an amendment in favour of one of the alternatives and if than is accepted, then all the other amendments relating to the other alternative drop automatically. We take 2006 and if this is carried, then we go to the second.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Sir, I suggest this. The amendments of course may be taken. But first we might form our opinion as to whether we want the first or second alternative so that if we want the first alternative, then the amendments to that alternative only will be considered and the other alternative will go away.

Mr. President : That is exactly what I suggested but it was felt that the best course will be to take the amendments.

The Honourable Shri Ghanshyam Singh Gupta : Supposing we take the other alternative and then the amendments, the first alternative will not be taken at all.

Mr. President : If 2006 is carried, all the amendments to the other alternative will drop.

Shri L. Krishnaswami Bharathi (Madras : General) : There is a third alternative.

Mr. President : That can come in as an amendment to one of the alternatives.

Shri Brajeshwar Prasad : Sir, I refer to 2015 stands in my name.

Mr. President : I shall take that up. That will come as an independent one. We will first dispose of 2006. Mr. Gautam.

An Honourable Member : What about appointment question?

Mr. President : We are taking up the article dealing with election. Then we shall take up the question of appointment. First we want to get rid of the question of election one way or the other.

Shri L. Krishnaswami Bharathi : Both may be negatived.

Mr. President : There are amendments to the second alternative.

Shri L. Krishnaswami Bharathi : If the amendment regarding appointment by President is carried, all other amendments will fall to the ground.

Mr. President : It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari : The choice of the alternative may be left to the mover. Dr. Ambedkar may say which he proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting Committee will be the person to make the choice. If you allow it to him, that will solve the problem. He might move one of the alternatives. This procedure is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President : Is Dr. Ambedkar prepared to accept one of the other alternatives?

The Honourable Dr. B. R. Ambedkar : Sir, I want to say a word regarding the procedure to be followed. Taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one thing in common *viz.*, that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendments here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House, to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupta, and then Mr. Kamath's and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the matter.

Mr. President : There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the president.

Shri Alladi Krishnaswami Ayyar (Madras : General) : If the question of appointment of not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's view in the matter.

Mr. President : There is bound to be discussion on this because three seems to be some difference of opinion. So we shall take up the second alternative of Mr. Gupta. Here also he brings in one element of consultation. I think we had better take up No. 2015.

Shri H.V. Kamath (C. P. & Berar : General) : I submit 2011 is substantially the same.

Mr. President : 2007 is also the same. Any of these may be moved and then we shall accept the wording. 2006 we leave out. 2007 will be the same. 2015 may be moved.

Shri K. M. Munshi (Bombay : General) : 2015 is more complete.

Shri H. V. Kamath : What about my amendment?

Mr. President : It is not as complete as 2015.

Shri Brajeshwar Prasad : Sir, I beg to move :

“That for article 131, the following be substituted :-

‘131 The Governor of a State shall be appointed by the President by warrant under his hand and seal.’”

The Great merit of this amendment which stands in the name of five or six Members of this House is that it lays down a simpler procedure than that prescribed either in the article or in the alternatives suggested by the Drafting Committee.

I feel, Sir that in the interest of All-India unity, and with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained intact over the provinces. To say that the President may nominate from a panel of names really means restricting the choice of President. It gives power into the hands of the Legislature. It is necessary, Sir, that the President should be free from the influence of the Legislator. I feel that the Governor may be one from the province or from another province. Personally I feel that the man from a province should not be appointed in the same province, because it gives encouragement of fissiparous tendencies. So I say the choice of the President should be unrestricted and unfettered. Sir, I have nothing more to add. This is a simple proposition and I commend it for the acceptance of the House.

Mr. President : Then there are other amendments relating to election. I shall have them moved, and then we can have general discussion. There is the one by Mr. Naziruddin Ahmad, the other by Shri Mihir Lal Chattopadhyay. There is the first alternative by Mr. Gupta, and then there is amendment No. 2013 by Pandit L. K. Maitra and others. There are several others which all deal with election. So I shall take one of them. I think No. 2013 seems to be the most comprehensive of these. But which shall we take up? Those who are in favour of election may choose any one of these, and whichever they choose, I shall allow to be moved. Those who favour election may choose any one of these amendments, favouring election.

Mr. Mohd. Tahir : I have got my amendment No. 2019.

Mr. President : That is different, and it comes after election. We are now on the question of election.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, Amendment No. 2013 is the most comprehensive one, but I am not permitted by the party to move it.

The Honourable Shri Ghanshyam Singh Gupta : If you put the amendment just now moved, then the whole thing will be solved. If it is carried, then there will be no necessary for any other amendment. The discussion can now take place.

Mr. President : I take it there is no other amendment going to be moved.

The Honourable Shri Ghanshyam Singh Gupta : If this amendment is defeated, then the other amendments will come in.

Mr. President : Then let us dispose of this amendment first. Seeing that there is not much difference of opinion, I hope there will not be much discussion.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment-No. 2015- which has just been placed before the House by my honourable Friend Shri Brajeshwar Prasad. The amendment I gave notice of-No. 2011 is substantially the same as the one moved by him, except for the legal or constitutional terminology added to it. There is another point-a very minor one-which I would like to point out before I proceed to the substance of the motion.

Mr. Mohd. Tahir : Sir, on a point of order. During the discussion of this Draft Constitution the House on an earlier occasion unanimously passed that the Governor shall be elected. I would like to know, in view of this, whether any Member can be permitted to move any amendment against this decision of the House. The main principle was discussed and decided upon by this House, and this second alternative is only a creation of the Drafting Committee. So, can any Member be permitted to move any amendment which goes against election of the Governor?

Mr. President : It is open to this House to alter its own decision. This comes in as an alternation of a previous decision. It is open to the House to reject it. So there is no point of order.

Shri H. V. Kamath : The words "of a State" occurring in the amendment are more or less redundant. If we turn to the Chapter dealing with the President, we find that once mention has been made of the President, the subsequent article 43 regarding the election of the President, does not mention or use the words "of India". On that analogy, I thought, the words "of State" here might have been usefully omitted in the interest of brevity. Anyway, I am not particular about it and I support the amendment as it has been brought before the House which is substantially the same as mine.

My friend Mr. Tahir raised an objection and said that the House had on an earlier occasion adopted another method of choosing the Governor of the State. It is quite true. During the August 1947 session of this Assembly-I am reading from the Reports of Committees, Second Series-the Assembly adopted an article to the effect that for each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage. But, Sir, as you rightly pointed out, this is a sovereign Body which can alter its own decisions, and to my mind there have been sound reasons why the decision should be altered today in the light of the circumstances that have arisen since the passing of that article in August 1947. As the House will recollect, the scheme envisaged in the July-August session, 1947, was more of a federal type than....

Shri Lakshminarayan Sahu : On a point of order, Sir. Rule 32 of Rules of Procedure says that :

"No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the members present and voting."

Mr. President : And I have assumed that more than one-fourth of the Members present are in favour of it. If you want it, I can actually ascertain it. I think more than one-fourth are in favour of it.

Shri Biswanath Das : Sir, is it left for assumption or have you actually taken the sense of the House?

Mr. President : I have not actually taken the sense of the House, because I know it is so. If you want, I can take it now.

Shri T. T. Krishnamachari : A ruling has already been given. It is open to any Member to question it now?

Shri H. V. Kamath : During the August Session of 1947, the House will recollect that we adopted certain articles on the Executive where this State of India has been referred to in more than one place as a Federation. But in the Draft Constitution which we are considering today that word has to my mind deliberately and with sound reasons been deleted, and article I which we passed in the last session of this Assembly reads that India shall be a Union of States. Therefore, the emphasis today is more upon the Union pattern of our State than upon its Federal aspect. My Friend, Dr. Deshmukh, just an hour ago, spoke on his resolution favouring a strong unitary system of government for India. Much can be said in favour of his proposition of this particular junction in our country's affairs. But, Sir, there is one thing to be noted as regards this and it is this : the constitution which we are framing today is not intended merely for the state of transition, but is intended to last for many decades to come, for such periods or times when happily by the Grace of God we have settled down to the tasks of reconstruction. Our people in the provinces have already got used to the system of provincial autonomy. They have had a taste of it during the last ten years or more, and I suppose now it is not wise for us to do away with the system of provincial autonomy or water it down in any measure. If at all, subject to the strength and the stability of the country as a whole, it is essential for us to give in course of time, more powers to the people in every province. But, Sir, the crux of the matter here is this. What type of Government are we going to suggest or prescribe for these provinces, or the States in the new Constitution, which will be the units of administration or governance? If the object of the Constitution is to have a parliamentary or cabinet form of Government in every State, then it is patent, it is obvious that the method of choice by direct election is absolutely inappropriate and unacceptable. It is an admitted fact that one of the essentials of successful cabinet government in a province or in the country as a whole is the existence of a fairly impartial constitutional head, who is more or less a symbol or a constitutional figure-head. If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province—by the entire adult population of the province—he will think that he is a far superior man and a far more powerful man than the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State : one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have

been elected by the people of the whole province and as such I am *persona gratia* with the people and not the Chief Minister". Therefore there will be in the administration of the province at every turn—if not at every turn, then very often—points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor.

As regards the other system of election from a panel, there are several objections to that as well, so far as the choice of a Governor of a Province or a State is concerned. Suppose the Legislature of the State submits a panel of four or five names to the President for selection and suppose the President—because after all every one is guided ultimately by his own views or conscience or his own judgment in every matter—chooses not the first nominee but the second, or third or fourth or the 9th. Then the Legislature of the State will certainly have a grouse against the man chosen by the President because he has been chosen in preference to the first man. Therefore the relations that will ensue from this appointment of one from among the panel,—the relations between the Ministers or Legislature in the State and this new Governor—will not be very cordial and happy.

Another consideration as regards this matter is this : always in an election—whether it is a small electorate or a large one—there are, what I may call, factions coming into being—factions or groups jockeying each other for power. Even if there is a solid, cohesive party within a Legislature, it is very likely that when they know that a panel of names is going up to the President for the appointment of a Governor, there will be groups within the party, each group favouring one of their own favourites, and the group feelings and passions that would be roused during the election on the panel system are likely to persist during the following years, and will not make the working of the party or the cabinet in the province very happy or conducive to amicable relations between the people and the Ministry in the province.

I will therefore submit, Sir, that on the whole, considering the *pros* and *cons* of election *vis-a-vis* appointment, the latter is far preferable. I do not like the word nomination at all. I think it is a very unpleasant word to use in this regard, because it is really not nomination by the President but it is appointment. There was an amendment to that effect but, I see, it has not been moved and I just referred to it in passing.

Lastly, I would say that it may be argued against the amendment that has been moved by my friend Shri Brajeshwar Prasad, and which I am supporting, that the Governor is not absolutely a figure-head : he is not just a symbol. The objectors will point out to articles 188 and also 187, which have invested the Governor with powers in grave emergencies and with power to promulgate ordinances respectively. As regards the first, article 188, it will be seen that the maximum period during which the Governor will be invested with these extraordinary powers is two weeks. Of course you can work wonders or tyranny even within twenty-four hours. But the House will see that the Governor has to forthwith inform or communicate to the President the action that he has taken. Therefore, really speaking the Governor practically divests himself of responsibility as soon as possible in any situation that may arise in the state on account of the emergency, and the President takes all the powers in his own hands, and the whole country will be governed as under Part XI of the Constitution—article 275 to 278.

The ordinance-making power is distasteful to me and I moved some amendments in connection with these powers of the President a couple of days ago. But Dr. Ambedkar himself argued against the amendments of mine which

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tried to limit the powers of ordinance-making by the President. He said that it was nothing extraordinary and that is was only a power given to the President at times when the Parliament was not in session, and visualising the possibility of Parliament sitting continuously, almost the whole year, he assured the House that the need for ordinance-making by the President will not arise. I hope the same argument will apply here too. In view of the fact that the legislative business will be very heavy in the States as well as in the Centre, I am sure that the state legislatures as well as the Parliament at the Centre will be almost continually in session, and the need for ordinance promulgation by the Governor in the States just as in the case of the President at the Centre, as pointed, out by Dr. Ambedkar, will not arise. I therefore submit, taking all in all—no system is perfect—considering the constitution as a whole, considering the powers given to the State legislatures, so the State cabinet and the relations between the units and the Centre, I think that the lesser-most evil is this system of opportunities by the President of the Governors in the various States. I, therefore, support the amendment and commend it to the acceptance of the House.

Shri B. A. Mandloi (C. P. & Berar : General) : Sir, I crave your permission to move my amendment No. 2007 as it is more comprehensive, inasmuch it deals with the first alternative also.

Mr. President : Amendment No. 2007 is the same as No. 2015, which has just been moved.

Shri B. A. Mandloi : But the second part is not moved. My amendment deals with both the alternatives. The first alternative is to be deleted and in the second alternative some modification is suggested.

Mr. President : If the second is carried the first alternative goes automatically.

Sardar Hukam Singh (East Punjab Sikh) : Sir, I oppose the amendment moved. I am afraid those of us who have given notice of amendments have been placed somewhat at a disadvantage, because the House is to decide on a question without hearing us and without appreciating what we have to say on our respective amendments. I have also one amendment No. 2006 in my name in my opinion the second alternative suggested was the best course. It steered a middle course. On one side there is the election of a governor of a State. I agree with my honourable Friend Mr. Kamath that it would be expensive as well as troublesome to go to the polls too often. And there is the danger of a conflict between the Governor and the Premier as well. At the same time I think these should not be so much discretion left with a Governor. Also when he has to act on the advice of one party, it might be abused. There might be favouritism. In my opinion the second alternative suggests a course which provided some check against favouritism. If there was a panel to be provided by the legislature of the State, certainly even then the ultimate power of appointment would lie with the ruling party or the Governor and they can choose whosoever suits them best. In that case the merits of those individuals who have been recommended in the panel would be before the public and if the right man is not chosen certainly the public shall have a right to criticise the selection and that would work as a wholesome check against my favouritism or abuse or power. So in my opinion the second alternative was the best between the two extremes of pure election and pure nomination. Therefore I oppose the present motion.

Shri Alladi Krishnaswami Ayyar : Sir, in view of the decision that was reached some two years ago and in view of the fact that I feel convinced that

the only right course, taking all the circumstances into consideration, is to accept the amendment of Mr. Brajeshwar Prasad, I should like to say a few words in support of the amendment. In the consideration of this question, the main points to be remembered are that this Assembly has accepted the introduction of responsible government in the different States, that the Governor is merely a constitutional Head of the province and that the real executive power has been vested in a ministry responsible to the Lower House in the different States. The question for consideration before this House is whether, under these circumstances, there is any point in going through an expensive and elaborate machinery of election based upon universal suffrage. After giving my best consideration to the various proposals put forward, (1) of a choice of the Governor on the basis of universal suffrage, (2) of election of the Governor by a majority of the Lower House or of both Houses whether on the principle of proportional representation or otherwise, (3) of a selection of a panel by the Lower House in the State from which the choice is to be made by the President of the Union or (4) of appointment by the President in consultation with the Cabinet, I feel that the wisest course to adopt is the last one. If the Governor is properly functioning as the constitutional Head, the expenses involved in going through the process of election is out of all proportion to the powers vested in the Governor under the Constitution. There is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier and the Cabinet responsible to the Legislature which itself has been elected on the basis of universal suffrage. Again, the election itself under modern conditions will have to be fought out on a party ticket. The fact is that even at or during the elections the party will have to rally round a leader who will presumably be the future Premier of the Province. Is the rallying to be round the Governor's name or the Premier's name? In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government. There is no correspondence between the Governor of a State in the United State of America and a Governor under our Constitution. In the case of a Governor of a State under the United States Constitution, the real and substantial executive power is vested in the Governor. There is a distinct separation between the executive and the legislature in the United States. A proper analogy has to be sought for in the Constitution of Canada where a responsible Governor obtains. In Canada, the Lieutenant-Governor of each of the provinces is appointed by the Governor-General, that is by the Governor-General on the advice of the Cabinet. There are many features of resemblance and similarity between the Canadian Constitution and our Constitution which, by some critics, has been considered to be quasi-federal. The system in the main we have accepted is the principle of responsible Government obtaining in the Dominions or in the different parts of the Commonwealth. Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution.

In the normal working of the Constitution I have no doubt that the convention will grow up of the Government of India consulting the provincial Cabinet, in the election of the Governor. If the choice is left to the President and his cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same time has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet government in the early stages. The central fact to be remembered is that the Governor is to be a constitutional head, a sagacious counselor and adviser to the Ministry

[Shri Alladi Krishnaswami Ayyar]

one who can throw oil over troubled waters. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the provincial Government, is likely to discharge his functions better than one who is elected on a party ticket by the province as a whole based upon universal suffrage or by the legislature on some principle of election.

One thing I may mention. The point has been raised in these discussions, whether it is wise at all to invest so much power in the Prime Minister or in the President of the Union acting on the advice of the Prime Minister. If you can confide the appointment of the Commander-in-Chief of all the Forces, the Ambassadors in different parts of the world, the Chief Justice and the Judges of the Supreme Court and the appointment of other high offices in a Cabinet responsible to the Legislature, and theoretically in the President, I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, of consulting the provincial Cabinet might easily grow up. Such a convention as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet.

I owe it to myself to say a few words about the panel, because the Drafting Committee of which I am a member felt the difficulty of an election process being gone through as per the original decision of the House. Tentatively, another suggestion was put forward by the Drafting Committee. On a fuller consideration I feel convinced that the panel system is likely to be fraught with great danger as experience shows in the case of the election of Vice-Chancellors in the several universities. Supposing three or four people are elected by the provincial legislature. What is the President to do? Is he to give his concurrence to the person who has obtained the largest number of votes or, go out of his way and select people who have lesser number of votes? Normally, he must support the candidate who has obtained the largest number of votes. If he goes out of his way and selects anyone of the other three, it is sure to lead to friction and continuous friction between the province and the Centre. That is another difficulty in the matter. In the net result, if the President is to get on smoothly with the province he has merely to say ditto and confirm the appointment of a person who obtained the largest number of votes in the provincial legislature. That would be the effect of that. There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result.

Then there is another point. It is said that the Governor may occasionally have to use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger. Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of

harmony, in the interest of good working, in the interest of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet. With these words I have great pleasure in supporting the amendment moved by Mr. Brajeshwar Prasad.

Dr. P. S. Deshmukh : Mr. President, Sir, I think that this is one of the article which should be discussed by this House at greater length than usual and for this reason, viz., that we are altering almost the whole idea about of the office of Governor of a State. It is quite right to say, that since we are giving adult franchise, and had provided for an elected Governor there may be innumerable people in this country who will be looking forward to the exercise of their vote for choosing the man who will be guiding the destinies of their own province. As I have said already, I am not in favour of the provinces as they exist today and so far as the appointment of the Governors is concerned, we have got to take a few fundamentals into consideration. Firstly, if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically that he should be a real executive authority. On the other hand if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President. Over this question there are sharp differences of opinion. Some people say that we are committing a breach of faith with the people of India if, after having told them once that the Governors will be elected we go back upon it and provide for their appointment by the President. I therefore want, Sir, that the people of India should understand what exactly we are doing and why we are doing it. Therefore I would like all the arguments which are in favour of our choice of appointed Governors should be stated on the floor of this House so that the nation outside will be convinced of the correctness of the decision that we are now taking. So long as the provinces are there and the structure of the Constitution remains as it is, I think we have, although somewhat late, corrected a mistake that otherwise would have been there. Our whole Constitution is based on the 1935 Act which in itself is based on the principles of responsible government. There is responsible government not only at the Centre but also in the provinces. Wherever there is responsible government, it necessarily means that the representatives of the people should have the authority to alter the executive any day or at any time. That being so, the head of the administration must be one who cannot interfere with the day to day administration. Therefore it necessarily follows that even if you have election for Governors, the Governor will have to be a figurehead and not a person who can interfere with the day-to-day administration. That being so, it would not be correct to ask the people to take the trouble of going through a huge election on a gigantic scale to elect a person who would be merely figure head. The decision embodied in this amendment is, I believe, a correct decision, because the Governor is merely a figurehead. He is a constitutional head without any authority to interfere with the actual administration. It is sometimes said that we are depriving people of the exercise of their votes. I do not think that is the case because the people will still have periodically to choose on the basis of adult franchise their own representatives in the provincial assemblies, a majority of whom will form the Provincial Ministry which will rule the Province and exercise all the powers which the Constitution provides for.

The other objection that is taken to the appointment of Governors by the President is that we are clothing the President and the Prime Minister with too

[Dr. P. S. Deshmukh]

much patronage. In a country like this, which is one of the greatest in the world, we will have willy-nilly to give lot of powers to the man who is selected by the people. After all the Prime Minister of India is going to be a popular Prime Minister. He can be there only so long as he has the support of the Parliament elected by the people at large. Therefore there should be no hesitation in giving powers of patronage to the Prime Minister or the President. After all, the representatives of the people will be there to call them to account. So, Sir I do not for a minute accept the argument that the Prime Minister will have too much patronage, that he will appoint the judges of the Supreme Court, he will appoint all ambassadors and then the Governors and so on and therefore, he will be a sort of a Moghul Emperor reigning at Delhi. I do not think these fears of the Prime Minister being clothed with too much patronage are justified.

An Honourable Member : Do you anticipate criticism?

Dr. P. S. Deshmukh : Yes; I am certainly anticipating criticism because criticism is bound to be there since we are taking such a drastic step as to alter a principle which we had agreed upon, and therefore, I am perfectly within my right to anticipate criticism and to say beforehand what is likely to be stated on the other side.

Then, Sir, we have also consider this; supposing we were to elect the Governor by adult franchise the relationship between the provincial Prime Minister and him in all probability would never be cordial, and supposing the exceptional happens, and he and the Prime Minister are completely at one. Since we have provided for a certain amount of autonomy for the provincial Governments; it is not unimaginable, Sir, that circumstances may arise when the Centre may be completely blacked out from that particular province. We must look at the whole thing, not only from the point of view whether the two most important persons in the province will always be able to get on or not, but we have also to consider the consequences, if they agree in everything, for instance, if they agree in defying the Centre altogether, what will be the position and what will be the situation that the Centre will find itself in? Will the Centre invade the province if it refuses flatly to carry out whatever suggestion or whatever direction comes from the Centre? So part from the unsuitability of having an elected Governor, with limited powers, an elected Governor is always bound to consider that he is the most liked person in the whole province, and therefore more competent to exercise authority with complete confidence of the people rather than the Premier. It is thus that a conflict between him and the Premier is bound to arise. But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position? That is also a matter which deserves serious consideration. So, Sir, I think so long as the provinces remains and the structure of our constitution is unaltered, there is no go and the wisest thing for us is to give the power of appointment to the President. I would also like, Sir, that at some suitable stage, the appointment should be made only during the pleasure of the President. It was only consistent with an elected Governor that we had provision for impeachment. If this amendment is accepted all that will have to go. I would, therefore, like that the appointment of the Governor should be during the pleasure of the President.

The Honourable Shri B.G. Kher (Bombay : General) : Mr. President, since the House intends to go back on a resolution which it had taken about this matter nearly two years ago, I think, I should say a few words about the very important principle involved in the amendment. I wish to support it

wholeheartedly. In the first place, conditions in the country have changed since we took our decision and in other matters than this we have gone back on the decision, which, at that time, we thought was proper. Experience also has taught that the system which we have adopted has worked fairly well in practice. The question, Sir, is this : when we are determined to have a governor for the provinces as we have decided to by passing article 129, should he be an elected Governor? Or should he be nominated or appointed by the President? Now it appears from the trend of the debate that election on adult suffrage is not advocated by anybody, because apart from the expense that it will involve, it will put at the head of the province a person who is elected by the whole people of the State and the whole power of the State because of the principle of responsible government, which we have adopted, will be vested in the Premier under the Constitution. It is bound to give rise a certain conflict, which it is desirable to avoid in the interest of smooth administration. Why do we want the Governor? Because, Sir, he represents the State; the Premier is there by virtue of his being the leader of the largest party in the House; he is to be held responsible for whatever happens in the administration. So far as the Governor is concerned, we have given him very few powers. But I do not agree with the comment that he is a mere figurehead; a figurehead is capable neither of good nor of bad. I want to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we propose to give him, and the functions that we assign to him are very few such as summoning and dissolving the Assembly, to give assent to the Bills passed by the State Assembly, to act as representative of the State, to nominate the Premier after the general election or the resignation of the ministry, to represent the province on ceremonial occasions and such power as we give to act in an emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by means of getting into touch with opponents of the party which is in power, reconcile them to a good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at head of the province a person who is supposed to be more representative than the Premier would be a mistake. If, therefore, the question of election on adult suffrage by the whole people is not to be thought of, then Sardar Hukam Singh referred to the other alternative, namely of having a panel of people elected by the House, and that may be thought of. After the very able argument of Shri Alladi Krishnaswami Ayyar, pointing out the defects of this system also, it is not necessary for me to say more than this, that if more than four or five persons are put up and aspire to the place of the Governor, in the course of an election even in the House there is bound to be some kind of canvassing, some kind of party faction, and whoever is appointed, you will have four or five or more disgruntled people in the House, which is not a very desirable state of affairs.

Sir, if, therefore, we wish to avoid the conflict that is bound to arise by adopting this method, what should be the guiding principle in making such an appointment? And the guiding principle is that no member of the executive should ever be elected by the popular vote. People might think it is a matter of going back to Mid-Victorian precedents, but I found, Sir, turning up pages of Mill's Representative Government this very important principle :

“The most important principle of good government in a popular constitution is that no executive functionaries should ever be appointed by popular election, neither by the votes of the people themselves nor by those of their representatives.”

[The Honourable Shri B.G. Kher]

That, Sir, I submit is a very sound principle. You want to hold the Leader of the Party in the province responsible; you want to hold the Prime Minister of India responsible. He must have the power to appoint people whether as his colleagues in the Central Cabinet or as a Governor with whatever limited or great powers you want to bestow upon him, in the province, one who will have his confidence and who will be the titular head of the Executive in the Province. The principle of appointing these people by election is very much open to doubt. I do not wish to comment on what is done in America. But, having deliberately chosen the British model of responsible Government and decided to give the Governor the position that we have decided to do, I submit Sir, that the only insurance for smooth government in the provinces is to allow the President of the country to nominate a person who enjoys his confidence, which certainly means, the confidence of his Cabinet as also the cabinet of the province, to be the Governor or the province. Any other mode, whether by election on adult suffrage or by election by the representatives of the people in the House will give rise to considerable friction. It is therefore, I submit, that the amendment that has been moved by Mr. Brajeshwar Prasad should be accepted.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, it is very difficult for us to say which is correct and which is not correct. Two years ago, in the month of June, we had, in the Provincial Constitution Committee, discussed this question for nearly three or four days. The Committee was presided over by no less a person than the Honourable Sardar Patel, and amongst the members, there were Premiers like the Honourable Shri Kher and there was also in that Committee the Honourable Dr. Ambedkar. The members of the Provincial Constitution Committee and the Union Constitution Committee sat together on one day. By a majority of votes this question was decided by coming to the conclusion that the post of Governor will be filled by election. Now, Sir, my honourable Friends who have spoken in support of the amendment of Mr. Kamath and Mr. Brajeshwar Prasad, have said that things have changed since then and there is therefore an alteration in the decision on the part of some of the Members. How have the changes affected the question at all? The fact that we have attained independence in the meantime, that is in August 1947, has that anything to do with the alteration of this decision? Are you to have nominated Governors when we are independent and should have been content with elected Governors when we were not independent? There has been partition of the country in the meantime; there has been bloodshed; there has been untold misery in the country. Is that the reason why we should have nominated Governors instead of elected Governors? The only reason that I can find is that there has been some change in the status of my honourable Friend Dr. Ambedkar. Possibly that is the reason why we are having a change in this decision today; otherwise.....

Mr. President : I would ask the honourable Member not to be personal.

Shri Rohini Kumar Chaudhuri : Not to refer to Dr. Ambedkar?

Mr. President : Not to be personal.

Shri Rohini Kumar Chaudhuri : I am sorry, Sir; I will not refer to Dr. Ambedkar.

I must however say that I fail to see any reason for the change in this decision.

My honourable Friend Mr. Brajeshwar Prasad who had moved the official amendment on this question, has not enlightened us very much in his speech.

The way in which he was supporting his own amendment or moving his amendment showed that his heart was not very much in it and the way in which he ran away from this place to his seat showed that he was rather swallowing a bitter pill than actively appreciating what he had said. Under the present proposal, the appointment will be made by the President. Who is the President? The President will be elected by the members of the legislatures. Certainly, he will have to be a person who will enjoy the confidence of the majority party. The desire which some honourable Members possess that he will be one who is absolutely detached from politics will not be raised. How will the President nominate the Governor? The President will nominate a Governor according to the advice of the Prime Minister. Who is the Prime Minister? The Prime Minister is very much a political man. He is the leader of some party and he will be guided by his party leanings. He cannot have a detached view altogether. If you are allowing a person who belongs to a particular party, who is the leader of a party to nominate the Governor, why are you not allowing the people to have a voice in the matter? After all, Sir, what is the pledge which the Governor has to take when he accepts office? He has to take this pledge :

“I.....solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of.....”

Here, a man, who does not know anything of that province, who does not understand the language of the province, can be nominated and that man will be expected to serve that province much better than a man who can be chosen by the people of that province! Are you going to accept that, Sir? A man who may be nominated may belong to any part of India : South India or North India or the Punjab; he may come from any corner of India and he is supposed to swear—I dare say he will have to forswear—that he will act in the best interest of the people of that province of whom he knows absolutely nothing. That is the position to which we are coming. In appointing him as Governor, the President has not to consult the people even of the province, or the representatives of the people of the province. He is merely nominated at the sweet will of the President or the Prime Minister of India. In selecting the Chief Justice of the Supreme Court, the President has to roam about all over India; he has to consult the Judges of the different High Courts; he has to consult the Chief Justices of the High Courts of the various provinces. But, in selecting the Governor, the people of the province of which he is going to be the Governor need not be consulted. Their opinion even need not be taken. That is a proposition which it is difficult for us to accept. It is said that if you have an elected Governor, there may be friction between the Governor and the Prime Minister and I suppose it is the fear of the present day Premiers of different provinces which is responsible for this decision of nomination of Governor. But I say, supposing (you can quite foresee such a state of things) you have a Prime Minister who is the Leader of a particular Party and you need a Governor in a province which is in the hands of a particular party which is not the same party as the party to which the Prime Minister of India belongs. What happens? The Prime Minister of India sends out a Governor to that Province. Is that Governor going to work harmoniously with the Government run by another party. Can you expect that the Governor who is selected by the Congress Party will act in harmony with the Ministry of the province the Premier of which belongs to another party? Will there not be more occasions for friction? This is quite obvious. Then how can you assume that for all time to come the Congress Party, or a particular party shall remain in power not only at the Centre but also in the different provinces? It is unthinkable. So

[Shri Rohini Kumar Chaudhuri]

I submit that under the present arrangement there is greater occasion for friction than if there was an election; and further, if you give him any power—and he will exercise certain very important powers under the present Constitution as the post of Governor is not a sinecure post in all the provinces—there is bound to be friction. In a particular province whether the Premier is all very powerful, he might be able to get things done in his own way but it may not be so in other provinces. For instance, in a province like Assam the Governor of the Province must exercise very important rights and he will have to work hard and if you send a Governor who does not know anything of the tribal people, who does not know their customs, their manners etc. and the miserable conditions in which they live, and he simply goes and looks at them in amazement, there will be terrible consequences. The Premier of a province like ours may not have anything to do with the tribal people. In order to become a Premier of the province, he need not care for their interest or enquire about them but if the Governor was elected, he would have to be a man who was known to be sympathetic even for the tribal people and the tribal people who have no vote in selecting the Premier will at least know who their Governor would be and will be able to give their votes accordingly. Why deprive these people of the right to have a voice in the appointment of the person who will control their destinies? So it would have been best to have election. Why go according to British precedent in this matter? The British precedent was that they had to have their Governor-General from outside India, and the Governor-General had the right to select Governors and they selected as Governors such persons who would safeguard their interest. Are you going to give powers to the President to select governors in that manner so that he may, contrary to the interests of the province, select a man who will look down upon the interests of the province and consider the question of the whole India? Do you want that you should have a man there who will closely watch the working of the Provincial Ministry so that they may not at any time go against the Centre? Is that the suspicion in the minds of those persons who want the nomination of Provincial Governors? I submit that it should not be the case. So I would have expected even if you do not go to the length of having an election—and I do not know what reasonable objection there can be in that—you must agree to have choice from a panel.

Then an objection has been put forward about additional expenses. If an election takes place on the same day as on the day of general election, there cannot be any question of additional expense. The question of expense does not at all arise. The question of greater efficiency cannot arise. You cannot perpetually go on nominating people from outside provinces and yet try to keep the people of the province contented; but even if you, for any reason, consider the election of a Governor a stupendous task, I suppose it might assuage the feelings to some extent if the province was consulted by some way. The other alternative which has been put forward by the Drafting Committee at least gives a chance to the local legislature to express an opinion, whether the man is from the province or from outside—or gets a chance to mention somebody from that province, and that would be some solace.

Pandit Hirday Nath Kunzru : Mr. President, two years ago I was one of the few unfortunate men in this House who tried in vain to persuade it not to resort to the system of electing Governors on the basis of adult franchise. I am glad to find that opinion in this House has changed and that even my honourable Friend Mr. Kher who was emphatically for the election of Governors two years ago stands now for a different system altogether. We should, however, examine some of the reasons that have been advanced in favour of the change. It was possible for the House while rejecting the principle of election

to accept the alternative method of choosing Governors recommended by the Drafting Committee; but the method that has been proposed today is that of pure and simple nomination by the President. The mover of the amendment I believe said in the course of his very brief speech that the Governors should be nominated by the President so that the Government of the Provinces might be carried on in conformity with the policies of the Central Executive. My honourable Friend Mr. Kher when speaking on this subject delivered himself of the opinion that it was right that the Governor of a Province should be the nominee of the Prime Minister of India Because the Prime Minister would be responsible for the good government of the Country. I find, Sir, that though Mr. Kher has changed his opinion since 1947, he still wants that the Provincial Ministers who will represent in majorities in the Provincial Legislatures would be controlled by some outside authority. The question formerly was that they should be controlled by an elected Governor, but now, Mr. Kher thinks that they should be controlled by a Governor nominated on the recommendation of the Prime Minister of India.

The Honourable Shri B. G. Kher : I did not say that.

Pandit Hirday Nath Kunzru : But it virtually comes to this. My honourable Friend said that as the Prime Minister of India would be responsible for the good government of India, it was desirable in principle that the Provincial Governors should be his nominees. If the Governors are not to be used to control the Ministries, how does their appointment on the recommendation of the Prime Minister of India enable him to fulfil his responsibility for the good government of the country? Nomination can enable him to discharge his duty only if it is understood to give him directly or indirectly the power of controlling the Provincial Governments through the nominated Governors.

Shri T. T. Krishnamachari : Control is no responsibility, whatsoever.

Pandit Hirday Nath Kunzru : My honourable Friend Shri T. T. Krishnamachari should then discuss the matter with my honourable Friend Mr. Kher and see whether the views of the two can be made to reconcile by any manner of means. I fully understand that my honourable Friend Mr. T. T. Krishnamachari does not want Provincial Governments to be controlled by the Prime Minister of India. But the opinion expressed by Mr. Kher, if pursued to its logical conclusion would have an effect contrary to that desired by Mr. Krishnamachari. I think that neither the House nor the Central Government should remain under the serious misconception that Mr. Kher is labouring under.

The Honourable Shri B. G. Kher : I am not labouring under any misconception. The honourable Member has not understood me correctly; I can assure him that I do not want to give any such power to the Prime Minister. He should understand there are ways in which things are done. You need not have it in the Constitution. It is always personalities, and not Constitution.

Pandit Hirday Nath Kunzru : I shall take it that my honourable Friend does not now desire that the Prime Minister of India should control Provincial Governments. But he should really then explain to us what he meant by saying that the Prime Minister of India would be able effectively to discharge his duties for the government of India, only if the Provincial Governors were nominated on his recommendation. However, if my honourable Friend Mr. Kher has changed his opinion in the course of a few minutes, I shall not twit him with it. But the important question raised by him, consciously or unconsciously, still deserves the consideration of the House. The Prime

[Pandit Hirday Nath Kunzru]

Minister of India and his Cabinet are responsible for the good government of the country, only in respect of certain matters, that is, in respect of matters that are under the control of the Central Parliament, or properly belong to the province of the Central Executive. Our Constitution, though it gives a great deal of power to the Central Legislature and Executive, does not provide for a unitary Constitution. It has not reduced the Provinces to the level of Municipalities and District Boards. They will, notwithstanding deductions made from their authority, still have the power exclusively to control certain subjects. The responsibility of the Prime Minister of India for the good government of the country cannot extend to the sphere that will be exclusively under the control of the Provincial Parliament and Executive. I think, Sir, that this should be clearly realised, least there should be serious conflicts between the Central Government on one side and the Provincial Governments on the other.

We have also to bear another very important consideration in mind. Our Constitution should be such as to permit of the free and full growth of democracy, and to prevent the establishment of a dictatorship in the country in any event. At the present time, it seems to many of us that greater confidence is reposed by the country in the judgment of the Central Executive than in that of the Provincial Executive. But in the first place, this can be no reason for reducing the Provincial Governments to a position of utter subordination to the Central Executive. In the second place, things may not always remain as they are now. It is easy to conceive of a time when the Central Government might not inspire as much confidence as some of the Provincial Governments might. If you entrust the Central Executive with power to exercise control over the Provinces in all important matters, and make them fall in line with the policy of the Centre, there is the serious danger of the country falling under a dictatorship. There are countries in which the federal system of government prevails, and there are differences of opinion there, from time to time, between the Federal and the State Governments. In Canada, a Provincial Government went so far as practically to change the prevailing system of currency. The Centre was able to deal with the situation, because in its opinion this was a matter exclusively under its control. It did not utilise the position of the Governor or any other method of asserting its power for this purpose. Similarly, when conflicts arise between the provinces and the Centre in this country it is very probable that if they are of a serious character they will relate to matters coming within the purview of the Centre and in that case the Centre, will, under the Constitution, have adequate means of dealing with such a situation. But let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive.

Now, Sir I think it would be pertinent to refer here to articles 175 and 188. Article 175 requires that a Bill passed by the Legislature of a province may be assented to by the Governor or reserved for the consideration of the President. My honourable Friend, Shri Alladi Krishnaswami Ayyar referred to the case of Canada where Lieutenant-Governors of provinces are appointed by the Governor-General of the Dominion. There in the early days of responsible Government the Lieutenant-Governors could reserve Bills for the consideration of the Governor-General, though the Governor-General, as the representative of the Crown, had the right and still has the right to disallow a provincial Bill. In course of time a system has grown up under which Lieutenant-Governors would not be called upon to reserve any Bills for the consideration of the Governor-General, because this is regarded as a deduction

from the authority of a fully responsible Government. The Governor-General can, however, disallow a Bill assented to by the Governor within a period prescribed by the Canadian Constitution Act. We in this Constitution, Sir, have given no such power to the President. A Bill can be reserved for his consideration by the Governor, but if the Governor does not do so, the President does not come into the picture at all. Now in this situation, Sir, it is clear that the President will instruct the Governors to reserve for his consideration Bills that the Centre does not approve of.

Shri T. T. Krishnamachari : May I respectfully point out that article 175 is yet to be passed by us and it is more than likely that that article will be reshaped in the light of amendment which will be tabled.

Pandit Hirday Nath Kunzru : I am very glad to hear that. This is exactly what I wanted to point out. It will be better if instead of using the Governor as an instrument of the President, the power of disallowing Provincial Bills within a certain period is given to the President. In that case, the responsibility both in form and in reality will be that of the Central Executive. In the other case, there is likely to be friction between the Governor and his Cabinet. The case of Canadian provinces shows that this fear is not imaginary.

Now, I shall come, Sir, to article 188. I do not know whether my honourable Friend Mr. Krishnamachari can tell me with regard to this article too, that it is proposed to delete it or to modify it in view of the change that has been made in the method of choosing a Governor. When the House resolved two years ago in favour of the election of Governors, the main argument put forward was that a situation of such a character may arise as to require that the Governor should have the power of acting decisively in grave emergencies. It was felt that responsible Ministries dependent upon popular support might not in a crisis be able to act with the strength required by the situation and that it would, therefore, be wise to entrust the elected supreme executive in a province with adequate powers to maintain the peace of the province, should it be confronted with a grave emergency. Opinion in this House on that subject has changed since 1947, as shown by the approval that the amendment of my honourable Friend Mr. Brajeshwar Prasad has received so far. I hope, therefore, Sir, that article 188 will be deleted. The President of the Republic can under another article be enable to take action where the peace of the country is threatened because of anything happening in a province, or where a province is face to face with a situation which if not firmly handled might lead to conflagration. I think, Sir, that this would be a better method of dealing with provincial emergencies than allowing the Provincial Governor to take the administration into his own hands. But though the ultimate power will rest with the President of the Republic, he will probably not take any action without consulting the Governor. The latter can well bring the position in his province to the notice of the President and leave him to decide what action should be taken.

I hope, Sir, in view of this article 188 should be deleted or amended so that it may be consistent with the establishment of responsible ministries in provinces and may not lead to bitter conflicts between the Governor and his Cabinet. Let such control as has to be exercised in emergencies under the Constitution be exercised by the President of the Republic directly and not through the Governor so that he and his Cabinet may not come into conflict with one another.

The Honourable Shri B. G. Kher : Does the honourable Member support or oppose the amendment?

The Assembly then adjourned till Eight of the Clock on Tuesday, the 31st May, 1949.

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 31st May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :—

Sardar Ranjit Singh [Patiala and East Punjab States Union.]

Seth Govind Das (C. P. & Berar : General) : *[Mr. President, Sir, I would like to draw your attention to a fact which, in my opinion, is of major importance. You are perhaps aware of the fact that some Members of the House have Hindi numerals on the number plates of their cars. Delhi police recently filed a case against one of the Members for using Hindi numerals on the number-plate of his car and he has been fined by the Court. I have come to know that some more similar cases against a few other Members are pending. This is a matter which relates to the privileges of the Members of the House. Indeed it is very surprising, rather a matter of shame, that even in independent India Members of this House are prosecuted for having numerals in the national language on the plates of their cars. I do not know if this matter was already before you. But at any rate I want to draw your attention to it and request that proper action should be taken in this matter.]

Shri Mohan Lal Gautam (United Provinces : General) : *[Mr. President, I have to convey a minor piece of information to the House. I have Hindi numerals on the number plate of my car registered in U. P. This car has been in Delhi for a long time. Shri Keskar and a few other Members also have Hindi numerals on the plates on their cars. Recently when going from the House in my car, the Delhi Police registered a case against me for using Hindi numerals on the plate of my car. The case is yet pending. I do not know what would be the outcome of this case. This is a fact and I have placed it before the House for information.]

Shri R. K. Sidhwa (C. P. & Berar : General) : I want to speak, Sir.

Mr. President : About the same matter?

Shri R. K. Sidhwa : No.

Mr. President : I shall dispose of this. As this is a matter which requires looking into. I shall ask the Secretary to consider what steps have to be taken.

I understand Pandit Kunzru wants to say something to complete what was said yesterday.

DRAFT CONSTITUTION—(Contd.)

Article 131—(Contd.)

Pandit Hirday Nath Kunzru (United Provinces : General) : I am grateful to you, Sir, for permitting me to answer the question Mr. Kher put to

*[] Translation of Hindustani speech.

[Pandit Hirday Nath Kunzru]

me yesterday. He wanted to know whether I was in favour of the amendment proposing nomination of Governors. I made it clear at the outset yesterday that I opposed the principle of election even two years ago. I consider nomination better than election; but I shall regard it as satisfactory only if article 175 is amended as suggested by me yesterday and as agreed to apparently by Mr. T. T. Krishnamachari, and article 188 is deleted. I ask for the deletion of article 188 because the Governor who will now be nominated should not be able to exercise the power of setting aside his Cabinet and taking the administration into his own hands which he was to have when he was to be elected. If these two amendments are made, I should consider the principle of nomination to be unobjectionable.

Shri T. T. Krishnamachari (Madras : General) : Pandit Kunzru has referred to some undertaking given by me. I am not in a position to give any undertaking, nor is any undertaking given by me of any use, so far as binding this House is concerned.

Pandit Hirday Nath Kunzru : I did not say that Mr. Krishnamachari spoke on behalf of the Drafting Committee or even on behalf of Dr. Ambedkar. I only expressed my pleasure that a careful student of constitutional affairs like my Friend, Mr. T. T. Krishnamachari, agreed to the suggestion that I made.

Mr. President : Before we start discussing this article, I might tell honourable Members that we should expedite the consideration of the Constitution. I have given great latitude to Members and I expect reciprocation from their side so that we might go through the Constitution as quickly as possible. In some cases I have allowed speeches which were not strictly relevant to the amendment under consideration, because I felt that some view-points were put forward which might deserve consideration if not exactly in connection with that particular article but in connection with some other article which might come at a later stage. Apart from that, I would ask honourable Members to bear in mind that we should not have repetition of arguments and no honourable Member need speak if he thinks that the point does not require any further clarification or that he is going to make any contribution which is not already before the House. With this appeal, I would now start the discussion, and I hope that Members will bear this in mind.

Dr. P. K. Sen (Bihar : General) : Mr. President, Sir, in this matter it is obvious that a great change has come over the honourable Members of this House since the last decision was taken and I must also confess that I am one of those Members who have changed their views. At that particular point of time, when the last decision was taken, I remember very well the consideration that weight with the Members, was as to the manner in which the Governor should be elected so as to be able to interfere with the government if party factions and cliques threatened to break it up or to paralyse its activities. At that time it was felt that the Governor, in order that he might have the strength so to interfere should be able to feel that he had the backing of the whole province behind him. It was for this reason that a great deal of emphasis was laid upon the form in which he was to be chosen, and it was decided that it should not be by appointment or selection but should be by election,—and not only election but election by adult suffrage. Since then on sober and serious reflection evidently the Members of the House are now persuaded that a general election of that kind whereby the Governor was to be elected by adult suffrage would impose a tremendous strain upon each province and would hardly subserve the purpose for which it was being held. What is the purpose? The upholding of democratic

ideas. The question is whether by interfering, the Governor would be upholding the democratic idea or subverting it. It would really be a surrender of democracy. We have decided that the Governor should be a constitutional head. The Premier with his Council of Ministers is really responsible for the good governance of the province. The whole of the executive power is vested in the Premier and his Council of Ministers. That being so, if there is another person who is able to feel that he has got the backing of the whole province behind him and therefore he can come forward and intervene in the governance of the province, it would really amount to a surrender or subversion of democracy. It would make it impossible for the Premier or his Council of Ministers to initiate measures which would be in the best interest of the province. Only in exceptional cases of emergency should he have the power or the function to step in and interfere with the actual governance of the province for a short time. Of course, the conditions and circumstances must be such as would justify the exercise of emergency powers and those conditions have been indicated elsewhere. Ordinarily, however, his function is not to interfere but to remain detached. Therefore in the best interest of democracy, in the best interest of parliamentary form of government which has been decided upon as the basis of the Draft Constitution, the election of the Governor by adult suffrage is uncalled for and inappropriate.

The next method of election that is suggested is election by the legislature. There too there would be mischief—only in another form—and a conflict would arise between the Premier and his Council of Ministers on the one hand and the Governor and certain other sections or factions which would be in his support. Therefore I believe that it would, instead of being in the interests of parliamentary government, be a thorn on the side of the Premier and the Council of Ministers and would prevent them from carrying out any measures which are in the best interest of the province. What then? We have now to look out for some other appropriate method. If we are satisfied that both the forms of election which form the substance of article 131—there are the two above-mentioned forms given there—would not subserve the purpose of democracy, what is the next alternative? The alternative that is placed before us is that the appointment of the Governor should be in the hands of the President who, by Convention, shall act upon the advice of the Prime Minister at the Centre. Now, it has been said by some of the honourable Members who have spoken on the subject that it would not really be in the interests of democracy to vest so much power in the hands of the President. The question then is where lies the balance of advantage. The two forms of election being out of the way, can we or can we not vest this power in the hands of the President who is to act on the advice of the Prime Minister? The President being detached from the province would be able to act in a manner perfectly in conformity with the interests of the province, whether his nominee be of the province or of any other part of the country. There is also a great advantage in having a person who is detached from the province—I do not say that necessarily the selection will be from outside the province—but supposing it were it would be an advantage because that person would come to the province with a free mind perfectly detached, perfectly unassociated with the different factions, or different sections of opinion, in the province.

The function that the Governor has to fulfil, as it is now borne in upon the Members of the House, is that of a lubricator, if I may use the expression. He is not to interfere, but he has just to smooth matters. If there are factions, if the different sections of the community are at loggerheads with each other, it is for him to act more or less as a lubricator, a cementing factor. He is to help the machinery of Government which is in the hands of the Prime

[Dr. P. K. Sen]

Minister and the Council of Ministers; he is not to come and interfere and cause confusion or chaos; he would be the person really to lubricate the machinery and to see to it that all the wheels are going well by reason not of his interference, but his friendly intervention. That being the conception of the Governor, as it is, I believe, Sir, that it would be in the interests of good government, if the House were to come unanimously to the opinion that the only possible method by which the Governor might be chosen was by the method of nomination by the President.

Shri Biswanath Das (Orissa : General) : Sir, in discussing article 131 regarding election of the Governor, I realize the difficulties of an election of a general nature in which every adult person in the province is called upon to vote. That is a difficult process and it is bound to create complications. I had therefore given notice of an amendment, that is No. 2023, not being satisfied with the alternative that was proposed by the Drafting Committee. Be the amendment what it is, we have to submit to the joint wisdom of honourable Members. Sir, in the course of discussion of this question, Mr. Alladi Krishnaswami Ayyar invited our attention to the British precedents. I request him to cite me a precedent from Britain wherein a British Governor is being nominated. The only precedent I could think of is the Lord Lieutenant of Ireland. The Lord Lieutenant of Ireland was always a non-official nominated by the cabinet. If the British precedent has any use for him, it is just the other way. Sir, the Canadian precedent has been quoted, but I would plead with him and tell him that the process that we propose to adopt will be more akin to the South African system, where you have very little of autonomy for the provinces. Sir, that being the position however great your anxiety may be to hasten the passage of the Constitution, the course of action taken by my honourable Members causes delay. Important propositions which were discussed and adopted in this House are being given the go-by; important changes are being proposed in the meanwhile. Therefore, it gives occasion for discussion, and discussion means delay. Therefore, I would plead with you that we on this side of the House have done nothing to earn your advice, or crave for your advice, for we have never desired to crave for consideration or indulgence. Sir, it has been stated that the Governor has very little functions. If he has very little functions under the set up that we have laid down in the new Constitution, then why have him. The Governor is getting a decent salary and he is getting allowances and if the functions prescribed for him are not very useful and necessary and not worth the money that we pay, I think it is time that we give the go-by to the Governor. I claim, that the new set-up, unless this House proposes to change the new set-up, invests the Governors with definite and important powers. The powers are the ordinances, powers, of course, in a modified way which you have under the Government of India act of 1935, to return Bills for consideration of the Assembly and dismissal of Ministers and calling for elections. I claim that these are very important powers under the new set-up. Therefore, a change in the Constitution that we have so far accepted means a change in all these items of responsibility that we have at present. If these powers continue to operate, I claim that the Governor under the new set-up has an important constitutional role to function. I have my bitter experiences in this regard. I was the Prime Minister of a province and I know how the Governor of my province was out to break my party. I know those days are gone and new days are coming ahead and I will plead with my honourable Friends to look at the future. If I were to have my leaders in office continuously, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely, no complaint. But I plead with my honourable Friends that human life is temporary, however long

and however much we desire; human life is temporary; the existence of parties, emergence of parties have to face elevation—ups and downs of parties are there, and world history has enough examples of such cases. That being the position. I want to plead with the honourable Members to look into the future and see how far the new set-up that they propose to have, will work and function properly and well.

What is the set-up that you are going to have? You are going to have the party system as the basis of democracy. It has been claimed in the newspapers that the present Constituent Assembly (Legislative) has no opposition and as such the Congress Party is having its own way. I do not at all agree and I join issue with people holding this opinion. However, whatever the criticism may be, the fact remains that democracy to make itself useful to the country and to the State must have a party system well organised and functioning properly. That being the accepted position, there is no knowing which party will be in power. It may be that a party absolutely different from that in the Centre may be functioning in office in a province. What then would be the position? The Governor, who is a Constitutional Governor under the Act has to be appointed on the advice of the Prime Minister of India, leader of another Party. My honourable Friend, Mr. Kher, made a distinct contribution to this discussion. His contribution is this, *viz.*, the Governor is being appointed in consultation with the Cabinet. If that were so,—I do not know what it is—the selection becomes less objectionable. But reference to the Legislative Assembly discussions shows that the Prime Minister appoints the Governor. The Prime Minister today is one of the tallest of the few men in the world. You may expect justice and you do expect justice in his hands. He has no axes to grind. But there may be a Prime Minister in the Centre who may have his own axes to grind. Is it anything serious to expect that a party functioning with its majority in the province may be interfered with if he proposes to play the role that was just now discussed by my honourable Friend the jurist member, Dr. Sen? Therefore, I feel and join issue with those friends who feel that the set-up that we propose under the new Constitution will be useful. I claim that you cannot have both ways. You cannot have democracy and autocracy functioning together. In the provinces you are going to have democracy from toe to neck and autocracy at the head. Both these are bound to fail; you are inviting friction. I know I will not vote against it because as I have stated I submit to the joint wisdom. But, I must clearly state here and place on record my views and what I see the future of it is going to be. I have experienced myself and I have no hesitation that this experience which I have had in my life will repeat itself. If the Honourable Sardar Patel were here, I would have cited how the Governor, who was an agent of British Imperialism, had all along been attempting to smash my party. What was being done by the Governor under British Imperialism may also be repeated by the party, though I have no hesitation in saying that my leaders would not stoop to or even think in the way in which things were being done.

We are told that this is one of the devices to bring harmony into the provinces. How could you bring harmony? It is impossible. You can never bring harmony by these acts. I could understand my honourable Friend Mr. Brajeshwar Prasad. He has been an undiluted paternal autocracy and he is for scrapping the entire Constitution; he does not have any faith in democracy. I do not agree but I respect his views. You cannot, as I have already stated, have it both ways; you cannot have democracy and autocracy together. My honourable Friend says, if the Prime Minister at the Centre

[Shri Biswanath Das]

who is responsible to the people of India nominates, it could not be autocracy. It will not be democracy either. It may be a nomination of the President under the advice of the Prime Minister; but it really is a nomination of the Prime Minister and in no event could it be democracy. We are giving powers to the villagers; we organise village panchayats. You authorise the Panchayat to elect its President. Would you in this Constitution deny the same right to the Assembly? My honourable Friend Mr. Ramalingam Chettiar had gone a step forward and he wanted to increase the size of the electorate in the province, by bringing in the District Boards, Municipalities in the arena of election. That is one aspect of the question which we may have to explore; but it was rejected. I am not sorry for its rejection; nor have I been pleading for it. What I say is this : you cannot refuse, nor could you justify this refusal to the Assembly to have its own elected Governor. There may be reasons to say, that an adult suffrage elected Governor and a responsible Premier functioning is nowhere in the world and as such not very desirable. That may be justifiable. In fact, when in the 1947 session this was debated, I pleaded with the Members that this would not be proper; but that was not accepted, and as I have stated I am always prepared to respect and follow the joint wisdom of the party and of this Assembly. In that view of the question, I had accepted it. It looks to me that constant change has been the fame and reputation of the honourable Members of this Assembly. We appointed a Committee; it had as its President a person no less than the Honourable Sardar Patel. The unanimous recommendation of the Committee was embodied in this Draft Constitution. Well, Sir, very question was discussed thoroughly in this House and then it was sent to the Drafting Committee. Now, we come forward for such an important and basic change in the set-up of the Constitution. If this is to go on, I think it is unfair to the Members who have absented themselves feeling probably that changes in the Constitution will not be root and branch.

Mr. President : No Member is entitled to absent himself in the hope that his vote will not be required. Every Member is expected to be in his place. Mr. Biswanath Das was saying that some Members were absent in the expectation that the draft would be accepted as it is and therefore I have said that no Member should take anything for granted and it is his duty to be here when the Assembly is sitting.

Shri Biswanath Das : I am thankful to the Chair and also to the Member who has protested against this but is it wrong to assume or at least far too wrong to assume that there will not be changes root and branch because it was once fully discussed in the Assembly?

Shri L. Krishnaswami Bharathi (Madras : General) : Absolutely wrong.

An Honourable Member : Then why have you come here?

Shri Biswanath Das : Another Friend says 'Why have I come here'? I know and he also knows why, Sir, I do not want to proceed with this interpretation. I feel that it is my duty and my responsibility to place on record my view in this matter. Also let me state that I have consulted all the Members of the delegation from Orissa and Orissa States and all of them agree with my feeling that this will not work properly.

Shrimati G. Durga Bai (Madras : General) : Mr. President, Sir, I stand here to support the amendment moved by my Friend Shri Brajeshwar Prasadji and supported by my Friend Mr. Kamath. Sir, I must frankly confess that I also for some time held the view that the system of election by direct vote

would be a better one compared to every other system. But I should say that I have changed my views in the matter because I am one of those who have given some thought to this question and come to the conclusion that the proposal of nomination or appointment as suggested in the amendment is a better one in the circumstances that we have today. Sir, I find that those friends who opposed this proposal of appointment by the President did it mainly on two grounds, that it would be inconsistent with the principle of democracy and also it would be giving too much power to the President. With regard to their fear that the ideal of democracy would suffer a good deal if people were deprived of their right of franchise in favour of Governor and that the ideology behind that—the freedom to exercise their vote—would be defeated if this power is given to the President, I may say that the usefulness or otherwise of any institution should be judged by the results that ultimately the institution would yield. Certain functions are expected to be discharged by the Governor. We wanted to introduce the Governor in our Constitution because we thought that an element of harmony would be there and that institution would bring about some sort of understanding and harmony between the conflicting groups of people, if really the Governor is conscious of his duties and he functions well. It is only for this purpose this is proposed, the governing idea is to place the Governor above party politics, above factions and not to subject him to the party affairs. Now, we find a section in the draft article 135 wherein it is said that he is not to be a member of either of the Legislatures or, even if he was a member at the time when the choice may fall on him, he is expected to resign before he is appointed or elected as Governor. The idea behind it is that he should be above party politics and party factions. May I ask those friends whether this idea would be realised if we make him dependent upon the mercy of the people and make him subject to party affairs? If he is to depend on the mercy of the people for votes, I am afraid the idea that he would be a harmonious element in the constitution of our country would not be realised. Therefore, I feel that the election system as proposed by some, as against the amendment, is very dangerous. The other point which my Friends who opposed nomination is that it would be giving too much power to the President. May I ask whether the President does not mean his Prime Minister, and the Prime Minister in his turn would not consult his colleagues before making the choice? Those in favour of this system of appointment said yesterday that a happy and healthy convention would grow of consulting the Provincial Prime Ministers. I think already the system has grown and is growing that whenever a Governor is appointed to a province, the Chief Minister of that Province is invariably consulted. Therefore I think the fear of my friends that the President would not discharge his responsibilities well and in the interest of the country is absolutely groundless. Therefore it would be quite safe to leave the entire responsibility to the President and I do not see any danger why we should not leave it if that could be discharged with great caution and I may tell my friends that the person who is to take the responsibility of such a magnitude would not easily take it and would take it after a great hesitation because he knows that he has got to face the criticism of my friends like Shri Rohini Kumar Chaudhary or Shri Biswanath Das or friends who oppose this idea and who are afraid of giving this power to the President. Therefore, I suggest that there is absolutely no danger and it is always open to those people to go and tell the President that whenever a man is not wanted why he is not wanted and therefore he is to be removed on certain grounds.

Therefore, I feel that there is absolutely no danger in that system of appointment and I urge on my friends to be convinced by this argument that this would be a safer method in the present circumstances. The Drafting

[Shrimati G. Durga Bai]

Committee itself has changed its view and has put forward an alternative proposal, *viz.*, to appoint one of the four candidates out of a panel of four candidates to be elected by the Houses. Sir, this is a proposal which has no counterpart or similarity in the whole world and also it is impossible to defend this panel business on its merits. I would say that this will not carry any responsibility but on the other hand carries all the disadvantages of a divided responsibility. It carries no responsibility of either the President or the Cabinet or the Provincial Cabinet because the responsibility here is very much divided. In this panel system there is this danger that if the votes recorded vary, as they are bound to vary, and if the President happens to pick up a man who has secured less number of votes, the person chosen will come into clash with the Provincial Legislature. Therefore he would be naturally unwilling to take up that responsibility. Ultimately, therefore, it would resolve itself into an election by the House itself. An election or appointment which rests on the House, I do not think, carries much importance.

I should also say that the system of proportional representation would not improve matters in any way. That will only produce the effect that it would divide the whole House into warring groups and it will also produce all the disadvantages and defects of the French system. This experiment of panels and appointment from the panel is already tried in some of our universities today and it cannot be said that this has worked well. Every appointment has resulted in a disappointment. Ultimately, the defeated candidate, transforming himself into the opposition, has brought about a lot of trouble to the Vice-Chancellor. Therefore, I do not see any reason why we should not have recourse to the simple and straight procedure of appointment by the President. Sir, with these words, I heartily support the amendment of Shri Brajeshwar Prasad.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President Sir, I consider this clause as one of the most important ones in the Constitution. We have modelled our Constitution on the British model, and in that model there is the King and in ours we have put our President in his place.

The King, in the Constitution, has almost no function, he is a cipher; but the cipher is on the right side of the digits, and it is very well known that the King exerts a powerful influence on the politics of England. I therefore say that if we are modelling our Constitution on the British model, we must give our President and Governors the dignity that the King enjoys in England. I feel that this dignity cannot be given to the Governor if he is a nominee of the President. If he is elected by the adult votes of the people, then alone can he get, can he acquire the dignity that the King enjoys in England. He has a dignity which surpasses that of all other persons. If we are trying to shape our Constitution on the British model, then we must not forget the fact that the Governor must not be a mere figure-head but should have the dignity and prestige of the King. At present the Centre has appointed Governors in all the provinces, but they have not the necessary prestige. I know many of them would not have been elected if they were to be chosen by election. I am not happy about the appointment in my own province, and I feel the people of my province would not have elected the Governor who has been appointed there. This practice if continued will defeat the purpose of the Constitution which is modelled on the British model.

Secondly, it has been said that if the Governor is elected, he will have greater prestige than the Premier of the Province, and then there will be clashes. I do not see why it should be so. Both these elected persons will be patriots and will love their province, and the country. They will try

to show, when they work, that they can work in the interest of the province. They will show that, when they both occupy these high offices, they can adjust their personal predilections, and work in the interest of the province. I see no reason why there should be any clash. Most probably the Premier and the Governor will be elected by the support of the majority party, and so probably they will both belong to the same party. Even if they are not of the same party as will happen only when parties are very evenly balanced, and if one party gives the Premier and the other the Governor then both the parties will have to co-operate and, this will ensure co-operation of all the voters, and so the province as a whole will have the benefits of the co-operation of both sections of the House. So no clash need be apprehended. These great men whom the people of the whole province will elect will be wise enough to devote all their abilities to the good of the province. They will never quarrel, and they will see that all quarrels are subordinated to the interests of the province.

Then it has been said that there need be no fear that the Centre will have too much power. Already we have invested the President with a lot of power, and it has been said that we do so because he is not a party man. He is to be elected by all the legislatures. Therefore he need not be a party man. But the President will act on the advice of the Prime Minister. So the party in power at the Centre will nominate all the Governors in all the provinces. It will also nominate all the Judges of the Supreme Court and other big officials. That is not a good thing. I cannot subscribe to the view that a single person should have the power to nominate all these high officers. We should remember that absolute power is not a good thing. It corrupts absolutely. If we clothe one single person, the Prime Minister, however good he may be, with all these powers—and all may not have the caliber of the present Prime Minister, and there might be some Prime Ministers who might misuse this power—it will be dangerous and it is not proper to give the President acting on the advice of the Prime Minister the power to nominate the Governors. We are also providing that the Governor will have the power to take over the affairs of his province in the event of an emergency. This he cannot do, unless he enjoys the confidence of the people of the province. He will not have the confidence of the people unless he is a man elected by the people, and they will not let him take over the powers in an emergency. So the Governor must be elected by the people.

It has been said that the Centre should have over-all powers over the provinces. If the idea is to have a single unitary constitution, I would have welcomed it. But now with the present Constitution as it is, we must leave it to the patriotism of the people of the provinces to try and to act in such a way that the Centre is powerful and that they are working in co-ordination with the Centre. And if the people are left to themselves, they will see that the Governor is such as will co-operate with the Centre and discharge his functions in the interests of the country. We must trust the people and their patriotism.

It has been said that election of the Governor by adult suffrage would be a very difficult task. But we all know that all the members of the Assemblies will be elected by adult suffrage. Along with the election of the members, the Governors can also be elected at the same time. I submit that the powers of the Governor should not be given to a person who does not enjoy the confidence of the whole people. The original suggestion of Dr. Ambedkar should be the one that should be accepted.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I would not have intervened in this debate at this late stage had it not been for the remarks that fell from my Friend Mr. Biswanath Das. I am afraid the remarks

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are likely to be understood in an unfortunate manner, if the whole position relating to the new amendment was not placed before the House at this stage.

It must be remembered that in 1947 when this question was discussed in the joint sitting of the Union Constitution Committee and the Provincial Constitution Committee there were two diametrically opposed views. That was in the beginning of the career of the Constituent Assembly. One view was that India as a whole should adopt the American model and the other, that it should adopt the British model. At one time the general opinion fluctuated from one to the other. Ultimately, however, so far as the general opinion was concerned, it veered round in favour of the British model both in the Centre and in the Provinces.

There was an intermediate position which some people favoured. It was felt that if at any time it was impossible to form a majority government either in the Centre or in the Provinces and there was fragmentation of political parties, a strong President and Governor elected on adult franchise and backed by the authority of the electorate would give stability to the Government.

When this proposal was mooted, a curious situation arose. With regard to the Centre that opinion was not upheld, it was decided that the President at the Centre should be a constitutional head and should not be directly elected by the adult franchise of the whole country. But the position of the Governor remained as it was in the old scheme. The co-ordinated scheme of both the President and the Governor being elected by adult franchise, so that they would have prestige in the country and power to stabilise Government, was this broken up. After we have adopted the British model, the election of the Governor by adult franchise in the province remained an anomaly, a completely out-of-date and absurd thing. Imagine a Governor being elected by adult franchise of all the citizens in a province. The persons who are at the top of the political life of the province would sooner prefer to be the Prime Minister and Ministers with effective power in their hands. Therefore, the party in power when it goes to the election will put up a person who is not as outstanding as the prospective ministers for that office of Governor, with the result that the best man in the party will not be available for it.

The expenditure and energy of a province under election would have been wasted in putting a second rate man in the party at the head of the Government. That would mean that he will be subsidiary in importance to the Prime Minister, as he would be his nominee. If that is going to be the case, there is no reason why the farce of a huge election has to be undergone.

In April last, both the Committees met again, considered this question and ultimately came to the conclusion that as the post of an elected Governor would be completely useless from the point of view of his having any controlling voice in the government, there was no need for going through the process. It was also felt and very rightly felt that if one member of a party was elected by the adult franchise of all the citizens, while the Prime Minister was there as only the leader of the majority party in the Legislative Assembly, in the event of a conflict between them, the position of the Governor may be superior to that of the Prime Minister. With the prestige of a general election by adult franchise he might seek in a given contingency to over-ride the powers of the Prime Minister. That would inevitably lead to a conflict. This possibility has to be obviated. The present scheme is that the Prime Minister who is the leader of the majority party should, like the Prime Minister of England, have the controlling voice in the affairs of the province or the government. Having two persons like that in a province might lead to an unfortunate

situation in the provinces. It was from that point of view that the Joint Committee ultimately decided that the best way would be to eliminate the election of the Governor.

The danger becomes clear, if you see the old scheme, part of which is given in article 144(6). It says "the functions of the Governor under this article with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion." So discretionary power was given to him to dismiss or appoint ministers. This is a very much wider power than could be exercised by a constitutional head of a province. Therefore this power is going to be removed. If that is so, the government in the province will be more in the nature of responsible government after the British model.

We have to consider the position only in this way. Would it ensure for the better government of the province to have a nominated governor or an elected governor? If there was a nominated governor, his power of dismissing ministers at his discretion naturally would go. He would remain a constitutional head. The Government would be practically run by the Premier and his party so long as the ministry is stable.

My Friend Mr. Alladi Krishnaswami Ayyar drew upon the analogy of Canada. With great respect for his profound learning I beg to differ. I do not think that the Governor that we envisage by this amendment, namely a nominated governor, is on the same lines as the Governor of Canada who is more or less an instrument of the Government of England, though a constitutional head. Here he will be nominated, no doubt, but his power, if the government is stable, will only be confined to what is contained in article 147, that is, he may submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council. Therefore there is nothing of importance that he has to do except to ask for a reconsideration of certain decisions. Consider this again. Would it not be better to have an independent person bringing a detached frame of mind on this question rather than have more or less a nominee or a follower of the Prime Minister himself, if he has to perform this function? Therefore from that point of view during a stable government it would be much better to have an independent person to advise the ministry.

The other advantage of a nominated Governor is this. Take the case where there is no majority party or the majority party is split into two or more sections and there is a rivalry for premiership. In that event a person who is completely detached from party politics of the province would be much better than a person who is wedded to the party. If for instance, as unfortunately it has happened in some provinces, the Congress party splits up into two groups and each puts up a prospective premier of its own what would be the position of an elected governor who will more or less be a follower of one or the other prospective premiers? It would lead to unnecessary complications in the affairs of the province. It would be much better that this person is nominated and thus cut away from the party politics of the province, so that the competition or the race between the rival groups is conducted in a fair, responsible and constitutional manner. All things considered, it would be better to have a Governor nominated by the Centre, who is free from the passions and jealousies of local party politics.

Then take the contingency under which article 188 comes into operation. That is a case of an emergency when the Governor has to exercise his discretion. He has to report to the President and act under that the section for a period of two weeks. In that event also if there is a real emergency

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in the province, a person who is not connected with the party politics of the province would be able to discharge that duty much better than when he is completely identified with one or the other group.

Article 188 implies that the conditions in the province are such that a stable government cannot possibly be carried on. If that is so, then it is advisable that a person who is connected with this or that party should not occupy this important position for he would, in that event, be responsible for the maintenance of public tranquility in that province.

Take the further stage envisaged in article 188. When the constitution of a province is suspended, a person who has the confidence of the Centre would be of much greater use in restoring the stability of the province than a person who is associated intimately with the politics of that province.

This view ultimately gathered strength from last April. It is not correct to say that this decision was placed before the party at the last minute or that there was no sufficient discussion upon it. A very large number of members have come to the conclusion both from the constitutional point of view as well as from the point of view of the country as a whole that the Governor should be nominated person.

From all these points of view I hope the House will accept the amendment unanimously.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, this debate has already elicited so many speeches that probably every conceivable argument for and against this proposal has been placed before the House. I do not know what I can add to it. I can well understand a certain amount of hesitation on the part of the House to reconsider something that it has already decided. That is right. Nevertheless it is pertinent to remember the time when we considered this first. It was in July 1947, when my honourable colleague, the Deputy Prime Minister brought this matter before the House and the House then passed it. Nearly two years have passed—two years which have made an enormous difference to the Indian scene. And if we seek to reconsider something that we have passed two years ago, before the 15th August and in view of all that happened after the 15th August 1947, it should not appear to be a strange thing to do, for we have had a great deal of experience, bitter experience during this period. I submit therefore that it is perfectly open to us not only, as of course it is in law, but in reason to reconsider this matter. In fact in the course of the last year on numerous occasions Committees of this House considered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. There was the Union Powers Committee: there was the Provincial Model Constitution Committee of which my colleague the Deputy Prime Minister was the Chairman. After all these considerations and discussions those committee felt that a certain change was desirable. Thus even those like Sardar Patel, who themselves put this forward in this House the other view, felt that change would be desirable.

Now the reasons for this have been stated before the House and I need not go into them, except to say that I myself originally was not very definite, if I may say so, in my mind as to which would be the preferable course. I preferred something but not to the extent of considering it as absolutely necessary. But the more I thought about it, the more I conferred with others and discussed with them, the more I felt that from almost every point of view this proposal that is moved of a nominated Governor, in the present context of the Constitution, was not only desirable from the practical point of view but from the democratic point of view too it was desirable and worthwhile.

Now, one of the things that we have been aiming at a great deal has been to avoid any separatist tendencies, the creation of groups, etc. We have decided that we will not encourage communalism: we have abolished separate electorates and reservation of seats, etc. We have yet to deal with many other separating factors. We cannot deal with them by law of course. We have to deal with minds and hearts. Nevertheless certain convention and practice helps or hinders the growth of separatist tendencies. I feel that If we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre. There would, normally speaking, almost inevitably I imagine, be a Governor from that particular province who stands for the governorship. As has been stated he might be some kind of a rival almost in that particular majority group, which for the moment controls that government of the province. Then there will be these enormous elections on the basis of adult suffrage. Apart from the tremendous burden of these elections for the provincial and central legislatures, to add another election on this major scale would mean not only spending a tremendous deal of the energy and time of the nation but also the money of the nation and divert it from far more worthwhile projects. Apart from this it would undoubtedly mean, I think, encouraging that rather narrow provincial way of thinking and functioning in each province. Obviously, the provinces have autonomy. Obviously, the provincial governments will function in a provincial way representing the people. But are you going to help that tendency by also making the provincial Governor much more of a provincial figure than he need be? I think it would be infinitely better if he was not so intimately connected with the local politics of the province, with the factions in the provinces. And, as has been stated by Mr. Munshi, would it not be better to have a more detached figure, obviously a figure that is acceptable to the province, otherwise he could not function there? He must be acceptable to the province, he must be acceptable to the Government of the province and yet he must not be known to be apart of the party machine of that province. He may be sometimes, possibly, a man from that province itself. We do not rule it out. But on the whole it probably would be desirable to have people from outside—eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally, while co-operating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that that policy might be carried out, he would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine. I do submit that that is really a more democratic procedure than the other procedure in the sense that the latter would not make the democratic machine work smoothly.

After all what is the test of a democracy? Carried to extremes it may be perfectly democratic in the sense of elections everywhere but this may produce conflicts, with the result that the machine begins to creak. Look round the world today. How many governmental machines are working smoothly: how many are creaking and how many are cracking up all the time for political or economic reasons. There are very few stable democratic machines anywhere. In providing for a stable democratic machine it is very important for us not to take any step which might tend towards loosening the fabric of India or loosening the governmental machinery and thus producing conflicts. We have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and I think we should always view thing from this context of preserving the unity, the

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stability and the security of India and not produce too many factors in our constitutional machinery which will tend to disrupt that unity by frequent recourse to vast elections which disturb people's minds and at the same time divert a great deal of our resources towards electoral machines rather than towards the reconstruction of the country.

We must base democracy on the electoral process. We have done it. But the point is whether we should duplicate it again and again. That seems to me unnecessary, apart from leading to conflict and waste of energy and money and also leading to a certain disruptive tendency in this big context of an elective governor *plus* parliamentary system of democracy. Therefore I should like to support fully the amendment proposed that the Governor should be a nominated Governor.

One word, more, Sir. I think that an elective governor is almost invariably not only likely to be of that province, but is likely hardly ever to represent any of the numerous minority groups that exist in the country. Normally, of course, the majority will probably have this for one of its members. But it is obviously desirable that eminent leaders of minorities—I use the word for the sake of simplicity; in future I hope we will not use the words 'majority' and 'minority'—eminent leaders of groups should have a chance. I think they will have a far better chance in the process of nomination than in election.

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. President, Sir, the intervention of our Prime Minister in this debate has loaded the dice and it is useless for me to speak against him. But yet, for the sake of being consistent in my principles, for the sake of the large population outside this House—I mean the entire population of India—this matter ought to be discussed thoroughly. The amendment which is being debated now goes to the very fundamentals of the frame of the Draft Constitution. The drafters of the Constitution, acting on the mandate that they received from the Constituent Assembly, drew up the principle of election for the governors of the provinces. The present amendment cuts at its very root and wants to lay down that the Governors should be appointed by the President. So this matter needs to be discussed very dispassionately, especially as the amendment wants to set aside the previous judgment of the Constituent Assembly. We should literally draw up a balance sheet of the advantages and the disadvantages of the principle of election and of the principle of appointment so far as the governors of the provinces are concerned. The supporters of the amendment lay stress on three different points on account of which they believe that "appointment" is the better arrangement. I will enumerate them one by one. Firstly, that an elected governor alongside an elected Premier of a province will go against the smooth working of the province and will be a negation of democracy. Sir, I contest every word of this objection. The country is now divided into different political parties or rather, the country is now governed by one political party.

Shri Mahavir Tyagi : Every country is governed by one party.

Syed Muhammad Sa'adulla : I refuse to be side-tracked by Mr. Tyagi. To continue, I challenge every word of the argument put forward. The country is now being ruled by one leading political party. In a province, it is more likely, under the principle of election, that the Governor as well as the Premier will come from the same ruling party. The result will be that the administration of the province will run smoothly, the Premier and the

Governor working harmoniously. Moreover, we want that India should be a secular democracy, a republic engendering the idea of the citizens, right to have a say in the administration of the country. The elective principle gives that right to the citizen to have a say in the appointment of even the ruler of his province. Again, we have nurtured our people in the expectation that the principle of election adopted two years ago will be left undisturbed. As against that we are told that an appointed governor will lead to democracy and better administration in the province.

Sir, it is said that in the provinces there are party factions and that passions will be roused and therefore the Governor as well as the Premier will be constantly at loggerheads. How can you assume that an appointed governor from another province will help smoothen the administration of a province? We were told yesterday, a leading politician from Western India may be sent by the President as governor of a distant and benighted province like Assam or Orissa. It is said that this political luminary will carry a detached mind. He will be unbiased. He will not be embroiled in the politics of the province. Therefore he will be able to bring a disinterested mind into consideration of the affairs of the province. I grant all that. But in addition we must look into this one potent factor that this gentleman will carry an empty mind so far as the conditions of the province are concerned. To many of the western politicians, the conditions of a distant province like Assam or Orissa are completely blank. I have talked with many politicians in my time and I am appalled at the ignorance of even the best informed so far as conditions in the east are concerned.

Therefore, Sir, it cannot be said that the mere appointment of a Western India politician to the Governorship will lead to better administration in the province.

The next point that I would place before you is this: How do we assume that the Cabinet in a province will be of the same political party as the Governor who is appointed to that province? Then conditions will be worse and worse confounded. The Governor under instructions from the Centre will try to run the administration in a certain way, while the Cabinet of a different political party would try to run it in their own way. Ultimately in this tussle, the Cabinet must prevail and for the purpose of good government, the Governor appointed by the President would have to be recalled. I think this is a contingency which is not far in the distant future. I submit, Sir, that good government is better than an ideal government. If good government is accompanied by self-government then it is better than even mere good government. Therefore, the principle of election is far more compatible with the good and efficient governance of a province, plus the right of self-government.

The second objection that was raised against election is the bogey of expenditure. I said bogey, for not a single pice more than will be necessary in a general election in a Province will have to be spent if a Governor is also to be elected. Sir, I have experience of elections from the year 1911, very nearly forty years. From what I have seen, in general elections, the elections for the provincial legislature as well as the Central legislature are held simultaneously. In the polling booths there is one box for the provincial election and another box for the Central election. There is no additional cost. The same Polling Officer is there; the same Returning Officer is there

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and all the polling staff is there. The voter has simply to put in his vote for the provincial legislature in one box and his vote for the Central legislature in another box.

The Honourable Shri Satyanarayan Sinha : (Bihar: General): If there is bye-election?

Syed Muhammad Sa'adulla : I am talking of a general election, which is the rule. In talking of a bye-election, you are talking of the exception. You cannot condemn a rule because of the exception. I therefore say, Sir, with all the emphasis at my command that in those circumstances there will be no additional expense in the election of a Governor.

Lastly, it has been said, and learned jurists have been brought in to support the idea, that elected Governors are really nowhere to be found; everywhere he is appointed, barring, of course, the U.S.A. We are told that the Canadian system ought to be followed. Well, the Canadian system may be good for conditions prevailing there. One jurist contradicted the other—I refer to my colleagues in the Drafting Committee, Shri Alladi Krishnaswami Ayyar on the one side and my friend Mr. K. M. Munshi on the other. Mr. Munshi said that the Canadian system cannot be ideal for India. Granting that we followed the Canadian system, we will have to put in a rider, a big proviso, that conventions should be established whereby the provincial Cabinet will have a say in the matter of appointment. This was suggested by Shri Alladi. Here comes the whole question, Sir. According to the Draft Constitution, the Governor has to be appointed first and the Governor would then ask the leader of the largest party in the legislature to form a Ministry in a Province. Now, where is the Ministry to be consulted before the Governor is appointed by the President? Take again the case, as I have already said, where the majority of the members of the provincial legislature is composed of a party different from the party in power at the Centre from which the President is bound to be chosen. Then the nominee of the President cannot but be of his own party, and he and the majority party in the provincial legislature will surely come to loggerheads.

Shri L. Krishnaswami Bharathi : Not necessarily.

Syed Muhammad Sa'adulla : We who have been condemning the British system of appointing Governors from the I. C. C., we who have used every kind of slogan, in order to remove that system of nomination or appointment by an outside body, we who are enamoured of the democracy of the U.S.A., cannot do better than follow the elective principle in the appointment of our Governors. I know that the advocates of the *status quo* in the Draft Constitution are up against a very strong stone wall. We cannot pit our strength against the on-coming tide. We have been told by speaker after speaker that originally they were all for the elective principle but they have now given deeper thought to this matter and they are now enamoured of the principle of appointment. Well, Sir, they are welcome to this change in their opinion, but those honourable Members have not the monopoly of the ability to concentrate their thoughts or of being better patriots. We too have thought over the matter with as much calmness and with as much consideration of the best interests of the country, and we are convinced that the elected Governor is far more in accord with our notions of democracy than an appointed Governor. Sir, the country is now being ruled by a certain party—I mean the great Congress Party. Although opinion among this great Party is divided and although this is an important fundamental matter in which each individual member ought to have been allowed a free vote, what do we

find Sir? A ukase has been issued, the fiat has gone forth and a party whip is being distributed to every Member whether he is a member of the Congress Party or not that every Congress member.....

Shri L. Krishnaswami Bharathi : On a point of order, Sir, is the honourable Member in order in bringing in the Party decision and all that?

Syed Muhammad Sa'adulla : The whip has been distributed on the floor of the House and in fact I have also been given a copy.

Mr. President : I am afraid some other honourable Members also have brought in the name of the Party. That way the discussion here becomes very unreal. When one of the members spoke, he said he was opposing the amendment, even though, when the time came for voting, he would vote in its favour. I thought that discussion might come to an end at that stage.

Syed Muhammad Sa'adulla : All I was going to say was about party strength in this Constituent Assembly. This august House has a total of 303 Members at present; if I remember aright, Sir, the Congress Party controls 275 votes and if members of the party are to follow the ukase, there is no chance for any other opinion to prevail. I simply take my stand, as I said, in all humility after the speech of the Honourable Pandit Jawaharlal Nehru only to record for future generation the other side of the issue.

Shri T.T. Krishnamachari : Mr. President, Sir, after the frank speech of the Honourable the Prime Minister, I do not think it is necessary to convince anybody of the need for a change or a reversal in the decision of this House in regard to the selection of the Governor of a province. But, Sir, there have been a number of speakers, very erudite lawyers, experienced administrators, and as it often happens when feelings run high, both the supporters of a proposition and those who oppose it over-pitched their arguments that they seek to put forward; and if anything, Sir, those people who have been opposing this amendment have raised this bogey of concentration of power in the Centre, of deprivation of the powers of the Provincial Government, of stifling the spirit of democracy and so on. On the other hand, those who supported this amendment, have drawn freely from analogies in other countries, analogies which, it must be admitted, have a very limited application to the circumstances of the case as it prevails in this country. Sir, I take it to be my duty only to dispel one or two misconceptions that arise from some of the previous speakers painting the picture rather in a highly coloured manner, and also to answer one or two arguments that have been put forward by my respected Friend, Syed Muhammad Sa'adulla, and which I think, had better be controverted at this stage,—because his arguments looked extremely plausible and extremely reasonable— but which on a careful examination reveal that they are neither plausible nor reasonable. I would like to refer to the arguments used by my respected Friend, Mr. Alladi Krishnaswami Ayyar yesterday, in a very eloquent speech in which he drew freely from the Canadian example, of the appointment of the Lieutenant Governor by the Governor-General of Canada. I will ask the House to examine the whole question for themselves, and they will then realise that my honourable Friend M. Alladi Krishnaswami Ayyar, had no intention of using that analogy as anything more than an analogy, and he had no intention of asking this House to accept the entire scheme that obtains in Canada in regard to the appointment of the Lieutenant Governor.

Sir, I would like to tell the House that when we borrow from the example of Dominions like Canada and Australia, we forget that what obtains in those countries today is something totally different from what they were in the beginning. For instance, in Australia the appointment of the Governors until the passing of the Statute of Westminster was done in the same way as it is

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done in any colony. The position of the Governor in an Australian province was that he was directly responsible to the Minister in charge of Commonwealth Relations or whatever it was called at that time in London. He had direct access to Whitehall: he could correspond direct and he often got instructions direct from the British Ministry concerned because it was only after the passing of the Statute of Westminster that Australia was recognized an undivided unit and the system of British Ministers directly corresponding with the Governors of the various provinces, was allowed to pass into desuetude. In regard to Canada where the constitutional position as it was some time back bore some analogy to conditions in this country, there is one particular principle that is in operation on which I would like to lay some emphasis which will have no application to this country at all. It is avowed by every writer on the Canadian Constitution that the whole scheme of the appointment of Lieutenant Governors and the control that the Dominion exercises over the provinces is such that the ultimate control is in the hands of the Dominion Government. Actually under the Canadian Constitution the Cabinet of the Dominion issues instructions to the Lieutenant Governors; in fact they have exercised their discretion in removing the Governor. Two instances are known in which the Governors have been removed. The Lieutenant Governor in a Canadian Constitution acts as an agent of the Dominion Government. I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future Governor who is to be nominated by the President to be in any sense an agent of the Central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of Government we envisage for the future. While considering the scheme of the distribution of powers which will ultimately be settled by this House, if it is found necessary that the Centre must have some powers reserved for itself in order to ensure good Government in the provinces, in order to enable it to interfere when the need for such interference arise we can adequately provide for that contingency in the distribution of powers. There is no need for us to adopt an outworn system, a system which has grown, because of historic traditions, because of that figment of imagination which was actually translated into practice by British Ministers, namely, the preservation of the prerogative of the Crown in the Dominions. We have no need to use that particular system not to impose the will of the Centre, if it is necessary and if circumstances make it necessary, on the provinces by means of making the Governor the agent for the purpose. Sir, I think much of the objection that has been raised to this idea of nomination would fall to the ground if this point is understood. We do not want either by this particular article or by any other article that will be passed by this House in future to make the Governor of a Province an agent of the Centre at all. The utility of a nominated Governor has been very fully dealt with by the Honourable the Prime Minister and I would like to tell Syed Muhammad Sa'adulla this: Notwithstanding his conviction, notwithstanding the fact of these years of struggle against British Imperialism which people have carried in various ways and which Syed Muhammad Sa'adulla has carried on within the cabinets functioning under the British Governors, we are fully convinced that we do not want to give up the system of election where it is necessary; at the same time we do not want to duplicate the system of elections.

I agree with one point made by my honourable Friend Mr. Sa'adulla that the argument that is being advanced, that the election of a Governor will be an expensive matter, is certainly beside the point. Democracy is an expensive affair. If this House wants a democracy, it has got to go through the expenses of an election, once, twice, thrice, as many times as it is necessary. I quite agree with him that he expenses, annoyance, and the work that has got to be done, that is being quoted as an insurmountable factor against the principle of election, is beside the point.

What is really material, and what, I think, will probably ultimately persuade the House to support the motion before the House is that we are really providing for there being no room for any conflict. This point has been made clear by many speakers, notably by the Prime Minister. Two persons, having more or less equal authority, one elected more directly with a certainty of tenure—mind you, he has a tenure of five years unless he could be in the meantime impeached,—and the other person, whose tenure cannot be guaranteed even for half an hour, these two people coming together, there undoubtedly will be conflict. If you want election of the Governor by adult suffrage, there is at least something to recommend it. The question of division of spoils in the case of a party which has got a hold over the province cannot be done to its fullest extent, because there is uncertainty about the election of the Governor and uncertainty about the election of the aspirant for Chief Ministership as the leader of the party. If, on the other hand, we adopt the alternative that the Drafting Committee has recommended, namely election by the legislature of a panel, then, it becomes a matter of mutual adjustment between two powerful persons in the majority party of that particular province, one saying to the other, “you shall be the Governor and I shall be the Chief Minister.” I do feel, Sir, that if I am given only these two alternatives, election by adult suffrage and election by the legislature, I would much rather vote for election by adult suffrage. It does not mean that I like the idea, for the reason that we do not want to create here and now the seeds of conflict in a province by duplicating election in regard to the two important offices in the provincial administration.

It has been said by my honourable Friend Mr. Sa’adulla that he fails to appreciate the reasons that several Members in this House have given for changing their point of view from what it was two years back to what it is today. (*Interruption*). My honourable Friend Mr. B. Das is not audible. I would only say this in explanation. I think the reasons that I am adducing are those which are still oppressing my honourable Friend Mr. Sa’adulla. He just now said how we are admirers of the United States Constitution. Yes; we are admirers of the United States Constitution. But, we have not adopted that Constitution. We have not adopted that Constitution because we believe and I believe very firmly that the genius of the Indian people is most suited to a Parliamentary democracy. If two years back we imported this principle of election for the Governor, it is due to the very fault under which my honourable friend is now labouring that was oppressing most of us. I was not one of them undoubtedly. We were trying to frame a constitution and in doing so tried to introduce various safeguards from various constitutions. Our mind was not very clear whether our future constitution was going to follow an entirely Parliamentary system or was going to be partly Parliamentary and partly Presidential. I think it is really a tribute to the leaders in this House that they kept an open mind right up to the end. They went on examining the question at various stages and finally came to the conclusion that we shall adopt an entirely Parliamentary system of Government completely free from any taint of the President system. Let me tell my honourable Friend Mr. Sa’adulla what the position of the legislature *vis-a-vis* the Governor is in the United States. The legislature is not summoned for a year in some States. I suppose in certain States the obligation to summon the legislature for passing the budget does not even exist. The meagre information that we have in regard to the working of the States in the United States Constitution, only makes us glean a little from side remarks here and there. I was reading recently a text book by Justice Roy Jackson, on the supremacy of the judiciary in America, wherein I found a categorical statement that in certain States, the legislature is not summoned for two years. The position is, either you make the legislature supreme or you make the Governor supreme. If you adopt the Presidential system, the Governor is supreme. Under the Parlia-

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mentary system, the legislature and the leader of the majority party in the legislature will be supreme. The choice is obvious; and that choice is logical. That is why we have come to this choice of a nominated Governor.

I would like to go back to the reference made to the Canadian example. Let not this House or the people outside be brought to think that we are borrowing anything from the Canadian example. Our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned, which particular person will have a veto,—and I think conventions have already grown in that direction,—and the person so selected will be a person who will hold the scales impartially as between the various factors in the politics of this State. The advantages of having a non-party man, a non-provincial man have been amply made out by the Honourable Prime Minister. I would only say this. My honourable Friend Mr. Sa'adulla was imagining a contingency which might perhaps exist in the initial stages, but which cannot exist for all time: How is the Chief Minister to be consulted? We are going to have new elections; there are already Governors appointed by the President or the Prime Minister of the Central Government. How could it be that the Chief Minister will be consulted in regard to the continuance or otherwise of the Governor. Will there be a re-appointment of the Governor after new Chief Minister takes charge? Hard cases do not always make bad law. In the transitory stages, certain incongruities of this nature are bound to occur. He has himself said that just because a particular thing is wrong, you cannot condemn the whole scheme. It is quite possible that the Governor of a Province who now functions would be quite willing to accept a re-nomination if necessary, or to go out if the provincial Chief Minister who will come into office does not like him. If they would like to have a man of their choice, if they would like to have a man whom they have selected, I have no doubt, that if we have a Prime Minister of the stature and outlook of the Honourable Pandit Nehru, he will be the first person to leave it to the provincial Chief Ministers to have their own way. I think that formidable contingency which was worrying my honourable Friend Mr. Sa'adulla will be met, provided the Prime Minister of India will be person who understands democratic principles and would always follow them.

One word more, Sir, in regard to some of the remarks of Pandit Hirday Nath Kunzru. I quite agree that the remarks made by him are out of genuine misgivings because, he felt doubts. I would only say this. In regard to the articles as they appear further down in this Draft Constitution, I have no doubt it is the intention of the House to change and shape all those articles to fit in within the changes made earlier on. If he wanted that the provisions of article 175 in regard to reservation of Bills should be specific, let us make it specific. If my honourable Friend wants that the views of the Central Government must be made very clear in regard to those subjects in which the Central Government has got an interest, and the responsibility for reserving the Bills should not be laid on the Governor, thereby creating an atmosphere of odium for him and creating bad blood between him and the Chief Minister, let us make it clear at the appropriate place. Let us say that in such circumstances, in regard to concurrent subjects, the Governor may ask for instructions from the President. We can make it clear beyond doubt.

In regard to article 188, I have a word to say. Article 188 has been viewed as something isolated altogether by itself, without reference to article 278 on which it is entirely based and it is said that that gives special powers to the Governor and makes his Chief Minister a puppet. Article 188 is merely intended to give the man on the spot an initiative for a very short period of fourteen days. Often times it may happen that it may be seven days or five

days. I shall ask my honourable friends in this House to read article 278 and amend it if necessary. Article 278 definitely says that the President who will come into the picture within a fortnight, will have the support of the Parliament. All that it seeks to do anyway is to transfer the responsibility in the case of a province where the administration is bad or where the conditions are such that strong action is needed, from the province to the Centre. In the Centre, we do not envisage having an irresponsible Government. We shall have a President who is controlled by his Prime Minister and the Prime Minister is in his turn controlled by Parliament ultimately. Article 278 clearly lays down that the President cannot act *suo motu*, of his own accord, and that he will have to take the Parliament into his confidence. If one-man rule or the rule of the Central Government by giving directions to the Governor is to continue, that will be done only by the authority and sanction of Parliament where the provincial representatives who will be in large numbers and will be able to represent the views of the province. I have no doubt that no Prime Minister of India of the future would ever completely disregard the views of the representatives of a particular province when taking such drastic action as is contemplated in article 188 in regard to a particular province.

Sir, I do not want to take up the time of the House further so much has been said on this aspect but I would be failing in my duty if I do not mention a word in regard to the possibility of voting on the motion before the House envisaged by my honourable Friend, Syed Muhammad Sa'adulla. It is unfortunate perhaps that the state of the country has been such that there is only one party that took the lead in the matter of the liberation of this country and the other party which could have co-operated effectively left this country bag and baggage and went away somewhere else, and it is not the fault of the Congress Party which happens to be the only party that fought for the freedom of the country and therefore has a large number of members returned here. But at the same time let me tell my honourable friend that the Congress Party is not a party governed by dictators, that the majority opinion in that party certainly obtains and nothing is done in order to twist the opinions of people into a particular strait-jacket and made it appear as though it is the opinion of the majority party of this House. If my honourable friend happens to be in a minority, am I to be blamed, or is the Prime Minister to be blamed or the Congress Party to be blamed? I can assure him that such of us individuals as are members of the Party always maintain the view that the Party has got a sacred trust to perform by reason of the fact that it is a majority here and the Party never does anything which would run contrary to the views of a large number of members in the party even though they may not be in a majority in respect of their views on a particular matter. There is hardly any necessity to import all these matters in a matter of this nature where ultimate issues that are at stake are not very considerable. Let me tell my honourable Friend Syed Muhammad Sa'adulla that the elected Governor is not going to be the champion of liberty of the province, that he is not going to be the champion of the minority interests, as against an elected Chief Minister. If we decide on an elected Governor we are only duplicating the process and provide room for conflict. The possibility is that we might not be able to find men who will perhaps fill the role that we want them to fill as Governors adequately by the election method or perhaps even by the alternative method. But at the same time, as I believe it has been said times without number, that a king who is a genius often goes to the scaffold. Oftentimes a Governor who has enormous abilities—intellectual and otherwise—will perhaps be a very unpopular person and very possibly a steady experienced person like Syed Muhammad Sa'adulla

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would perhaps make a better Governor than persons with genius who had been hand-picked. The future is not in our hands. All that we can do is to envisage the future with the limited capacity that God has given us. I do believe that wisdom lies in the direction that this amendment indicates and I hope the House will accept this.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I come from an Indian State. I have listened very carefully to the discussions which have been going on for these two days as to whether the Governors may be appointed by the President or may be elected by the people; and I was wondering all along whether the House has taken into consideration, or given sufficient attention, to the fact that this Constitution is being framed not only for what I may call non State area but for the whole of India including Indian States as well. I may point out that the Constitution which we are framing will be binding on these States as well, as they would be a part of the future Union of India.

Shri L. Krishnaswami Bharathi : Article 128 specifically mentions that this applies only to what are now called provinces and not to States.

Shri V. S. Sarwate : I may point out that since we are allowed to be here and take part in the discussions it is assumed.....

Shri L. Krishnaswami Bharathi : I did not say that he has no right. I was only making a correction.

Shri V. S. Sarwate : Then he should have waited for a little more time and seen how I proceeded. Now, the States would be bound by the Constitution which we are making. As matters originally stood an option was given to these States either to adopt the Constitution or to reject it; but in view of the recent covenants I believe that option no longer exists. But even assuming that it exists, there is no doubt that all the States would ultimately accept this Constitution. So the position is that the Constitution of the future Union of India which we are at present framing would apply to all areas included in the Indian States. Therefore the House would have to take into consideration the position of that person who in these States would be analogous to the Governor in the provinces. The House may be knowing that in the States which have acceded and which would be ultimately bound by this Constitution, either the States individually or their Unions, have at their head Rajpramukhs, whose position is if not hereditary, at least for their life-time. The Government of India have bound themselves that this position of theirs would continue for their life-time at least. If that be the position, then is it not a little amusing to see that the discussion here is centering round as to whether the appointments of Governors would be by election or not? The argument in favour of the appointment of Governors by the President is this that if there is no such appointment, the Prime Minister would not be able to discharge his responsibility to maintain peace. Now the Indian States form one-third of the whole of India. If the one-third is governed by Rajpramukhs who are not the President's nominees and if the Prime Minister would still be able to discharge his duty or responsibility to maintain peace, then it can be very well imagined that he can do the same with the Governors in the rest of India being his non-appointees. In fact here is an incongruity. Either the House would have ultimately to find out and make certain provisions by which these Rajpramukhs would be brought on level with the Governors and their powers made identical with Governor's or the other alternative is this. Two years back there was a Resolution adopted by this House, I am told, that the Governors should be elected. It was then urged that if the Governors be not

elected the principle of democracy would be stifled, that the autonomous character of the provinces would be lost. But the House has now veered to the view that Governors if appointed would be better in the interest of the country. If no provision in this Constitution is made to bring the Rajpramukhs on level with the Governors regarding their powers then the other alternative is to veer still further and when time comes for reconsideration of this constitution, then all the Governors who may be holding office at that time may be made hereditary or at least their tenure may be made to last for their life-time. These are the only two alternatives before this House. I urge that the House will have to consider provisions which may be necessary to bring the Rajpramukhs on level with Governors. I sound this note of warning with the object that the House may not lose sight of the importance of such provisions. All along I find in the Constitution no provisions are made so far for the States or their Unions. We assume and it must be assumed in the circumstances of the case that the States would form a part of the Union; But in spite of this assumption no provision is being thought of as to how to make the Unions of States or States on level with the provinces.

With this note of warning, I support the proposition that is before the House, namely that the appointment of the Governors be made by the President.

Mr. President : Mr. Sidhwa.

I hope this will be the last speech. We have had a very good discussion.

Shri Mahavir Tyagi : Sir, is that your ruling?

Mr. President : I have it in my mind, if you do not mind.

Shri R. K. Sidhwa : Mr. President, I am not one of those who are surprised at the attitude of those who voted last time for the election and now the same persons are voting for nomination. When this question was discussed nearly two years ago I held the view that the Governors of the provinces should be nominated by the President. If you refer to my amendment on page 204 there you will find the amendment which I sent in April last year. It reads as follow:—

“The Governor of a State shall be appointed by the President.”

Sir, there were some who felt along with me last time that the Governors should be appointed by the President; but my views and the views of friends like me, were a voice in the wilderness. But today the position is changed. My Friend Mr. Rohini Kumar Chaudhari asked yesterday, “What has happened since then that this change has taken place?” May I know, if a change has taken place in the interest of the country, is it a sin or a crime? If those who opposed this system, realised in time that the minority was right, if they now feel that the minority was in the right, it is not honourable for them to change their views? Is that anything wrong? On the contrary, I am grateful to them, that though small men advocated this view, the big men have realised at a later stage that this is the correct view, and therefore, I think they deserve greater credit. Many felt last year, that the Governor’s appointment should be by nomination. But it was by a mere fluke last time that this election wave that was in the minds of Members carried the day. Mr. Dass said that in the top there would be democracy and in the provinces autocracy. I fail however to understand how in the provinces there will be autocracy. In the provinces the Members will come to the legislatures through direct voting.

Shri Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, My honourable Friend is casting a reflection on the House when he says that last time it was by a mere fluke that the thing was carried.

Mr. President : I do not think any reflection is meant. It is only a question of language.

Shri R. K. Sidhwa : The President who is elected by the people makes the nomination. Do you call it autocracy? My Friends do not seem to realise the difference between nomination in the British regime and nomination done now. Does my Friend Mr. Das think that nomination by the Viceroy in the legislatures in the past, by the Governors in the provincial legislatures and by Commissioners and Collectors in the municipalities and District Boards, that those nominations are identical with the nomination that is going to be made now? If that is so, I am sorry for his intelligence. Our President will be elected. And we do not want all our offices to become elected. After all the fundamental position is that in the Legislature there will be election. And you do not expect every office to go by election, and create chaos in the country. That is the fundamental point that we have to bear in mind.

I do feel at the same time that the Governor's position is a non-entity. He has powers, and status; The Governor is the first citizen of the Province, I admit that. But in the matter of the executive, he is a non-entity, and from that point of view, nomination which does not mean nomination by someone who does not enjoy the confidence of the people...

Shri B. Das (Orissa: General) : If we import a few robots from America will that do?

Shri R. K. Sidhwa : If that is his argument, Sir, I cannot answer it.

Sir, another point in this policy which is at present adopted which I like is this, and it is a very praiseworthy policy, that a person from that very province should not be taken as the Governor of that Province. It is a very healthy thing, and I fully support that policy, apart from individual cases— there may be mistakes in the appointment of individuals. But as a matter of policy, if you adopt the policy of appointing a Governor from the same province, there will be so much bickering that you will bring the Governor into disrepute. I do not want to mention names; but I should be failing in my duty if I did not give one instance.

Mr. President : Please do not mention any names, or any instance which could be easily spotted out.

Shri R. K. Sidhwa : There is one whose character is beyond question, whose independence cannot be questioned today, and.....

Shri B. Das : I strongly protest that smaller provinces do not have the character or able men fit to be governors of other provinces. I say they have even better character than men from Bombay and other places.

Mr. President : Mr. Sidhwa is entitled to his own opinion.

Shri R. K. Sidhwa : A person from a province, whose character cannot be questioned, whose ability and whose integrity cannot be questioned, if he goes to his own province, his name will be brought into disrepute. I do not want to mention any names. If some have understood whom I mean, well and good.

Mr. Das says that his province has got competent persons to be Governors of provinces I said yesterday that all provinces have able men and there should be no grouse that a particular province has been ignored, for the purpose of appointing Governors; Mr. Das cheered what I said. But today he seems to have understood something different and he raises points of order

every time. I do feel, Sir, that whosoever may be Prime Minister in the future, whosoever may be the President, he should see that the question of all the provinces is borne in mind. It is not as if able men exist only in a few provinces. Able men exist today in all the provinces, and in making selections, the President should bear in mind this fact. He should not look with any narrow vision, and he should see that able men in the other provinces also get their chance. The view that a person from his province should not be appointed a Governor, I strongly hold, and I tell you if that policy is adopted we will simply bring the Governor into disrepute. With these words, Sir, I whole-heartedly support the amendment.

The Honourable Shri Satyanarayan Sinha: Sir, I move:

“That the question be now put.”

Shri B. Das : Sir, before the closure is moved, I would request that I may be given an opportunity of clarifying certain points, though I am bound to vote for the amendment.

Mr. President : Is it any use speaking against the amendment when you are going to vote for the amendment. I cannot allow that kind of thing.

Shri B. Das: We have been tied down.....

Mr. President : If you are tied down you have tied down yourself in this House everybody is free to vote as he likes.

The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : (Bombay: General) : Mr. President, Sir, after such a prolonged debate on the amendment I think it is quite unnecessary for me to take the time of the House in making any prolonged speech. I have risen only to make two things clear: one is to state to the House the exact correlation between the two alternatives that have been placed by the Drafting Committee before the House and amendment No. 2015 which has been debated since yesterday. My second purpose is to state the exact issue before the House, so that the House may be able to know what it is that it is called upon to bear in mind in deciding between the alternatives presented by the Drafting Committee and the new amendment.

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decide upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises: why is it that the Drafting Committee thought it fit to present an alternative? Now, the reason why the Draft Committee presented an alternative is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions—to use a familiar phraseology, “no functions which he is required to discharge either in his discretion or in his individual judgment.” According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers

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he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought the another alternative might be suggested.

It has been said in the course of the debate that the argument against election is that there would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking for myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. So far as I could visualise, the election of the Governor would be on the basis of personality: is he the right sort of person by his status, by his character, by his education, by his position in the public to fill in a post of Governor? In the case of the Prime Minister the position would be : is his programme suitable, is his programme right? There could not therefore be any conflict even if we adopt the principle of election.

The other argument is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the second alternative suggested by the Drafting Committee and this particular amendment. In my judgment there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the Provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this: that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the

Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is.....

Shri Rohini Kumar Chaudhari : Can he contemplate any situation, where a Governor—whether you call him a mere symbol or not—will not have the power to form the first Ministry? Will he not be competent to call upon any one, whether he has a big majority or a substantial minority? And that is a very big power of which he cannot be deprived under any circumstances.

The Honourable Dr. B. R. Ambedkar : Well that power an elected or a nominated Governor will have. If he happens to call the wrong person to form a Ministry, he will soon find to his cost that he has made a wrong choice. That is not a thing that could be avoided by having an elected Governor. Such a Governor may have a friend of his choice whom he can call in to form a Ministry and that issue can be settled by the House itself by a motion of no-confidence or confidence. But that is not the aspect of the question which is material. The aspect of the question which is material is. Is the Governor going to have any power of interference in the working of a Ministry which is composed of a majority in the local Legislature? If that Governor has no power of interference in the internal administration of a Ministry which has a majority, then it seems to me that the question whether he is nominated or elected is a wholly immaterial one. That is the way I look at it and I want to tell the House that in coming to their decision they should not bother with the more or less academic question—whether the Governor has to be nominated or to be elected—they should bear in mind this question: What are the powers with which the Governor is going to be endowed? That matter, I submit, is not before us today. We shall take it up at a later stage when we come to the question of articles 175 and 188 and probably by amendment or the addition of some other clause which would give him powers. The House should be careful and watchful of these new sections that will be placed before them at a later stage. But today it seems to me. If the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with not power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.

Shri L. Krishnaswami Bharathi : Is the honourable Member accepting the amendment?

The Honourable Dr. B. R. Ambedkar : I am leaving it to the House.

Mr. President : I shall then put amendment 2015 moved by Shri Brajeshwar Prasad to the vote.

The question is:

“That for article 131, the following be substituted:—

‘131. The Governor of a State shall be appointed by the President by warrant under his hand and seal.’ ”

The amendment was adopted.

Mr. President : I think after this all the other amendments to this article fall to the ground and therefore I shall put the article as amended to the vote.

Mr. President : The question is:

“That article 131, as amended, stand part of the Constitution.”

The motion was adopted.

Article 131, as amended, was added to the Constitution.

Article 132

Mr. President : We have a number of amendments to this article. Now that we have decided in favour of one alternative, all the amendments favouring the other alternative naturally fall to the ground. So we shall take up only those amendments which are concerned with the article as now amended. The first amendment is No. 2033 in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : I am not moving it.

Mr. President : There is an amendment by Dr. Ambedkar.

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

“That with reference to amendment Nos. 2033 and 2041 of the List of amendments for article 132, the following article be substituted:—

‘Term of office of Governor.—132 (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President; resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.’ ”

Now, Sir, this article.....

Prof. Shibban Lal Saksena : On a point of order. Amendment No. 2033 has not been moved. There is another amendment 2041, to which this is an amendment. But even that has not been moved.

Mr. President : But that has not been moved.

Shri T. T. Krishnamachari : Amendment No. 2041, stands in the name of Dr. Ambedkar.

Mr. President : Well, he may formally move it.

The Honourable Dr. B. R. Ambedkar : I have said that I am moving this in place of that amendment.

Mr. President : Dr. Ambedkar is moving No. 2041.

Pandit Thakur Das Bhargava (East Punjab: General): The practice has been that all these amendments are taken as moved and a person is entitled to move any amendment.

Mr. President : We have not been following that practice.

Then you move your own amendment.

Shri Brajeshwar Prasad : Sir, I move:

“That for article 132, the following be substituted:—

‘132 The Governor shall hold office during the pleasure of the President.’ ”

I commend this amendment for acceptance by the House and I have no further comments to make.

Mr. President : If this amendment is carried, all other amendments fall to the ground. Therefore we shall take up this amendment as covering all the other amendments.

The amendment and the article are for discussion.

Prof. K. T. Shah (Bihar : General): Is my amendment No. 2034 not to be moved? It suggests that the Governor shall be irremovable and therefore cannot be included under the amendment moved.

Mr. President : If the five-year term is carried, that falls to the ground.

Shri T.T. Krishnamachari : The main point is whether as he is going to hold office during the pleasure of the President he cannot be removed by the President.

Mr. President : If the amendment of Dr. Ambedkar is carried, then 2034 falls to the ground. But Prof. Shah can speak upon it.

Prof. Shibban Lal Saksena : Sir, both may be moved and the House may then choose one of the two.

Mr. President : If Professor Shah wants it he may move it now.

Prof. K. T. Shah : I beg to move:

“That in article 132, after the word ‘office’ where it occurs for the second time, the words ‘and shall during the term be irremovable from his office’ be inserted.”

The amended article would read:

“The Governor shall hold office for a term of five years from the date on which he enters upon his office and shall during that term be irremovable from his office.”

This is, as I conceive it, different fundamentally from the appointment during the pleasure of the President. The House, I am aware, has just passed a proposition by which the Governor is to be appointed by the President and it would be now impossible for any one to question that proposition. I would like, however, to point out, that having regard to the appointment as against the elective principle, we must not leave the Governor to be entirely at the mercy or the pleasure of the President. We should see to it, at any rate that if he is to be a constitutional head of the province, if he is to be acting in accordance with the advice of his ministers, if we desire to remove any objection that might possibly be there to the principle of nomination, we should see to it that at least while he is acting correctly, in accordance with the Constitution following the advice of his ministers, he should not be at the mercy of the President who is away from the Province and who is a national and not a local authority. This is all the more important pending the evolution of a convention, such as was suggested by one of the previous speakers, that the appointment, even if agreed to, should be on the advice of the local Ministry. I do not know if such a convention can grow up in India, but even if it grows up, and particularly if it grows up, it would be of the utmost importance that no non-provincial authority from the Centre should have the power to say that the Governor should be removable by that authority; So long as he acts in accordance with the advice of the constitutional advisers of the province, he should I think be irremovable during his term of office, that is, five years according to this article.

There is of course a certain provision with regard to resignation voluntarily or other contingencies occurring whereby the Governor may be removed. But, subject to that, and therefore to the entire Constitution, the period should be the whole period and not at the pleasure of the President.

Shri Brajeshwar Prasad : We have passed the provision that he should hold office during the pleasure of the President.

Prof. K. T. Shah : That has not yet been passed. Because you moved it, if it is to be treated as passed, I have no objection.

Mr. President : There is an amendment by Mr. Gupta which has to be moved. I see that he is not moving it. Then there are the amendments of Saiyid Jafar Imam and Mr. Naziruddin Ahmad. They are not moving them.

Professor Shah may now move his amendments Nos. 2048, 2049 and 2051.

Prof. K. T. Shah : Sir, I move:

“That in clause (b) of the proviso to article 132, after the word ‘Constitution’, in line 21, the words ‘or if found guilty of treason, or any offence against the safety, security or integrity of the Union’, be inserted.”

That would make, Sir, if accepted, the removal of the Governor possible by his own resignation or his being proved guilty of certain offences. This is by way of providing for possible contingencies, not that any one expects or even thinks that it is in the normal course likely that persons of that importance ‘would be guilty of such offences. I therefore commend this amendment.

I now move my amendment No. 2049 :

“That in article 132 after the existing proviso (b) the following new proviso be added:—

‘(b-1) A Governor may be removed from office by reason of physical or mental incapacity duly certified, or if found guilty of bribery or corruption, or as provided for in article 137.’ ”

These, again, are contingencies which may occur and therefore there must be constitutional authority for the removal of the Governor. I think it is nothing but rounding off of the occasions where this extraordinary power may have possibly to be exercised, namely the proving of the Governor as guilty of bribery or corruption or mental or physical incapacity duly certified, not merely suspected of such incapacity, but properly certified, and in that case automatically the Governor should be removable.

Sir, I now move my next amendment.

“That after article 132, the following new article 132-A be added:—

‘132 A. The office of the Governor shall fall vacant by his death before completion of the term of office, or by resignation duly offered and accepted, or as provided for other wise by this Constitution. In the event of the office of the Governor falling vacant at any time, the arrangements made for the discharge of the functions of the Governor during such vacancy shall hold good only pending the election of another Governor as provided for in this Constitution.’ ”

For this purpose, he will have to be not appointed but elected. This again is providing for a contingency, for an interregnum if I may say so, that is to say, the office of the Governor falling vacant by death, resignation or for any other reason specified in the Constitution, and his successor not being available for the time being. Provision must be made for the discharge of the functions belonging to the Governor during this interim period during which there is no Governor whether appointed or otherwise provided for. I trust that these simple provisions would prove acceptable to the House.

Prof. Shibban Lal Saksena : Sir, the amendment moved by Dr. Ambedkar makes a very great change in the provision originally made in article 132. I am sorry he has not given any reasons why he has suggested his fundamental change. Just now we have accepted a provision whereby the Governor

shall be nominated by the President. Already we feel that there democracy has been abandoned. Now, Sir, comes this provision whereby the Governor shall hold office only at the pleasure of the President. Even in the case of the Supreme Court, we have provided that once the Judges of the Supreme Court has been appointed, they will be removable only after an address presented by both the Houses of Parliament, and by two-thirds majority of the members present and voting. In the case of the Governor, you want to make a different provision. It seems to me, Sir, to be an extraordinary procedure and it completely takes away the independence of the Governor. He will be purely a creature of the President, that is to say, the Prime Minister and the party in power at the Centre. When once a Governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the President at his whim. It only means that he must look to the President for continuing in office and so continue to be subservient to him. He cannot be independent. He will then have no respect. Sir, Dr. Ambedkar has not given any reasons why he has made this change. Of course, the election of the Governors has been done away with, but why make him removable by the President at his pleasure? The original article says:—

“A Governor may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 137 of this Constitution.”

It means that a Governor can only be removed by impeachment by both the Houses. Now, he will be there only at the pleasure of the President. Such a Governor will have no independence and my point is that the Centre might try to do some mischief through that man. Even if he is nominated, he can at least be independent if after he is appointed he is irremovable. Now, by making him continue in office at the pleasure of the President, you are taking away his independence altogether. This is a serious deviation and I hope the House will consider it very carefully. Unless he is able to give strong reasons for making this change, I hope Dr. Ambedkar will withdraw his amendment.

Shri Lokanath Misra (Orissa : General): Mr. President, Sir, after having made the decision that Governors shall be appointed by the President, it naturally follows that the connected provisions in the Draft Constitution should accordingly be amended, and in that view, I accept the amendment that has now been moved by Dr. Ambedkar. That amendment suggests that the Governor shall be removable as the President pleases, that is, a Governor shall hold office during the pleasure of the President and that whenever he incurs the displeasure of the President, he will be out. When the President has appointed a man, in the fitness of things the President must have the right to remove him when he is displeased, but to remove the evil that has now crept in by doing away with election for the office of the Governor, it would have been much better if the State legislature too had been given the power to impeach him not only for violation of the Constitution but also for misbehaviour. I use the word ‘misbehaviour’ deliberately because, when a Governor who is not necessarily a man of that province is appointed to his office, it is but natural that the people of the province should have at least the power to watch him, to criticise him, through their chosen representatives. If that right had been given, in other words, if the provision for the impeachment of the Governors by the State legislatures had been there, it would have been a safeguard against improper appointment of Governors by the President. One of the main objections to the appointment of the Governor by the President has been that he will be a man who has no roots in the province and no stake, that he will be a man who will have no connection with the people, that he will be a man beyond

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their reach and therefore can go on merrily so long as he pleases the President, the Prime Minister of the Union and the Premier of the Province. But they are not all. It would have been much better if the Governor's removal had been made dependent not only on the displeasure of the President but on the displeasure of the State legislature also which represents the people and that would have been a safeguard against the evil that has been caused by the provision for the appointment of Governors by the President.

The Honourable Dr. B.R. Ambedkar : Sir, the position is this: this power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor. It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unnecessary to categorize the conditions under which the President may undertake the removal of the Governor.

Mr. President : The question is:

“That with reference to amendments Nos. 2033 and 2041 of the List of Amendments, for article 132, the following article be substituted:—

Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office.

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.”

The amendment was adopted.

Mr. President : The question is:

“ That article 132, as amended, stand part of the Constitution.” The motion was adopted.

Article 132, as amended, was added to the Constitution.

Article 133

Mr. President : There are several amendments that this article should be deleted. Those are not amendments to be taken up. They are practically negative ones, and therefore, I take it that they need not be moved.

Shri T.T. Krishnamachari : I would like to say that they are unnecessary in the context of the previous article.

Mr. President : The question is:

“That article 133 stand part of the Constitution.”

The motion was negated.

Article 133 was deleted from the Constitution.

Article 134

Mr. President : We have dropped the first alternative, and we have to take the amendments only to the second alternative, and I think amendment No. 164 standing in the name of Dr. Ambedkar would cover.

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

That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following be substituted:—

‘Qualifications for appointment as Governor.—“No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years’.”

Sir, may I take it that the amendment is moved?

Shri T.T. Krishnamachari : Mr. President, the Chair and the House can permit the substitution of an amendment.

Mr. President : You need not read the amendment in full.

The Honourable Dr. B.R. Ambedkar : Sir, I moved Amendment No. 2061. Sir, I also move that for amendment No. 2061, the following be substituted:

‘Qualification or appointment as Governor.—“No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years’.”

(Amendment Nos. 2062, 2065 to 2071, 2075 to 2080, 2082, 2084 to 2087, 2089 and 2090 were not moved.)

Mr. President : The question is:

“That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following be substituted:—

‘Qualification for appointment as Governor.—“No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years’.”

The amendment was adopted.

Mr. President : The question is:

“That article 134, as amended, stand part of the Constitution.”

The motion was adopted.

Article 134, as amended, was added to the Constitution.

Mr. President : We may now go to article 135.

Shri A. Thanu Pillai (Travancore): May I know, Sir whether clause (2) of that article stands, or that also goes?

Mr. President : The whole article has been substituted by the amendment.

Shri A. Thanu Pillai : Sir, the amendment reads thus:

“That with reference to amendment No. 2061 of the list of amendments, for article 134, the following be substituted.” The original amendment reads thus; “That for the existing clause (1) of article 134, the following be substituted:—” The ultimate effect seems to be, that only sub-clause (1) has been amended and clause (2) will stand as it is.

Mr. President : The effect of the amendment which has been carried is to substitute the whole of article 134 by the amended article.

We may go to article 135.

Article 135

Mr. President : The motion is:

“That article 135 form part of the Constitution.”

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

“That in clause (1) of article 135, for the words ‘either of Parliament or’, ‘the words of either House of Parliament or of a House’ be substituted.”

This is a formal amendment.

Sir, I move:

“That in clause (1) of article 135—

(a) for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’ be substituted,

(b) for the words ‘in Parliament or such legislature as the case may be’ the words in that House’ be substituted.”

Sir, I move :

“That in clause (2) of article 135, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

(Amendments Nos. 2092 and 2095 were not moved.)

Shri H.V. Kamath (C.P. & Berar: General): Mr. President, I move:

“That in clause (3) of article 135 the words ‘The Governor shall have an official residence, and’ be deleted.”

Mr. President : “There” also must be deleted.

Shri H. V. Kamath : “There” will remain. “There shall be paid to the Governor such emoluments, etc.,”. I wonder why our Constitution should be cumbered with minutiae such as this. This matter about the official residence of the Governor, is, in my estimation, not even a tremendous trifle. Our Constitution would not be less sound if we omitted therein any reference to or mention of the Governor’s official residence. Certainly, it stand to reason that the Governor shall have a residence. We do not contemplate that the Governor will be without an official residence. Don’t you visualise the Premier in the province having a residence? But have we made mention of such a thing in the Constitution? I do not know whether this was bodily lifted from some of the unimportant constitutions of the world. Because, I am sure, the American Constitution makes no mention of the official residence of the President or the State Governors. I do not know which Constitution has given the inspiration to Dr. Ambedkar and his colleagues of the Drafting Committee.

An Honourable Member : Irish Constitution.

The Honourable Dr. B.R. Ambedkar : We have passed article 48 exactly in the same terms with reference to the President. Here, we are merely following article 48.

Shri H.V. Kamath : I was coming to that point. I do not know why, simply because the President’s residence has been mentioned, the Governor’s residence should also be mentioned. Is it logical, is it rational, or does Dr. Ambedkar think that because we have committed one little mistake—I should not say that—we should repeat it?

This point was raised by me in the course of the discussion on article 48, Dr. Ambedkar, in his reply to the debate could not give the convincing reply. May I, Sir, for his benefit and to refresh his memory, read from what he said

on that occasion? Even with regard to the President's residence, his reply was far from convincing. We have now a nominated Governor. The President, of course, is a much higher dignitary than the Governor of a State. It certainly beats me why the Governor's official residence should be mentioned at all. In his reply to this debate about the official residence of the President, this is what Dr. Ambedkar said:

“But, the question I would like to ask Mr. Kamath is this. Does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of a wrong if the proposition was stated in the Constitution itself?”

I do not say that it is wrong at all. We are not perpetrating any wrong by mentioning it in the Constitution. But, where is the necessity for this thing to be brought into the Constitution? He went on to say: “This is merely a matter of logic”. (I wonder what strange logic it was that he had in mind) “I want to know if he does or does not support the proposition that the President should have an official residence.” I then interrupted him: “May I know whether the Prime Minister will or will not have an official residence?” He did not give any reply to that, but proceeded: If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down.” Simply because the Government of India Act has mentioned that, should we copy it blindly without deliberating at all any further about it? I think that the Constitution is, as I have said already, an elephantine one and it has been encumbered with much unnecessary detail. We are mentioning this here because we are following the Government of India Act, whether logically or illogically. It might have been usefully and reasonably omitted.

One last point. The Governor may have more than one official residence. He may have two residences. Suppose he is to be given two residences; but since the Constitution mentions only one residence, what will happen? I hope Dr. Ambedkar and his wise men will give some thought to this matter. I move, sir

(Amendment Nos. 2097 to 2102 were not moved.)

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

Shri B. Das : Mr. President, article 135 deals with Governors' perquisites, honorarium, and housing problem. It is presumed that the Governors should be Congressmen or should have Congress ideals. Although my honourable Friend Dr. Ambedkar did not move his amendment where he wanted to fix the salaries of Governor at Rs. 4,500 p.m. the problem of salaries of Governors, Governor-General or President had been agitating most of us for the last few months. If Governors are to be Congress-minded people, are to follow Congress ideals, the ideals that our worthy leader Rajagopalachari started that every Congressman should live up to Rs. 150 and nothing more—that problem Congressmen in this House at least must face once for all. Why should the Governor-General have at present Rs. 7,500 free of Income-tax? Why should the Drafting Committee or Dr. Ambedkar fix a Salary of Rs. 4,500 for the Governors? Of course it is presumed income-tax will be deducted from that money.

Prof. Shibban Lal Saksena : On a point of order. Are we passing the schedule also along with this article.

Mr. President : We are not.

Shri B. Das : I am discussing the principle.

Prof. Shibban Lal Saksena : We shall have an opportunity of discussing that later on.

Mr. President : Let him develop the argument and I shall see.

Shri B. Das : The moment we pass this article, we give the privilege to the Legislature to fix the salary and we know what is happening. The Parliament on the other side fixed the salary of the Governor-General of Rs. 7,500 free of Income-Tax.

Mr. President : Are you quite correct Mr. Das, about the figure? I understood it was 5,500.

Shri B. Das : No, Sir.

Some Honourable Members : It is Rs. 5,500.

Shri B. Das : I am sorry, Sir, I accept that correction. But to me, a Congressman who was fed with the idea of Rs. 150 for every Congress Minister it sounds a big sum and we know the Governor-General is drawing a sumptuary allowance of Rs. 63,000.

Mr. President : I think you had better not refer to the Governor-General.

Shri B. Das : The Governor in every province draw sumptuary allowances also. There is something like Rs. 6,000 in poorer provinces and more in rich provinces like Bombay and Madras and it is spent in paraphernalia and in imitation of British pomp and splendour. Is it necessary that this sovereign House would permit or approve the idea that Governors should spend huge sums of money in pomp and splendour and should draw big salaries? Why should a Congressman draw beyond Rs. 3,000 which is maximum limit that my Central Ministers are drawing? I hope Governors are patriots. I know there are certain benighted Knights who have been made Governors. Rs. 3,000 is pretty big sum for them but when everything is new and there is the honour of being called H. E. and being nominated by President, that should I think be sufficient. I am sorry I could not participate in the debate on the previous clauses: but the only thing emerges that these nominated Governors who are actually drones would now apply to the President or the Governor-General that they are candidates for Governors of Provinces: The Drafting Committee and the House has accepted article 133 whereby such nominated creatures will go on all their lives as Governors. The Draft article 133 was that he will hold office only once more.

In another article we discussed about the Supreme Court. We did not want the Judges to accept jobs and hang round in the corridors of Dr. Ambedkar or Sardar Patel. Now we find we create a class of drones in India who will hang round in the corridors of the Governor-General or the Prime Minister of India, and who would like to be perpetual Governors in spite of their being eighty-eight years old or until they fall down. These are things which agitate me most and I hope the House should be very careful in fixing emoluments of the Governors. The very fact that one is a nominated Governor is enough and if he is a Congressman he will be happy and serve the country and if he is a non-Congressman it is a high honour for him. The emoluments should be fixed either by this House or by the Provincial Legislatures on the Congress standard and I do expect the Governors to behave as Congressmen and not as some of the Governors behaved in the past.

Shri Rohini Kumar Chaudhari : Sir, I am glad that this section has been allowed partially to stand as it is. I only do not understand the position taken up by my honourable Friend Mr. Kamath. He was one who has been advocating nomination of the Governor; but it seems that after having nominated him, he wants to throw him away. He wants to leave him to his own resources. He perhaps forgets that this nominated Governor has to go to another Province where he has very few friends. It is different with the Ministers. Ministers in most provinces in India have their residences provided officially. Not only do they have their official quarters, they have also got their furniture, screens, motor-cars, and everything supplied to them.

Shri H. V. Kamath : May I know whether these are mentioned in the Constitution?

Shri Rohini Kumar Chaudhari : They are not in the Constitution, but I am coming to that. That is not in the Constitution because the Ministries are always in the hands of the majority party, and therefore they can have whatever they want. Look at the position of the poor Governor. He is sent out from one province to another province where probably he knows very few persons, where he has probably been foisted upon that province against the will and consent of the Ministry itself. In that case, the least that you can help him is with shelter. If he has a Government Official residence, he can straightaway drive into that place, at least he will have a shelter, and he can look for his food afterwards. But if this is not provided for, then he has to go to this friend and that friend, and ultimately he may fall into the hands of a commercial magnate who will give him shelter, and we know commercial magnates are known to give shelter to this kind of persons holding high positions. But the Governor will fall under the obligation of some merchant Prince of the place.

Dr. P. S. Deshmukh (C. P. & Berar: General): He may have even to go back to his own province for want of a House. (Laughter)

Shri Rohini Kumar Chaudhari : So I say that official residence will have to be provided for the Governor, otherwise it will be impossible for him to carry on in that Province.

The provision which enables the Provincial Legislature to fix the salary of the Governor is also a very sound proposition, because if the Ministry does not approve of a particular Governor, it may reduce his salary to Re. 1 and thus compel him to leave the Province. That is a very strong and good safeguard which has yet been left in this article, because if the majority of the members of the legislature who are bound to reflect the opinion of the province consider that the Governor is not a suitable person for their province, then they can reduce his salary to Rs. 2 or Re. 1 as was done during the days of dyarchy when the Ministers' salaries were reduced to Re. 1 or Rs. 2. This is a mighty weapon in the hands of the Provinces, and I am glad this weapon has been left in the hands of the people of the province.

Secondly, I am interested in the allowances of the Governor. Next to his salary. I like that the Governor should have his allowances. He should have sumptuary allowance. This sumptuary allowance is intended for giving parties, dinner parties, lunch parties and so on to different people. And I should think particularly they should be given and it should be laid down that preference in this matter should be given to the members of the legislature. There is no attempt to interface with this sumptuary allowance and therefore, the Governor enjoys this allowance. And if he gets this sumptuary allowance, he must have some official residence. It does not look well that the Governor should give his dinner parties and lunch parties and tea parties in different hotels. He must have a residence for these parties at least. Mr. Kamath is not against this sumptuary allowance, but he does not want the Governor to have a house where

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he can utilise this sumptuary allowance. What is the Governor to do with the allowance then? The first and foremost duty of a Governor today is to give parties,—dinner-parties, tea-parties and parties of various other kinds. He has got to do it in order to maintain his own popularity, and also to maintain the popularity of the Ministry. If he finds anything wrong anywhere, he has to go out there and deliver some lectures in support of the Ministry. Besides these, there are functions like Prize-distributions, important marriages in high life,—all these things the Governor has got to attend to keep up his popularity. Therefore, I submit that his having an official residence should not be interfered with and this clause should be passed as it stands.

Shri Brajeshwar Prasad : Mr. President, Sir, I think this is the proper place where I can suggest to the House, and to the members of the Drafting Committee in particular, that they should incorporate some provision to the effect, that the same person may be appointed Governor of two or three or more provinces at a time.

Mr. President : You did not move any such amendment.

Shri Brajeshwar Prasad : I am not moving any amendment, but I am only suggesting to the House, to change this article so as to accommodate the suggestion that I am making. I feel that my suggestion will effect a great deal of economy, if one Governor is made responsible as the Constitutional Head for the administration of more than one province. Formerly the provinces of Bihar, Bengal, Orissa and Assam were under one Governor. Ultimately these Provinces will become one once again. With this end in view I am suggesting that the same person may be appointed Governor of two or more Provinces at a time.

Dr. P. S. Deshmukh : Sir, on a point of order. This is contrary to the clause we have already passed that each province shall have a Governor. (Hear, Hear).

Mr. President : I am in entire agreement with Dr. Deshmukh. We have already passed an article that every province shall have a Governor.

Shri Brajeshwar Prasad : Then I have nothing more to add.

Prof. Shibban Lal Saksena : Sir, My Friend Mr. B. Das raised the question of emoluments of the Governors given in the Schedule mentioned in this article. The question of emoluments attached to our high offices is a very important question. I do not think that under this article we can properly discuss the emoluments given in the Schedule, but as you have ruled that these might be discussed. I would like to say a few words. We as Congressmen are pledged to certain scales and to certain standards of life. But I am sorry to have to say that we have forgotten all that we said before. In Karachi Congress we passed a resolution that the maximum salary of the highest official shall be only Rs. 500 and in view of the present increase in the cost of living it may now be fixed at Rs. 2,000. But here we are providing for a salary of Rs. 4,500 for the Governors. The Governor is merely a cipher, without any function and holding office only during the President's pleasure. I do not think this large amount is necessary for him. In addition to this salary he has his allowances also. When the proper Schedule comes up, I will say more. But here I will only say that by accepting this article, we are not accepting the amounts fixed in the Schedule.

Shri M. Thirumala Rao : Mr. President, Sir, I was under the impression that the Drafting Committee's amendment No. 2100—

“That the following proviso be added to clause (3) of article 135 :—

‘Provided that the emoluments of the Governor shall not be less than four thousand and five hundred rupees per month.’”

will be moved.

I think, Sir, that there should be a uniform policy adopted in regard to the emoluments and salaries of these Governors which I think now obtains. There is no use leaving the matter to the sweet will of the respective Legislatures, which may be swayed by so many considerations in fixing the salaries of the Governors. If necessary, Governorships may be divided into different categories, *e.g.*, first-rank, second-rank, etc., according to the income of the provinces. But the Governors' emoluments should not be so variable as to depend upon the respective influences of the legislatures. Governors are expected to enjoy a status, though not power, above the Legislatures and the Ministries and they have to uphold certain tradition and prestige in the eyes of the public. Therefore, their salaries should not be made the play-thing of legislative forms where different parties may have their own motives for reducing the emoluments of the Governors. I suggest, Sir, that both for the President as well as for the Governors the Constitution should fix a certain amount of salary as well as sumptuary and other allowances which should not be subject to the influence of the Legislatures. I wish the Drafting Committee will take up this matter and bring in suitable amendments in this behalf.

Shri Brajeshwar Prasad : Sir, I want your ruling as to how my amendment is not pertinent. Article 149 says that there shall be a Governor for each State. It only means that there cannot be a Province without a Governor. The article does not debar the same person from being appointed as Governor of two or more provinces at a time.

Mr. President : No occasion for a ruling arises, because the honourable Member did not move his amendment.

I shall now put the amendment to vote. The first amendment is that moved by Dr. Ambedkar.

The question is:

“That in clause (1) of article 135, for the words ‘either of Parliament or’ the words ‘of either House of Parliament or of a House’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (1) of article 135—

(a) for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’ be substituted.

(b) For the words ‘in Parliament or such Legislature as the case may be’ the words ‘in that House’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (2) of article 135, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (3) of article 135 the words “The Governor shall have an official residence, and’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That article 135, as amended, stand part of the Constitution.”

The motion was adopted.

Article 135, as amended, was added to the Constitution.

Mr. President : There is notice of an amendment by Professor Shah suggesting the addition of a new article 135.

The Honourable Dr. B. R. Ambedkar : Before we go to the next amendment I would like to suggest that in article 135, the word “elected” be dropped.

Mr. President: That is understood.

New Article 135-A

Prof. K. T. Shah : Sir I beg to move:

“That after article 135 the following new article 135-A, be added:—

‘135-A. Every Governor shall, on completion of his term of office and retirement, be given such pension or allowance during the rest of his life as the State Legislature may by law provide;’

‘Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him shall not be varied to his prejudice;’

‘Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.’”

Sir, I want by this amendment to secure to eminent public servants and distinguished sons of India who rise to such offices as the Governor of State a decent retirement allowance, so that they should not be exposed to any want or penury, or to any temptation which might lead them to use their influence acquired in the past by holding such offices in any undesirable manner.

The Constitution, Sir, does not provide any such consideration for people who rise to high offices in the State, except in regard to the Judiciary. In the Judiciary this has been provided by the Constitution. Speaking for myself, I do not see any reason why exalted public servants and officers, who have served the State and the country in such high capacities like that of the President, or the Governor, should not be provided for the rest of their lives, so that they should be free from any want or temptation to utilise their influence in any undesirable manner.

I have not deliberately indicated the scale of such pension. I have also suggested the condition that the pension is payable only if the person concerned retires. That is to say, he really devotes himself for the rest of his life to the honorary service of the country in whatever way may be open to him free from any want, and that he does not hold any other office of profit in the State in which he has been Governor or under the Government of India. If, of course, he holds any other office which carries its own emoluments, he will have to choose between either the pension or those emoluments. But subject to this, that he holds no other office, the pension should be available to him for the rest of his life in retirement.

The object of providing such security for the persons who have risen to this high level is the same as that which now secures to every workman in civilized nations an old-age pension, a pension or superannuation allowance, which would be calculated to suffice to maintain him in the standard of life to which he was accustomed while at work. A pension is deferred pay, not paid to the worker while at work; and the analogy will hold here also. This also is a type of work—perhaps the highest of its kind—which should not go unprovided for altogether by the State for the rest of the period on earth of the Parties who have served so eminently the State.

I take it, Sir, that no one would be appointed or elected Governor, who has not in the past, before being so appointed also rendered service, which has earned him the distinction, the eminence of public position that makes him fit for selection as a Governor. That being so, and his services being of that level culminating in his appointment as Governor should, I think in the fitness of things be recognized and rewarded in some such manner as I am suggesting. As I said before, it is not necessary in this Constitution to provide the actual scale of such allowances or pension. All that is necessary is that the principle should be recognised, and I would leave it to the State Legislature to make the necessary provision, on condition however, that the provision once made by law, shall not be varied to the prejudice of the holder of such pension while he enjoys it in retirement. This is a very simple and in my opinion a very fair proposition, provided the House will accept it.

Dr. P. S. Deshmukh : Sir, my Friend Prof. K. T. Shah wants that pensions should be provided for the Governors. I have considerable sympathy for the point of view that he has placed before the House, because as a rule, except under exceptional circumstances, we shall be appointing men from the public life of India to these offices and in Public life there are not many people who have large balances or considerable property. So I think there is everything to be said in favour of making some provision for a public man who, at the fog end of his life more or less, becomes a Governor and is so appointed by the President under the Constitution we are framing but when after the completion of his term of office he retires, has nothing to fall back on. But in spite of all our sympathies we will have also to admit that if we accept the amendment, there are many difficulties that will arise. First and foremost, what would be defined as his term of office? Suppose a person is appointed in a bye-vacancy and he also completes his term of office, whatever it may be. It might six-months, or one year or two years. Does he, Prof. Shah, propose that even such a person should have proportionate pension or whether he would propose something less? Secondly, I do not think this has been followed at any time anywhere so far and those who have had the good fortune of being appointed Governors I do not think, have claimed it or asked for it. On the whole, I think the advantage will remain in not giving any such pension. Of course my Professor friend has advanced the argument that this would be by way of a reward, and if he accepts any other office, then he should not be entitled to any pension. But I think a public man who offers himself for this appointment, will have to content himself with whatever salary that might be given to him during his tenure of office, and I do not think any one would be right in looking forward to a pension. If we provide pension for such people, we will have next to consider the cases of the Ambassadors and many other persons more or less of similar categories. A whole set of people will then be coming forward for these pensions and probably a very large portion of our revenues will have to be spent on these pensions alone. On principle, also, I do not think it is a good proposal and I therefore oppose it.

Sardar Hukam Singh (East Punjab: Sikh) : Sir, I come here to oppose this motion. I feel there is no justification for lending this additional lustre to our Governors. We have been told that they are figure-heads only and ornamental heads and that they shall have no authority or powers. Again in the way that we are proceeding, I think we are depriving them in the States and Provinces of every authority that they could have. All powers are being centralised. The residuary subjects are also with the Centre. Under such circumstances, when the Governors have to do nothing, when they are only constitutional heads, when they are only ornaments, we have given them sufficient lustre by the salary of Rs. 4,500, other emoluments, sumptuary allowances, official residences and such other things. On the other hand, the Professor wants to give those Governors even additional things, so that they might live princely lives even after they have retired.

[Sardar Hukam Singh]

I am opposed to it and I do not see any justification in giving these additional things to these Governors who would be merely titular heads and denuded of all authority in the provinces or States.

Mr. President : The question is:

“That after article 135 the following new article 135-A, be added :—

‘135-A. Every Governor shall, on completion of his term of office and retirement, be given such pension or allowance during the rest of his life as the State Legislature may by law Provide;’

‘Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him shall not be varied to his prejudice;’

‘Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.’ ”

The amendment was negatived.

Article 136

Mr. President : There is an amendment of which we have received notice, by Dr. Ambedkar. It is No. 2104. There are other amendments which are more or less of a similar nature.

Shri T. T. Krishnamachari : My amendment in List 2—No. 132—follows more or less the wording of article 49 which this House has passed.

Mr. President : Let the amendment be moved first: then we can take up amendment No. 132. Dr. Ambedkar, I take it that you have moved amendment No. 2104?

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

“That in article 136 for the words “in the presence of the members of the Legislature of the State’ the words ‘in the presence of the Chief Justice or, in his, absence, any other judge of the High Court exercising jurisdiction in relation to the State’ be substituted.”

Shri T. T. Krishnamachari : Sir, I move:

“That for amendment No. 2106 of the List of amendment, the following be substituted :—

‘That in article 136, for the words ‘in the presence of the members of the Legislature of the State’ the words ‘in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior most judge of that Court available’ be substituted.’ ”

This does not need any explanation for the reason that it follows, as I said, the wording of article 49 which the House has adopted. At any rate it would not be proper in view of the different method of selection of the Governor now decided on that he should take the oath before the Legislature. It is only proper that the Chief Justice of the High Court, exercising jurisdiction in relation to the State, should perform the function the function, or in his absence the senior-most judge of the Court.

Sir, I move.

(Amendment Nos. 2105 and 2107 were not moved.)

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

“That for amendment No. 2106 of the List of Amendments the following be substituted:—”

“That in article 136, for the words I, A.B., do solemnly affirm (or swear) the following be substituted :—

“I, A.B, do _____
swear in the name of God”
solemnly affirm

This follows the amendment which was accepted unanimously by the House about the oath or affirmation to be made by the President under article 49 of the Draft Constitution. You, Sir, were unfortunately not in the Chair on that occasion. You were lying ill at Wardha from which illness happily by the grace of God you recovered rapidly and we are fortunate to have you again in this House to preside over its deliberations.

I do not propose to make any speech, because I have said what I had to say on that occasion. I would only say this that we would be true to our heritage and true to our spiritual genius if we adopt an amendment of this nature, with regard to the oath or affirmation to be made by the Governor of a State. I commend this amendment for the acceptance of the House.

Mr. President : As amendment Nos. 2107, 2108 and 2109 are not, I understand, being moved, does Dr. Ambedkar wish to make any reply to the amendments moved?

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shri T. T. Krishnamachari and also the one moved by my Friend Mr. Kamath.

Mr. President : The question is:

“That for amendment No. 2104 of the List of Amendments, the following be substituted :—

‘That in article 136, for the words ‘in the presence of the members of the Legislature of the State’ the words ‘in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior-most judge of that Court available’ be substituted.’ ”

The amendment was adopted.

Mr. President : The question is:

“That for amendment No. 2106 of the List of Amendments, the following be substituted :—

“That in article 136, for the words ‘I, A.B., do solemnly affirm (or swear)’ the following be substituted :—

“I, A.B., do _____
swear in the name of God”
solemnly affirm

The amendment was adopted.

Pandit Hirday Nath Kungru (United Provinces : General) : How does the oath read? Is it, “I do swear in the name of God, or I do solemnly affirm,” or not? The question is this : some people may think that the Governor should take oath in the name of God. There may however be people in this country who are atheists. (*Interruptions*) (Mr. President read out the oath) I see that there is an alternative. That is what I wanted to know. Nobody should be compelled to swear in the name of God if—he does not want to do so.

Mr. President : No, no. The question is:

“That article 136, as amended, stand part of the Constitution.”

The motion was adopted.

Article 136, as amended, was added to the Constitution.

The Assembly then adjourned till Eight of the Clock on Wednesday, the 1st June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 1st June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—*Contd.*

Article 137

Mr. President : We begin with article 137 today. There is an amendment to this of which notice has been given by Mr. Brajeshwar Prasad, but that is a negative one.

(Amendment No. 2111 was not moved.)

Shri T. T. Krishnamachari (Madras: General) : This article cannot be moved in view of the decision that has been made earlier.

Shri Brajeshwar Prasad (Bihar: General) : It must be put to the vote of the House.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): It may be put to the vote.

Mr. President : None of the other amendments is going to be moved, I take it. Now, the question is:

“That article 137 stand part of the Constitution.”

The motion was negatived.

Article 137 was deleted from the Constitution.

Article 138

Shri T. T. Krishnamachari : Sir, may I suggest that the alternative might be formulated, because the original article has no place in view of the change that has already been made?

Shri Brajeshwar Prasad : Sir, I move:

“That for article 138, the following be substituted :—

‘The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.’ ”

I move this amendment without making any comments. It does not need any.

(Amendment Nos. 2132, 2134 and No. 169 of List III were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

“That in article 138, for the word ‘Chapter’ the word ‘Constitution’ be substituted.”

[Mr. Mohd. Tahir]

I think, Sir, that the word "Constitution" is more appropriate and comprehensive. If my friends accept it, it may be used instead of the word "Chapter".

Mr. President : The question is:

"That for article 138, the following be substituted :—

'The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.' "

The amendment was adopted.

Mr. President : The question is:

"That in article 138, for the word 'Chapter' the word 'Constitution' be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That article 138, stand part of the Constitution."

The motion was adopted.

Article 138, as amended, was added to the Constitution.

Articles 139 and 140

Mr. President : These will have to be dropped as being inconsistent with the decision already taken, but I am told that it is necessary to formally put them to the vote.

The question is:

"That article 139 stand part of the Constitution."

The motion was negatived.

Article 139 was deleted from the Constitution.

Mr. President : The question is:

"That article 140 stand part of the Constitution."

The motion was negatived.

Article 140 was deleted from the Constitution.

Article 141

Mr. President : As regards this article, there are one or two amendments. There is amendment No. 2148 and to that there is an amendment No. 170 in List III by Pandit Thakur Das Bhargava.

(Amendment Nos. 2148, No. 170 in List III, and Nos. 2149 to 2152 were not moved.)

Mr. President : The question is:

"That article 141 stand part of the Constitution."

The motion was adopted.

Article 141 was added to the Constitution.

Article 142

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2153 and in substitution of same, I move Amendment No. 184 (Third week—List IV):

“That for article 142, the following be substituted :—

‘142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.’ ”

Sir, this will simplify the wording of the article as it stands and also eliminate clause (b) which raises complications, as it refers to certain aspects of this Draft Constitution about which we have not made any decision for the time being, because it refers to States in Part III of the First Schedule and a decision will have to be taken later when the position of States in Part III of this Schedule is precisely defined. Therefore, Sir, this amendment is necessary and I hope the House will accept it.

(Amendment No. 2154 was not moved.)

Mr. President : The question is:

“That for article 142, the following be substituted :—

‘142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 142, as amended, stand part of the Constitution.”

The motion was adopted.

Article 142, as amended, was added to the Constitution.”

Article 143

(Amendment Nos. 2155 and 2156 were not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, I move:

“That in clause (1) of article 143, the words ‘except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion’ be deleted.”

If this amendment were accepted by the House, this clause of article 143 would read thus :—

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise *vis-a-vis* his ministers, than has been given to the President in relation to his ministers. If we turn to article 61 (1), we find it reads as follows :—

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that

[Shri H. V. Kamath]

even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to vest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

Prof. K. T. Shah (Bihar: General) : Mr. President, I beg to move:

“That in clause (1) of article 143, after the word ‘head’ a comma be placed and the words ‘who shall be responsible to the Governor and shall’ be inserted and the word ‘to’ be deleted.”

So, that the amended article would read:

“(1) There shall be a Council of Ministers with the Chief Minister at the head, who shall be responsible to the Governor and shall aid and advise the Governor in the exercise of his functionsetc.”

Sir, this is a logical consequence of the general principle of this Draft Constitution, namely, that the Government is to be upon the collective responsibility of the entire Cabinet to the legislature. At the same time, in the Cabinet the Prime Minister or the Chief Minister or by whatever title he is described would be the Principal Adviser and I would like to fix the responsibility definitely by the Constitution on the Chief Minister, the individual Ministers not being in the same position. Whatever may be the procedure or convention within the Cabinet itself, however the decisions of the Cabinet may be taken, so far as the Governor is concerned, I take it that the responsibility would be of the Chief Minister who will advise also about the appointment of his colleagues or their removal if it should be necessary. It is but in the fitness of things that he should be made directly responsible for any advice tendered to the Constitutional head of the State, namely, the Governor. As it is, in my opinion, a clear corollary from the principles we have so far accepted, I hope there would be no objection to this amendment.

(Amendments Nos. 2159 to 2163 were not moved.)

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

Shri T. T. Krishnamachari : Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of the article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appro-

appropriate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. If it is to be given in article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception of article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point I would like to draw the attention of the House to and I think the article and better be passed as it is.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Mr. T. T. Krishnamachari has clarified the position with regard to this exception which has been added to clause (1) of article 143. If the Governor is, in fact, going to have a discretionary power, then it is necessary that this clause which Mr. Kamath seeks to omit must remain.

Sir, besides this, I do not know if the Drafting Committee has deliberately omitted or they are going to provide it at a later stage, and I would like to ask Dr. Ambedkar whether it is not necessary to provide for the Governor to preside at the meetings of the Council of Ministers. I do not find any provision here to this effect. Since this article 143 is a mere reproduction of section 50 of the Government of India Act, 1935, where this provision does exist that the Governor in his discretion may preside at the meetings of the Council of Ministers, I think this power is very necessary. Otherwise, the Ministers may exclude the Governor from any meetings whatever and this power unless specifically provided for, would not be available to the Governor. I would like to draw the attention of the members of the Drafting Committee to this and to see if it is possible either to accept an amendment to article 143 by leaving it over or by making this provision in some other part. I think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

Shri Brajeshwar Prasad : Mr. President, Sir, the article provides—

“That there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Sir, I am not a constitutional lawyer but I feel that by the Provisions of this article the Governor is not bound to act according to the advice tendered to him by his Council of Ministers. It only means that the Ministers have the right so tender advice to Governor. The Governor is quite free to accept or to reject the advice so tendered. In another sphere of administration the Governor can act in the exercise of his functions in his discretion. In this

[Shri Brajeshwar Prasad]

sphere the Minister has not got the power to tender any advice. Of course it is left open to the Governor to seek the advice of the Ministers even in this sphere.

I feel that we have not taken into account the present facts of the situation. We have tried to copy and imitate the constitutions of the different countries of the world. The necessity of the hour requires that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgment. I feel that the Governor should be vested with the power of special responsibilities which the Governor under the British regime were vested in this country. I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on in the various provinces. Unless the Governor is vested with large powers it will be difficult to effect any improvement in the Provincial administration. Such a procedure may be undemocratic but such a procedure will be perfectly right in the interest of the country. I cannot allow democracy to jeopardize the vital interests of the country. I feel there is no creative energy left in the middle class intelligentsia of this country. They seem to have become bereft of initiative and enterprise. The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands. I feel that we are on the threshold of a revolution in this country. There will be revolution, bloodshed and anarchy in this country. I feel that at this juncture it is necessary that all powers should remain centralised in the hands of the Government of India. In certain provinces the machinery of law and order seems to have completely broken down. Dacoities, arson, loot, murder and inflationary conditions are rampant. I am opposed to this article, because I am convinced that federalism cannot succeed in a country which is passing through a transitory period. The national economy of America is fully developed. It can afford to have a federal form of Government. In a country where there is no room for expansion and for economic development, there is no necessity for a centralised economy. In India when our agriculture, industry, minerals etc. are in an incipient stage of development, it is necessary that power must be vested in the hands of the Government of India. Federalism was in vogue in the 19th century when the means of communications were undeveloped. The technical knowledge and resources at the disposal of Governments in ancient times were of a very meagre character. Today the situation has completely changed. Means of communications have developed rapidly. Technical knowledge and the necessary personal at the disposal of the Government of India are of such a wide character that it can undertake to perform all the functions which a modern Government is expected to perform. There is another reason why I am opposed to this article. In this country there is no scope for federalism. All governments have become more or less unitary in character. If we are to escape political debacles, economic strangulation and military defeats on all fronts, then our leaders and statesmen must learn to think in unorthodox terms: otherwise there is no future for this country.

Pandit Hirday Nath Kunzru : (United Provinces: General): Mr. President, I should like to ask Dr. Ambedkar whether it is necessary to retain after the words "that the Governor will be aided and advised by his Ministers", the words "except in regard to certain matters in respect of which he is to exercise his discretion". Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done? The functions of the Ministers legally will be only to aid and advice the Governor. The article in which these words occur does not lay down

that the Governor shall be guided by the advice of his Ministers but it is expected that in accordance with the Constitutional practice prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

My Friend Mr. T. T. Krishnamachari said that as article 188 of the Constitution empowered the Governor to disregard the advice of his Ministers and to take the administration of the province into his own hands, it was necessary that these words should be retained, *i.e.* the, discretionary power of the Governor should be retained. If however, he assured us, section 188 was deleted later, the wording of article 143 could be reconsidered. I fully understand this position and appreciate it, but I should like the words that have been objected to by my Friend Mr. Kamath to be deleted. I do not personally think that any harm will be done if they are not retained and we can then consider not merely article 188 but also article 175 on their merits; but in spite of the assurance of Mr. Krishnamachari the retention of the words objected to does psychologically create the impression that the House is being asked by the Drafting Committee to commit itself in a way to a principle that it might be found undesirable to accept later on. I shall say nothing with regard to the merits of article 188. I have already briefly expressed my own views regarding it and shall have an opportunity of discussing it fully later when that article is considered by the House. But why should we, to begin with, use a phraseology that is an unpleasant reminder of the old order and that makes us feel that though it may be possible later to reverse any decision that the House may come to know, it may for all practical purposes be regarded as an accomplished fact? I think Sir, for these reasons that it will be better to accept the amendment of my honourable Friend Mr. Kamath, and then to discuss article 175 and 188 on their merits.

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr. Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great Britain and the British Dominions, that the Governor or the Governor-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Minister the duty of informing the Governor of the decisions come to by the Council Ministers in regard to administrative matter and the legislative programme of the government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to say that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I heard very carefully the speech of my honourable Friend, Mr. Krishnamachari, and his arguments for the retention of the words which Mr. Kamath wants to omit. If the Governor were an elected Governor, I could have understood that he should have these discretionary powers. But now we are having nominated Governors who will function during the pleasure of the

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President, and I do not think such persons should be given powers which are contemplated in section 188.

Then, if article 188 is yet to be discussed—and it may well be rejected—then it is not proper to give these powers in this article beforehand. If article 188 is passed, then we may reconsider this article and add this clause if it is necessary. We must not anticipate that we shall pass article 188, after all that has been said in the House about the powers of the Governor.

These words are a reminder of the humiliating past. I am afraid that if these words are retained, some Governor may try to imitate the Governors of the past and quote them as precedents, that this is how the Governor on such and such an occasion acted in his discretion. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; and no less a person than the honourable Pandit Govind Ballabh Pant had given notice of the amendment which Mr. Kamath has moved. I think the wisdom of Pandit Pant should be sufficient guarantee that this amendment be accepted. It is just possible that article 188 may not be passed by this House. If there is an emergency, the Premier of the province himself will come forward to request the Governor that an emergency should be declared, and the aid of the Centre should be obtained to meet the emergency. Why should the Governor declare an emergency over the head of the Premier of the Province? We should see that the Premier and the Governor of a Province are not at logger heads on such an occasion. A situation should not be allowed to arise when the Premier says that he must carry on the Government, and yet the Governor declares an emergency over his head and in spite of his protestations. This will make the Premier absolutely impotent. I think a mischievous Governor may even try to create such a situation if he so decides, or if the President wants him to do so in a province when a party opposite to that in power at the Centre is in power. I think article 188, even if it is retained should be so modified that the emergency should be declared by the Governor on the advice of the Premier of the province. I suggest to Dr. Ambedkar that these words should not find a place in this article, and as a consequential amendment, sub-section (ii) of this article should also be deleted.

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to differ from my honourable radical Friends Mr. Kamath and Prof. Shibban Lal Saksena, and I think the more powers are given to the provinces, the stiffer must be the guardianship and control of the Central in the exercise of those powers. That is my view. We have now given up the old idea of creating autonomous States and are now keeping a reserve of powers in the Centre, and we are going to have nominated Governors. Those Governors are not to be there for nothing. After all, we have to see that the policy of the Centre is carried out. We have to keep the State linked together and the Governor is the Agent or rather he is the agency which will press for and guard the Central policy. In fact, our previous conception has now been changed altogether. The whole body politic of a country is affected and influenced by the policy of the Centre. Take for instance subjects like Defence involving questions of peace or war, of relationship with foreign countries; of our commercial relations, exports and imports. All these are subjects which affect the whole body politic, and the provinces cannot remain unaffected, they cannot be left free of the policy of the Centre. The policy which is evoked in the Centre should be followed by all the States, and if the Governors were to be in the hands of the provincial Ministries then there will be various policies in various provinces and the policy of each province shall be as unstable as the ministry. For there would be ministries of various

types having different party labels and different programmes to follow. Their policies must differ from one another; it will therefore be all the more necessary that there must be coordination of programmes and policies between the State and the Central Government. The Governor being the agency of the Centre is the only guarantee to integrate the various Provinces or States. The Central Government also expresses itself through the provincial States; along with their own administration, they have also to function on behalf of the Central Government. A Governor shall act as the agency of the Centre and will see that the Central policy is sincerely carried out. Therefore the Governor's discretionary powers should not be interfered with. Democratic trends are like a wild beast. Say what you will, democracy goes by the whims and fancies of parties and the masses. There must be some such machinery which will keep this wild beast under control. I do not deprecate democracy. Democracy must have its way. But do not let it degenerate into chaos. Moreover the State governments may not be quite consistent in their own policies. Governments may change after months or years; with them will change their policies. The Governors may change too, but the policy and instructions given by the Centre to the Governors will remain practically unchanged. The more the powers given to the States the more vigilant must be the control. The Governor must remain as the guardian of the Central policy on the one side, and the Constitution on the other. His powers therefore should not be interfered with.

Shri B. M. Gupte (Bombay: General): Sir, I think the explanation given by my honourable Friend Mr. T. T. Krishnamachari should be accepted by the House and the words concerning discretion of the Governor should be allowed to stand till we dispose of articles 175 and 188.

With regard to the suggestion made by the honourable Dr. Deshmukh about the power being given to the Governor to preside over the meetings of the cabinet I have to oppose it. He enquired whether the Drafting Committee intended to make that provision later on. I do not know the intentions of the Drafting Committee for the future but as far as the Draft before us is concerned I think the Drafting Committee has definitely rejected it.

I would invite the attention of the honourable House to article 147 under which the Governor shall be entitled only to information. If we allow him to preside over the meetings of the Cabinet we would be departing from the position we want to give him, namely that of a constitutional head. If he presides over the meeting of the Cabinet he shall have an effective voice in shaping the decisions of the Cabinet in the entire field of administration, even in fields which are not reserved for his discretionary power. If certain powers have to be given to him, our endeavour should be to restrict them as far as possible, so that the Governor's position as a constitutional head may be maintained. Therefore, Sir, I oppose the proposal of Dr. Deshmukh.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143 namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So long as there are article in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

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The only other question is whether first to make a provision in article 143 that the Governor shall act on ministerial responsibility and then to go on providing "Notwithstanding anything contained in article 143.....he can do this" or "Notwithstanding anything contained in article 143 he can act in his discretion." I should think it is a much better method of drafting to provide in article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If off course the House comes to the conclusion that in no case shall the Governor act in his discretion, that he shall in every case act only on ministerial responsibility, then there will be a consequential change in this article. That is, after those articles are considered and passed it will be quite open to the House to delete the latter part of article 143 as being consequential on the decision come to by the House on the later articles. But, as it is, this is perfectly, in order and I do not think any change is warranted in the language of article 143. It will be cumbrous to say at the opening of each article "Notwithstanding anything contained in article 143 the Governor can act on his own responsibility".

Shri H. V. Kamath : Sir, on a point of clarification, Sir, may I know why it is that though emergency powers have been conferred on the President by the Constitution no less than on Governors, perhaps more so, discretionary powers as such have not been vested in the President but only in Governors?

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to oppose the amendment of Mr. Kamath. Under article 143 the Governor shall be aided in the exercise of his functions by a Council of Ministers. It is clear so far. I gave notice of an amendment which appears on the order paper as 142-A which I have not moved. In that amendment I have suggested that the Governor will be bound to accept the advice of his ministers on all matters except those which are under this Constitution required to be exercised by him in his discretion. My submission is that it is wrong to say that the Governor shall be a dummy or an automaton. As a matter of fact according to me the Governor shall exercise very wide powers and very significant powers too. If we look at article 144 it says:

"The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

So he has the power to appoint his ministers. But when the ministers are not in existence who shall advise him in the discharge of his functions? When he dismisses his ministry then also he will exercise his functions under his own discretion.

Then again, when the Governor calls upon the leader of a party for the choice of ministers, after a previous ministry has been dissolved, in that case there will be no ministry in existence; and who will be there to advise him? Therefore he will be exercising his functions in his discretion. It is wrong to assume that the Governor will not be charged with any functions which he will exercise in his discretion. Articles 175 and 188 are the other articles which give him certain functions which he has to exercise in his discretion.

Under article 144 (4) there is a mention of the Instrument of Instructions which is given in the Fourth Schedule. The last paragraph of it runs thus:

"The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the state, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religions beliefs and sentiments."

My submission is that according to me the Governor shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitution. He will be a man above party and he will look at the Ministry and government from a detached standpoint. He will be able to influence the ministers and members of the legislature in such a manner that the administration will run smoothly. In fact to say that a person like him is merely a dummy, an automaton or a dignitary without powers is perfectly wrong. It is quite right that so far as our conception of a constitutional governor goes he will have to accept the advice of his ministers in many matters but there are many other matters in which the advice will neither be available nor will he be bound to accept that advice.

Under article 147 the Governor has power for calling for information and part (c) says: This will be the duty of the Chief Minister.

“If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.”

This is specifically a matter which is of great importance. The Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which one minister might have decided. When he calls for information he will be acting in the exercise of his discretion. He may call for any kind of information. With this power he will be able to control and restrain the ministry from doing irresponsible acts. In my opinion taking the Governor as he is conceived to be under the Constitution he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143.

Shri H. V. Pataskar (Bombay: General): Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised, whether the Governor is to be merely a figure-head, whether he is to be a constitutional head only or whether he is to have discretionary powers. To my mind the question should be looked at from an entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the powers and functions of a Governor. It only says:

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor? In my view article 188 is probably necessary and I do not mean to suggest for a moment that the Governor's powers to act in an emergency which powers are given under article 188, should not be there. My point is this, whether if this Provision, *viz.*, “except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion”, is not there, is it going to affect the powers that are going to be given to him to act in his discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer. Mr. Alladi Krishnaswami Ayyer, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say “Notwithstanding anything contained in article 143.” In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision in article 188 by saying “notwithstanding anything contained in article 143”, it looks so obnoxious to keep these words here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the

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Governor and his functions, by telling them that they shall not give any aid or advice in so far as he, the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtesy and politeness. Therefore I think the question should be considered in that way. The question is not whether we are going to give discretionary powers to the Governors or not. The question is not whether he is to be merely a figure-head or otherwise. These are questions to be debated at their proper time and place. When we are considering article 143 which defines the functions of the Chief Minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite, nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, the position is that under article 41 the executive powers of the Union are vested in the President and these may be exercised by him in accordance with the Constitution and the law. Now, the President of the Union is responsible for the maintenance of law and order and for good Government. The Cabinet of the State is responsible to the people through the majority in the Legislature. Now, what is the link between the President and the State? The link is the Governor. Therefore through the Governor alone the President can discharge his functions for the good Government of the country. In abnormal circumstances it is the Governor who can have recourse to the emergency powers under article 188. Therefore the power to act in his discretion under article 143 *ipso facto* follows and article 188 is necessary and cannot be done away with. Therefore certain emergency powers such as under article 188 are necessary for the Governor to discharge his function of maintaining law and order and to carry on the orderly government of the State.

I wish to say one word more with regard to Professor Shah's amendment that the Minister shall be responsible to the Governor. The Minister has a majority in the legislature and as such, through the majority, he is responsible to the people. If he is responsible to the Governor, as distinguished from his responsibility to the Legislature and through the legislature to the people of the State, then he can be overthrown by the majority in the legislature and he cannot maintain his position. He cannot hold the office. Therefore it is an impossible proposition that a Minister could ever be responsible to the Governor as distinguished from his responsibility to the people through the majority in the legislature. He should therefore be responsible to the Legislature and the people and not to the President. That is the only way in which under the scheme in the Draft Constitution the government of the country can be carried on.

Shri Rohini Kumar Chaudhari : (Assam: General): I rise to speak more in quest of clarification and enlightenment than out of any ambition to make a valuable contribution to this debate.

Sir, one point which largely influenced this House in accepting the article which provided for having nominated Governors was that the Honourable Dr. Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the honourable Dr. Ambedkar now, whether any person who

has the right to act in his discretion can be said to be a mere symbol. I am told that this provision for nominated governorship was made on the model of the British Constitution. I would like to ask Dr. Ambedkar if His Majesty the king of England acts in his discretion in any matter. I am told—I may perhaps be wrong—that His Majesty has no discretion even in the matter of the selection of his bride. That is always done for him by the Prime Minister of England.

Sir, I know to my cost and to the cost of my Province what ‘acting by the Governor in the exercise of his discretion’ means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers—Mr. Allah Bux. Sir, if in spite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget.

We have always thought that it is better to be governed by the will of the people than to be governed by the will of a single person who nominates the Governor who could act in his discretion. If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork. Furthermore, as the article says, whenever the Governor thinks that he is acting in his discretion nowhere can he be questioned. There may be a dispute between the Ministers and the Governor about the competence of the former to advise the Governor; the Governor’s voice would prevail and the voice of the Ministers would count for nothing. Should we in this age countenance such a state of affairs? Should we take more than a minute to dismiss the idea of having a Governor acting in the exercise of his discretion? It may be said that this matter may be considered hereafter. But I feel that when once we agree to this provision, it would not take long for us to realise that we have made a mistake. Why should that be so? Is there any room for doubt in this matter? Is there any room for thinking that anyone in this country, not to speak of the members of the legislature, will ever countenance the idea of giving the power to the Governor nominated by a single person to act in the exercise of his discretion? I would submit, Sir, if my premise is correct, we should not waste a single moment in discarding the provisions which empower the Governor to act in his discretion.

I also find in the last clause of this article that the question as to what advice was given by a Minister should not be enquired into in any court. I only want to make myself clear on this point. There are two functions to be discharged by a Governor. In one case he has to act on the advice of the Ministers and in the other case he has to act in the exercise of his discretion. Will the Ministry be competent to advise the Governor in matters where he can exercise his discretion? If I remember a right, in 1937 when there was a controversy over this matter whether Ministers would be competent to advise the Governor in matters where the Governor could use his discretion, it was understood that Ministers would be competent to advise the Governor in the exercise of his discretion also and if the Governor did not accept their advice, the Ministers were at liberty to say what advice they gave. I do not know that is the intention at present. There may be cases where the Ministers are competent to give advice to the Governor but the Governor does not accept their advice and does something which is unpopular. A Governor who is nominated by the Centre can afford to be unpopular in the province where he is acting as Governor. He may be nervous about public opinion if he serves in his own province but he may not care about the public opinion in a province where he is only acting. Suppose a Governor, instead of acting on the advice of his

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Ministers, acts in a different way. If the Ministers are criticised for anything the Governor does on his own, and the Ministers want to prosecute a party for such criticism, would not the Ministers have the right to say that they advised the Governor to act in a certain way but that the Governor acted in a different way? Why should we not allow the Ministers the liberty to prosecute a paper, a scurrilous paper, a misinformed paper, which indulged in such criticism of the Ministers? Why should not the Ministers be allowed to say before a court what advice they gave to the Governor? I would say, Sir—and I may be excused for saying so—that the best that can be said in favour of this article is that it is a close imitation of a similar provision in the Government of India Act, 1935, which many Members of this House said, when it was published, that they would not touch even with a pair of tongs.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the constitution of Canada and the constitution of Australia. I do not think anybody in this house would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

“Section 55.—Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen’s assent, he shall, according to his discretion, and subject to provisions of this Act, either assent thereto in the Queen’s name, or withhold the Queen’s assent or reserve the Bill for the signification of the Queen’s pleasure.”

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar when the British North America Act was passed?

The Honourable Dr. B. R. Ambedkar : That does not matter at all. The date of the Act does not matter.

Shri H. V. Kamath : Nearly a century ago.

The Honourable Dr. B. R. Ambedkar : This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision. They have not done so. Therefore in reply to Pandit Kunzru I can

very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

Shri Lokanath Misra (Orissa : General): On a point of order, Sir, are we going to have the status of Canada or Australia? Or are, we going to have a Republican Constitution?

The Honourable Dr. B. R. Ambedkar : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgment, necessary. The only question that arises is.....

Pandit Hirday Nath Kunzru : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar : I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned—article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all

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the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H. V. Kamath : Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article?

The Honourable Dr. B. R. Ambedkar : Of course there is because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H. V. Kamath : Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this?

The Honourable Dr. B. R. Ambedkar : I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding vesting of the discretionary powers in the Governor.

Shri H. V. Kamath : Why not hold it over?

The Honourable Dr. B. R. Ambedkar : We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

Shri H. V. Kamath : Why go backwards and forwards?

Mr. President : The question is:

“That in clause (1) of article 143, the words ‘except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 143, after the word ‘head’ a comma be placed and the words ‘who shall be responsible to the Governor and shall’ be inserted and the word ‘to’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That article 143 stand part of the Constitution.”

The motion was adopted.

Article 143 was added to the Constitution.

Article 144

(Amendments Nos. 2164 and 173 to amendment No. 2164 were not moved.)

Mr. President : Amendment No. 2165 stands in the name of Dr. Ambedkar. There are amendments to that also, but that amendment has to be moved before the amendments to the amendment can be moved.

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

“That for clause (1) of article 144, the following be substituted:—

‘144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council shall be collectively responsible to the Legislative Assembly of the State.’ ”

Shri T. T. Krishnamachari : May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (1a) of article 144 by the addition of the words “Of ministers” to the words “The Council” ?

The Honourable Dr. B. R. Ambedkar : That is all right. It will bring it into line with article 62. I move that amendment.

Shri Mahavir Tyagi : May I know what is the method for the appointment of that particular Minister for Bihar and other places? Whether the minister will be appointed by the Governor on the advice of the Chief Minister—that is clear certainly, because you say, “Provided” and this means that whatever we have said before will not apply in the case of these ministers.

The Honourable Dr. B. R. Ambedkar : What it says is among the ministers appointed under clause(1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

Mr. President : There are three amendments to this, amendments Nos. 134, 135 and 174.

Shri Jaspal Roy Kapoor (United Provinces: General): I do not propose to move any one of these two amendments. But, I hope that the Drafting Committee will be pleased to take the suggestions contained in these two amendments into consideration while giving final touches to the Draft Constitution.

(Amendment No. 174 was not moved.)

(Amendments Nos. 2166 to 2169 were not moved.)

Mr. President : Amendment No. 2170.

Shri H. V. Kamath : Sir, I have been forestalled by Dr. Ambedkar. I am not moving the amendment.

(Amendments Nos. 2171, 2172 and 2173 were not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

“That in clause (1) of article 144 for the word ‘appointed’ the word ‘chosen’ be substituted, and the following words be inserted after the words ‘his pleasure’:—

‘and till such time as the Council of Ministers maintains the confidence of the members of the Legislative Assembly.’ ”

Sir, I have moved this amendment because the stability of the Ministry mainly depends on the confidence of the members only and not in the pleasure of the Governor. In certain cases, it may happen that there may be some sort of a tug of war as between the pleasure of the Governor and the confidence of the members of the Legislative Assembly. It may happen that the members of the Legislative Assembly may not have confidence in the Ministers, but at the same time, through long association with the Governor, the ministers may enjoy the pleasure of the Governor quite all right. I want that the hand of the Governor should be made stronger so that if he finds that over and above the

[Mr. Mohd. Tahir]

question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Ministry should be dissolved. In many cases I have seen, for instance in the local bodies, although the members have no confidence in the Chairman of the District Board and pass a vote of no-confidence, the Chairman still continues in office because nowhere in the Constitution is it provided that if a no-confidence motion is passed, the Chairman has to resign his office. As time passes on, the Chairman tries to win over and convert many of the members who voted against him with the result that the members who have no confidence in the Chairman have got to turn themselves to the side of the Chairman. In this way, it is also possible in the case of the Ministers. Therefore, I submit that if the Governor finds that the Ministers do not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the Ministry dissolved.

Sir, with these few words, I move.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. President, Sir, before I move the amendment that stands in my name, I want to point out that the word 'long' has been omitted at the beginning between the words 'so' and 'as'. Perhaps, it is due to a printing mistake or something else: but the word 'long' should be there.

I beg to move:

"That in clause (1) of article 144, for the words 'during his pleasure', the words 'so long as they enjoy the confidence of the Legislative Assembly of the State' be substituted".

Sir, the meaning of my amendment is very obvious and I do not think I have to say many words in support of the proposition. There are no two opinions on the question whether the Council of Ministers should be responsible to the legislature or not. The amendment moved by the Honourable Dr. Ambedkar also envisages such a responsibility. It is contained in the new clause (1a) of the amendment moved by the Honourable Dr. Ambedkar. There are also other amendments which indicate that this responsibility of the Ministers to the legislature is an accepted fact. The question is when there is a variance between the pleasure of the Governor and the pleasure of the House, which is to prevail, whether it is the view of the Governor or the view of the legislature, that is the view of the majority of the legislature.

As I have already stated, it is an accepted fact that the Ministers must be responsible to the legislature and therefore my amendment proposes that it should be made clear and beyond doubt in this article with the addition of the words that I have proposed. Sir, it may be said that conventions might grow which will enforce such a procedure as is being proposed in my amendment. Conventions are resorted to at a time when we are not clear about any matter or any position and when we want to learn things by experience. But, this responsibility of the Ministers to the representatives of the people has now been accepted as a result of the experience that the world has had, beyond all doubt. Therefore, we need not in this matter wait for conventions to grow. Moreover, it is particularly necessary that the provision suggested by my amendment should be made in this article in view of the fact that the Constituent Assembly has decided that the Governor should be not an elected one, but an appointed one. Perhaps, the article as it stands in the Draft Constitution was drafted by the Drafting Committee when the same Committee envisaged the possibility of the Governor being elected in some form or other. But that position has now changed. The Governor is a nominee of the President. Therefore, I think it is particularly necessary that it should be made clear that the Council of Ministers should hold office only so long as they enjoy the confidence of the Legislative

Assembly. This is a very democratic and acceptable procedure and there need be no hesitation about this and we do not want to learn anything by experience. Therefore I think the House will see my meaning which is very obvious and accept the motion.

(The amendments Nos. 2176 to 2178 were not moved.)

Mr. President : There is an amendment which I left over by mistake and that is 109 of the printed list of amendments to amendments, of which notice was given by Mr. Gupte.

(The amendment was not moved.)

(Amendments Nos. 2179 to 2184 were not moved.)

Mr. President : No. 2185.

Mr. Mohd. Tahir : Sir, I beg to move:

“That for clause (3) of article 144, the following be substituted:—

‘(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State as the case may be.’ ”

The draft provides that—

“A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.”

This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of Imperialism and fortunately those days have gone. This was then provided because if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the backdoor as has been provided in the Constitution and in 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore, I do not find any reason why a man who till then was not elected by the people of the States and which means that, that man was not liked by the peoples of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister. I have greater respect to the voice of the people of the State, and in order to maintain that I will submit that this provision should not remain in the Constitution and the Ministers should be from among those members of the Assembly who have been elected by the people of the States as they are the true representatives of the States sent by the people of the States. I hope that this amendment will receive due consideration by the honourable Members and will be accepted by the House.

Mr. President : There is an amendment No. 176 to this.

(The amendment was not moved.)

Prof K. T. Shah : I do not want to move either 2186 or 2189 as the principle of these two has been rejected by the House.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That in clause (3) of article 144, for the words ‘Legislature of the State’ the words ‘Legislative Assembly of the State’ be substituted’.”

[Prof. Shibban Lal Saksena]

Sir, it is not a verbal amendment. I do not know whether it is by an oversight of Dr. Ambedkar that the word "Legislature" is used in the section, but I think it has been deliberately used. It means that any member who is not elected and is unable to get himself elected by adult suffrage can also become a Minister. The article says:—

"A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

That means that if a person is not a member of the Lower House but is made a Minister, and supposing that the man fails to get elected to the Lower House on the basis of adult suffrage in six months, then under this article we are providing that he can still continue to remain a Minister if he is nominated to the Upper House by the Governor. I think it is undemocratic that our Ministers should be persons who cannot even win an election by adult suffrage. I have therefore suggested that we should say 'Legislative Assembly' instead of 'Legislature' in this article. In the Assembly nobody is nominated and all Ministers shall therefore have to win an election by adult suffrage within six months of their appointment in order to continue to be ministers. Otherwise persons who are not representatives of the people but are favourites of the Premier may be nominated to the Upper House in the provincial Legislatures and they can continue to remain Ministers under this clause (3) of the article. I desire that only members who are able to get the confidence of the electorates in an election by adult suffrage should hold the post of a Minister. Anybody who is not able to get elected by direct adult suffrage and is not a member of the Lower House should no be a member of the Council of Ministers.

Mr. President : Is not the effect of your amendment to exclude a member of the Upper House even if he is an elected member?

Prof. Shibban Lal Saksena : That is the effect, Sir. I want that only members of the Lower House should be there which means that those who are elected by adult suffrage to the Lower House should alone be able to be Ministers. Unless a member can get the confidence of the electorate in an election to the Lower House by adult franchise, he should not be made a Minister. That is the essence of democracy, which means the Government of the people by the people. So I submit, Sir, that in this article, in place of the words "Legislature of the State", the words "Legislative Assembly of the State" should be substituted. I hope the Drafting Committee will accept this suggestion.

(Amendments Nos. 2188 to 2191 were not moved.)

The Honourable Dr. B. R. Ambedkar : Mr. President, I beg to move:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted."

Sir, this is nothing but a verbal amendment.

Mr. President : Amendment No. 2193.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

I have moved this amendment, Sir, because if the clause is allowed to stand as it is then it will amount to a clear negation of the Instrument of Instructions

that has been provided for in the Fourth Schedule. In that Schedule some instructions have been given to the Governor and he is to act according to those instructions. But if the present clause is allowed to remain as it is, then it will mean that inspite of the fact that the Fourth Schedule provides these Instrument sof Instructions, the Governor might act otherwise. Thus it amounts to a clear negation of those instructions. Therefore, I think it will be better if the words I have indicated are deleted from this clause.

(Amendments Nos. 2194 to 2197 were not moved.)

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

“That clause (6) of article 144 be omitted.”

Shri Brajeshwar Prasad : Why?

The Honourable Dr. B. R. Ambedkar : Because we do not want to give more discretionary powers then has been defined in certain articles. We are trying to meet you.

Mr. President : There is an amendment to this, by Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move, Sir, amendment No. 177, Third Week, List III. I move:

“That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, the following new clause be inserted:—

‘(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government, or in any way aided, protected or subsidised by Government; and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.’ ”

Sir, the object of my amendment is to ensure a high standard not merely of efficiency but also of purity in the administration of our country. I am sure we are all agreed that the Ministers of a State or of India as a whole, should promote such efficiency and purity in our administration. There is no disputing the view that every Minister in our country should be above suspicion. Unfortunately, Sir, this expectation has not always been fulfilled. Many of our leaders, including you Sir, have recently pointed out that there has been a certain deterioration in the standards of public life in this land. It is a very disquieting and very disconcerting trend which we have to counteract by every means at our disposal, and this, may I humbly submit, is one of those means by which we can try to promote and uphold a very high standard of purity in our public life and in our administration.

May I Sir, with your leave, reinforce my arguments by mentioning one or two instances which have occurred of late, in some parts of our country? In one of the States which has since merged in the adjoining province, it was openly alleged by an important journal of Bombay that a person who had been convicted of black-marketing, had been included in the Cabinet of that State. This statement went uncontradicted and unchallenged. Recently there has been a very sad instance, a very unfortunate instance of a Minister of one of the integrated States being arrested in the Constitution House on an alleged charge of corruption.

Mr. President : I think that is a matter which is still *sub-judice*.

Shri H. V. Kamath : That is why I said on an alleged charge of corruption.

[Shri H. V. Kamath]

I therefore seek by means of my amendment to ensure that as far as lies in human power, we shall be able to maintain purity in our administration and in public life.

May I, Sir, by your leave out to the House what Dr. Ambedkar himself remarked about this matter on a previous occasion? Dr. Ambedkar was all in favour of a similar amendment moved in connection with the Council of Ministers at the Centre. But he wanted it to be more effective, and I have, by expanding my former amendment and submitting a new one, tried to accommodate, Dr. Ambedkar as far as I can.

Dr. Ambedkar on that occasion observed that:

“If at all it is necessary (i.e. a provision of this type is necessary) it should be with regard to the Prime Minister and other Ministers of the State and not the President, because it is they who are in complete control of the administration.”

Expanding his argument further—clarifying his position further—he observed:

“I think all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency, but also of purity.” Continuing, he said :

“If you want to make this provision effective, there must be three provision to it.”

This is what he went on to say:

“One is a declaration at the outset (i.e. when he enters upon his office):

Secondly, a declaration at the time of quitting his office:

Thirdly, responsibility for explaining how the assets have come to be so abnormal: and

Fourthly, declaring that to be an offence followed up by a penalty or a fine.”

The second of the provisions that he mentioned at that time I have included in the amendment which I have brought forward today. I have included a new clause to the effect that every Minister shall make a similar declaration when he quits his office: and I find that Prof. Shah has gone a step further in an amendment he has suggested and in which he has tried to include the third provision which Dr. Ambedkar suggested to make this clause completely effective.

I have left the matter of dealing with such a declaration by the Minister to the Legislature. It is likely that he may have certain shares, or titles, or interests, but the Legislature may hold that the matter is innocuous; and he may continue to enjoy those rights and privileges. I have not stated here what exactly should be the course to be pursued in such a case, as Prof. Shah has sought to do in his amendment. I have left it to the Legislature to deal with it as it likes, and I hope, Sir, that by accepting this amendment, we would be guaranteeing, as far as lies in human power, the purity of our administrations and of Government in so far as those in control of both these are concerned.

Prof. K. T. Shah : Sir, I move:

“That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (7) of article 144—

(a) in the first para,—

(i) in line 1, after the word ‘Every’ the words ‘Governor or’ be inserted,

(ii) in line 3, for the word ‘disclosure’ the word ‘declaration’ be substituted;

(iii) in line 6, after the words ‘controlled by’ the words ‘Central or State’ be inserted;

- (iv) for the words 'and the Legislative may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate', the following be substituted—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and, on vacation of office of such Governor or Minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned': and

(b) in the second para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and
 (ii) at the end the following be added:—

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as the Legislature may deem necessary to demand'."

My amended amendment which I shall, with your permission, read to the House is as follows:

"Every Governor or Minister, including the Chief Minister should, before he enters upon his office, make a full declaration to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade, or industry, either private or directly owned or controlled by the Central or State Government or in any way aided, protected, or subsidised by the Central or State Government, and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India, which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and on vacation of office of such Governor or Minister, all money so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned:

Every Governor or Minister, including the Chief Minister shall make a similar declaration at the time of quitting his office, and in the event of there being any material change in his holding, right, title, interest, share or property, he shall give such explanation as the Legislature may deem necessary to demand."

Shri B. Das (Orissa: General): Would gambling in share bazars come into it?

Prof. K. T. Shah : Well, gambling is a business for many people and also a trade!

As Mr. Kamath has tried to explain the genesis of this motion, may I be permitted to amplify a little bit all the same by pointing out that on a previous occasion, in connection with the President and the Prime Minister of the Union of India, I had tried to bring forward an amendment of this nature, and that amendment was rejected. At the time of rejecting that motion, however, the Chairman of the Drafting Committee was pleased to make certain observations which suggested the unworkability or futility of the amendment as it then stood, and indicated certain conditions or improvements whereby it could be made more workable. Mr. Kamath seems to have taken him at his word. I find myself now in that happy position of having to bring out these points also in a more substantial manner, perfectly in accordance with the apostolic observations of Dr. Ambedkar. The point simply is this. We are all interested in maintaining and promoting the efficiency as well as the purity of our administration. The Minister should be above any suspicion, and as such it is suggested here that if they have any chance of being tempted, if they have any concern, any interest in any business, trade or profession which is likely to be, or which is being owned or controlled, aided or subsidised in any way by the Central or Provincial, Government, then all that portion must be fully declared to the State Legislature. I have changed the word "disclosure"

[Prof. K. T. Shah]

to “declaration” because the word ‘disclosure’ might suggest some sort of previous concealment which is now to be unconcealed, and a ‘declaration’ is a simple statement of the holdings that the party concerned may have which are presented to the House.

Sir, it is a wholesome convention that even the Director of a Joint Stock company when he accepts office as a Director has to make a declaration, a disclosure, of his interest in any other company or concern wherein his company might be interested. We have a convention also in such a body like the Bombay Municipal Corporation wherein even a member has to make a declaration if any matter in which he is interested comes up for disposal before the body. If such conventions, if such precedents, are to be found in the ordinary law or practice of public bodies I put it to the House, Sir, that it is of still higher importance that provincial Ministers should be similarly required to make a declaration of their holdings, in any trade or profession, in any company or enterprise, before they become Ministers.

Sir, a story is known—very well known—of a former Prime Minister of the United Kingdom, Mr. Baldwin, who before he accepted his post as Prime Minister dissociated himself completely with Baldwins Limited, which was a great iron and steel, firm, and when he retired he actually had to declare that he was not worth perhaps as many hundreds as he was worth thousands when he took office. This is a part of sacrifice inherent in the public service of a country like England and the ideal or example set by people of the kind will, I hope, be followed in this country as well. We are trying by this amendment to insert a provision in the Constitution to see to it that no opportunity is left for anybody holding such high office in the State as that of Governor, Minister or Prime Minister, to use or abuse his authority, power or position for any purpose of personal aggrandizement. I have, therefore, suggested that not only should there be such a declaration, but that having so declared, the interest, share or title may be either disposed of in the public market in which case there would be nothing more to be said about it, or if that is not done, the property, right, or share may be held in trust by say, the Reserve Bank of India which may receive all the interest, dividend, profit or rent that may be accruing from such property and credit it to be the party concerned, so that when the party concerned leaves office the same may be returned to him This is a requirement which would in no way hurt the individual economically, at the same time safeguarding the purity and excellence of their conduct while in office.

I am aware, Sir, that if people want to abuse and take undue advantage of their position as Minister or Governor, they will always be able to do so. If there is one way of observing a law, there may be hundred ways of evading the law. But at the same time, so far as in us may lie, and so far as we can openly guard against such mischances, I think an amendment of this kind is necessary, particularly in view of the very common and universal complaint of growing corruption and demoralisation that seems to have invaded all branches of public service and it is with that purpose in mind that I am placing this amendment and I trust this House will not reject it.

(Amendments Nos. 2200, 2201 and 2202 were not moved.)

Mr. President : There is one amendment of which I have just received notice from Mr. Jaipal Singh. It is late, but in view of the fact that it raises an important question which has been left out by sheer oversight, I allow him to move it.

Shri Jaipal Singh (Bihar: General): Sir, I move:

“That in article 144, clause (1), after the words ‘States of’ word ‘Bombay’ be inserted.”

Sir, I am very grateful to you for permitting this very late amendment of mine. The province of Assam has already been amply provided for by the directives given in the Schedule, but Bombay has been left out. At the time when the Tribal' Sub-Committee met, the question of the merger of States had not been finalised. By the merger of a number of States Bombay province gets an additional population of 44 lakhs and out of this a good number will be tribals and backward classes. I suggest that Bombay be included in the article so that in that province also there may be a Minister who may, in addition to his other duties, pay particular attention to the tribals and other backward classes.

My honourable Friend Mr. Sidhva wanted to know about Assam. I would refer him to page 185 of the Draft Constitution and therein he will find that Assam has been amply provided for, I need not say much about my amendment. The omission is due to oversight and I do hope that Dr. Ambedkar will accept my amendment.

Dr. P. S. Deshmukh : Mr. President, Sir, there are a large number of amendments that have been moved. Some of them are more or less of a consequential nature to which a mere reply that the proposal which they want to embody in the Constitution specifically would be covered by other provisions in the Constitution or by the way in which the Ministries have functioned so far would probably be sufficient. I would here just like to speak on one or two points.

I would like, first of all, to say that it would be better if this proviso is transposed either as an independent article or is embodied here in article 104 as an independent sub-clause. I refer to the proviso to para (1) of article 144 in regard to the States of Bihar, Central Provinces and Berar and Orissa and to the proposed addition suggested by Mr. Jaipal Singh in his amendment. I think this is a substantive provision which should stand independently and not as a proviso. I am glad to find that there is actually an amendment suggested by Mr. Gupte for the addition of an independent clause. I am in favour of it.

Then I may say a word about the proposal to include Bombay. I have my fullest sympathies with Mr. Jaipal Singh. For the reasons stated by him briefly, I think it would be proper to include Bombay in the list of States which have been mentioned in this article.

Then there is the amendment of Mr. Kamath which seeks to be amended by the one moved by Professor K. T. Shah. There can be no two opinions about our being very punctilious and about our making every effort to see that our public men are as scrupulous as possible. It is with this end in view that the amendment seeks to provide for a declaration of business interests of the Ministers. But the question is whether we should provide for this in the Constitution or whether there are not other means to achieve the desired end. My Friend Mr. Kamath has suggested that there should be declarations of financial and business interests of the Ministers. Professor Shah who usually goes into details in such matters wants to provide further that when certain interests are found to exist they should be dealt with in a particular way. In spite of all these exhaustive amendments, I do not think the chances of misbehaviour by public men and public officers have been completely eliminated. Besides business interests there may be a thousand other things which it is equally desirable to discourage or put a stop to extraordinary indulgence in, for instance receiving addresses from the public or in celebrating one's own birthdays or the marriages of one's sons or daughters of other relatives. All these things and a whole host of others will have to be included if we want to see that our Ministers do not derive any benefit other than their legitimate remuneration.

[Dr. P. S. Deshmukh]

To make out a complete list of these things and to provide for enquiries and adjudications is I think too much of a task to provide for in the Constitution. I have not a shadow of doubt in my mind that we must do everything possible to raise the moral status of our nation. I am not prepared to say that at the present moment it is very high. But the question is whether this is the right place or method to do it. I am sure the consciousness of our independence, of our nationhood, and of the responsibility that has devolved on our shoulders is increasing in India, and I for one hope that even in the absence of a provision of this kind the moral standards in our country will rise higher. At the present moment however the situation is disgraceful. There is no shadow of a doubt about it. Very few people, cultured people, highly educated people place any value on speaking the truth and there is a craze for deriving vicarious advantages and benefits in different ways. To enumerate all these occasions when men might be unscrupulous enough to transgress the moral code in the Constitution would be an impossible task for the draftsmen. I would therefore prefer to leave this matter entirely outside the Constitution and if necessary include them in the Instructions that may be issued by the President to the Governors to see that from day to day the Ministers and the Premiers who get so much power and authority under the scheme of provincial autonomy do not misbehave and to watch and communicate and such misbehaviour to the President. If those Instructions are followed, much good that we desire will be accomplished. That would be much better than contaminating the whole Constitution by frank admission that our public men are not capable of looking after their own morality and do not care for any moral principles.

I next want to refer to my sub-province of Berar. We have mentioned Central Provinces and Berar as a State which will have an additional Minister to look after the interests of Tribals and the Scheduled Classes. It is stated that that Minister could be given other work also. This reminds me of section 52 of the Government of India Act. There was a special responsibility placed on the Governor, so far as Berar was concerned, and this was "to see that a reasonable share of the revenues of the Province was expended in or for the benefit of Berar." I do not wish to take the time of the House by referring to the Constitutional position of Berar. But, so far as exploitation from the financial point of view is concerned, I may say that it has been a long-standing complaint of Berar that the larger revenues that it contributed are swallowed up by the other and poorer areas of the Province and that Berar does not get the benefit that is due to it. Of course it is too late in the day to ask for any direction or for the placing of any special responsibility for Berar on the Governor, I would, however, like the administrators to bear in mind that the needs of Berar still require attention and consideration.

One more point and that is with respect to the 25 lakhs of rupees paid as lease money to the Nizam. I think we can now conclude that the Nizam's nominal sovereignty has, at long last, been completely abolished and terminated and that hereafter there is no connection between the Nizam of Hyderabad with Berar. Therefore the question of paying this sum of Rs. 25 lakhs to the Nizam will not I expect arise hereafter.

Mr. President : We are not concerned with the contribution which is paid by Berar or the separate finances of Berar. We are here concerned only with the question of having Ministers to look after the welfare of the backward tribes in certain provinces.

Dr. P. S. Deshmukh : I only want to say one word more, Sir. I referred to this subject since the old provision of special responsibility is going finally to be abolished. Since the payment of Rs. 25 lakhs is not going to be made to the Nizam, this money should be utilised for the benefit of the territory of

Berar for educational and medical purposes. I have already made a representation to the Home Minister in this matter and I hope that since we are not going to repeat the provision existing in 1935 Act, this request of mine to utilise this sum of Rs. 25 lakhs for the people of Berar will be accepted.

Pandit Thakur Das Bhargava : Mr. President, Sir, the article under discussion, article 144, is a very important article and so I venture to take some time of the House in regard to some of the provisions in this article.

In the first place, clause (1) of article 144 is too wide. It says—

“The Governor’s ministers shall be appointed by him and shall hold office during his pleasure.”

We just discussed article 143 in which the question was whether the Governor must be invested with any discretion at all. Here his discretion is too wide. Now, the Governor, if he so chooses, can appoint his Ministers and the Premier may be called upon to form a Ministry from any party which is not the biggest party in the House. There is no bar against this. I would have liked a provision that the Governor shall only call for the leader of the biggest party in the Assembly to form the Ministry. Moreover, Sir, the words “during his pleasure” have been interpreted in different ways. A convention is to grow that the Governor is only entitled to dismiss a Ministry if the Ministry fails to retain the confidence of the Legislative Assembly. In regard to this, two amendments have been moved and I am sorry I cannot support any of them because the words used are “retains the confidence of the Legislative Assembly”. My humble submission is that unless the Ministry fails to command the confidence of the majority of members of the Legislative Assembly, the Ministry should not be dismissed. Now, it is true that the sole judge of this is the Governor himself and therefore he will have very great power in this regard. If the provision had been made that as long as the Ministry retains the confidence of the majority of the members of the Lower House, the matter would have been put beyond doubt and the Governor would not be within his rights if he dismisses a Ministry which is still in the enjoyment of the confidence of the House.

An amendment was moved by Mr. Saksena in regard to clause (3). He wanted that only members of the Lower House should be chosen as Ministers. In regard to this, my submission is that since in the Upper House we are having many members who will be elected by a large body of people, like Municipalities, District Boards, village panchayats, etc, there is no reason why we should restrict Ministership to the members of the Lower House only. My submission is that all those members who have been elected, whether they belong to the Upper House or the Lower House, should be eligible for Ministership.

In regard to the proviso, I would submit a word. I am very much against this backdoor reservation of ministership. So far as the question of the Scheduled Castes, the backward classes and the tribal people is concerned, we have got very specific provisions in this Constitution which aim at the amelioration of the condition of these classes and it will be the statutory duty of those in power to see that the interests of these classes are not ignored and there is no need for reservation of a separate minister. The backward classes has been divided under this Constitution into two classes, the Scheduled Castes for whom reservation have been made and backward classes for whom no reservation has been made. If we turn to article 301, we will find that backward classes have been protected under that article, where it has been made the duty of the President to see that the conditions of the backward classes including the Scheduled Castes are bettered and to have an investigation made into the conditions of these classes by a Commission and then after the Commission has reported, action has again to be taken so that they may be brought

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up to the normal level. In regard to the tribal people, there is a specific provision in article 300 which says—

“The President may at any time and shall, on the expiration of ten years after the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes in the States, etc.”

If you just see article 299, you like be pleased to see that special officers are to be appointed both by the President himself and by each State to study how these safeguards work, how these provisions work. Therefore, it is the bounden duty of the President and of the Union Legislature to whom the report of the Commission is to be presented to see that the condition of the backward classes is improved. I do not see why there should be overlapping of functions by different functionaries and why there should be reservation for them in the Ministries. So far as the report of the Minorities Advisory Committee is concerned, they have not recommended that for the backward classes and the Depressed Classes there should be a separate Minister. In regard to welfare there is no reason why Scheduled Castes should be differentiated or mentioned separately when there is equal responsibility on Government for both. My submission is that this distinction should be eliminated. As a matter of fact, in regard to article 301 there is no distinction. My point is that if the Scheduled Classes or the backward classes require any special protection, they require special protection in the whole of India, not only in C. P., Orissa and Bihar. I have to submit, Sir, that the Constitution has already protected them. Untouchability has been made an offence. In the Fundamental Rights there are so many provisions by virtue of which they have got equal access to all public places. In view of that, I am opposed to this kind of reservation. I am very much opposed to this provision because it stands for all times and may prove the thin end of the wedge for demanding such reservation in all the provinces. Moreover this provision is not only for the first ten years but for all times. This will be a blot on our Constitution and I therefore submit that this House should throw out this proviso.

The next point was made by Mr. Kamath and subsequently supported by Professor Shah in regard to the property of the Ministers. They said that the Ministers should be asked to disclose what they have at the time they are appointed as Ministers and also when they hand over the administration, that they should be made to disclose what they have amassed, what they have gathered during the time they were Ministers. This is an inquisition. I do not think that in regard to our Ministers we should resort to this kind of inquisition. We have already rejected such proposed provision for other dignitaries.

Shri A. V. Thakkar (Saurashtra): Mr. President, Sir, though no notice has been given of an amendment by Mr. Jaipal Singh, he has spoken and perhaps he has been allowed by you Sir, to put it as an amendment. I do not know what is the actual state of things. However, since three members of this House have spoken upon it, I wish to express my opinion on the subject. Separate Ministers are recommended in the three provinces of Bihar, Orissa and C. P. to take care and to protect the interests of the tribals, scheduled castes and all other backward classes. It was on the recommendation of the Tribal Sub-Committee of the Minorities Committee that I as the Chairman along with the other members suggested that such a provision may be made in the Draft Constitution to take care of the backward people residing in these three provinces only. It was for this reason that these three provinces were considered at the time when we made recommendations, that they were backward in the matter of giving special treatment to these people or protecting them. Things have moved much since then. All these three provinces of

Bihar, C.P. and Orissa have now very well organised departments for giving protection and do all kinds of welfare work for them. We did not include at that time the forward provinces like Bombay, Madras etc., because they were already moving in that matter for the last twenty or even thirty years and, therefore, they were not included. Somebody may say it is a stigma to these three provinces that they are being specially mentioned. However, I do not think that any addition should be made at this moment without any further consideration or without consulting the Bombay Ministry, which has been proposed in this amendment of Mr. Jaipal Singh. However, I leave it, Sir, at that.

Shri H. V. Pataskar : Sir, so far as the consideration of this article 144 is concerned, I only object to the manner in which it has been worded and I would make the following suggestion, if that will be acceptable to those who are responsible for this draft: "The Governor's ministers shall be appointed by him and shall hold office during his pleasure." This is preceded by article 143 and in that article a provision has been made that "there shall be a Council of Ministers". Naturally, therefore, we must mention as to who is to appoint this Council of Ministers. I think the better form would have been merely to mention that "the Council of Ministers shall be appointed by the Governor." At the same time to make a further provision that "they shall hold office during his pleasure," is undesirable. My opinion is it is not necessary and is derogatory to the position which we are going to give to the Prime Minister of the State and the Council of Ministers. Probably this provision is a remnant of the old idea that the Ministers hold office during the king's pleasure. Things have changed since then and it is not necessary that we should incorporate the same language, namely, "they shall hold office during his pleasure". I admit that if the Governor is the appointing authority, naturally he should have the power in certain circumstances for which provision may be made in this section that the Council of Ministers may be dissolved or some new ministers shall be appointed, but, Sir, when we are making a provision with regard to the appointment of a Council of Ministers in the year of grace, 1949. We need not say that "they shall hold office during the pleasure of the Governor." That "Governor" we have decided will be nominated by the President and I do not think it will be proper to say that the minister shall hold office during his pleasure. It may be asked, "What would happen if the ministers have to be changed"? The ministers should be changed only if they cease to command the confidence of majority of the members in the House and for that provision could be made in the Instrument of Instructions, but so far as article 144 reads now, I do not think it is proper that we should lay down that in the case of a Governor of the type which we have already decided upon the Council of Ministers shall be appointed by him and they shall hold office during his pleasure. This phraseology may have been taken out from some other constitutional books and as I said it is probably due to the fact that formerly as the powers of the ministers developed, they may have held office during the pleasure of the Crown, but now there is going to be no Crown and the wording of the article is not happy and proper and, therefore, I would appeal that this part of article 144 be taken out of the Constitution.

Shri Krishna Chandra Sharma : Sir, I do not think there is any necessity for the provision regarding Scheduled class and tribal people in this article. In article 37 we have already provided for the promotion of the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes, and again in article 301 the President is to appoint a Commission to look to the amelioration of the backward classes and the tribal people. In view of these two provisions in the Draft Constitution, a special mention of a portfolio with regard to the tribal areas and Scheduled classes is unnecessary. The whole matter should be left to the State Ministry; they will consider what is necessary and what is wanted with regard to their

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amelioration and to incorporate details like this is going too far and I do not think this special provision will do anything not envisaged in the two articles. It does no good to a depressed class man to be told that because he is a depressed class man, therefore, such and such facilities are provided for him; it does create an inferiority complex in the man. It is not always the giving of facilities here and there that helps so much to raise a man up. It is more a matter of psychological make-up. If a man thinks "I am as good as A, B, C, or D", then he raises himself up; their moment you say "You are an inferior being and therefore, such and such a facility is granted to you and we raise you as against the interests of any other member", he goes down. He does not raise himself. Therefore, it is in my opinion, in the interests of the Scheduled Classes, in the interests of Tribal Classes not to be told again and again that because they are inferior people, because they are weaker people, therefore, such and such facilities are provided for them. It does not do them any good to make a fetish of the thing. It looks such a nasty thing to be told that A has to be given a scholarship because he belongs to the Scheduled Class, that B, a better boy, a more deserving boy from economic considerations, from his talents and personal capacity, is to be denied those facilities because he belongs to the Brahmin Class or the Kshatriya Class or some other class which is different from the Scheduled Classes. How can a State say that a boy simply because he belongs to a certain community or certain class is to be provided with better facilities, though they have better conditions in life than a boy who belongs to another class, simply because he belongs to a different community? Such a thing would be impossible from the point of view of justice and fair-play, and Sir, it would not be in the interests of the community as a whole. Therefore, looking into the two articles. I just cited and the general scheme in the Draft Constitution, I think that this special provision regarding portfolio for backward classes should be dropped.

Shri R. K. Sidhwa (C.P. and Berar: General): Mr. President, Sir, I wish to draw the attention of the House to one point as regards clause (3) or article 144. The clause says: "A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State, shall at the expiration of that period cease to be a Minister". I feel that this is merely a repetition or imitation of a clause which exists in the present Government of India Act of 1935. I do not think it is necessary now, because, under the new Constitution, the number of members in the provincial legislatures will be ranging from 300 to 600 and I do not think we will be wanting in people to fill even special posts. I am opposed to an outsider who is not a member of the Legislature, however highly qualified he may be, being called upon to hold the very responsible office of a Minister even for six months. From the experience we have gained, we find that in some cases where Ministers have been so appointed, eventually it has led to corruption. After the period of six months, somebody has to vacate a seat and it has so happened in one or two provinces that to make room for this Minister, that gentleman had to be provided with some job for which he was not qualified. Therefore, when we are going to have large Houses in which there will be members with vast experience, and experts in many respects, I feel that it is not proper, and it is not a very good principle to imitate what is existing in the Government of India Act, 1935, and say that if the Chief Minister feels that so and so who is not a member is required for expert advice, he should be taken as a Minister. Sometimes, the Chief Minister would like to favour somebody. In the name of the special qualifications that he may possess, he will be asked to become a Minister, and at the end of six months, he will have to be made a member of the legislature, because he cannot hold that office after six months. As I stated, Sir, some other member who will be asked to vacate will have to be offered something and this will lead to corrupt public life.

As regards the amendment of Mr. Jaipal Singh in which he wants to add Bombay also, I have to say that it is wrong in principle. A committee was appointed by the Advisory Committee of this House, and they went into the whole question. They went to all the provinces. They recommended that only these provinces should have a Minister for tribal welfare and any other work. It is most improper at this juncture to come and say that Bombay also should be included. As far as Scheduled Castes are concerned, there are large numbers in Madras. When a Committee had gone into the whole question, it will be wrong in principle that a member should come up and throw before the House a surprise amendment that another province should also be included. From that point of view, I oppose Mr. Jaipal Singh's amendment.

Shri Rohini Kumar Chaudhuri : Mr. President Sir, in most of my speeches in this House, I had made several appeals to the Honourable Dr. Ambedkar to oblige me by clarifying certain questions which I had raised. My former attempts in this direction have failed; but I have faith in the example of King Bruce and I hope that this attempt of mine to get clarification from that quarter will receive proper attention.

Shri T. T. Krishnamachari : May we have the pleasure of hearing the honourable Member properly by requesting him to come to the rostrum and address the House?

Shri Rohini Kumar Chaudhuri : (after coming to the Rostrum) I am very much gratified to learn that at least there is one Member in this House who is anxious to hear what I have to say. I cannot be sufficiently grateful to him. All that I can do in return is to give my fullest attention to what that honourable Member will speak in this House.

I wanted some clarification. I want to know why particularly these provinces have been selected for reservation of Tribal members in the Cabinet. If there are important minorities in these provinces, necessarily, under the provisions of the Constitution, they will find a place in the Cabinet. If there are no important minorities in these provinces, why are these particular provinces selected for the purpose of giving representation to the backward classes and Scheduled Castes in the Cabinet?

Mr. President : There is no question of representation of Scheduled Castes and backward tribes in the Ministry. A Minister has to be appointed to look after them; not that he should belong to that Tribe or backward community.

Shri Rohini Kumar Chaudhuri : Sorry, I have not followed the point.

Mr. President : There is no question in this proviso of a man from the Tribal people or from the backward classes being appointed a Minister, or reservation of a seat in the Ministry for any of these classes. The only point is that a Minister should be appointed who will look after their interests.

Shri Rohini Kumar Chaudhuri : I am much obliged to you, Sir, If this clause then means that any member, whether he belongs to the Scheduled Castes to Tribal classes or not, may be selected and appointed in charge of tribal welfare, that is to say, this clause only wants that a portfolio should be created for the purpose of looking after tribal affairs, I think this is not necessary. The general understanding of the tribal people is that by virtue of this proviso, the Tribal people or the Scheduled Castes will secure representation in the Cabinet. If it means that this proviso does not necessarily mean that a member of the Tribal people or the Scheduled Castes will be placed in charge of looking after the welfare of the Tribal people, then, I think this clause is a disappointment to them. If that is the interpretation that is to be put on this proviso, that any member Caste Hindu or even a Muslim or even a Christian

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can be placed in charge of the portfolio of looking tribal welfare, and that this does not necessarily mean that a tribal person should be taken in, I would only say that that object will not go half its way.

My point is this. If there is an important minority, automatically that important minority of Scheduled Castes will find representative in the Cabinet. If you do not think that there is any important minority or if you think that the Tribal people form an insignificant minority, then I do not understand why a particular portfolio should be created for the purpose. For instance, do you mean to say that the Minister in charge of Education, who does not belong to the tribal community, does not properly look after the education of the Tribal people, because he has not been placed in charge of tribal welfare? He may not be placed particularly in charge of tribal welfare; nevertheless, he will look after the education of the Tribal people. Any Education Minister would do that. Any Minister in charge of Public Works will look after the proper communications in the tribal areas. What is the use of having a particular portfolio for tribal welfare? You have to look after the law and order of the Tribal people; you have to look after the education of the Tribal people; you have to look after the local-self-government of the Tribal people. What can one Minister do? All the Ministers in the Cabinet will be expected to look after the interests of the Tribal people in every respect. If you have a non-tribal or a Scheduled Caste member in charge of tribal welfare, what does it mean? Is it the intention that he will poke his nose in every thing and say, "you have not made sufficient arrangements for education in my area or you have not given sufficient roads for me or you have not properly looked after the health of the Tribal people?" Is that the object of creating a Minister? For that purpose this not necessary to create a Minister specially because generally every Minister to whatever community he may belong, has to look after the interests of the Tribals so far as his Department is concerned.

Shri R. K. Sidhva : Just like the Labour Minister looks after the interests of labour, similarly a Tribal Minister can do.

Shri Rohini Kumar Chaudhuri : The interests of labour lie in a particular way but the interests of Tribal people are in every matter. Do you mean to say that this Tribal Minister will be there to look after the interest of tribal affairs only? It is considered the responsibility of all. Therefore I want clarification; as it is we have two Tribal Ministers in the Assam Cabinet now and there have been Tribal Minister since 1937 and there never was a Ministry without a Tribal Minister. This can very easily be left to the Chief Minister who will select his Ministers and he will certainly look after the interests of the Tribal people by selecting a Tribal Minister. Otherwise if you have a Minister only for tribal welfare, there will be frequent interruption in the work and there will be confusion and there will be rivalry and there will be unnecessary interference in the work of the other Ministries.

Shri Jaspal Roy Kapoor : Sir, may I have permission to move amendment No. 134 which stands in my name and with respect to which I said that I did not want to move I find it is a necessary amendment and I have consulted a large number of Members who feel that it should be moved.

Mr. President : The amendment is to this effect:—

"That in amendment No. 2165 of the List of Amendments, the proviso to the proposed clause (1) of article 144 be deleted, and the substance of it be included in the Instrument of Instructions set out in the Fourth Schedule."

Dr. P. S. Deshmukh : It should not be permitted to be moved at this late stage.

Mr. President : It seems there is some objection to this amendment being moved at this late stage and so in that view I would not like to permit it.

Shri Jaspal Roy Kapoor : If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the House to reject it.

Mr. President : Would that not open up discussion again?

Dr. P. S. Deshmukh : Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

Mr. President : Yes, that is a way out.

The Honourable Dr. B. R. Ambedkar : I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

Pandit Thakur Das Bhargava : May I propose that this article be held over?

The Honourable Dr. B. R. Ambedkar : Why, after having debated so long?

Mr. President : The question is whether it should stand here or it should be transferred to the Instrument of Instructions, That seems to be the effect of the amendment which is sought to be proposed. If there is any considerable body of Members who are opposed to the amendment being moved at this stage, I would not allow it but if it is only the technical objection, then I should be inclined to give the House a change to consider this amendment also. I would like to know if there are many Members who are opposed to it.

Dr. P. S. Deshmukh : So far as the transposition is concerned there will be ample opportunity for that. At this stage it does not arise because this is an independent amendment proposed by Mr. Gupta to be embodied as a separate clause.

Mr. President : If this amendment of Dr. Ambedkar is carried and the proviso is retained, what will be the position of Mr. Gupta's new article?

Dr. P. S. Deshmukh : If Dr. Ambedkar is prepared to say that the proviso may not be put now, the purpose of my friend's amendment would be served. Otherwise it will be a negation.....

Mr. President : It is not a negation. He wants the thing to be transferred from the body of the Act to the Schedule and the Instrument of Instructions. So it is not a negation; it is only a question of transposing the thing from one place to the other.

Shri Jaspal Roy Kapoor : May I submit, Sir, as a matter of general policy I think while dealing with the Constitution we should not take our stand too much on technicalities?

Mr. President : I appreciate that.

Shri T. T. Krishnamachari : Any transposition of this proviso will deprive it of the legal status which it would otherwise possess because the Governor is not bound to carry out the instructions that are given under the Instrument of Instructions and nobody can call him into question in any Court or before any other authority for not following it. I believe the basis for this proviso is a certain measure of agreement in the sub-Committee concerned and if we are going to make a change at this stage it might upset the scheme of the Constitution as envisaged to this sub-Committee.

Mr. President : I think there is some objection to it and so I cannot allow it to be moved at this stage. Dr, Ambedkar may reply to the general debate.

Shri Jaspal Roy Kapoor : May I now move that the final decision on this clause be held over till tomorrow?

Mr. President : After all this discussion I do not think that will improve matters. Even if it is held over till tomorrow, your amendment will not be moved tomorrow.

Shri Jaspal Roy Kapoor : In view of the long discussion we have had on the article it appears that a little further constitution is necessary. This long discussion suggests that there are different points of view and it is possible.....

Mr. President : That position will not be changed by tomorrow morning. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, in the course of this debate on the various amendments moved I have noticed that there are only four points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated in that fashion or in those terms in any of the Constitution which lay down a parliamentary system of government. 'During pleasure' is always understood to mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence or the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words "Lower House" I am afraid, cannot be accepted because under the provisions of the Constitution, it is open to the Prime Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from the Upper House. Consequently the provision that the Minister shall be appointed for six months, although he is not elected must be so extensive as to cover both cases, and for that reason I am unable to accept his amendment .

The third amendment which has been considerably debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. In that connection, what I would like to say is this, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

Shri H. V. Kamath : My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

Mr. President : You have already said all that.

The Honourable Dr. B. R. Ambedkar : The fourth point is the one which has been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced

in the Draft Constitution is to be found in the recommendation of the sub-committee on tribal people appointed by Minorities Committee of the Constituent Assembly. In the report made by the Committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular Committee. It is said, there, that in the Provinces of Bihar, Central Provinces & Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the Report of the Tribal Committee which was headed "Statutory Recommendation". It was the intention of this Committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

With regard to the suggestion of my Friend Mr. Jaipal Singh, that Bombay should be included on account of the fact that as a result of the mergers that have taken place into the Bombay Presidency, the number of Tribal people has increased I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necessary to consult the Ministry of Bombay, and unfortunately my Friend The Honourable Mr. Kher who was present in the Constituent Assembly during the last few days is not here now, and I am therefore not able to accept this amendment.

Shri H. V. Kamath : With reference to my amendment, may I know if Dr. Ambedkar had resiled from the view that he expressed previously—if he has recanted?

Mr. President : I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail, Nos. 2174 and 2175 which relate to this article 144, clause (1).

If Dr. Ambedkar's amendment No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

Mr. President : The question is:

"That for clause (1) of article 144, the following be substituted:—

'144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor;

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council of Ministers, shall be collectively responsible to the Legislative Assembly of the State.' "

The amendment was adopted.

Mr. President : As I have said, the two amendments No. 2174 and No. 2175 do not arise.

Then there is No. 2185 by Mr. Tahir.

The question is:

"That for clause (3) of article 144, the following be substituted:—

'(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be.' "

The amendment was negatived.

Mr. President : Then there is Prof. Saksena's amendment No. 2187.

The question is:

"That in clause (3) of article 144, for the words 'Legislature of the State' the words 'Legislative Assembly of the State' be substituted."

The amendment was negatived.

Mr. President : There is then Dr. Ambedkar's amendment No. 2192.

The question is:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted.

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

The amendment was negatived.

Mr. President : Then we come to the amendment moved by Mr. Kamath to which another amendment was moved by Prof. Shah. I shall put Prof. Shah's amendment first.

Shri T. T. Krishnamachari : There is amendment No. 2198 moved by Dr. Ambedkar.

Mr. President : I will put that last. I will put Prof. Shah's amendment No. 185 to vote now.

The question is:

"That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (1) of article 144—

(a) in the first para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted;
- (ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;
- (iii) in line 6, after the words 'controlled by' the words 'Central or State' be inserted;
- (iv) for the words 'and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate' the following be substituted:—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or minister concerned, and, on vacation of office of such Governor or minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned'; and

(b) in the second para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and
- (ii) at the end and following be added:

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as legislature may deem necessary to demand.' "

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, of following new clause be inserted:—

- (7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government or in any way aided, Protected or Subsidised by Government, and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.’ ”

The amendment was negatived.

Mr. President : The question is:

“That clause (6) of article 144 be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 144, as amended, stand part of the Constitution.

The amendment was adopted.

Article 144, as amended, was added to the Constitution.

New Article 144-A

Mr. President : Notice of an amendment has been received from Shri B. M. Gupte that a new article 144-A be put after article 144. It reads:

“That after article 144, the following new article be added:

- ‘144-A. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.’ ”

I think this is already included in the article accepted. Therefore this cannot be moved.

Article 145

Dr. P. K. Sen : (Bihar: General): I do not wish to move the amendment No. 2205 but I would like to make a few observations.

Mr. President : When we come to the discussion of the article, you can do that. (Amendment Nos. 2204 and 2206 were not moved.)

(Amendment Nos. 136 and 178 of Lists III and IV were not moved.)

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

“That after Clause (2) of article 145, the following new clause be added:

- (2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.’ ”

I want to enable the Advocate-General to have the right of audience in all Courts in the State for which he is the Advocate-General, without any special authority, and also when he appears for the State in other States, and also in the Federal Court when he appears in that capacity. My reason is based on

[Mr. Naziruddin Ahmad]

the analogy of article 63, clause (3). Article 63 of the Draft Constitution relates to a similar provision giving the Attorney-General of India, right of audience in all courts in India. Clause (3) of that article runs thus:

“(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in the territory of India.”

While there is this provision for the Attorney-General, empowering him to appear in all Courts in the territory of India by virtue of his office, there is no corresponding provision empowering or authorising the Advocate-General to appear in Courts of the State to which he is attached and also in courts in other States where the State to which he is attached is a party, and also in the Supreme Court where the State is a party. I submit that it is a necessary provision: otherwise there would be practical difficulties. If we do not insert here a clause similar to clause (3) of article 63, it would be necessary in every case for the State to authorise the Advocate-General in every case where he is required to appear. Without this statutory provision he will have to obtain authority for appearance in every case, and there may be difficulties about enrollment. A lawyer from Bihar may be appointed the Advocate-General of West Bengal. While that lawyer is enrolled in the High Court at Patna, he may not be enrolled in the High Court at Calcutta. There will be this difficulty that although he is the Advocate-General of West Bengal, he will not be entitled to appear in any Court subordinate to the Calcutta High Court because of the enrollment difficulties and it may be that the State for which he is the Advocate-General is a party in a suit or proceeding in another State; there also he should be empowered to appear on behalf of the State to which he belongs without any written authority and also without the difficulty of enrolment.

We have similar provisions in the Code of Criminal Procedure as to the Public Prosecutor. In section 493 of that Code, the Public Prosecutor is authorised automatically to appear without any authority in all cases in the district for which he is the Public Prosecutor. There are similar provisions with regard to the Government Pleader or the Crown Lawyer appearing for the Crown in civil cases.

So, I submit that this is a necessary Provision, otherwise the difficulties which I have suggested, and other ancillary difficulties will arise. It is similar to other provisions with regard to all lawyers appearing for the State and there is no reason why this should not be accepted in principle in the case of the Advocate-General. If the principle is accepted that the Advocate-General should have a right of audience in all courts where the State is a party without any authority, I think a provision should be made here. If the Drafting is open to any objection, it may be considered by the Drafting Committee and a suitable draft be adopted.

This is the Principle on which this amendment is based.

(Amendment Nos. 179, 2208 and 2209 were not moved.)

Mr. Naziruddin Ahmad : Sir, I would like to move my amendment with a slight verbal alteration to which, I understand, Dr. Ambedkar has no objection, Sir, I beg to move:

“That for the existing clauses (3) and (4) of article 145, the following be substituted:—

‘(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.’”

Sir, clause (3) as it at present stands, reads as follows:

“(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed.”

This provision will cause a lot of inconvenience. I submit, that the tenure of the Advocate-General should not be made dependent on the vagaries of party politics. It is quite likely that the Advocate-General may be engaged in the midst of a prolonged case in which the State may be interested. His removal, all of a sudden, will prejudice the interests of the State. It is therefore, better to make his tenure dependent upon the pleasure of the Governor.

I understand that this amendment is exactly on the same lines as the one suggested by Dr. Ambedkar himself and that it is acceptable to him. I hope, therefore, that the House will accept it.

The Honourable Dr. B. R. Ambedkar : Are you not moving amendment No. 2211?

Mr. President : He has embodied it in his amendment. It is exactly the same as your amendment which need, not therefore, be moved now.

Shri Jaspal Roy Kapoor : Mr. President, Sir, I have only just one more argument to urge in support of amendment No. 2207 which has been moved by my honourable Friend Mr. Naziruddin Ahmad. According to clause (1) of article 145 the Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State. Now, Sir, one who is an eminent jurist is also eligible for appointment as High Court Judge and as such he is eligible for appointment as Advocate-General also. It is quite likely that an eminent jurist may not be a duly enrolled advocate of a High Court. If an eminent jurist is appointed an Advocate-General and if by chance he is not a duly enrolled member of a High Court, it will certainly not be open to him to appear in any High Court or even in a subordinate court. In view of this, Sir, I think it is necessary that the amendment moved by Mr. Naziruddin Ahmad, or at least the substance of it, should be accepted. It may be said that it will be a rare contingency that a jurist not enrolled in any High Court will be appointed as Advocate-General. I admit that it may be so. But then when we are so very particular in laying down every little detail in this Constitution, I do not see any reason why we should let this lacuna remain.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to oppose the amendment (No. 2207) moved by my honourable Friend Mr. Naziruddin Ahmad. The amendment appears to have been based on a confusion between the functions of the Advocate-General of India and the Advocate-General of a Province. The Advocate-General of India—whom we have styled “Advocate-General” in this Constitution—is really an Advocate-General functioning throughout of India. He has, therefore, to go to all courts in order to act for the Government of India. For instance, whenever a question of the interpretation of the Constitution is taken up before a court, under the present Civil Procedure Code, notice is given to the Government of India to appear in that matter. The Advocate-General of India, therefore, has to appear in all the provincial Courts in order to support the interests of the Centre.

As regards the Advocate-General of a province, his position is entirely different. In his own province, naturally being the Advocate-General, he has audience before all the courts in the province. But as regards the other provinces, he has no *locus standi* as Advocate-General. His *locus standi* would only be that of an advocate of one High Court and he will, therefore, be

[Shri K. M. Munshi]

governed by the provisions of the Legal Practitioners' Act. He has no position as Advocate-General in the other provinces and, therefore, there is no reason why he should be put on the same footing as the Advocate-General of India. Ordinarily, the Advocate-General of one province goes to another provincial High Court not for purposes of any litigation connected with the State. He only goes there for his private practice and therefore to that extent he can appear only under conditions which are imposed by the High Court in which he is going to appear.

There is reciprocity of appearance between one High Court and another ordinarily. But there have been occasions when one High Court has not permission to advocates of another High Court for various reasons—valid or invalid. The regulation of appearance of an advocate of another High Court in one particular High Court depends upon the rules and policy of that High Court. Therefore, it is much better that the Advocate-General's appearance in another High Court is regulated by the Legal Practitioner's Act applicable to all the members of the profession. I, therefore, oppose this amendment.

Mr. Naziruddin Ahmad : I do not advocate private practice in the case of the Advocate-General. It is only when he appears for the State in another High Court that the question arises. May I draw attention to the fact that I do not want the Advocate-General to indulge in private practice? It is only when he appears for the State in another High Court that the question arises. There the question of private practice does not arise. What provision has been made for the Advocate-General appearing for his State in the Supreme Court?

Shri K. M. Munshi : No one has found any difficulty in one Advocate-General appearing in another province. There is no reason why there should be a special provision.

Prof. Shibban Lal Saksena : Sir, I wish to draw attention to one fact. We have taken the British practice in these matters as the model in framing our Constitution. In Britain the Advocate-General has the status of a Minister. Dr. Sen had given notice of an amendment to give our Advocate-General the same status, but has not moved it. I would draw attention to the fact that it will be much better if we followed the practice in England. I request Dr. Ambedkar to tell us why he does not follow that model in this respect.

Dr. P. K. Sen : Sir, I quite appreciate that this debate should not be prolonged at least by me, and I am going to finish my observations as quickly as possible.

The point I wish to place before this House is not in support of my amendment, because I am not moving it, but to express my ideas about the fundamental principles which should govern the office of the Advocate-General. The Advocate-General at the present moment is no doubt often a lawyer of eminence in the province, but his sole duty and function seems to be to advise the Government on occasions in regard to certain points that arise in cases either between the Government and a private party or between parties which in some manner or other are connected with Government. For instance, there is a trust property in the hands of the Government and the trust is being disputed by somebody or other. In various matters like this the Advocate-General's opinion is sought. His office is really a bureau or legal advice. So is also the office of the Legal Remembrancer or the Judicial Secretary. But in neither case is the Government obliged to take opinion or adopt it and, in

many cases, it is treated with scant courtesy. Supposing that the Minister in charge of Labour or Revenue or Local Self-Government wants to initiate a certain measure. He no doubt consults the Advocate-General. But he can ride rough-shod over the opinion of the Advocate-General and take the opinion of any other inferior, irresponsible advocate and proceed upon it. This seems to me to be against all principles whatsoever. The Advocate-General's position should be, as I conceive it, much higher. He ought to be of the status of a Minister. The Law Minister can then influence to a very large extent, the spirit of the legislative and administrative structure of the Government. This has to a very large extent under the Law Minister, the Advocate-General can hardly do anything, even if he were a man of great eminence to influence legislation. His powers are practically nil. As I conceive it, the position of the Advocate-General should be much higher. Unless it is equivalent to that of a Minister, it is impossible for him to discharge his duties properly. In other words, it comes to this that in my humble opinion, the Advocate-General should be charged with the portfolio of law. The question may arise about attendance in courts. Why should he then go about appearing in case? At the present moment the Advocate-General think that it is one of the Privileges of that office to earn fees by appearing in cases on behalf of the Government in the *mufassal* or even in the High Court. Well, that is a thing which will recede into the background of he is charged with the duties of the office of law Minister. The most preminent of those duties shall be to establish and maintain a high level in the legislative and executive structure of the Government. He cannot then go and appear for fees in all cases; but in matters affecting high policy he would certainly go as Advocate-General to give an exposition on a high level, before the courts, of the principles and policies that actuated his Government. Now-a-days we are passing through critical times. There are various fissiparous tendencies at work and all manner of discriminatory legislation is being put through which bears the marks of very unwise and unskillful handling. What I submit is that the Advocate-General is one of those few persons who if installed in the office of the Law Minister could take a large share in regulating, shaping and moulding the polish of legislation in all its aspects. The rule of law is, in my humble judgment, the rule that should save the Government from all manner of disruptive tendencies. With the Law Minister, being in charge if these high functions it would be possible for the Government to proceed in the right manner and in the right direction. These are the observations which I humbly place before the House to consider in connection with article 145.

The Honourable Dr. B.R. Ambedkar : I do not think I need add anything to the debate that has taken place. All that I want to say is this: I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

Mr. President : I shall now put amendment No. 2207 of Mr. Naziruddin Ahmad to vote.

The question is:

“That after clause (2) of article 145, the following new clause be added:—

- ‘(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.’”

Shri T.T. Krishnamachari : What is the number of the amendment, Sir?

Mr. President : I shall put the amendment to vote again.

The question is:

“That after clause (2) of article 145, the following new clause be added:—

[Mr. President]

‘(2a) In the performance of his duties the Advocate-General shall have right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.’”

The amendment was negatived.

Mr. President : Then I put Amendment No. 2210 which includes within itself 2211 also.

The question is:

“That for clauses (3) and (4) of article 145, the following be substituted:—

‘(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.’”

The motion was adopted.

Mr. President : The question is:

“That article 145, as amended, stand part of the Constitution.”

The motion was adopted.

Article 145, as amended; was added to the Constitution.

Mr. President : We shall now adjourn till tomorrow morning, 8 O’ clock.

The Constitution Assembly then adjourned till Eight of the Clock on Thursday the 2nd June 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 2nd June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ADJOURNMENT OF THE HOUSE

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I submit that it is difficult for Members to follow the stream of amendments which are coming every day. I do not complain against amendments coming in, but I only wish that we should have some breathing time to consider them carefully and then come prepared and, if necessary, to submit supplementary amendments. We are after all passing a Constitution for India, which should be the best Constitution in the world. I find new lists of amendments are coming in every conceivable number and size and they are of a very radical character. Some are absolutely new amendments to the Constitution itself and not merely amendments to amendments, though they come by way of disguise as being “with reference to” regular amendments or even of amendments to amendments. I do not oppose this tendency. In fact, Members should have the right to change their opinions, if they find it proper and necessary. May I suggest, therefore, that a Committee be appointed by Members who would really take interest in these matters? Let us have an overall picture of the amendments that the Members do submit and then we should have some time to consider them and to submit further amendments if necessary. I find the Drafting Committee is put to a very hard test. They have to pass through a large number of amendments daily without notice—and I fully sympathize with them. I, therefore, feel that some time should be given to the Members so that they may make up their minds as to what amendments are really necessary. In framing the Constitution, time should not be much important, and I believe that, at any rate, we cannot pass the Constitution by the 15th of August. May I, therefore, suggest to the honourable members and to you Sir, that there should be an adjournment of one or two months? In the meantime those who want to send amendments should work hard and send in all their amendments once for all so that we may come prepared. The debates will in that case be more useful. At present much bewilderment exist amongst the Members on the new amendments and so the debates are more less confined to the general aspect of the subject, which is not particularly useful. I therefore submit that we should be given sufficient time. The heat which has subsided for two or three days is likely to reappear with vengeance and that is another additional factor to be taken into consideration. I ask the House to consider all these matters and to suggest a way out.

Prof. Shibban Lal Saksena (United Provinces: General): I am opposed to any adjournment of the House. I am surprised at the suggestion of Mr. Naziruddin Ahmad for adjournment of the House for a month or two. I think that these fresh amendments to amendments will continue until the very last day that we discuss the Constitution and there can be no finality about them. If we want to finish the Constitution, we must continue to sit irrespective of the heat. If we adjourn, the passing of the Constitution may have to wait up

[Prof. Shibban Lal Saksena]

to the next year. We should continue to sit and finish the Constitution whatever may happen. At the same time I think we must get full time to understand and consider the amendments, but on that score we must not adjourn. We must continue till we finish.

Shri R.K. Sidhwa : (S. P. & Berar: General): Mr. President, the first part of Mr. Naziruddin Ahmad's point is really reasonable, that is to say the amendments reach us the previous night, say, at 9 o'clock or 10 o'clock and when amendments to an amendment are to be sent, it is more difficult for us, as we meet at 8 o'clock in the following morning. From that point of view, his argument, that some time should be given, is justified. I did not follow him about the adjournment of the House and I am not in favour of the adjournment of the House. I would however suggest that when these amendments come in you should give us one day more, that is to say, the discussion on those important amendments should be taken on the day after and not on the following day, so that if we have to send amendments to amendments, we can do so. That is the only solution and that will enable Members to send amendments in time. I am, however, not in favour of the adjournment of the House; we must continue to sit and finish the Constitution. That is my point, Sir.

Mr. President : As far as possible, I have been trying to accommodate Members with regard to the new amendments which they wish to give. Now, the suggestion is that when a new amendment to an amendment, which is already on the Order Paper, comes in, I should give further time for fresh amendments to this new amendment. I do not know if we go on in that way, we shall ever come to an end of amendments because we have already given time for giving amendments.

Shri R. K. Sidhwa : Sir, the new amendments come from the office on the previous night and they come at 9.30 p.m.

Mr. President : We have got more than 4,000 amendments, which originally came in and then amendments to these amendments have been coming and if it is suggested that we should give further time for these amendments to these amendments, as I said, there will be no end to these amendments. If there is any question which requires further consideration and if any amendment raises any point on which Members feel that they are not in a position to express themselves, that will be a ground for postponing the consideration of that particular amendment and if the Members are so inclined, personally I shall not stand in the way of adjourning discussion of any particular article or amendment which requires more consideration, but I do not think the House wants, and certainly I do not want, the adjournment of the House either for any Members to give fresh amendments or on account of the heat. I understand that there was some suggestion or consideration given by Members to the question of getting an adjournment on account of the heat but fortunately for us, as soon as the question of getting the House adjourned on account of heat came, the heat somehow disappeared and so that agitation also I think has now subsided. I hope we shall go along without any thought of adjournment on account of the heat. But adjournment of particular items I shall always be prepared to consider if there is any substantial ground for that.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, there is one real difficulty that I should request you to consider. The notices of amendments or amendments to amendments are received by members—at least by many Members—at about half-past ten in the night and you can see for yourself that there is not much time left after the receipt of the amendments to study them carefully. If it is possible to circulate these amendments earlier, then the complaint that has been made this morning will I think subside, but

so long as we receive amendments as we do at present between half-past ten and eleven, this complaint is bound to continue.

Mr. President : If there is any amendment which requires consideration about which Members want time, I shall be present to consider any suggestion of that sort. The amendments reach Members at ten because the amendments come till five in the afternoon and they cannot very well reach the Members before ten.

Shri R.K. Sidhwa : It is neither the fault of the office nor our fault.

Mr. President : But they have to be typed and then circulated.

Shri R.K. Sidhwa : We get fresh amendments from office at ten, I mean from the Drafting Committee.

Mr. President : The Drafting Committee is also sitting from day to day and they sit every day after the House rises and they have to consider all that has taken place and in view of other considerations they have to prepare their draft and those drafts come till about five in the office and then they have to be typed and circulated. All that takes time. But as I have said, I shall always be prepared to consider adjournment of discussion of any particular item about which members have doubt.

DRAFT CONSTITUTION—(contd.)

Article 146

Mr. President : We are now going to deal with a number of articles which are more or less word for word reproduction of articles which we have passed only during the last few days and I think there would not be much of discussion with regard to many of these articles. Article 146.

(Amendment No. 2212 was not moved.)

Professor Shah has tabled an amendment 2213. Do you wish to move that?

Prof. K.T. Shah (Bihar: General): Yes, Sir. Sir, I beg to move:

“That in clause (1) of article 146, for the word ‘Governor’ the words the Government of the State Government of the State concerned be substituted.

That in clause (2) of article 146, for the word ‘Governor’ where it first occurs the words ‘Government of the State’ be substituted.”

The amendment clause will therefore be:

“All executive action of the Government of a State shall be expressed to be taken in the name of the Government of the State concerned.”

and a similar change will follow in the second clause.

The reason why I put forward this amendment is that it is very unusual—not to say improper—for us to attach in our Constitution such a personal importance to the Governor, who is after all a temporary Head of the State, elected only for a few years, to make all executive action of Government being taken in his name. It is all very well for those countries where a hereditary, permanent, life-long King is the Head of the State, and where consequently action is taken in his name. Even then it is impersonal to the extent that it is spoken of as His Majesty’s Government. But in this case the suggestion that all executive action be taken in the name of the Governor seems to me to be utterly incongruous with the democratic republic that we are thinking of establishing. The Governor is a bird of passage. He is there for five years at most, and therefore not having that permanence of headship and perpetuity which a hereditary monarchy would possess. It is improper and unreal, therefore, to suggest that every executive action be in the name of the Governor.

[Prof. K. T. Shah]

The orders of the Government of India even today have been expressed and all along have been expressed as the orders of the Government of India. An impersonal of that kind is much more suitable and appropriate for the form of Government that we are going to establish, then the personal prominence that this clause seems to suggest to the Governor individually.

I realise that this is only confined to the executive side of the Government. But even so I think the argument I have been advancing should be conclusive that the action of Government should be impersonal, and in the name of the Government of Province A or B or State X or Y as the case may be.

The orders I take it will be signed by the Secretary. If so, it would be still more appropriate to speak in the name of the State as a whole than in the name of the Governor who does not sign.

If on the other hand, it is intended that all executive action will be also signed by the Governor, and would, therefore, be more appropriate to be taken in the name of the Governor, I would enter a more emphatic objection. For in that case, apart from the foregoing argument, it would be almost impossible for the Governor personally, so to say, to look to every order of Government, and as such the machine may become unworkable. I, therefore, suggest, that instead of the Government action being in the name of the Governor, we must have a more appropriate and more impersonal expression—the Government of the State concerned—and I think there will be no objection to his suggestion.

Shrimati G. Durgabai (Madras: General): Sir, I think the language of this article is exactly the same as was adopted in article 64.

Mr. President : Amendment No. 2214 is of a drafting nature.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment. Article 146 is only a logical consequence of article 130. Article 130 says that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expression of executive action must be in the name of the Governor as is provided for in article 146.

In regard to the observations made by my honourable Friend Prof. K. T. Shah that under the old regime, all executive action was expressed in the name of the Government of India, my reply is that that was due to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

Mr. President : The question is:

“That in clause (1) of article 146, for the word ‘Governor’ the words ‘the Government of the State concerned’ be substituted.

‘That in clause (2) of article 146, for the word ‘Governor’ where it first occurs the words ‘Government of the State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 146 stand part of the Constitution.”

The motion was adopted.

Article 146 was added to the Constitution.

Article 147

Mr. President : The motion is:

“That article 147 form part of the Constitution.”

Amendment No. 2215, Mr. Kamath.

Shri R. K. Sidhwa : It is a negative one, Sir.

Mr. President : There is an alternative also. Mr. Kamath, which part do you like to move?

Shri H. V. Kamath : (C. P. & Berar: General): I would like to move the first part, Sir.

Mr. President : Then, it is a negative one.

Shri H. V. Kamath : I shall not move it; but I shall speak on the article, Sir.

(Amendment Nos. 2216, 2217, 2218, 2219 and 2220 were not moved.)

Shri H. V. Kamath : Mr. President, I fail to see any valid reason for the retention of this article. It may be argued that it is on the same lines as an article which we have already adopted with reference to the President. But, now that we have accepted nominated Governors in the States, this article, to my mind, requires to be recast, if not entirely deleted.

There are certain aspects in this article which are wholly incongruous with, at least not in conformity with, the principle of nominated Governors for the States. If the House will carefully consider clause (c) of this article, to take only one instance, the House will see that the nominate Governor has been given power to interfere in what may be called the day-to-day business of the Council of Ministers. I wonder why the Governor should call upon the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. I submit that this is entirely a matter for the Council to decide among themselves and the Governor has no *locus standi*, has no privilege or power or right whatever to step in here. The business of the Council of Ministers, is entirely a matter for them to arrange and discuss among themselves and to arrive at any particular procedure they like. If a matter has been considered by one of the Ministers, but has not been considered by the whole Council, the Governor cannot step in and tell the Chief Minister, ‘you must put it before the Council of Ministers’. The Chief Minister and his colleagues are competent enough to decide which matter should go before the Council and which it is not necessary to be put before the Council. This to my mind is in tune with the tenets of constitutional democracy that we propose to set up in the States. My Friend Mr. B. Das asks, where is democracy? I am inclined to agree with him that there is no true democracy any where in the whole world. But we are trying to arrive at an approximation. I hope, if all of us pull our weight together, if we all put our shoulders to the wheel, we may at no distant date arrive at some sort of an approximation to democracy.

Then, Sir, there is another aspect to clause (b) of this article, which in my humble judgment offends against the new set-up that we have accepted for the States. Under this clause, the Governor can call for any information relating to the administration of the State. This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the State to decide which matter he would like to put before the Governor and which not. If he and his colleagues in their collective wisdom arrive at the opinion

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that a particular matter may go to the Governor, certainly they may put it up to the Governor. But the Governor has no right to call for any information regarding the administration of the affairs of the State and proposals for legislation. This is another aspect of this article which to my mind violates the principle of constitutional democracy which we are going to set up in the States, and is repugnant to the principle of nomination that we have accepted for State Governorship. I would have been very happy if this article had been deleted. These are all matters of Government business for which I understand, I definitely know, there are manuals in every province and every State dealing with the conduct of Government business. These things could have been easily taken up later on and incorporated in the manual as to the procedure for the conduct of Government business. As it is, the whole article is out of tune with the new set-up that we have accepted after the adoption of article 131 in the changed form. I would therefore request the Honourable Dr. Ambedkar to hold this article over, if he has not considered it already, for further mature consideration by himself and his team of wise men. If it cannot be deleted, I hope it will be possible to recast it in the light of what has happened in the last few days, and, for that purpose, that it will be possible for us to hold it over for some time.

Dr. P. S. Deshmukh : (C. P. & Berar: General): Mr. President, Sir, I am afraid I am not able to agree with my honourable Friend Mr. Kamath in his suggestion that the article should be omitted. If he were to pay a little more attention to the provision made by article 146, which we have just passed he will. I think, admit the wisdom of incorporating this article in the Constitution. Now under article 146 every order which is issued by the Ministry or the Cabinet or even individual Ministers will be an order which will be published and proclaimed in the name of the Governor. If article 147 is not there, there is nothing which will empower the Governor to know the various actions taken from day to day, and the orders passed and issued in his name. My Friend has said that this would refer even to routine matter. I can tell him, Sir, that ordinary matters which are unimportant, and which are of a routine nature, I am sure, no Governor in his wisdom would like to question, or request the Chief Minister that they should go to the Cabinet for reconsideration.

Shri H. V. Kamath : What is the guarantee?

Dr. P. S. Deshmukh : The guarantee is the Governor's wisdom, and the wisdom of the authority that will appoint such a.....

Shri H. V. Kamath : What is the guarantee I asked?

Dr. P. S. Deshmukh : The guarantee I said is the Governor's wisdom and the wisdom of the authority that will appoint the Governor.

Sir, this article can never refer to unimportant, routine matters, but it can refer only to orders which the Governor thinks are likely to have larger repercussions, and are of such importance that it will be wise if all the Ministers in the Cabinet were to consider it. And apart from this direction that the question may be considered by the Cabinet, there is nothing. The Governor is not given the authority to over-rule the decision of the Cabinet. The article merely empowers the Governor whenever he considers that an individual Minister's decision should rather be given some more attention, that he would refer it for the consideration of the whole Cabinet.

My Friend Mr. Kamath has also attacked part (b) of the article. So far as this part is concerned I consider that this also is extremely necessary. For instance, suppose the Cabinet or certain Ministers are not pulling on well with the Governor; then they would be in a position to keep the Governor absolutely in the dark. On the other hand I feel confident that these powers given to

the Governor are not likely to be misused at any time, and that it is essential that he should have fullest information regarding the day-to-day administration so that he may be able to prevent pursuit of wrong policies and also communicate to the President and the Government of India the nature and course of the provincial Government. After all the Governor is essentially a link between provincial autonomy and the President and the Government of India, and that function he can discharge adequately only if he has the authority to ask the Cabinet to reconsider certain things and also to keep himself informed from day to day as to what orders have been issued and what sort of administration is being carried on.

Then, Sir, my friend also objected to proposals for legislation going up before the Governor; but this too is useful and desirable. The Governor must know beforehand any legislation that is proposed to be placed before the provincial assembly, what is the nature of that legislation and how it bears on the existing situation or compares with legislation in other parts of India. It is his duty also to see how it conforms with the policy of the Government of India. He is the one man who will be on the spot and who could advise the Chief Minister from a wider and a more impartial stand-point. Apart from giving advice, I do not think he is likely to go every much further. In any case this article does not confer upon him any grater powers. But this much authority he should and must have, i.e., of asking the Cabinet to consider the *pros* and *cons* of the proposed legislation so that the administration of the province does not suffer either to the detriment of the Ministers of the Province or of the Government of India as a whole.

Shri H. V. Kamath : May, I ask why we should not trust the wisdom of the Chief Minister? Is not the Chief Minister wise enough?

Dr. P. S. Deshmukh : If my learned Friend Mr. Kamath were to consider the whole thing coolly, he will find that in fact, everything is and has been left to the Chief Minister, and the Governor is not likely to interfere. He only claims the right to get the information he may consider necessary. He is not given under this article any power to say that such and such legislation shall not be passed. The article provides that all decisions relating to the State should merely communicated to the Governor.

Shri H. V. Kamath : Why should not the Governor ask for it? Why should the Chief Minister be required to do it?

Dr. P. S. Deshmukh : This is, Sir, only a mutual arrangement and I do not find anything objectionable in this arrangement. The article provides that the Chief Minister shall give the Governor certain information and other information the Governor is empowered to ask for. There is no question of dignity or of standing on ceremonies. I therefore strongly support the article, and suggest that it be passed as it stands.

Shri B. Das (Orissa: General): Sir, as we are finishing the articles (Part IV Chapter II) relating to the Governor's powers and conduct of business, I think it my duty to tell the House my reactions. I wish I had the robust optimism of my Friend Dr. Panjab Rao Deshmukh as to believe that the Governor is a useful functionary. What has been the experience in the provinces since Congressmen came into power under Independent India? How has the Governor functioned? It is common knowledge, and it has been repeated by responsible members of this House that the Governor was nothing but a cipher. If that be the case, how is it then that this Governor, this nominated Governor of the Central Government and the Ministers elected by the State Unions and the Provinces will be able to co-operate? The Governor, according to my Friend Dr. Deshmukh is full of wisdom. I question that, and I doubt it very much, particularly when the Governor is a nominated Governor, nominated by the President and the Central Government. I wish we ought not to have a Federal Constitution and a Union Government any

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more. We have now centralised all power in the hands of the President and the Cabinet, and it is not bad. It will save a lot of expenditure if we abolish all provincial Government, provincial Governors and provincial Ministers.

Mr. President : There is no use discussing that question; we have already passed that.

Shri B. Das : But my Friend Mr. Kamath referred this morning to the nominated Governors and their functions.

The point is, if we are going to centralise all power in the hands of the President and the Governors we should see if they are elected Governors or not. But the Drafting Committee has had no time to examine this point and the clauses if they fit in with nominated Governors. That is the mischief of this whole chapter. We know sections of constitutions remain dead letters. Certain sections of the American Constitution have gone to the winds. Some of the sections in this Constitution will also go to the winds. If however, there are some who have the illusion that the Governors will exercise their statutory powers against the elected Ministries, let them take note of the present practice under which the Governors know nothing absolutely of what is happening in their respective Province, where the provincial Cabinet is submitting no notes to the Governor as to what is happening.

There is a perpetual clash and perhaps the President and our beloved Premier may have to intervene at various stages to bring about harmony between the Governor and the provincial Cabinet. In spite of that I would make bold to utter a prophecy, *viz.*, that the provincial Cabinets will win and the Governors will remain the ciphers that they have been for the last two years.

Shri B. M. Gupte (Bombay: General): Sir, without going whole-hog with my honourable Friend Mr. Kamath I should like to support him as far as sub-clause (c) is concerned. In my opinion there are certain difficulties in the working of this sub-clause. The sub-clause says:

“If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.”

I do not understand how the Governor will know what particular decision has been taken by a minister in a particular matter, because according to sub-clause (a) the decision of the cabinet only are to go to him.

According to the working of the system of cabinet there are two sets of decisions. A minister in his own department and on his own responsibility, without the concurrence or even the knowledge of his colleagues, takes certain decisions on various matters that come before him from day to day. But there are other matters of greater importance which a minister is bound to submit for the collective decision of the Cabinet. Only the second set of decisions go to the Governor. As regards the first set of decisions there is no mention made at all in the article itself. I therefore do not understand how he is to know them. I may be told that the Governor might take advantage of sub-clause (b) and ask for information. I can understand that once he gets the information he can ask for more particulars but how is the initially to get the information regarding a certain decision taken by an individual minister? Without such a channel of information he is called upon to intervene and practically he might even stop the implementation of a decision taken by a minister. The point to be considered is how far this is consistent with his position as a constitutional head. Is it necessary to clothe the Governor with this authority or is it even desirable? I do not mean to suggest that the province should lose the benefit of the sage counsel of a Governor. He might be an elder statesman with ripe experience and wide knowledge. But the same purpose can be achieved even without giving him the statutory

right. He can make private suggestion to the Premier. We have got the example of the letters of Queen Victoria. We have there the evidence of how a sagacious monarch without any statutory or constitutional right could exert a profound influence on the decisions of the Cabinet by making various private suggestions to the Prime Minister. I therefore submit that it is not necessary to clothe the Governor with this statutory right.

It might be said that it may not be necessary but it is desirable. But there is the danger that it might lead to trouble. Suppose a Governor exercises his statutory right and objects to a decision made by a minister. Human nature being what it is, the minister concerned is bound to resent it. He might wonder how the Governor received the information. Is there any watch-dog on him or is there any tale-bearer? In the Government of India Act, 1935, there was the right of the Secretary to Government having direct access to the Governor. When that particular provision was debated in the House of Commons somebody described the secretaries as watch-dogs on the ministers. Very rightly the Drafting Committee has rejected this obnoxious right of access to the Governor on the part of the secretaries. In the absence of these watch-dogs the minister might wonder who told the Governor. Is there any tale-bearer? Today one minister might resent such interference and tomorrow another minister might become disgruntled. It is thus likely that bitterness may grow and in my opinion it might ultimately lead to a disturbance of the cordial relations which must subsist between the Cabinet and the Governor.

Moreover, if the statutory provision is there, perhaps an ambitious governor like President Milleraeu in France might be tempted to misuse or overuse it. I therefore, submit that it is unnecessary to keep that provision and at least it is worthwhile considering whether it is necessary to put it in the form in which it appears in the Draft Constitution.

Prof. Shibban Lal Saksena : Sir, I could not understand the opposition of my honourable Friend Mr. Kamath to this article on the ground that the Governors are nominated. He was the person who supported the proposition and now he says that because they are nominated therefore they should not have this power. If after the Governors are nominated this section is also removed, it is better to remove the Governors altogether.

According to the scheme which the House has approved, the Governor will be nominated by the President and we have given him power in his discretion. If the Governor as the Head of the State is not aware as to what is happening in the State, or what decisions his ministers have taken, how can he function as the head of the State at all?

Shri H. V. Kamath : Through the Chief Minister.

Prof. Shibban Lal Saksena : The Chief Minister may not tell him anything. So this section is necessary so that the Governor may at least know what is happening in his State.

Under the scheme of things which the Drafting Committee has proposed they contemplate a Governor who shall try to be a liaison officer between the President at the Centre and the provincial Governments. He will try to see that the provincial Governments' policies fit in with the scheme of the Central Government. He will try to give advice and guidance to the Ministry on account of his superior wisdom and experience. The President, I hope, will nominate only such persons who have ripe administrative experience and wisdom and have the necessary political and intellectual stature to be Governors, so that they can give proper guidance to the provincial Cabinets. The Governor will have to keep himself above party politics and in this way

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his position will be more important and effective. If, as suggested, he is not even entitled to obtain information from his ministers or know what is going on in the State in his name, I do not think it is worthwhile having him at all.

Mr. Gupte took objection to clause (c). He felt that if the Governor is entitled to get the decision of a minister reversed it might lead to heart burning. Personally I feel that the Governor under the new scheme of things will try to get the confidence of the whole Council of Ministers. The clause only says that if an individual minister takes some important decision on his own responsibility and it is not considered by the whole ministry then he will desire the matter to be considered by the council. Mr. Gupte complained that the minister might wonder how the Governor came to know about his decision. Under clause (b) he can call for the information from the Prime Minister himself. There is no reason to think that there are some backbiters, or somebody has been going to the Governor behind the back of the ministers. The Governor will also be touring and will come to know many things through his personal experience. Under the scheme of things the House has adopted, the Governor will have to be nominated in a manner that he can enjoy the respect of the council of ministers, by his superior intellectual calibre and sound administrative' wisdom and advice. Then the ministers will trust the Governor and will devote themselves to the welfare and the promotion of the real interests of the province.

Mr. President : I think we have had enough discussion on this article and I would like honourable Members to cut short their speeches.

Shri R. K. Sidhwa : Sir, we are all clear in our minds as far as one point is concerned, *viz.*, that the Governor who will be appointed will be in his status the first citizen of the province though he will have no executive power as far as good government and the maintenance of law and order are concerned. Since that is a settled fact we must know what is the interpretation of this article. Undoubtedly clauses (a), (b) and (c) create some kind of confusion and I am prepared to accept that. Under clause (a) it shall be the duty of the Chief Minister, it is obligatory on the Chief Minister to supply any information that the Governor wants from him. It may be argued that if the Chief Minister feels that the Governor is not entitled to call for information he might refuse to supply it, because he is the executive head of the province. The result will be that there might be some conflict. To avoid that the Chief Minister has the freedom to complain to the President who might intervene.

As regards clause (c) it has been argued by those who are opposed to it that the Governor might require to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, which has not been considered by the Council. Mr. Gupte asked how is the Governor to know what a minister has done. Any file that goes to the Governor contains a full note as to whether the subject-matter has been handled by a minister or by the Council of Ministers.

Shri B. M. Gupte : Individual minister's file would not go to him.

Shri R. K. Sidhwa : It is the practice everywhere. Every file goes to the Governor for his signature. The Constitution says that all orders are to be made in the name of the Governor and therefore formally the whole file goes to him—not merely one paper. He has to see the whole file before he puts his signature.

Shri H. V. Kamath : A file should go to him only after the entire Council has decided a matter; not the decision of an individual minister.

Shri Mahavir Tyagi (United Provinces: General): That might be observed in Sind but not in the provinces here.

Shri R. K. Sidhwa : If the file does not go to him he can call for it. He might say "I would like to know what I have to say before I put my signature." The head of the department might sign a cheque, which might be a formal one but he has to take the responsibility as far as his signature is concerned. You cannot say that he cannot call for the file and so that point does not arise. Supposing a minister takes a decision on which the Governor feels some doubt that the matter should be considered by the whole Cabinet, he would be justified in asking for its reconsideration by the Council of Ministers. I know of instances where a Minister has taken a decision, which the Council of Ministers reconsidered at the instance of the Governor and they had to revise it. There is nothing wrong in this. On the other hand the Council might tell him that the minister was perfectly right. Therefore clause (c) is more justified than clauses (a) and (b). Clause (c) is very necessary, for I have seen sometimes a minister in his individual judgment, issues certain orders and sends them to the Governor. It may be a contentious matter on which the Governor may honestly feel that it is in the interest of the province and its people that the matter should be considered by the Council. He would be perfectly justified in doing so. So while there is room for some improvement in language under clauses (a) and (b), clause (c) on which greater stress has been laid must be retained.

Shri Biswanath Das (Orissa: General): Sir, I am sorry I have to come here despite your advice to hasten the decision on the article by minimising discussion. If I have come up to speak it was because I thought that a certain aspect of this article has to be clearly and fully realised before honourable Members are called upon to vote. It is better at this stage to know what powers and responsibilities we are going to invest a Governor of a province with. I quite see the difficulties of the Drafting Committee when they were faced with a situation wherein root and branch changes were brought before them at the eleventh hour. If that is the difficulty they could very well take time to consider.

My Friend Dr. Deshmukh stated that the Governor is to direct and advise. If that is the idea behind the Drafting Committee and also leaders of thought in the Assembly I think not only the powers contained in article 147 but something more is called for.

The question we have to consider in this House is whether the Governor is going to be a constitutional head or a Governor who has to play his role in advising the ministry and directing into proper channel ministerial thought and action. If it is the later, if he has to interfere in shaping the administration and raising the standard, then this power is not unnatural but is necessary. All that I want to know and the Assembly has a right to demand to know is the background behind this article. This article was drafted under different circumstances and conditions keeping in view certain essentials, *viz.*, the Governor is to be elected on the basis of adult suffrage. Now the conditions have changed.

I would just invite the attention of honourable Members to clause (b) which says:

"to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for."

I for myself do not see why a Governor who is wedded to the Constitution and who is to be a constitutional head should dabble in matters regarding

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administration. The question might be asked as to whether the Governor should not know the proposals for legislation. Here again, I state that provision has been made that the proceedings of the Council of Ministers should be communicated to the Governor. Further, all the legislation, that is approved or passed by the legislature is to be submitted to him for his assent. Therefore there is every opportunity given to the Governor to know what legislation is coming and the shape in which it is coming. That being so, clause (b) seems to be wholly unnecessary. But if it is the desire of the House that the Government should have also the Governor's say in matters of administration the provision is justified. While discussing this article it would be unfair on my part if I do not invite attention to the Fourth Schedule wherein Instrument of Instructions has been provided. The Instrument of Instructions to the Governors has no legal force or validity in law. Whatever it is, be it a Sermon on the Mount, or be it something real, it allows scope for certain executive activities by the Governor. I specially refer to Para 4 which says:

“That Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State.....”

Is the House, after the change in the modus of selection or election of the Governor, going to invest him with these powers? If so, I could understand the background and would say that clause (b) is fully justified. I therefore feel that those that are responsible for giving a lead to this Assembly to pass the articles have also the responsibility of explaining to honourable Members as to what is there in their minds in regard to the relations that should exist between the Governor and the Government and how they propose to avoid clashes and compose differences between them.

For myself, let me tell you a bit of my experience. I still recollect the days when contentious matters came up; how the Governor always took scrupulous care to be a disinterested person and said that in matters of contentious legislation he had no opinion to offer in the Cabinet because of his power of assent. If this is the case, there is no meaning in intimating to him beforehand what the legislative programme of the leader of the party or the Cabinet is going to be. Especially I visualise, in course of time as the Constitution works, there may be possible scope for the emergence of parties with differing political programmes and ideologies in the Centre and in the States. In such cases the Governor nominated by the Prime Minister at the Centre may not in all cases be acceptable to a Cabinet in the State headed by a different political party. In such circumstances rub can never be avoided if the power to give administrative pin-pricks is vested in the Governor.

Lastly, I wish to place before the House the fact that under the Government of India Act of 1935 ample powers were vested in the Governor to interfere and to keep himself informed of things done by the provincial Government. He had in his hands the nose-strings of the bull so to say. But there is nothing in this Constitution to control the Governor once he is appointed by the President on the advice of the Prime Minister of India, till the Governor himself chooses to resign. Therefore I feel that you are appointing a Governor who is responsible morally to the Prime Minister of India and to the President of the Indian Republic. There is little now in law limiting him to be a symbol or subject him to the control of the Centre or by the President. Therefore it is a pertinent question for honourable Members to ask, whether you are going to vest powers, of a wider scope in the Governor, capable of creating mischief and at the same time provide no power of control over him vested in the President or the Prime Minister of the Republic.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I cannot understand the objection that is raised to the powers of the Governor under article 147. The House has accepted and very rightly accepted, that there should be a Governor in the provinces. That Governor is not necessarily to be a cipher as some Members said, nor need he be only a super-host giving lunches and dinners to persons in society. He has a political function to perform and that political function is to be the Constitutional Head.

Some honourable Members who spoke are under the impression that a Constitutional Head has no functions at all and that he has to do nothing else than to endorse what the Premier or the Ministers do, without even giving them the benefit of his advice or giving them the impressions of a detached spectator on governmental actions. This I submit is entirely wrong. The Governmental set-up which we have envisaged is on the model of the British Constitution. Article 147 is a repetition of article 65 which we have already accepted with regard to the President in the Centre. The responsibility of Government, if at all, is much more comprehensive and stronger in the Centre under this Constitution than in the Provinces. In view of this, I cannot understand why these objections are taken again and again in respect of the same powers.

My Friend, Mr. Gupte, referred to sub-clause (c) and asked the question, where is the Governor to get the information from? If you read sub-clause (b) it says—

“It shall be the duty of the Chief Minister of each State to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;”

Under this clause it will be open for the Governor to ask the Chief Minister for information with regard to important questions and if he feels that certain decisions have been taken not by the Cabinet as a whole but by an individual Minister which requires reconsideration at the hands of the Cabinet as a whole, clause (c) will give him the power to get that done. What is wrong about it? When a Minister acts behind the back of his colleagues, behind the back of the Chief Minister who is responsible for all the actions of the Ministers, why cannot the Governor say, “Here is a particular order. I feel that it is a matter of great importance. I want that by virtue of collective responsibility all the Ministers must meet together and consider it”? If they accept it, he is bound to accept their advice. He has no right to over-rule them. It is merely a matter of caution that a decision, which in the opinion of the Constitutional head, is such as requires the *imprimatur* of the whole Cabinet and not of a single Minister, should so receive it. Therefore it is a safeguard which preserves the collective responsibility and the powers of the Prime Minister, and not a power which interferes with the Government. Therefore the fear that it would so interfere is entirely unfounded.

Then as regards my honourable Friend, Mr. Biswanath Das, I am reminded of the claim of the psycho-analyst that when an infant in the beginning of his life gets a certain complex that continues throughout life. My Friend, Mr. Biswanath Das, when he was Prime Minister of Orissa in 1938, had an extraordinarily bad Governor and the complex that he acquired then about the powers of the Governors continues even after ten years. He forgets that even in those days in 1938 there were several Governors who took up a strictly constitutional attitude, and who out of their experience of parliamentary life in England now and then asked the Ministers to reconsider certain points of view. This was extremely helpful. I am particularly referring to Sir Roger Lumley, the then Governor of Bombay. We need not import the old complex into the new regime. The new Governor has no power except as a constitutional head. He is going to be nominated by the Centre. He is going to be a detached spectator of what is going on in the province. His function is to maintain the dignity, the stability and the collective responsibility of his government. Now in that limited sphere he can exercise some influence.

[Shri K. M. Munshi]

That influence he can exercise only if he is given these limited powers. I would mention to the House that since we are copying the British model, we have also to consider what are the duties and functions of the constitutional head there.

Shri Biswanath Das : Let me accept Mr. Munshi's comments on me, for I do not worry about them, but I would request him to reply to the points that I have raised.

Shri K. M. Munshi : I want to make it clear that the position of the Governor must be considered from the point of view of a constitutional head as in England. A constitutional head is not a cipher. I will read for the benefit of the House the position of the king in England as enunciated by the late Mr. Asquith who could not be considered a weak Prime Minister at any time of his life. This is his definition of the position of the constitutional head in England:—

“We have now a well-established tradition that in the last resort, the occupant of the Throne accepts and acts on the advice of his Ministers... He is entitled and bound to give his Ministers all relevant information which comes to him;”

Therefore it is not as though he cannot get any information apart from what he gets from his Ministers.

“to point out objections which seem to him valid against the course which they advice; to suggest, if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament.”

Therefore the constitutional head in England is not a dummy. He is not a cipher. He has got an important role of advising his Ministers.

Shri H. V. Kamath : On a point of information, Sir, may I ask Mr. Munshi whether in any written Constitution of the world any Constitutional head is invested with powers envisaged in article 147?

Shri K. M. Munshi : So far as this Constitution is concerned, as I have said, we have tried to adopt the British model as far as we can, consistently with the conditions in this country, and so the constitutional head to of the province—and the President—must be put on the same level as the constitutional head in England. Sir, there are going to be many minorities in the provinces and it is the duty of the Governor to see that there is a balance in the general policies followed by governments. It may happen in this way. The Prime Minister, being the head of the majority party, has certain policies to put through. He may find that the minorities are not able to accept those policies, but the Governor exercising influence over his Prime Minister might be able to bring about some harmony among the parties, ‘behind the Speaker’s chair’ as it is said in England. Therefore he must have the right to ask his Ministers to reconsider certain programmes. Of course, ultimately he must accept the advice of his Ministers. If the Prime Minister finally says, “this is my policy, this is my advice,” the Governor will have to accept them. But till that stage is reached, he has got considerable scope for influencing decisions.

Shri Biswanath Das : I am sorry for interrupting. Does Mr. Munshi honestly believe that the position of the Governor in a province has any connection with or any resemblance to the executive in England? That is No. 1. No. 2. is, does he not know that the king in England is not even in a position to use the Royal Seal, that it is being used by the Lord Privy Seal? Therefore how does he compare the position and power of the king of England and

the British Cabinet with these of a provincial Governor and his Council of Ministers?

Shri K. M. Munshi : I do not understand this objection which is being raised against this article. He wants to build up democracy in this country. We are going to have a government of a type which is more or less on the British model. That being so, nothing need prevent us from following the successful experiment in England. We are not going to have a new experiment. If the Governor has not even the function of influencing his Ministers or even asking them to reconsider their decision, the only alternative is the suggestion made two years ago but rejected that the Premier, once elected, should be the constitutional head, the complete master of the government in the province during his tenure of office for five years. There is no harm, but there is great advantage if the Governor exercise his influence over his Cabinet. As I said, we have single parties in the provinces now, but a time might come when there will be many parties, when the Premier might fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit that the powers that are given here are legitimate powers given to a constitutional head and they are essential for working out a smooth democracy and they will be most beneficial to the ministers themselves, because then they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessible to the other parties. From this point of view these powers, which we have accepted for the Governor, are essential and must be retained.

Shri Rohini Kumar Chaudhuri : (Assam : General): Mr. President, Sir, I consider this article 147 will be a blot on our future Constitution, if it is adopted. Sir, just as a piece of cow-dung may spoil the whole vessel of milk, this particular provision will spoil this whole Constitution of ours. I am speaking from personal experience and I consider that this is a most unwanted provision and this will lead to friction in the provincial administration. The first question that you ought to remember is whether in a province the Chief Minister is the most effective person or the Governor. Can you for a moment deny that the Chief Minister is certainly the person in authority in a province except in certain matters which will be under the Constitution in the discretion of the Governor? Now is it fair to say that it shall be the duty of the Chief Minister to do a certain thing or to furnish certain information to the Governor? Let me take, for instance, the first clause of this article. It says: "It shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation." This is a work which can be and is left to the Chief Secretary of the Government. Will the Chief Minister be guilty of breach of duty if for any reason, the Chief Secretary or the Secretary in charge does not forward the copy of the proceedings of the Council of Ministers to the Governor? This article should be worded in this way—"That all information relating to the administration of the State so far as it affects the exercise of the right, power and discretion of the Governor shall be communicated to the Governor". As for other things the Governor has absolutely nothing to do; it is only in those matters which may affect the exercise of his discretion information may be sent. The decision of the Council of Ministers may be forwarded to the Governor, but not any other matter and even in that, it should be left to the ordinary office channel for the proceedings to be sent to him. No Chief Minister should be considered as failing in his duty if for any reason copies of the Proceedings are not sent to the Governor. Then, Sir, clause (b) reads as follows:—

"To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;"

[Shri Rohini Kumar Chaudhuri]

What is his business to call for any information? What can he do after getting the information? He has no business to call for any information or any file or anything of that kind. Even in the present arrangement there is no such provision. All files go to the Chief Minister. It is no part of his duty to send certain things to the Governor. I think that the whole section is very badly worded and this clause should be worded in this way:—

“The Governor may call for any information relating to the administration of the affairs of the State and such information shall be furnished to him if in the opinion of the Chief Minister such information is necessary for a proper exercise of the duties of the Governor.”

In all other matters, the Governor has no duty. It is only that information which may help him in the exercise of his duty, which may be sent to him. I am afraid the clause has been unhappily worded. It seems as if to say that the Governor is the same Governor, a representative of the British monarch and as such the Chief Minister is subject to him and must carry out his orders; it is not so under the present Constitution as we are framing it. We are not placing anybody here either as a monarch or as any representative of the monarch. There is no question of monarchy; it is a question of democracy. The Governor has no business to poke his nose into the affairs of the State which is entirely the consideration of the Ministry. He can only butt in when such information is necessary for the exercise of his discretionary power, and in no other matter can he call upon the Chief Minister to give information and it cannot be a breach of duty of the Chief Minister not to give him that information which is entirely within his consideration. If the Governor can show some relevancy, then, of course, the information will be given to him and not otherwise.

The third clause, I submit Sir, is the most dangerous of all the clauses under this article. It says: “If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.” There are many things which are done by Ministry, of course by informal consultation; there are many things which a particular minister does and if he has any doubt he usually consults the Chief Minister. Who is the Governor to ask the Chief Minister to take that matter to the Council of Ministers? Why should he do it? I, as a Minister, have passed a certain order and when I find that I am in doubt, I ask the Chief Minister whether the order is proper or not. If the Chief Minister says it is all right, I pass the order; the order is urgent and action on that order should be taken immediately. What has the Governor to do with that? How can the Governor ask the Chief Minister to reconsider this matter? It may not be at all within his province of powers and why should it be reconsidered? Take for Instance, Sir, a Judicial Minister remits a death sentence; he does so after having taken into consideration all matters; he has also consulted the Chief Minister, but his decision is against the advice of the Secretary and what the Secretary does is, he goes to the Governor and says: “Here is a man whose sentence is being remitted and you ought to.....”.

Mr. President : Where is the provision in this Constitution which gives power to a Minister to grant pardon ?

Shri Rohini Kumar Chaudhuri : That is true, Sir, but I am only giving an illustration. After all the Minister passes the order.

Mr. President : Not from this Constitution.

Shri Rohini Kumar Chaudhuri : Let me give another instance. Take, for

instance, that a settlement has been made by the Ministry of certain shops, excise or something, in contravention of the wishes of the Secretary or of the head of the Department, and they do not agree with that order. Now they approach the Governor for a reconsideration of the matter; the order may have been passed after consultation with the Chief Minister and then the Governor says that this matter ought to be considered by the Council of Ministers and the time passes. Why should the Governor be allowed to interfere in such a matter, that is my question. I am only giving an illustration and there may be other illustrations. But why in those matters where the Governor has nothing to do, where the orders have been passed after consultation with the Chief Minister by a particular Minister, what authority has the Governor to ask the Chief Minister again to consider this matter by the Council of Minister? Why? That only delays the matter and makes the order infructuous. Under what circumstances can you imagine that he should be able to do it? You may say that the Chief Minister has made a mistake and therefore this is a matter which ought to be considered by the Council of Ministers. But, who is the governor to find out mistakes in a Minister in matters not affecting his special powers? That is the question I would like to ask. Who is the Governor to poke his nose and ask the Chief Minister or the Ministry to reconsider a matter because he does not agree with him or because his officers do not agree with the Ministers? This clause is a very dangerous clause; this is a very bad clause.

Shri R.K. Sidhwa : I may say, here, Sir, that in certain provinces, a Minister without consulting the Prime Minister or the Chief Minister sends papers to the Governor and he is allowed to do so.

Shri Rohini Kumar Chaudhuri : That is wrong. Why should the Governor interfere? The Chief Minister is always there and if he finds that a particular Minister is acting contrary to the policy of his Government, he can call for any papers, he can advise the Minister or he can himself pass orders. What business has the Governor to do here? I would request the Honourable Dr. Ambedkar to reconsider the whole position in view of what I have said. I am sure that whatever we may say about the other clauses, clause (c) is going to lead to friction and quarrel between the Ministry and the Governor.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

Shri H. V. Kamath : May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated...(*Interruption*).

The Honourable Dr. B.R. Ambedkar : As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry.

[The Honourable Dr. B. R. Ambedkar]

That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

Shri H. V. Kamath : Won't he be able to delay or obstruct.....?

The Honourable Dr. B. R. Ambedkar : My friend will not interrupt while I am going on. At the end, he may ask any question and if I am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all: He is the representative not of a party, he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all Cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of

the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform what I say not functions because he has none, but the duties which every good Governor ought to discharge. (*Cheers.*)

Shri H. V. Kamath : May I ask Dr. Ambedkar some questions?

Mr. President : What is the use of asking questions now? You had your chance.

Shri H. V. Kamath : Dr. Ambedkar said that I could put questions at the end of his speech.

Mr. President : I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

Mr. President : The question is :

“That article 147 stand part of the Constitution.”

The motion was adopted.

Article 147 was added to the Constitution.

New Article 147-A

Mr. President : There is another article proposed to be added—147-A by Prof. Shah.

Prof. K. T. Shah : I do not wish to move it.

Article 150

Mr. President : Articles 148 and 149 have been passed. We go to article 150.

Shri L. Krishnaswami Bharathi (Madras: General): May I suggest that this article be held over?

Mr. President : Is it the wish of the House that the consideration of this article be held over.

Honourable Members : Yes.

Article 151

Mr. President : We go to 151.

(Amendment Nos. 2298 to 2304 were not moved.)

(No. 2305 was not moved.)

There is an amendment to this— 181 of Third List by Mr. Gupte but the original amendment is not moved.

Shri Brajeshwar Prasad (Bihar: General): Sir, I will move 2305.

I beg to move:

“That in clause (1) of article 151, The words ‘and the expiration of the said period of five years shall operate as a dissolution of the Assembly’ be deleted.”

Shri B. M. Gupte : Sir, I move:

“That with reference to amendment No. 2304 of the List of Amendments, after clause (1) of article 151, the following proviso be inserted:

“Provided that the said period may by law, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.”

Prof. Shibban Lal Saksena : On a point of Order. This amendment No. 2304 has not been moved.

Mr. President : I am afraid it is my mistake. This has reference to 2304 and not to 2305.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): I am moving 2304. Sir, I beg to move:

“That in clause (1) of article 151, after the words ‘its first meeting’ the words ‘and no longer’ be inserted.”

Shri B. M. Gupte : Sir, before I proceed I request permission to rectify a mistake which has occurred owing to inadvertence or oversight. I want to say ‘Parliament by law for a period’ instead of ‘Parliament for a period’ in my amendment.

Mr. President : Yes, you have permission to do that.

Shri B. M. Gupte : This provision is exactly similar to the one which we have already adopted for the Central Parliament— article 68. Here it is less objectionable. There the Parliament is allowed to extend its own life. Here I have given authority to Parliament to extend the life of the State Legislature. Some persons might argue that in view of article 227 it is not necessary to give this power to Parliament because in an emergency the Parliament is given the right to legislate on all State matters and therefore it may not be necessary to extend the life of the State Legislature. But that will not be proper, because an emergency does not necessarily mean that all the machinery of the provincial responsible Governments should be scrapped. On the contrary in order to enlist better co-operation in war effort or in an emergency effort, it is necessary to keep that machinery going; and if this provision is not made and if the time of the State legislature expires during that emergency then our object could not be achieved. Automatically the Legislature would be dissolved and the whole machinery would be suspended. Therefore I submit that there should be this power for the Parliament to extend the period if it so desires and if it is necessary in the public interest at that time. I therefore move this amendment.

Mr. President : Nos. 2306 and 2307 are of a drafting nature. 2308—Dr. Ambedkar.

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

“That in clause (2) of article 151, for the words ‘third year’ the words ‘second year’ be substituted.”

(Amendment No. 2309 was not moved.)

Mr. President : Now the amendments are moved. Does any one want to say anything about this article or the amendments?

Prof. Shibban Lal Saksena : Sir, before I proceed I would like to know whether this article can be taken up before article 150 has been passed,

because this article lays down that one-third of the Members shall retire after three years. Unless we know the composition of the Council how can we decide whether they should retire after two years or three years?

Mr. President : Whatever the composition of the Council may be, half of the Members will retire at the end the second year, or if it is so decided, one third may retire. That will not in any way depend on the composition of the Council.

Prof. Shibban Lal Saksena : If that is your ruling, Sir, I bow to it.

The Honourable Dr. B. R. Ambedkar : The article has been passed that the Second Chamber shall be there. This article deals only with how the Members will re-elect themselves.

Prof. Shibban Lal Saksena : We have to decide whether a particular Council should live for nine years or six years, and that will depend upon the composition of the Council. The composition will determine the period at the end of which one-third of the members should retire.

Mr. President : That does not depend on the composition of the Council. Whatever may be the life of the House, the composition will be according to the decision we may take on article 150.

Prof. Shibban Lal Saksena : Well Sir, I bow to your ruling.

I have only to say that the amendment of Mr. Gupte, which gives to the Parliament the power to increase the life of the Legislatures by one year at a time until an emergency is over, is almost wholly undemocratic. The result may be that sometimes the Legislative Assemblies in the Provinces may continue for even ten or twelve years. Suppose there is a war and the war lasts long. Then every year, the life of the Assemblies will be extended. I say that Mr. Gupte's amendment which wants to give to the Parliament the power to increase the life of the provincial Legislature by a year at a time is something which is wholly undemocratic. I know we have allowed such a provision in the case of the Parliament, and I opposed it then also. I am sorry the Prime Minister is not here; I wish he were here and he had given us his views upon this subject. So far as I know he is opposed to this provision. It has been said that when a war is on, an election is difficult. But I say it is in war that people's tempers are so altered that there must be an election to know the views of the people. I, therefore think that this power of increasing the life of the provincial Legislature year by year indefinitely is something which besides being wholly undemocratic will be very harmful. In fact we know that in the United States of America, the Presidential election was held at the height of the war and President Roosevelt was re-elected, and I think that raised the prestige of the United States very high. I think it is only proper that the elections to Legislatures should be held after the fixed period of five years, irrespective of the fact whether there is war or no war. The people have the right to demand fresh elections every fifth year. It is a right which should not be taken away from the people on the pretext of any emergency. If this power is given to Parliament, it may be abused and the people may be deprived of the right of removing an unwanted government and of choosing the government of their choice. I am therefore opposed to this amendment of Mr. Gupte.

Then it has been said that one-third of the Council will retire every third year. I am glad Dr. Ambedkar has now proposed that the period will now be two years, instead of three. That will make the life of the Council only six years which is almost equal to the life of the Assembly. It also ensures greater freshness to the Council. I therefore, support the amendment of Dr. Ambedkar.

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

The Honourable Dr. B. R. Ambedkar : I accept Mr. Gupte's amendment.

Mr. President : Now I shall put Mr. Gupte's amendment which has been accepted by Dr. Ambedkar, to vote. It becomes the original amendment.

The question is:

"That with reference to amendment No. 2304 of the List of Amendments, after clause (1) of article 151, the following proviso be inserted:

'Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.'

The amendment was adopted.

Mr. President : Mr. Brajeshwar Prasad's amendment.

Shri Brajeshwar Prasad : Sir, I would like to withdraw my amendment.

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

Mr. President : Then I put Dr. Ambedkar's amendment No. 2308.

The question is:

"That in clause (2) of article 151, for the words 'third year' the words 'second year' be substituted."

The amendment was adopted.

Mr. President : Then I put article 151, as amended by these two amendments to the House.

The question is:

"That article 151, as amended, stand part of the Constitution."

The amendment was adopted.

Article 151, as amended, was added to the Constitution.

Article 152

Mr. President : Then we come to article 152. To this article, there is the amendment of Dr. Ambedkar, No. 2311, to which there are several amendments, one of which is amendment no. 38 of the First List.

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

"That for article 152, the following be substituted:—

'152. *Qualification for membership of the State Legislature.*—A person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in a Legislative Assembly, not less than twenty five years of age and, in the case of a seat in the Legislative Council, not less than thirty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State.'

Mr. President : As I said, there are several amendments to this.

These may be moved now.

(Amendment Nos. 126, 127, 128 and 129, in the Supplementary List were not moved.)

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move amendment No. 38 of List I, Third Week, which is:

“That in amendment No. 2311 of the List of Amendments in clause (b) of the proposed article 152, for the word “thirty-five” the word “thirty” be substituted.”

This is in conformity with what we have already passed in regard to age qualification for the members of the Upper House in the Parliament, and therefore, there is not much to be said as to why this amendment is being moved here. But before I close I would like to clear a doubt regarding clause (c) of this article which has been proposed by Dr. Ambedkar. It says, the person shall “possess such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State.”

Sir, my doubt—the doubt that I have in mind—is this. While we are wedded to the principle of adult franchise and hope that Members of both these Assemblies will be popularly elected persons, who will be entitled not only to send their representatives to sit in this House and also in the Upper House— whether of the Centre or the provincial bodies—my fear is that according to this sub-clause as it stands it is quite possible that a property qualification or any other qualification may be introduced whereby Members may be debarred from offering themselves as candidates for either House of the Legislature.

Sir, in moving the constitution for the Upper House of the provincial Legislature, that is of the State, reference has been made to the constitutions of Canada and South Africa, where there is a property qualification prescribed for those who can be members of the Upper House. If that idea remains in our minds that this sub-clause can at any stage be introduced— and I am not even sure that, where this sub-clause is retained, members of the Lower House or the Upper House may not have their qualifications restricted, and what you have granted by adult franchise namely that every adult can vote and every adult aged 25 or 30 can be a member of the Lower or Upper House—and if any other qualifications are prescribed, his right may be thereby taken away. My point is that either we draw our rights from the Constitution laid down in this House or they are drawn from the Parliament which may change those rights from time to time. We have no objection should a Parliament, which would be also a sovereign body, wish to change the constitution. There is a certain prescribed method and only by a certain number of votes can that constitution be changed. But suppose at any given time in a provincial Legislature or in a Parliament a motion is put and the qualification of the members is raised, then I am afraid that the safeguard or the provision we have placed that every adult, or every adult aged 25 or 30 shall be able to be a member of either House may be nullified. So I hope that Dr. Ambedkar will assure the House that that possibility is not in his mind because as far as disqualifications are concerned, there is a separate article disqualifying a member from appearing as or becoming a member of either of the two Houses. Here it is specifically mentioned that the qualifications of the members may be prescribed from time to time. Sir, I move.

(Amendments Nos. 2312 to 2318 were not moved.)

Prof. K. T. Shah : Sir, I move:

“That in article 152, after the word ‘age’ where it occurs for the first time the words ‘is literate, and is not otherwise disqualified from being elected’ : and after the word ‘age’ where it occurs for the second time, the words ‘is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected’ be added.”

The important point that I would like to make for the consideration of this amendment is the necessity of at least candidates being literate who seek

[Prof. K. T. Shah]

to be elected to the Legislature. We have an appalling volume of ignorance in this country—utter illiteracy. And the danger of illiteracy becoming predominant, or rather the danger of illiterate candidates coming into the Legislature, appears to me to be so great that I think we would do well to lay down a positive requirement by or qualification for candidates, seeking election to the Legislature, to be literate at least.

Under the prevailing state of things, it is difficult to demand that electors shall be all literate, as we have some 85 per cent of the population illiterate, and with adult franchise the voters would naturally be largely illiterate. It is, however, a misfortune which we would like to correct at the earliest opportunity, and I trust that within a measurable period of time—perhaps ten years—illiteracy would be completely abolished; and voters will all have this minimum of requirement in democratic citizenship.

But even while it prevails, and while this danger of something like over three-fourths of the population, if not more, being illiterate is before us, I think it is necessary to insert in this Constitution the positive requirement that the candidate will be at least literate; and that anyone who is not literate will be disqualified.

The other items, Sir, in my amendment making disqualifications for candidates, are not so very important; and I do not lay so much stress by them. The amendment moved by the Chairman of the Drafting Committee if carried, would perhaps attend to some of those. But in this matter of literacy of the candidate, I feel very strongly; and I trust the House will agree with me, and lay down this qualification of literacy by the Constitution, and not by an Act of Parliament only.

I commend my amendment to the House.

Mr. President : The amendments have been moved. Any one wishing to speak on the article or any of the amendments may do so now.

Mr. Naziruddin Ahmad : Mr. President, I have some difficulty in accepting amendment No. 68 moved by Shrimati Purnima Banerji. The first difficulty is that I feel that in the Legislative Assembly where a member should be more vigorous, more youthful, and more energetic than the Members of the Legislative Council who would be elderly statesmen, the amendment states that the Members of the Legislative Assembly must be at least thirty five and the Members of the Legislative Council at least thirty. I submit that the whole thing should have been the other way round. As in the amendment moved by Dr. Ambedkar, the age-limit of the Lower House...

Mr. President : I think you are under a misapprehension. She wants for the words “thirty-five” the word “thirty”. That refers to the Council and not to the Assembly. “In case of a seat in the Legislative Council not less than 35 years”—she wants that to be substituted by “30”.

Mr. Naziruddin Ahmad : But, Sir, in the corresponding provision to the Central Legislature—the Parliament—the provision is that for the House of the People—the Lower House—the age limit would be twenty-five and for the Legislative Council not less than thirty-five. But as it is printed and circulated.

Mr. President : It is said that in the case of a seat in the Council of State not less than thirty-five years and in the case of a seat in the House of the People not less than thirty.

Mr. Naziruddin Ahmad : So the age limit is—Upper House 30 and Lower House 25. In that case I have nothing further to say. The speed and

rapidity with which amendments are being showered upon us is responsible for this slip.

Prof. Shibban Lal Saksena : Mr. President, Sir, the original clause has been substituted by the amendment of Dr. Ambedkar. Sir, in this amendment I object to two things: my first objection is to clause (c). This clause says:

“possess such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State.”

It does not even say ‘Parliament’. I would have wished that these qualifications were laid down in the Constitution itself. One of the main objects of the Constitution is to lay down the qualifications of candidates and unfortunately these have been left to be decided by the Legislature of the State. The result will be that every State will have a different set of qualifications for its candidates. A man who can be a member of the Assembly in Bombay may not be eligible to be so in the United Provinces, because the qualifications in Bombay may be different from those in the United Provinces. This, I think, is a mistake which I hope Dr. Ambedkar will correct.

Again, Sir, as I said, I am totally opposed to even Parliament being given the power of prescribing qualifications; the Constitution itself should lay down what those qualifications shall be. Otherwise, qualifications of candidates will be made a plaything of party politics. For instance, a die-hard Government might come into power and lay it down that only zamindars, or persons paying income-tax of a particular amount would be eligible to seek election. The result will be that ordinary people will go to the wall. I, therefore, think, Sir, that clause (c) should be deleted.

Then, coming to clause (b), it lays down that a person shall not be qualified for election unless he is not less than twenty-five years of age in the case of the Legislative Assembly, and thirty years, in the case of the Legislative Council. As I said the other day, in the case of other constitutions these limits are not generally prescribed. In England any voter can be a member of Parliament. I have known persons who have become members of provincial Assemblies at a much younger age. I, therefore, think, Sir, that at least for the provincial Legislatures which are the training grounds in parliamentary affairs, the age of eligibility for membership should be fixed at twenty-one years.

Mr. President : We had all these arguments when we discussed article 68-A. Is it necessary to repeat the same arguments once again?

The Honourable Dr. B.R. Ambedkar : Sir, I accept the amendment moved by Shrimati Purnima Banerji. With regard to the fear that she expressed about clause (c) that this clause might enable the prescription of property qualifications by Parliament for candidates, I certainly can say that such is not the intention underlying sub-clause (c). What is behind this clause is the provision of such disqualifications as bankruptcy, unsoundness of mind, residence in a particular constituency and things of that sort. Certainly there is no intention that the property qualification should be included as a necessary condition for candidates.

Then, with regard to the amendment of Professor K.T. Shah about literacy, I think that is a matter which might as well be left to the Legislatures. If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.

Sir, there is only one point about which I should like to make a specific reference. Sub-clause (c) is in a certain manner related to articles 290 and 291 which deal with electoral matters. We have not passed those articles.

[The Honourable Dr. B. R. Ambedkar]

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to reserve for the Drafting Committee the right to reconsider the last part of sub-clause (c). Subject to that I think the article, as amended, may be passed.

Mr. President : I shall now put the article with the various amendments to vote: first is the amendment of Shrimati Purnima Banerji—No. 38 of List I.

The question is:

“That in amendment No. 2311 of the List of Amendments, in clause (b) of the proposed article 152, for the word ‘thirty-five’ the word ‘thirty’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That for article 152, the following be substituted:—

‘152. *Qualification for membership of the State Legislature.*—A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State’.”

The amendment was adopted.

Mr. President : The question is:

“That in article 152, after the word ‘age’ where it occurs for the first time the words is ‘literate’, and is not otherwise disqualified from being elected; and after the word ‘age’ where it occurs for the second time, the words ‘is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected’ be added.”

The amendment was negatived.

Mr. President : The question is:

“That article 152, as amended, stand part of the Constitution.”

The motion was adopted.

Article 152, as amended, was added to the Constitution.

Mr. President : Then we have notice of another article, No. 152-A, which I think is covered by the article which we have just passed; so, that need not be taken up.

Then we go to article 153.

Article 153

Mr. President : Article 153 is for the consideration of the House.

With regard to the very first amendment, No. 2321, as we had a similar amendment with regard to article 69 which was discussed at great length the other day, does Professor Shah wish to move it?

Prof. K. T. Shah : If I am in order I would like to move it. But if you rule it out, it cannot be moved.

Mr. President : It is not a question of ruling it out. If it is moved, there will be a repetition of the arguments once put forward.

Prof. K. T. Shah : I agree that this is a similar amendment, but not identical.

Mr. President : I have not said it is identical.

Prof. K. T. Shah : All right. I do not move it, Sir.

Mr. President : Amendment Nos. 2322, 2323, 2324, 2325 and 2326 are not moved, as they are verbal amendments.

Prof. K. T. Shah : As my amendment No. 2327 is part of the amendments not moved, I do not move it.

Mr. President : Then amendments Nos. 2328, 2329 and 2330 also go, Amendment No. 2331 is not moved.

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, I move:

“That at the end of sub-clause (c) of clause (2) of article 153, the words ‘if the Governor is satisfied that the administration is failing and the ministry has become unstable’ be inserted.”

In this clause certain powers have been given to the Governor to summon, prorogue or dissolve the Legislative Assembly. Now I want that some reasons may be enumerated which necessitate the dissolution of a House, I find that to clause (3) of article 153 there is an amendment of Dr. Ambedkar in which he wants to omit the clause which runs thus: “(3) the functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.” I, on the other hand, want that some reasons should be given for the dissolution. Nowhere in the Constitution are we enumerating the conditions and circumstances under which the House can be dissolved. If we do not put any condition, there might be difficulties. Supposing in some province there is a party in power with whose views the Governor does not agree. In such cases it is possible that the Governor may find some reasons to dissolve the Assembly and make arrangements for fresh elections. If such things happen there will be no justification for a dissolution of the House. Simply because a Governor does not subscribe to the views of the majority party the Assembly should not be dissolved. To avoid such difficulties I think it is necessary that some conditions and circumstances should be enumerated in the Constitution under which alone the Governor can dissolve the House. There should be no other reason for dissolution of the House except maladministration or instability of the Ministry and its unfitness to work. Therefore this matter should be considered and we should provide for certain conditions and circumstances under which the Governor can dissolve the House.

Mr. President : The next amendment, No. 2333, is not moved, Dr. Ambedkar may move amendment No. 2334.

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

“That clause (3) of article 153 be omitted.”

This clause is apparently inconsistent with the scheme for a Constitutional Governor.

Mr. President : Amendment No. 2335 is the same as the amendment just moved. Amendment No. 2336 is not moved.

Shri H.V. Kamath : Mr. President, Sir, may I have your leave to touch upon the meaning or interpretation of the amendment that has just been

[Shri H. V. Kamath]

moved by my learned Friend, Dr. Ambedkar? If this amendment is accepted by the House it would do away with the discretionary powers given to the Governor. There is, however, sub-clause (b). Am I to understand that so far as proroguing of the House is concerned, the Governor acts in consultation with the Chief Minister or the Cabinet and therefore no reference to it is necessary in clause (3)?

Mr. President : He wants clause (3) to be deleted.

Shri H.V. Kamath : In clause (3) there is reference to sub-clauses (a) and (c). I put (a) and (b) on a par with each other. The Governor can summon the Houses or either House to meet at such time and place as he thinks fit. Then I do not know why the act of prorogation should be on a different level.

Mr. President : That is exactly what is not being done now. All the three are being put on a par.

Shri H. V. Kamath : Then I would like to refer to another aspect of this deletion. That is the point which you were good enough to raise in this House the other day, that is to say, that the President of the Union shall have a Council of Ministers to aid and advise him in the exercise of his functions.

The corresponding article here is 143:

“That shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.....”

Sir, as you pointed out in connection with an article relating to the President *vis-a-vis* his Council of Ministers, is there any article, is there any provision, in the Constitution which binds the Governor to accept or to follow always the advice tendered to him by his Council of Ministers? Power is being conferred upon him under this article to dissolve the Legislative Assembly. This is a fairly serious matter in all democracies. There have been instances in various democracies, even in our own provinces sometimes, when a Cabinet seeking to gain time against a motion of censure being brought against them, have sought the Governor's aid, in getting the Assembly prorogued. This of course is not so serious as dissolution of the Legislative Assembly. Here the article blandly says, “subject to the provisions of this article.” As regards clause (1) of the article, I am glad that our Parliament and our other Legislatures would meet more often and for longer periods. I hope that will be considered and will be given effect to at the appropriate time. Clause (2) of this article is important because it deals with the dissolution of the Assembly by the Governor of a State and in view of the fact that there is no specific provision—of course it may be understood and reading between the lines Dr. Ambedkar might say that the substance of it is there, but we have not yet decided even to do away with the discretionary powers of the Governor and only yesterday we had a fully-dress debate on the subject in this House—there is no specific provision in the constitution binding the Governor to accept the advice tendered to him by his Council of Ministers, there is a lacuna in the Constitution. Notwithstanding this, we are conferring upon him the power to dissolve the Legislative Assembly, without even mentioning that he should consult or be guided by the advice of his Ministers in this regard. I am constrained to say that this power which we are conferring upon the Governor will be out of tune with the new set-up that we are going to create in the country unless we bind the Governor to accept the advice tendered to him by his Ministers. I hope that this article will

be held over and the Drafting Committee will bring forward another motion later on revising or altering this article in a suitable manner.

Shri Gopal Narain (United Provinces: General): Mr. President, Sir, before speaking on this article, I wish to lodge a complaint and seek redress from you, I am one of those who have attended all the meetings of this Assembly and sit from beginning to the end, but my patience has been exhausted now. I find that there are a few honourable Members of this House who have monopolised all the debates, who must speak on every article, on every amendment and every amendment to amendment. I know, Sir, that you have your own limitations and you can not stop them under the rules, though I see from your face that you also feel sometimes bored, but you cannot stop them. I suggest to you, Sir, that some time-limit may be imposed upon some Members. They should not be allowed to speak for more than two or three minutes. So far as this article is concerned, it has already taken fifteen minutes, though there is nothing new in it, and it only provides discretionary powers to the Governor. Still a Member comes and oppose it. I seek redress from you, but if you cannot do this, then you must allow us at least to sleep in our seats or do something else than sit in this House. Sir, I support this article.

Mr. President : I am afraid I am helpless in this matter. I leave it to the good sense of the Members.

Shri Brajeshwar Prasad : (Rose to speak).

Mr. President : Do you wish to speak after this? (*Laughter*).

The Honourable Dr. B.R. Ambedkar : I do not think I need reply. This matter has been debated quite often.

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

The question is:

“That at the end of sub-clause (c) of clause (2) of article 153, the words ‘if the Governor is satisfied that the administration is failing and the ministry has become unstable’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That clause (3) of article 153 be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That article 153, as amended, stand part of the Constitution.” The motion was adopted.

Article 153, as amended, was added to the Constitution.

New Article 153-A

Mr. President : There is notice of a new article by Professor Shah.

Prof. K.T. Shah : I am told that this matter came up before but I am not aware of it. Perhaps the honourable Chairman of the Drafting Committee would inform me. If it has already been decided, then I would not move this, but I do not think it has come up.

Mr. President : (after referring to amendment No. 1483). That has nothing to do with the right of members.

Prof. K.T. Shah : Sir, I beg to move:

“That after article 153, the following new article 153-A be added:—

‘153-A. If at any time when the Assembly is not sitting, it appears necessary to more than half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of the Requisition; provided that the Speaker may, if he deems proper, call upon such Requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.’ ”

Sir, this right of Requisition is, in my opinion an important right which should be given to members of the Assembly provided they are in number more than half the total membership of any State Legislative Assembly. The entire framework of this Constitution, Sir, has been so designed as to vest all powers even in regard to the Legislature in the executive, I mean powers of convening, of dissolving, of proroguing or of adjourning the House. It seems to me therefore that within the safeguard. I have indicated in this amendment the right of Requisitioning and assent of the Speaker by more than half the total membership of the House is not only liable to be abused, but may be of great service.

As the House is aware, it is possible that between two sessions of a State Legislature there may be as much as six months. Within a period of six months, it is not inconceivable that a situation may arise, that could not be dealt with except by deliberation and action of the Legislature itself. There may be factors at work, however, whereby the executive is either unable or unwilling to call such a meeting. It becomes, therefore, important for the rest of the members or rather for the private members, if I may say so, of the Legislature, to request that a meeting be called. And hence my amendment providing for the right to requisition.

I have provided, I think, more than ample safeguards that a right of this kind shall not be abused. It has been laid down in the first instance that not a fraction, but a definite absolute majority of the House so considers necessary to convene a meeting. Secondly that if they do so, they will have to address the presiding authority in writing specifying the special situation which requires a meeting of this kind to be convened; Thirdly that they may have to bear, if the Speaker so thinks proper, the entire expenditure of the meeting being convened unless the Assembly when it meets realizes the gravity of the situation or the wisdom of those people who make such a request, and specifically resolve to exonerate them from the charge and causes the meeting to be convened in the ordinary manner.

Subject to these precautions or safeguards, I think the right of requisitioning is in no way likely to be abused; on the contrary it is possible that thereby a sense of responsibility may be created in the ordinary member; a sense of close interest by the average private member in the doings or happenings in the province may be generated, and as such the real training, if one may say so, of responsible Government may be induced in the Legislature as such.

I know that this demand is somewhat unusual, but I trust the mere “unusualness” of it will not be an argument to damn it. I trust the House will see the force of the arguments I have put forward and accept my motion.

Mr. President : Does anyone wish to say anything about this amendment?

The Honourable Dr. B.R. Ambedkar : Sir, I do not accept the amendment.

Mr. President : The question is:

“That after article 153, the following new article 153-A be added :—

‘153-A. If at any time when the Assembly is not sitting, it appears necessary to more than half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of Requisition; provided that the Speaker may, if he deems proper, call upon such requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.’ ”

The amendment was negatived.

Article 154

Mr. President : I find that this article 154 is word for word the same as article 70, which we have already adopted with only this difference that one relates to the States and the other relates to the Union. Is it necessary to have any long discussion about this?

Many Honourable Members : No, Sir.

Mr. President : The question is:

“That article 154 stand part of the Constitution.”

The motion was adopted.

Article 154 was added to the Constitution.

Article 155

Mr. President : This article also is word for word same as article 71 except that the present article refers to the State and the previous article refers to the Centre. The amendments to this also are of a verbal nature except the one by Mr. Sidhva—Amendment No. 2348.

Shri R. K. Sidhva : I do not wish to move that.

Mr. President : The question is:

“That article 155 stand part of the Constitution.”

The motion was adopted.

Article 155 was added to the Constitution.

Article 156

Mr. President : This article is also the same as article 72, which we have already accepted. Of course there are some amendments.

(Amendment Nos. 2349 to 2352 were not moved.)

The question is:

“That article 156 stand part of the Constitution.”

The motion was adopted.

Article 156 was added to the Constitution.

Article 157

Mr. President : There is no amendment, to this article as far as I can see, which is of a very substantial nature. All are verbal amendments. This article is similar to article 76 relating to the Union.

The question is:

“That article 157 stand part of the Constitution.”

The motion was adopted.

Article 157 was added to the Constitution.

Mr. President : Then there is notice of another amendment to insert a new article-157-A, given by Prof. Shah.

Prof. K.T. Shah : Sir, this matter has been discussed in the past and it has been rejected. Therefore, I do not wish to move it.

(Amendment No. 2359 was not moved.)

Article 158

Mr. President : The motion is:

“That article 158 form part of the Constitution.”

Mr. Mohd. Tahir : Mr. President, I beg to move:

“That in article 158, for the words ‘A member holding office as’ the word ‘The’ be substituted and in clause (b) of article 158, for the words ‘such members’ the word ‘he’ and for the words ‘to the Deputy Speaker’ the words ‘the member of the Legislative Assembly’ be substituted respectively.”

If the amendment is accepted, it will run as follows:

“The Speaker or Deputy Speaker of an Assembly—

- (a) shall vacate his office if he ceases to be member of the Assembly;
- (b) may at any time by writing under his hand addressed if he is the Speaker to the members of the Legislative Assembly and if he is the Deputy Speaker, to the Speaker, resign his office, and

I will say a few words in this connection. The Speaker of the Assembly must necessarily be a member of the House. He is resigning or vacating the office, not as a member, but as the Speaker of the Assembly. Therefore, the wording, “A member holding office as”, I think is redundant and it should be, “Speaker or Deputy Speaker of the Assembly.” So far as the addressing of the resignation is concerned, I would submit that the Speaker of the Assembly is elected by the members of the House. The Speaker is the highest official in the Assembly. If he resigns he must address to the members of the Assembly and not to the Deputy Speaker. He may hand over the resignation letter to the Deputy Speaker: that is a different matter. So far as the addressing of the application for resignation is concerned, he must address it to the members of the Assembly who have elected him as such. Therefore, I think that this provision should be amended like this. With these few words, I commend this amendment to the House for acceptance.

(Amendment No. 2361 was not moved.)

Mr. President : Amendment No. 2362.

Shri H.V. Kamath : A similar amendment has been lost earlier, Sir, and I am not anxious to see the same fate overtake this amendment as well.

(Amendment Nos. 2363 and 2364 were not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

“That in clause (c) of article 158, for the words ‘all the then members of the Assembly’ the words ‘the members of the Assembly present and voting’ be substituted.”

Clause (c) runs as follows:

“(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly.”

Sir, so far as I can understand the meaning of the wording, “all the then members of the Assembly”, it includes all the members of the Assembly. Supposing a House is composed of 300 members then, it will mean all the members of the Assembly, that is 300. Supposing fifty members of the House are not present in the House, then, those members will not have the right to give their votes so far as this question is concerned. Therefore, I think that it would be better that this matter should be considered by only those members who are present in the Assembly and who can vote in the matter. If this phrase “all the then members of the Assembly” means the members who are present in the Assembly, then, I have no objection. If it means all the members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment.

(Amendment Nos. 2366, 2367 and 2368 were not moved.)

Mr. President : Amendment No. 2369.

Shri T. T. Krishnamachari (Madras: General): May I ask, Sir, if Mr. Jaspat Roy Kapoor is going to move another amendment which stands in his name, article 159-A, which is another version of the amendment which is now before the House. If he is going to move that amendment, I think there is no point in moving this amendment. I think the latter amendment will serve the purpose he has in mind more adequately.

Shri Jaspat Roy Kapoor (United Provinces: General): I may assure my honourable Friend Mr. T.T. Krishnamachari that I will move all the relevant amendments. In order to enable me to move the final amendment, I think it is necessary that I should move amendment No. 2369. Otherwise it will not be permissible for me to move any other amendment which is an amendment to this amendment.

Mr. President : You may formally move this and then go to the amendments to this amendment.

Shri Jaspat Roy Kapoor : Is it your suggestion, Sir, that I need not read this?

Mr. President : Yes.

Shri Jaspat Roy Kapoor : Mr. President, I beg to move amendment No. 2369 in the printed List of Amendments, Volume I:

“That at the end of article 158, the following new clause be inserted :—

- (2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorised to preside during the absence of the Deputy Speaker.’ ”

To improve upon this amendment I have given notice of amendments to this amendment. I will first move amendment No. 138 which runs thus :

“That for amendment No. 2369 of the List of Amendment, the following be substituted :—

“That after article 158, the following new article be inserted :—

- 158-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply in relation

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to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.”’

There is yet another amendment to this amendment, No. 195:

“That with reference to amendment No. 2369 of the List of Amendment and No. 138 of List II (Third Week), after article 159, the following new article be inserted :—

‘159-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration.

Perhaps it is unnecessary to read amendment No. 195. The only change that it seeks to make in amendment No. 138, is that the location of this new article should be after 159 and not after 158.

Sir, the principle and propriety of the procedure suggested in this amendment has already been agreed to by this House on a previous occasion in dealing with the procedure in respect of the two Houses of Parliament. This amendment is on the same lines as article 75-A and 78-A which the House has already adopted. This amendment only seeks to lay down the same procedure as we have laid down in the case of the two Houses of Parliament. Obviously it would be unfair to the Legislative Assembly and it would be embarrassing to the Speaker and the Deputy Speaker to preside over the deliberations in the Assembly when a motion of no-confidence is being moved against him, and I think that, in order to be fair to the House and also to relieve the Speaker or the Deputy Speaker of the embarrassing position in which he would find himself when such a motion of no-confidence against him is being discussed in the House, it is necessary that the Speaker or the Deputy Speaker, as the case may be should not preside over the sitting of the Assembly and somebody else should preside in his place as is provided in this amendment. I need not say anything more on this subject because it has already been discussed on a previous occasion and I simply commend it for the acceptance of the House.

Mr. President : I think this should come after 159. It is moved and we shall reserve voting after article 159 is disposed of.

I will put article 158 to vote. I will first put the amendments of Mr. Tahir to vote.

Mr. President : The question is:

“That in article 158, for the words ‘A member holding office as’ the word ‘The’ be substituted and in clause (b) of article 158, for the words ‘such member’ the word ‘he’ and for the words ‘to the Deputy Speaker’ the words ‘the member of the Legislative Assembly’ be substituted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (c) of article 158, for words ‘all the then members of the Assembly’ the words ‘the members of the Assembly present and voting’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 158 stand part of the Constitution.”

The motion was adopted.

Article 158 was added to the Constitution.

Article 159

Mr. President : We take up article 159.

(Amendment Nos. 2370 and 2371 were not moved.)

Mr. President : The question is:

“That article 159 stand part of the Constitution.”

The motion was adopted.

Article 159 was added to the Constitution.

New Article 159-A (contd.)

Mr. President : I now take vote on the amendment moved by Mr. Kapoor.

“That with reference to amendment No. 2369 of the List of Amendments and No. 138 of List II (Third Week), after article 159 the following new article be inserted:—

The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration.

‘159-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of the clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.’ ”

The amendment was adopted.

New Article 159-A was added to the Constitution.

Article 160

Mr. President : We take up article 160.

There is no amendment to this either.

Mr. Naziruddin Ahmed : No. 2373, Sir. Sir, I beg to move:

“That in article 160 for the word ‘another’ the word ‘a’ be substituted.”

I move the second part only. This amendment has been twice last in another connection, but I still venture to submit it for the reconsideration of the House so that the other context may be reconsidered by the Drafting Committee. The article provides that if the Deputy Chairman or the Chairman of the Council loses his seat or so often as the office as the office of the Chairman or Deputy Chairman becomes vacant ‘another’ member shall be elected. The question is about another member. I submit that when the Chairman or the Deputy Chairman loses his seat then of course for that election that Chairman or Deputy Chairman is not eligible for election because he is not a member, but there is a provision that as many times as the office of the Chairman or Deputy Chairman becomes vacant, another member should be elected. Supposing that a Deputy Chairman loses his seat, there is a first vacancy. For that election the late Deputy Chairman will not be eligible because he would not be member but then if there is a second vacancy and, meanwhile, let us suppose that the Deputy Chairman is re-elected a member of the Council, the question is, would you allow him to contest or not? At the time of the second or subsequent vacancy he may have been re-elected and for all that I know he would be quite eligible; but the effect of the wording would be, if you say ‘another member,’ I beg to ask whether that member if he is otherwise qualified in the

[Mr. Naziruddin Ahmad]

meantime, would he be shut out? If it is desired to shut him out, that is a different matter; but I do not think there is a desire to shut him out. On the other hand there is a belief that as soon as a man loses his seat, he cannot possibly be a candidate because he is not a member but the very supposition which is the basis of the amendment is that meanwhile he may be re-elected. The question is whether you will allow him to contest. I submit that on re-consideration possibly the amendment may be accepted. It is not a verbal amendment but a substantial amendment. It gives a right to a member who has been meanwhile re-elected although he has lost his seat before.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. President : The question is:

“For the word ‘another’ the word ‘a’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 160 stand part of the Constitution.”

The motion was adopted.

Article 160 was added to the Constitution.

Mr. President : Prof. Shah has given notice of a new Article.

Prof. K. T. Shah : This has already been covered.

Article 161

Mr. President : Article 161. Mr. Jaspal Roy Kapoor’s amendment No. 196 will come in as a separate article.

Shri T.T. Krishnamachari : Somebody may raise some procedural objection later on. So, better it is moved now.

Mr. President : Mr. Kapoor may move No. 2381.

Shri Jaspal Roy Kapoor : Sir, I beg to move:

“That after article 161, the following new clause be inserted :—

- ‘(2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorised to preside during the absence of the Deputy Speaker.’ ”

To this I move another amendment, No. 139 in the List of Amendments to Amendments, Third Week. I beg to move:

“That for amendment No. 2381 of the List of Amendments, the following be substituted :—

“That after article 161, the following new article be inserted :—

- 161-A. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, ‘the Deputy Chairman, is absent.’ ”

To this again. I beg to move another amendment No. 196 in the same List

of Amendments to Amendments. I beg to move:

“That with reference to amendment No. 2381 of the List of Amendments and No. 139 of List II (Third Week) after article 162 the following article be inserted :—

The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration.

‘162-A. At any sitting of the Legislative Council of State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.’ ”

I need hardly say anything in support of this. It is just on the same lines as article 159-A which we have just adopted and we might readily adopt this amendment.

(Amendment Nos. 2376 to 2380 were not moved.)

Mr. President : I put article 161 to vote and put this last amendment 196 separately.

Mr. President : The question is:

“That article 161 stand part of the Constitution.”

The motion was adopted.

Article 161 was added to the Constitution.

Article 162

Mr. President : Then I take up article 162. New article 162-A will come later.

(Amendments Nos. 2383, and 2384 and 2385 were not moved.)

Then there is no amendment to article 162.

The question is:

“That article 162 stand part of the Constitution.”

The motion was adopted.

Article 162 was added to the Constitution.

New Article 162-A

Mr. President : Now I put article 162-A which has been moved as amendment No. 196, List VI, by Mr. Kapoor.

The question is:

“That with reference to amendment No. 2381 of the List of Amendments and No. 139 of List II (Third Week) after article 162 the following article be inserted :

The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration.

‘162-A. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

The amendment was adopted.

New Article 162-A was added to the Constitution.

Article 163

Mr. President : We go to article 163.

(Amendment Nos. 2386, 2387 and 2388 were not moved.)

There is then no amendment to article 163.

The question is:

“That article 163 stand part of the Constitution.”

The motion was adopted.

Article 163 was added to the Constitution.

New Article 163-A

Mr. President : There is the new article 163-A which has to be moved. That is amendment No. 39 List I.

The Honourable Dr. B.R. Ambedkar : Sir, it has to be held over.

Shri T.T. Krishnamachari : Sir, quite a similar article—article 79-A has been tabled and it is being held over, and conditions relating to this new article 163-A are more or less the same as those of article 79-A.

Mr. President : Then it is passed over. Article 164.

Shri T. T. Krishnamachari : I suggest that this particular article might be held over for this reason. We have difficulties in regard to making up our minds about joint sittings which also occur in subsequent articles. We have not yet made up our mind really how to fit it in with some of the new ideas that have come into being by the acceptance by the House of certain amendments. I suggest, therefore, that this article may be held over.

Mr. President : Is it the wish of the House this should be held over? Honourable Members: Yes.

Article 165

Mr. President : Article 165; to this there is the amendment No. 2397 by Mr. Tahir.

(Amendment Nos. 2397, 2398 and 2399 were not moved.)

There is then No. 2400, but that is a verbal amendment.

Shri T.T. Krishnamachari : The Chair has on previous occasions permitted Dr. Ambedkar to move such amendments, and I think the same practice may be continued and it may be moved formally.

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

“That in article 165 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

Mr. President : The question is:

“That in article 165 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

The motion was adopted.

Mr. President : Now article 165, as amended, is before the House.

The question is:

“That article 165, as amended, stand part of the Constitution.”

The motion was adopted.

Article 165, as amended, was added to the Constitution.

Shri H. V. Kamath : Sir, how does this article find a place under this Chapter which is headed “ Disqualifications of Members”? Article 165 deals not with disqualification but with a declaration.

Mr. President : That is a matter which may be looked into by Dr. Ambedkar.

Article 166

(Amendment No. 2401 was not moved.)

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

“That after clause (1) of article 166, the following new clause be inserted:—

‘(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of such period as may be specified in rules made by the President that person’s seat in the Legislature of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.’”

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

Mr. President : There is the amendment of Mr. Naziruddin Ahmed, No. 2403, but that is covered by the one now moved. No. 2404.

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

“That clause (2) of article 166 be deleted.”

Mr. President : No. 2405 is covered by the previous one, I think.

(Amendment Nos. 2405 and 2406 were not moved.)

Mr. Mohd. Tahir : Sir, I move:

“That sub-clause (a) of clause (3) of article 166 be deleted.”

Sub-clause (a) says that if a member of a House becomes subject to any of the disqualifications mentioned in clause (1) of the next article, that is, article 167, his seat shall become vacant. But if a man is subject to the disqualifications mentioned under clause (1) of article 167, how can he become a member of the Legislature? It is not necessary to retain this clause because a Member cannot be a Member if he is disqualified under clause (1) of article 167.

(Amendment No. 2408 was not moved.)

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

“That in clause (3) of article 166, the following new sub-clause be inserted:

‘(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;
(d) or dies.’”

May I just mention one or two points about the second part of the amendment relating to the death of a Member? When I moved a similar amendment on an earlier occasion, my query remained unanswered. The point that

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I raised then was whether a vacancy arises or not in the event of the death of a member. If we turn to articles 51 and 55 regarding the vacancy arising in the office of the President or Vice-President, it is explicitly laid down there that a vacancy will arise by reason of death, resignation or otherwise. Here clause (a) refers to "otherwise" and (b) of course refers to resignation. Here no mention is made about a provision in the event of death by which a seat becomes vacant. I do not see why for the President and the Vice-President such a thing is mentioned and we omit any such mention in the case of a Member of Parliament! We have such a provision in the Rules of Procedure in the Assembly which we adopted two years ago. The relevant portion of Rule 5 of those Rules reads:

"When a vacancy occurs by reason by death, resignation or otherwise."

I do not know whether it is sheer consideration of prestige that stands in the way of the Drafting Committee or Dr. Ambedkar accepting this amendment of mine. Speaking on my previous amendment, Mr. Sidhva said that if a member dies the "office" knows about it. I do not know which office he meant or which office will know it. Therefore, it is better to say in this article that a vacancy will arise also in the event of death of a member of the House.

Shri R. K Sidhva: I said—who will intimate to the office after his death.

Shri H. V. Kamath: That is what the honourable Member said. But which office will know it? Where you have definitely stated that a vacancy will arise in the event of the death of the President or the Vice-President and it is also stated in the Rules of our Assembly, I do not understand why an omission should occur with respect to this article.

(Amendment Nos. 2410 to 2414 were not moved.)

Mr. President : I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. Kamath : Will not Dr. Ambedkar answer the point raised by me?

The Honourable Dr. B. R. Ambedkar : I do not consider it necessary.

Mr. President : The question is:

"That after clause (1) of article 166, the following new clause be inserted :—

'(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then, at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.' "

The amendment was adopted.

Mr. President : The question is:

"That clause (2) of article 166 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That sub-clause (a) of clause (3) of article 166 be deleted."

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 166, the following new sub-clauses be inserted:—

- ‘(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;
- (d) of dies.’ ”

The amendment was negatived.

Mr. President : The question is:

“That article 166, as amended, stand part of the Constitution.”

The motion was adopted.

Article 166, as amended, was added to the Constitution.

Article 167

Prof. K. T. Shah : Sir, I move:

“That in sub-clause (a) of clause (1) of article 167, after the word ‘profit’ the following be inserted :—

- ‘or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article.’ ”

The amendment portion would read :

“A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative council of State—

- (a) if he holds any office of profit or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article under the Government, etc.....”

The old-time disqualification, arising out of the possibility of conflict of interests between one’s own private interests and that of public service, had led to the insertion as a disqualification the holding of any office of profit. Under present conditions, however, the mere holding of an office of profit, that is to say, any post carrying some salary or allowance attached to it is scarcely a temptation to at least many likely candidates who have attained prominence in their business or profession, and whose other source of income may be much greater than Government salaries can possibly be.

This, however, does not make holding of a post of profit under Government the less a disqualification. I want, however, to add certain other things, which are, as we notice, far more likely to be sources of temptation to sacrifice public interest to private advantage, than mere holding of an office of profit. Whatever may have been the conditions in the days of Walpole, today a Government office as such hardly suffices to tempt a legislator or a candidate for the Legislature, who has a flourishing private profession, trade or business, wherein much greater prospects of gain can be had by contact with Government or membership of the House.

One of the most considerable sources of temptation or corruption in these days of great building activity is that of a building contract. The possibility of enormous profits being obtained through large building and development projects, in which the State is interested directly or indirectly—and every day the State becomes more interested in those projects—will be a source of gain to such an extent that those who have it in their power to grant, and those who have such contracts, can afford to subsidise to any extent, if only people can canvass for them sufficiently, or help to obtain such contracts for them on easy terms from Government. The same applies to supply of

[Prof. K. T. Shah]

other materials on a large scale needed by a modern Government. A Member of the Legislature should, I think, be free any such temptation; and anyone therefore who holds such contracts, or who is interested as a shareholder even in a joint stock Building or Construction or Manufacturing company, or who is interested as a shareholder in a company which is supplying articles on a large scale—articles of building materials or for any other needed by Government, should be disqualified from membership of the Legislature. The number of such interests in very varied and large, and any one so interested ought to be, in my opinion, disqualified.

I am therefore, suggesting that if you wish your Legislators to be free from temptation, if you wish them to serve the public disinterestedly, and solely with an eye on public service, then I think it is necessary that you should accept this suggestion to disqualify any one interested, of the kind I have mentioned. It must be disqualification for candidature to the Legislature of the Centre as well as of a State. Sir, I move:

(Amendment No. 2416 was not moved.)

Mr. Mohd. Tahir : Mr. President, Sir, I would like to move only the latter part of my amendment. Sir, I move:

“That after the words ‘Legislature of the State’ the words ‘or any Local Authority of such State’ be inserted.”

Sir, the intention of my amendment is quite clear and obvious. I do not want to make any speech. If my honourable Friend wants to accept it, he may accept it.

(Amendment No. 2418 was not moved.)

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

“That for sub-clause (d) of clause (1) of article 167, the following be substituted :—

‘(d) if he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State.’ ”

Shri Mahavir Tyagi : What will be our position in regard to England, now that we are in the Commonwealth? Will our allegiance to the King be also a disqualification ?

Mr. President : That is a matter of interpretation of the Constitution.

The Honourable Dr. B. R. Ambedkar : That will be dealt with by the Nationality Act.

Shri Mahavir Tyagi: But we must know what it is....

(Amendment Nos. 2420 to 2423 were not moved.)

Shri H. V. Kamath : I think my amendment No. 2424 is a purely verbal amendment and I leave it to the Drafting Committee.

Mr. President : I think it is of a substantial nature.

Shri H. V. Kamath : If that be so, I will move it.

I move:

“That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word ‘or’ be added.”

Sir, in a similar article dealing with disqualifications of members (article 83) the word ‘and’ has been substituted by the word ‘or’. I think, Sir, the Drafting

Committee will follow its own precedent and make a similar change here. That is why I said that it is a drafting amendment. Whether the word 'and' is deleted, or in its place 'or' is substituted, more or less comes to the same thing, according to my untrained mind. That is why I said I leave it to the wise men of the Drafting Committee, because I am a mere novice in these matters. I thought 'or' would be more appropriate, because if any one of these disqualifications arises—if a person is disqualified for any of these reasons—then the article will apply.

Mr. President : Dr. Ambedkar might consider it.

Shri H. V. Kamath : As I said, I leave the decision to the wise men of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : I think it is perfectly all right, Sir.

Mr. President : Won't they read cumulatively?

The Honourable Dr. B. R. Ambedkar : No, Sir, they won't read cumulatively.

Mr. President : If 'or' is added it will put it beyond all doubt.

The Honourable Dr. B. R. Ambedkar : I do not think it necessary.

(Amendment Nos. 2425, 2426 and 2427 were not moved.)

Mr. Mohd. Tahir : I beg to move:

"That after sub-clause (e) of clause (1) of article 177, the following new sub-clause be inserted :—

'(f) if he is not registered as voter.' "

Sir, clauses (a) to (e) of this article enumerate the disqualifications for being a member. I want that this should be included in this article so that if a man is not a registered voter he cannot become a member of the Assembly. If candidature is not restricted to persons whose names are on the roll, every man could come and file his nomination paper for election. Therefore it is necessary that a clause of this kind should be added.

Mr. President : The Honourable Member may move his other amendments, 2430 and 2432 also now.

Mr. Mohd. Tahir : Sir, in this amendment I move only the latter part. I move:

"That in clause (2) of article 167, after the words 'Government of any State', the words for an local 'or other Authority subject to the control of such State', be inserted."

I am not making any speech.

Sir, as you have suggested I shall move this amendment 2432 also now. I am not moving the first part of it. The second part which I move runs thus:

"That in sub-clause (a) of clause (2) of article 167, after the words 'for any State', the words 'or a Chairman, a Vice-Chairman, a President, or a Vice-President of any Local or other Authority of such State' be inserted."

I am not moving 2433.

Shri T.T. Krishnamachari : Sir, with reference to amendments Nos. 2419 and 2430 of the List of Amendments, I beg to move:

"That for sub-clauses (a) and (b) of clause (2) of article 167, the following be substituted :—

'He is a minister either for India or for any such State.' "

Sir, the wording really follows the wording of a similar sub-clause in article 83 which has been accepted by the House. This is necessary because the

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reference in sub-clause (2)(b) to Part III of the first Schedule is one we are trying to obliterate, because we do not visualise the contingency of having to make a separate provision of this nature so far as the States in Part III of this Schedule are concerned. Any necessary provision to that effect will be made in a separate Chapter.

There are certain obligations imposed in the wording of sub-clause (b) as it stands which we would like to avoid and we feel that the wording "he is a minister either for India or for any such State" will be adequate for all purposes.

I hope the House will accept the amendment.

Shri Mahavir Tyagi : Sir, I hope you will not mind my saying a few words on this article—we have already passed a number of them today. I would like to ask Dr. Ambedkar to make it expressly clear as to what the expression 'allegiance or adherence to a foreign State' occurring in his amendment signifies. Sir, 'adherence' is a very wide term. Its meaning is not very exact." I wonder if our adherence to the Commonwealth will disqualify many of us, particularly our Prime Minister who was instrumental in our agreeing to some little adherence to a foreign State like England. We have recognised a foreign king to some extent by becoming a member of the Commonwealth. Now, will not that adherence disqualify a lot of us? If it does, then it is only Dr. Ambedkar who will remain in the House. We would all be disqualified. We have adhere to the Commonwealth and to the King of England who is a foreigner. Since the word 'adherence' is extremely ambiguous I think some change in the wording of the amendment should be made or a promise be given by the Drafting Committee that it will not be left so ambiguous. Our relation with the Commonwealth and other Dominions may be interpreted as with a foreign State. This is not a matter of treaty. It is a question of permanent relationship that we have established. A treaty is a contract. Here it is not a treaty. It is actual adherence to foreign dominions. I would like Dr. Ambedkar to throw light on this issue. Either the wording should be changed so as to enable us to remain in the Commonwealth, or an assurance be given that the Commonwealth countries will not be deemed to be foreign States for the purpose of this article.

I am glad that Shri Mohanlal Gautam has not moved his amendment; otherwise many of us who have not passed the matriculation examination would have been disqualified. I would be treated as disqualified if the matriculation qualification were there. My education is hardly equal to the primary school. I only desire that such of our countrymen as are illiterates like me be not disqualified by these provisions.

Prof. Shibban Lal Saksena : Sir, I want to draw attention to two things. Sub-clause (e) says, 'if he is so disqualified by or under any law made by the Legislature of the State'.

In another article we have laid down that the Legislature of the State is empowered to lay down qualifications and here we empower it to lay down disqualifications. But then Dr. Ambedkar has assured us that Parliament will lay down qualifications and not the Legislature of the State. So I request Dr. Ambedkar to tell us whether this power will also be exercised by the Parliament or not. Here we say that the Legislature of the State can declare the public office the holding of which will not disqualify a person from being a member of the Legislature of the State. I think this thing should also be left to Parliament. The Parliament should lay down the public office such as parliamentary Secretaries, Deputy Minister etc., the holding of which will not disqualify the holders of these offices in a State from continuing to be members of

the legislature. The laws disqualifying persons from being candidates for the legislature should also be uniform in all the States. Otherwise the result will be that every State will pass different laws and a person who can be a candidate for the membership of the Bombay legislature may not be able to be a candidate for the membership of the legislature in the United Provinces. This lacuna should be removed, and instead of 'State legislature' we should empower 'Parliament' to make uniform laws for all provinces.

Shri Brajeshwar Prasad : Sir, I am sorry that Mr. Mohanlal Gautam has not moved his amendment. I feel that there should be some educational qualifications for a member of the legislature. The impression has become prevalent that it is not necessary to have any educational, administrative or judicial experience for a member of the legislature. A doctor, or an engineer or a lawyer has to undergo certain specific periods of specialised training. I consider that the role of the legislator is far more important than either that of a doctor, a lawyer or an engineer. But in order to become a legislator, it is considered to be enough if he is a demagogue, a loud tongued orator, a professional political dancer, a man with hundred faces and a confirmed scoundrel. I feel, Sir, that if we want to build up a decent system of government, some educational qualifications for legislators must be considered necessary. Sir, I have nothing more to say.

Shri M. Thirumala Rao (Madras: General): May I know, Sir, if the honourable Member used the word 'scoundrel'? I should not hear him well. If he has used the word, is the word parliamentary?

Mr. President : That word should not have been used, if it has been used.

Shri T. T. Krishnamachari : It only follows the saying that politics is the last refuge of the scoundrel.

The Honourable Dr. B. R. Ambedkar : I rise only for the sake of my Friend, Mr. Tyagi, as he has asked me one or two pointed questions. As he himself says that he is an illiterate, I can very well understand his difficulty in understanding the word 'adherence'. I would therefore explain to him what the word 'adherence' means. When one country is invaded by another country, what happens is this that the local people either out of fear or out of martial law sometimes give obedience to the laws made by the military governor who acts in the name of the invading country. Such a conduct is often excused while the invasion continues and the military occupation continues. It often happens that when there is no real necessity to obey the invader or the military governor, either because there has been a relaxation of control or because the hostility has ceased, certain people still continue to render obedience to the military governor or the invader. Their conduct under law is referred to as 'adherence'. It is distinct from acknowledging. It is to protect this kind of case that the word 'adherence' has been used.

My Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country, and if my Friend, Mr. Tyagi has got Volume II of the printed List of Amendments he will see what the proposed amendment is. The proposed amendment gives power to the President to declare what are not foreign countries, and that declaration would govern whether a particular country is or is not a foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to be rather worried that when a country is declared not to be a

[The Honourable Dr. B. R. Ambedkar]

foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would *ipso facto* acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under Commonwealth relationship would be this; In all the Dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean in this, that the citizens of the Dominions residing in India would not be treated as aliens, they would have some rights which aliens would not have, but they would certainly not be entitled, in my judgement, to get the full rights of citizenship which we would be giving to the people of our country. I hope my Friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

Shri Mahavir Tyagi : I heartily thank you for the interesting speech that you have made.

Mr. President : The question is:

“That in sub-clause (a) of clause (1) of article 167, after the word ‘profit’ the following be inserted :—
‘or contract of building or of supply of any article, or is a shareholder in any Joint Stock Company which has such a contract of building or of supply of any article.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in sub-clause (a) of clause (1) of article after the words ‘Legislature of the State’ the words ‘or any Local Authority of such State’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That for sub-clause (a) of clause (1) of article 167, the following be substituted:—
‘(d) if he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance of adherence to a foreign State.’ ”

The amendment was adopted.

Mr. President : The question is :

“That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word ‘or’ be added.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (d) of clause (1) of article 167, the following new sub-clause be inserted :
‘(f) if he is not registered as voter.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 167, after the words ‘Government of any State’, the words ‘or any local or other Authority subject to the control of such State, be inserted.”

The amendment was negatived.

Mr. President : The question is

“That for sub-clause (a) and (b) of clause (2) of article 167, the following be substituted :—
‘He is a minister either for India or for any such State.’ ”

The amendment was adopted.

Shri T. T. Krishnamachari : The other two amendments of Mr. Mohd. Tahir fall to the ground because those clause are eliminated by the acceptance of the amendment I had moved.

Mr. President : Yes amendment Nos. 2432 and 2433 fall to the ground.

Mr. President : The amendment moved by Dr. Ambedkar and the other moved by Mr. Krishnamachari have been carried and I would put the article, as amended to vote.

Mr. President : The question is:

“That article 167, as amended, stand part of the Constitution.”

The motion was adopted.

Article 167, as amended, was added to the Constitution.

Mr. President : We adjourn till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Friday the 3rd June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 3rd June 1949

The Constituent Assembly of India met in the Constituent Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 168

Mr. President : We shall take up article 168.

Shri T. T. Krishnamachari (Madras: General): Before taking up article 168, Sir, I would like to draw the Chair's attention to the fact that there is an amendment seeking the introduction of new article 167-A. This arises out of the issue raised by two amendments to article 168, amendments Nos. 2440 and 2441. It is felt that it would be appropriate to have those issues put in a separate article 167-A. I feel, however, the House has not had the time to consider this proposed article and I would therefore suggest with the Chair's permission that this may be held over to a later date, so that the House may have enough time to digest the contents of this new article.

Mr. President : I was thinking of taking it up with amendment No. 2441. If it is to be held over, then it is all right.

Shri T. T. Krishnamachari : The point is, it more or less covers the purpose of amendment No. 2441; but the procedure outlined is different. I think it would be better to give the Members some time to digest it. Therefore, I suggest that it may be held over so that we can take it up on a later occasion.

Mr. President : If the Members have no objection, I shall hold it over.

There is notice of a fresh amendment that a new article should be added, article 167-A, which deals with the question of disqualification of members and suggests that the question whether a Member has incurred a disqualification or not will be dealt with in a particular way. The suggestion is that it should be held over. The notice is in respect of amendment No. 2441 which is to article 168; but it comes more properly here. In any case, the idea is that it should be held over for the present so that the Members may consider it.

We shall take up article 168 now.

The motion is:

“That article 168 form part of the Constitution.”

The first three amendments 2434, 2435 and 2436 I think are of a drafting nature.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Yes, they are of a drafting nature.

Mr. President : Amendment 2437 : This is covered by this new article which is proposed, 167-A. We may leave that over.

(Amendments Nos. 2438 and 2439 were not moved.)

Mr. President : Amendments 2440 and 2441: these arise in connection with the new article proposed. We may leave these over.

There is no amendment moved to article 168. Does any one wish to say anything about the article?

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I do not think there is any particular necessity for retaining article 168 in our Constitution. There is already enough provision in the Constitution to deal with such persons as are not members or do not possess the necessary qualifications but enter the House and sit there as members. We can turn them out of the House, or can prosecute them for trespassing and thereby they would be awarded due punishment. Therefore, it does not appear proper to me, Sir, to have an exclusive article for this purpose. I do not think there is any advantage in providing for an additional article like the present one. My submission is that they should be treated as trespassers and punished accordingly.]

Mr. President : The question is:

“That article 168 stand part of the Constitution.”

The motion was adopted.

Article 168 was added to the Constitution.

Article 169

Mr. President : We take up article 169.

(Amendments Nos. 2442, 2443, amendment to amendment, No. 141, and 2444 were not moved.)

No. 2445.

Shri Jaspal Roy Kapoor (United Provinces: General): Sir, I beg to move:

“That in clause (4) of article 169, after words ‘a House of the Legislature of a State’ the words ‘or any committee thereof’ be inserted.”

Sir, after my amendment is incorporated in clause (4) of 169 it will read thus:

“The provisions of clause (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature.”

The object of this amendment is that any person, though not a member of the Legislative Assembly, if he is called upon to appear before or act in a committee set up by the Legislature, he shall have in respect of whatever he says or does there the same privileges as have been extended to members of the Legislature. Without such immunity being extended to persons who are invited to appear before or act on a Committee set up by the Legislature it would be very difficult for such persons to act freely, with absolute freedom and without any reservation. A similar amendment of mine in relation to the privileges of such persons when they were to appear before a Committee

*[] Translation of Hindustani Speech.

set up by the Central Parliament has already been accepted by this House and for the same reason I would submit that this amendment also should be accepted.

Mr. President : Nos. 2446 and 2447 are not moved. The amendments and the article are open for discussion.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I shall, by your leave, say a few words with respect to clause (3) of this article. I do not propose to repeat what I said on an earlier occasion when we were discussing the corresponding clause relating to the privileges of members of the Central Parliament. But I should like to invite the attention of Dr. Ambedkar and also of the House to the reaction among the people as well as in the Press to the clause that we adopted on that occasion. I have no doubt in my own mind that Dr. Ambedkar keeps his eyes and ears open, and cares to read some of the important papers daily or at least has them read to him daily. Soon after this clause relating to the privileges of members of Parliament was adopted in this House, most of the Press was critical of the way in which we had dealt with the matter. Even a Conservative Paper such as the *Hindustan Times* remarked that it was highly undesirable for us, drafting a written Constitution for our country, to legislate or to insert something in our constitution by reference to something in the unwritten Constitution of another country. Britain, as the House is aware, has an unwritten Constitution though this particular measure may be written down in some document. I believe that when that clause was adopted, our Constitutional pandits here, our experts, Dr. Ambedkar, Mr. Alladi and others of their way of thinking laid the flattering unaction to their souls that, the House of Commons being the Mother of Parliaments, we were doing the wisest thing in the world by stating something with reference to that body, the House of Commons, about which however most of us here are blissfully ignorant. Many of the Members here who spoke on that occasion remarked that they did not know what the privileges of the Members of the House of Commons were, and some of the papers and some of the comments on this particular aspect of our work was that the Drafting Committee more or less shirked, "scamped", its work. They could have at least drafted a schedule and incorporated it at the end of the Constitution to show what the privileges of the members of the House of Commons were. That was not done, and simply a clause was inserted that the privileges obtaining there will obtain here as well. Nobody knows what those are, and *a fortiori* nobody knows what privileges we will have. Our Parliament presided over by Mr. Mavalankar has adopted certain rules of business and procedure tentatively, and has also appointment or is shortly going to appoint a Committee of Privileges. I wonder why we could not have very usefully and wisely adopted in our Constitution something to this effect, that whatever privileges we enjoy as members of the Central Parliament will be enjoyed by members of the Legislature in the States. If at all there was a need for reference to any other Constitution, I think it was very unwise on the part of the Drafting Committee to refer to an unwritten Constitution, *viz.*, the Constitution of Great Britain. There is the written Constitution of the U.S.A., and some of us are proud of the fact that we have borrowed very much from the American Constitution. May I ask Dr. Ambedkar whether the Privileges of the Members of the House of Commons in the United Kingdom are in any way superior to or better than the privileges of the members of the House of Representatives of the United States? If they are, I should like to have enlightenment on that point. If they are not, I think the reference to an unwritten constitution is not at all desirable. I am of course against any reference to another constitution. If necessary let us put in a schedule to our constitution, and say here in this article that the privileges and rights are as specified in the Schedule at the

[Shri H. V. Kamath]

end. There is probably a desire to simplify matters, but to simplify matters is not always the proper way. If they wanted to simplify it for the sake of brevity, they should have thought of this alternative—a reference to a written constitution of some country in the world. That would not have been absolutely repugnant to me. But I would any day prefer a definite schedule in the Constitution showing what privileges shall be enjoyed by members of the Legislatures and of Parliament. This particular clause, to my mind, should be recast. We have passed one clause on an earlier occasion, but that is no reason why we should perpetrate the same mistake over and over again. I would, therefore beg of Dr. Ambedkar and his wise team of the Drafting Committee and the House to revise this clause, and if necessary, to go back to the other clause, if they are convinced of the wisdom of this course, and revise that also accordingly and proceed in a saner and a wiser manner.

Mr. Naziruddin Ahmad : Mr. President, Sir, I also desire to offer a few remarks on clause (3) of the present article. It was I who tabled an amendment to article 85, clause (3), and that was amendment No. 1624. There is another amendment which was tabled by me to the present article, namely, No. 2443. Each of these clauses deals with the privileges of members by reference to those of the House of Commons. But I did not move the earlier amendment, nor this amendment, because I found that it would involve the Drafting Committee in tremendous labour. The greatest objection to these clauses is that they attempt to define our privileges to be co-extensive with those of the Members of the House of Commons in the United Kingdom. These clauses have been copied from the Government of India Act, 1935. This clause has been bodily lifted from that Act and there has been no attempt to clarify the situation. As Mr. Kamath pointed out, this shows some amount of indolence on the part of the Drafting Committee. The difficulty is that the privileges of the Members of the House of Commons are nowhere collected in any systematic form. It is therefore, difficult for us, for any Member to be sure of our privileges. And it is also necessary and highly desirable not to postpone the matter any further. My feeling is that honourable Members should suggest the incorporation of a Schedule showing the list of privileges which, as far as they could be found out and decided upon today, may be incorporated in the Schedule, with a slight amendment of this clause, referring to that Schedule. I have a draft ready and I shall submit it for consideration of the House at a suitable stage, if requested. I think it highly desirable that the privileges which we are so anxious to protect, should be clearly known. I think they should be systematised and for the time being incorporated in the Schedule of the Constitution, to be further revised and elaborated by Parliament, if necessary.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, on the last occasion too, I had supported Mr. Kamath and I do not want to repeat a single syllable of what I then said. So far as this clause is concerned, I have one concrete suggestion to make. I would be happy if reference to the House of Commons could be omitted. But if that is not possible, there is a second suggestion that I would like to make. Of course, I have not seen much consideration given to suggestions that I make, but still I hope this particular suggestion of mine will not fall on deaf ears. I would say rather say that this subject of privileges was dealt with by a reference to article 85 that we have already passed. That would not only save an additional reference to the House of Commons, but it will also do away with a variety of privileges which may

come to prevail as a result of this clause. The clause reads like this:

“In other respects the privileges and immunities of member of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law.....”

Instead of leaving it to each State Legislature to define these for itself, I would much rather have the privileges co-extensive to those enjoyed by Parliament, so that so long as the reference to the House of Commons remains, it may exist; but when we define various privileges it should be done only by the Central Parliament and not by each particular State differently, because they are likely to vary. I hope this suggestion of mine will be accepted, by which we will be saved reference in another place to the House of Commons. We will also be basing our Constitution on our own decision, by reference to article 85—so that even if the reference to the House of Commons of the United Kingdom remains there in article 85, the privileges enjoyed by the members of all the legislatures in all the States will be co-terminous and co-extensive and will not vary in any way. I feel this is a very sensible suggestion and I hope it will find favour with the Drafting Committee and the Honourable Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in relation to this article 169, I tabled an amendment which is amendment No. 2444, but I have not thought fit to move it. In regard to this section, apart from the general tendency of our Assembly to shelve inconvenient questions, which I deprecate very much, I find this reference to the privileges and immunities enjoyed by the members of Parliament of the House of Commons is undesirable. Not that I am ashamed of a reference to the House of Commons, but in a matter like this, if we do that, it will be again shelving the very important question which is within the scope of the activities of this Constituent Assembly. After all, if we cannot find a solution of this difficult question, may I know when the solution will be found? If today our jurists and our leaders cannot define the privileges of the members of a Legislature, I do not see at what point of time this would be possible. I know that the Members of this House have been enjoying certain privileges. Even if we cannot define them all, let us define such of them as we know. I know that the Members of this House and the Members of provincial legislatures, in some cases, have been enjoying the right of holding arms without licenses. I know the right of freedom of speech has been enjoyed, which is referred to in article 69. The question about liability to arrest was mooted in the Punjab Assembly at one time, when the question arose as to whether a Member could be arrested while coming to or going from a Session of the Assembly. These similar things are not written down anywhere, so far as the House of Commons is concerned. They are part of the unwritten constitution, and are among the privileges which cannot perhaps be reduced to writing. Be that as it may, I think still that a reference to the House of Commons is humiliating to an extent. Why should we refer to it? Our Parliaments have been in existence for a very long time. There is no reason why we should not attempt to put in writing whatever our privileges are. If they are to be enlarged or restricted subsequently, that could be done, but this reference to the House of Commons to find our immunities and privileges is not justified.

Moreover, I have seen a tendency whenever any inconvenient question crops up, such as for instance the constitution of the Council of State or any such similar body, we want to keep it in abeyance and leave it to the Parliament to decide. When we are framing the Constitution we must take up questions which are of fundamental importance and decide them here and now.

Sir, I think it would be much better if the reference to the House of Commons is deleted. If we are not able to decide the question now we should leave it to our own legislatures. But if that is not possible, Mr. Jaspal Roy

[Pandit Thakur Das Bhargava]

Kapoor's amendment must be accepted. He wants that the privileges and immunities enjoyed by the members of the provincial Legislature may be the same as those enjoyed by the members of the Central Legislature, whenever these privileges come to be defined.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges which we think of fall into two different classes. There are, first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh: We do not want any enumeration of the privileges nor any lecture on how they are exercised. What we want to know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President: He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than to the two privileges, mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters—e.g., to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava: We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar: Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating, these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, That Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh: The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar: As I said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages.....

Mr. President : Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State Legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar: That is only a drafting suggestion. For instance, it can be said that most of the articles we are adopting for the State Legislatures are more or less the same articles which we have adopted for the Parliament at the Centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular case.

Mr. President: I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House:

The question is:

“That in clause (4) of article 169 after the words ‘a House of the Legislature of a State’ the words ‘or any committee thereof’ be inserted.”

The amendment was adopted.

Mr. President: The question is:

“That article 169, as amended, stand part of the Constitution.”

The motion was adopted.

Article 169, as amended, was added to the Constitution.

Article 170

Mr. President: To article 170 there are no substantial amendments except Nos. 2450 and 2451.

(Amendment Nos. 2448 and 2449 were not moved.)

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I beg to move:

“That in article 170, after the words ‘so made’ the words ‘salaries and’ be inserted.”

Sir, this is only to fill in an inadvertent omission in this article. Article 170 relates to salaries and allowances of members of the Assembly and the Legislative Council. This has two parts as the House will see. The first part makes provision for Parliament to determine salaries and allowances etc. and then the next part says that till such provision is made the existing conditions shall continue. But in the actual wording it is only said “allowances at such rates” shall be continued. The House will know that in the provinces members of the legislature are receiving salaries at present. Unless this word “salaries” is added the members of the provincial legislatures would get no salary till provision is made in that regard. The article is in similar terms to article 86 which relates to members of Parliament. Members of the Constituent Assembly are not receiving salaries and hence provision is made only for allowances, whereas in the provincial legislatures the members receive salaries. It is therefore necessary that you must have the word ‘salary’, and I hope the House will accept the amendment.

Mr. President: The other amendment is 2451 in the name of Mr. Z.H. Lari. A similar amendment was discussed and rejected in regard to the Central Parliament. I find that Mr. Lari is also not here and so the amendment is not moved.

The Honourable Dr. B. R. Ambedkar: Sir, I accept Mr. Bharathi’s amendment.

Mr. President: The question is:

“That in article 170, after the words ‘so made’ the words ‘salaries and’ be inserted.”

The amendment was adopted.

Mr. President: The question is:

“That article 170, as amended, stand part of the Constitution.”

The motion was adopted.

Article 170, as amended, was added to the Constitution.

Mr. President: There is notice of a new article 170-A in the name of Mr. Bharathi.

Shri L. Krishnaswami Bharathi: Sir, I am not moving it.

Mr. President: There is another in the name of Prof. K. T. Shah.

New Article 170-A

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

‘That after article 170, the following new article 170-A, be inserted:—

‘170-A. It shall be open to the Legislature of any State to move the Supreme Court to restrain any other State from ill-treating or discriminating against or denying the Fundamental Rights of citizens to the individuals originating from the former State but who are settled or carrying on any trade, profession, occupation or business in the latter on the ground only of their not being original inhabitants of that State.’ ”

Sir, this is a very difficult matter which is already agitating the minds of many public men; and unless we find a remedy for it in a constitutional manner, it would raise its ugly head to very unpleasant proportions.

Generally speaking Sir, I think it is of the same character and fraught with the same consequences as the communal evil which has resulted in the partition of the country. Inter-provincial jealousies and rivalries, which are already showing themselves in variety of ways, would mean a menace to the country’s integrity and the maintenance of proper friendly feelings between the various parts of the country which require urgent attention. And if we desire a constitutional solution, if we desire a peaceful amicable settlement of such problems, a provision of the kind I am suggesting is of the utmost importance. The manifestation of this sentiment in some form of discriminating taxation, if not legislation, and in the form of discriminating appointments in services and other advantages in trade, occupation or business to the persons originating from one part of the country and carrying on business trade or profession in another, are already known to us. One solution which is suggested is the reconstitution of several parts of the country on some form of internal homogeneity, like language. But that creates new difficulties. I am afraid the sentiment is such that, unless a harmonious and amicable arrangement is provided within the Constitution itself, these dangers will not be obviated.

It is possible that you may have entrusted powers of this kind to the Central Government of Legislature. On that basis, you may have a feeling of some kind of justice being given to the parties complaining. For my part, I am afraid that, by their very nature, the Central Government or the Central Legislature may be suspected of being actuated by political rather than purely judicial motives; and that is why I suggest that the power be vested in the legislature collectively of a State to move the Supreme Court, which will always give, presumably, decisions on purely judicial lines so that any grievance of the kind implied in the amendment may be solved by unimpeachable and unexceptionable judicial authority on lines exclusively of justice.

[Prof. K. T. Shah]

Sir, such collective grievances no doubt may be difficult to take to a court of law, in as much as they may not manifest themselves in specific injury or specific harm to any particular individual, who would then have a cause of action and would be able to take the matter to a court of law. I am fully aware of that difficulty; and so I suggest the remedy that you make a provision of the kind suggested so as to provide a check, on sectional basis which would help to prevent and to a great extent minimise at any rate the grievances that may otherwise crop up.

The possibility of the country completely solidifying and the sense of oneness prevailing and prevailing all over the country is not to be undreamt of. But at the same time it will take some time. And before that sense of single homogenous nationality runs through every corner of the country, I think a salutary provision of this kind will be very helpful to avoid difficulties the magnitude of which I for one am afraid to contemplate. Hence my suggestion which I hope will be accepted.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I only wish to draw the attention of Professor Shah to the fact that under articles 9 and 10 we have already provided that there shall be no discrimination against any citizen on the ground of race, caste, place of birth etc., and that no citizen shall, on grounds only of religion, place of residence or birth etc. be ineligible or discriminated against for any employment or office under the State. As there are these provisions against discrimination on the basis of provincialism there seems to be no necessity to make this provision in a separate article as is here contemplated. My Friend wants that the Legislature of the State should move the Supreme Court. I think it is not proper to overdo the fear of provincial feelings and jealousies. Individuals can get their remedy in civil courts. I think that by making this provision we shall be increasing provincial jealousy rather than diminishing it.

Shri H. V. Kamath : Sir, I feel that there is no valid reason for the insertion of an article of this nature at this stage. Professor Shah has drawn the attention of the House to the increasing inter-provincial or inter-State jealousies based on various considerations such as language, caste, etc. But, as Professor Shibban Lal Saksena has pointed out, the Chapter on Fundamental Rights has guaranteed these rights and their enforcement under articles 25 and 13. It may be argued that article 25 confers the right on an individual and not on a corporate body to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. I do not know how the juristic, legal and constitutional experts will at a later date interpret this article 25. To my mind it confers the right on the individual only and not on a corporate body such as a legislature or some other organisation. But the suggestion of Professor Shah is a remedy which in fact may be worse than the disease. He wants to prevent or alleviate as far as lies in human power the rousing of inter-provincial jealousies and rivalries leading to discrimination of various kinds. But to cure that disease, investing the legislature of a State with the right to move the Supreme Court to restrain another State, is not the proper treatment. Such an action on the part of one State is liable to be seriously misunderstood by the other State as an attempt to meddle in the affairs of that State. This would be a fatal consequence. Therefore, if at all there is a remedy, we should follow the provisions of Part III, article 25. If the citizen of any State, who has not originated in that State but has settled there, has a grievance against the Government of that State, Part III has given him the right to move the Supreme Court. That should be adequate. There is no need for insertion of an article of this nature.

Dr. P.S. Deshmukh : Sir, I am not, like my Friends Professor Shibban Lal and Shri Kamath, content merely by saying that there is no need for the addition of a fresh article and that we should be content with the provisions regarding Fundamental Rights.

I wish to oppose very strongly the very suggestion that it should be competent for any State to complain against any other State on a matter like what is embodied in this article. I was really surprised that a man like Professor Shah should come forward and should try to protect the interests of the people for whom I never expected that he will have much sympathy. In making his speech he has referred to communal considerations also. It is of course the fashion to dub anybody as communalist, however much the critic himself is steeped in communalism and does, nothing else but help the people of his community, if not his own relatives only. This is the fashion of the day. Those who sponsor the cause of ninety per cent. of the people are dubbed as communalists, while those who never look beyond the small coterie of their own relatives and caste pose themselves as the most noble-minded and cosmopolitan-spirited persons. I would not have wished to refer to all this but I was really amazed that when there is nothing in this article about communalism, my learned Friend, Professor Shah, thought fit to refer to it. Actually he wants to protect the interests of the businessmen and the traders, the merchants and so on. Here I want to say with all the emphasis at my command that the trading and merchant profession in India has not proved an honest profession at all. It is a profession based essentially on cheating. If you see from day to day the way in which our food articles are sold, you will be amazed to see how they are adulterated, and he will be a bold man who says that he gets his food articles pure and unadulterated with something or the other. Irrespective of the profit they can make by legitimate means, the merchant class is not content with it. If under such circumstances, for instance, a State wants to bring a legislation against this sort of adulteration of foodstuffs on a large scale, my Friend Professor Shah wants that some State which only consists of traders and businessmen should be in a position to move the Supreme Court so that the Supreme Court may take steps against all the States or any State which passes such legislation.

There is another fact which should be taken into consideration and that is the kind of usury which has been going on in India. In times to come, States. *e.g.* the Samyukta Maharashtra when it comes into being, will have to take steps against usurers who have taken possession of thousands and lakhs of acres of land by no other process except by cheating and usury. I am sure that it is the apprehensions and fears of these people that my Friend Professor Shah was talking about. And I would not blame them if they feel apprehensive. But if they have apprehensions and fears, the remedy lies in reforming themselves and behaving justly and fairly with the other members of the society and not to base their existence and their prosperity on cheating others. That would be a better remedy than to empower any State to go to the Supreme Court for their protection so that their nefarious actions could go unchallenged and unnoticed. From that point of view I do not even like the fundamental right by which anybody could go anywhere and acquire any land or property, because the acquisition of property on a large scale itself means that it has not been done by fair means and if any State comes forward to stop these unfair means, it should be entirely free to do so and not be debarred from punishing these enemies of society.

Sir, for all these reasons I think that an article like this would give a charter to dishonesty, a charter to all sorts of anti-social activities that some of our people are accustomed to. I hope, Sir, this sort of thing will not be permitted. Again, Sir, the word 'minorities' is mis-interpreted. We understood minority and majority as between Muslims and Hindus. Later on the Sikhs came in and

[Dr. P.S. Deshmukh]

the Schedule Castes also were considered a minority. Now the term is sought to be applied to even small castes and communities amongst the Hindus themselves. The Hindu community as a whole is exploited from day to day by some of these minor Hindu castes and if there is a strong feeling against these castes, it is not based on communal feelings at all. It is based on the dislike of the exploitation of the masses which that caste has been carrying on. It is this exploitation that a State may well want to put a stop to, and a provision like this should not be allowed to come in the way of any State acting in this direction.

Prof. K.T. Shah : In view of the arguments advanced, I would request the House to give me permission to withdraw the amendment.

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

Mr. President : Then we come to article 171.

Shri T.T. Krishnamachari : Since the provisions following the Chapter which begins with article 171 are more or less similar to the provisions which earlier the House has not yet decided relating to financial matters as well as the Supreme Court, we can now go back to those provisions and take up 109 again. Once we pass the financial provisions and the Supreme Court provisions, the provisions following the chapter which begins with article 171 will be easy to deal with as *mutatis mutandis* they are much the same.

Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B.R. Ambedkar : What does it matter?

Mr. President : Articles 171 and 172 relate only to procedure.

Shri T.T. Krishnamachari : Article 172 relates to joint sittings and unless the composition of the Upper House is decided, we will not be able to decide on the question of joint sittings. The articles following article 172 are much the same as those we have held over. But it is entirely left to the Chair to do what the Chair thinks fit.

Mr. President : There is notice, Mr. Naziruddin Ahmad, if you look at the Orders of the Day. Item No. 2 there refers to the remaining articles of Chapters II and IV of Part V and Part VI. So there is notice that article 109 may be taken up today. Shall we go back to article 109?

Honourable Members : Yes.

Mr. President : We shall take up article 109.

Article 109

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

“That in article 109, for the words ‘if in so far as’ the words ‘if and in so far as’ be substituted.”

(Amendments Nos. 1896 and 1897 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move amendment No. 1898 standing in my name, and in amendment thereof, I move amendment No. 147 of List III, Third Week, which reads as follows:

“That with reference to amendment No. 1898 of the List of Amendments for the proviso of article 109, the following be substituted :—

‘Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.’ ”

Sir, amendment No. 1898 and the amendment that I have now moved are more or less the same except that the amendment that I have moved states the whole proviso as it would stand if proviso (i) is deleted. The reason why proviso (i) is to be deleted is, for one thing, it refers to disputes in which the State for the time being specified in Part III of the First Schedule is a party which opens out a vista of agreements and disputes which are to be prohibited from coming within the scope of this article by this particular proviso. The House will remember that right through our deliberations we have been trying to avoid a specific reference to States in Part III of the First Schedule. As I have stated before—and it has also been stated by Mr. K.M. Munshi and Dr. Ambedkar—where it is necessary to provide specifically for these States, if the need still exists at such time as we come to the end of the discussions of the articles in the Draft Constitution, it will be provided for in a separate chapter, and, therefore, this proviso No. (i) is entirely unnecessary, and it is only to avoid this particular provision, which will put these States on a different footing from other States which now form the provinces of India, that I have moved this amendment. Sir, it does not present any complications as it is merely an elimination of proviso (i). I hope the House will accept it.

(Amendment Nos. 1899, 1900 and 1901 were not moved.)

Shri Brajeshwar Prasad : (Bihar: General): Mr. President, Sir, I rise to oppose article 109. I am never tired of repeating the same argument because I feel that repetition may have some effect and may bring about a change in favour of a unitary system of Government. I am not in favour of vesting the power that has been vested under this article into the hands of the Supreme Court. The Government of India has always enjoyed the power of adjudicating in a dispute between two States. I fully understand the role of the Supreme Court in federalism, but I am opposed to both federalism and the Supreme Court. I feel that if there is a conflict between two States, the Government of India should adjudicate. If there is a conflict between the Government of India and a State, the decision of the Government of India should be final. The provincial Governments are subordinate Governments. I have nothing more to add.

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, I am very happy to accord my full support to the amendment moved by Mr. T.T. Krishnamachari. We find that in the Draft a distinction was sought to be made between States in Part III of the First Schedule and States in Part I, evidently on the ground of the difference in the political relations between the States in Part III and the Centre and between the States in Part I and the Centre. Sir, after this Draft was prepared, a good many changes have taken place. We find that in this Draft nineteen States are mentioned by name in Part III and the others were not mentioned because they were expected to be merged in large units. Now all the minor States have disappeared. Even of the nineteen units which were probably expected to remain, we now find only four or five and they are also fast coming into line with the other States, namely those that are known as the provinces. If there is any benefit that the people of the States in Part III should receive from the new Constitution that is to come into being, in my view it is a right of approach to the Supreme Court. In these States till now, we have had no right of appeal to the Privy Council. Our courts are supreme. The High Court of Travancore exercises the same extensive powers in respect of that State as the Privy Council in relation to the provinces of India. Now conditions are changing and they must change. Mr. T.T. Krishnamachari said that provisions will now be made on the basis that the Supreme Court will have the same Jurisdiction over the States in Part I and in Part III : but that if the necessary agreement of the States in Part III be not secured in time, they will be excluded from the operation of these provisions. I fully hope, Sir, that

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such a contingency will not arise. Everybody concerned in this matter including those that are responsible for running the Government of India and those that have a right to speak on behalf of the States in Part III will I hope appreciate that the people of these States should have the right to approach the Supreme Court in the same way as the people of the provinces. There should be absolutely no distinction in regard to this right. With that hope I fully support the amendment moved by Mr. T.T. Krishnamachari. I wish to refer to another point in this connection. Constitution-making in the States in Part III has now been held up by an order or direction from the Central Government. The Government of India are preparing a model Constitution for the States. I do not know at what stage that work is now. The question is has to be decided, and that promptly, whether the Constitution for the States should be framed here in this Constituent Assembly or in the States themselves by their respective Constituent Assemblies. In any case, delay should be avoided and this Constitution that we pass here will not be capable of being put into force fully until the Constitution of the States in Part III is also framed and passed. Therefore, no time should be lost and necessary steps should be immediately taken in that regard. I do not think this Constituent Assembly will be out of order in seeing to it that the Constitution-making in the States in Part III is taken up soon and completed because this Constitution will not be capable of being put into force until that Constitution is also passed. I hope that that matter would also receive the earnest consideration of this House and the Government of India.

(Amendment Nos. 1899 to 1901 were not moved.)

The Honourable Dr. B.R. Ambedkar : I do not think it is necessary to say anything. I accept Mr. T.T. Krishnamachari's amendment.

Mr. President : The question is:

“That for the proviso to article 109, the following be substituted :—

‘Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in article 109 for the words ‘if in so far as’ the words ‘if and in so far as’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 109, as amended, stand part of the Constitution.”

The motion was adopted.

Article 109, as amended, was added to the Constitution.

Mr. President : We may go to article 110.

Pandit Thakur Das Bhargava : Sir, I have given notice of Amendments Nos. 182 and 183 to add a new article 109-A. I would request you, Sir, kindly to allow them to stand over.

Mr. President : They may stand over. But, if as a result of any other articles being accepted, these amendments become infructuous, then you take that risk.

Shri T.T. Krishnamachari : May I clarify the position, Sir? The position is that this article 109-A stands on its own. It is entirely unrelated to any article that comes thereafter. Therefore, the danger that the Chair visualises will not happen and it will not become infructuous by reason of later articles being passed; the subject covered is a new subject. If the Chair wishes, it may be allowed to stand over.

Mr. President : If it does not become infructuous, it will be taken up later. These two amendments will remain for the present.

Article 110

Mr. President : The motion is:

“That article 110 form part of the Constitution.”

Shri Raj Bahadur (United States of Matsya): Mr. President, Sir, I beg to move:

“That in clause (1) of article 110, for the words ‘a State’ the word ‘the territory of India’ be substituted.”

There are two principal reasons for which I wish to move this amendment. The term ‘a State’ is definitely one which restricts and limits the interpretation and meaning of this article. We can very easily contemplate the possibility of acquiring by conquest or otherwise new territories for India. So far as the definition of “the territories of India” is concerned, at present article 1 clause (3) says:

“The territory of India shall comprise—

- (a) the territories of the States;
- (b) the territories for the time being specified in Part IV of the First Schedule; and
- (c) such other territories as may be acquired.”

If we retain the term ‘a State’ in article 110, territories that may be acquired hereafter, or that may of their own free will come to be included in the territory of India will not fall within the purview of this article and as such, it is necessary, in my humble opinion, that this change should be made.

Again, if we turn to article 111, it would be found that the term used there is not ‘a State’, but ‘territory of India.’ Article 111, for instance, runs as follows:

“An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India.....”

Again in article 112, the same words “territory of India” are used. It is therefore necessary that in article 110 also, the same term ‘territory of India’ should be used and not ‘a state’. For these reasons, I commend this amendment for the acceptance of the House.

(Amendment No. 1903 was not moved.)

Mr. Naziruddin Ahmad: Sir, with your permission, I shall move amendments 1904 and 1907 together, as they are related.

Sir, I beg to move:

“That in clause (1) of article 110, the words ‘as to the interpretation of this Constitution’ be omitted.”

[Mr. Naziruddin Ahmad]

I also move:

“That in clause (3) of article 110, the words ‘as to the interpretation of the Constitution’ be omitted.”

I think these are consequential amendments, consequential upon certain enactments that we have already passed in the Legislative Assembly. I submit, Sir, that these two amendments have a great constitutional importance.

In clause (1) of article, 110, it is provided:

“An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.”

I want to delete the last few words ‘*as to the interpretation of this Constitution*’. The effect of this deletion would be that an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in civil or criminal or other proceedings if the High Court certifies that the case involves a substantial question of law. If we keep the words objected to, the result would be to confine the power to grant certificate to errors as to the interpretation of the Constitution, and it will therefore automatically prevent the High Court from granting certificate if there is an error of law which does not involve the interpretation of the Constitution. The effect would be the grossest violations of law laid down in the Criminal Procedure Code, Evidence Act, the Indian Penal Code etc., will go unchallenged. Even if there is the grossest error in the decision of a High Court, then the High Court will have no power to grant certificate in order to enable party affected to come to the Supreme Court.

The second amendment relates to clause (2). It provides that where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law *as to the interpretation of the Constitution*, grant special leave from such judgment. We are therefore reduced to this that the High Court can grant certificate for appeal if there is an error affecting the interpretation of constitution and under clause (2) the Supreme Court will grant leave if there is a substantial question of law as to the interpretation of the Constitution. I submit that this Draft was made at a time when the Privy Council was functioning. In the meantime we have passed a law in the Legislative Assembly empowering the Federal Court to deal with matters which were pending before the Privy Council relating to civil matters. At that time these two clauses were fully justified. There was a division of labour between the Federal Court and the Privy Council. The Federal Court had jurisdiction to entertain appeals on other matters which involved interpretation of the Constitution—the Government of India Act. So far as the Privy Council was concerned it entertained direct appeals involving question of law but which did not involve a question of interpretation of the Constitution. If any interpretation of the Constitution was involved, there was an appeal from the Federal Court to the Privy Council. Now that power of the Privy Council is gone. The powers of the Privy Council and the Federal Court are to be united in the Supreme Court. The power to restrict the right of the High Court to grant a certificate for an appeal to the Supreme Court only when the interpretation of the Constitution is involved is now obsolete, and the Federal Court has been partly enjoying and the Supreme Court will enjoy of powers of the Privy Council also. In these circumstances the powers of the Privy Council and the powers of the Federal Court as hitherto enjoyed should be combined and should be given to the Supreme Court. In fact whether the question relates to interpretation of Constitution or otherwise, the High Court

should be enabled to grant a certificate, and the Supreme Court should be enabled to grant special leave, irrespective of the question whether there is a question of interpretation of Constitution or not. There may be grave errors of law affecting numerous Acts other than the constitution, and obviously appeal should be allowed on certificate by High Court on those grounds too. Then there is a article 112 which tries to save the situation to a certain extent “that the Supreme Court may in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply.” Therefore wherever the High Court did not grant leave or could not grant under clause (1) of article 110 or wherever the Supreme Court could not grant special leave under clause (2) of that article, then the Supreme Court has a residuary power to grant special leave. The result would be that if there is a grave failure of law in the decision of a case not involving an interpretation of Constitution, the High Court would be precluded from granting any certificate. But under article 112 the Supreme Court alone would be enabled to grant special leave. In fact a grave error of law will not empower the High Court to grant any certificate but it would enable the Supreme Court to grant special leave. To this extent there is a clash between clause (2) of 110 empowering the Federal Court to grant leave where the question of law involves the interpretation of the Constitution and article 112 allowing the Supreme Court to grant special leave in other cases. So by combining clause (2) of article 110 and article 112 the Supreme Court has been given power to grant special leave in any case involving a question of law. While this power is given to Supreme Court the High Court’s power to grant a certificate is confined only to error of law affecting the interpretation of the Constitution. If an error of law is considered to be a serious matter which requires correction by Supreme Court, then the High Court should be enabled to grant certificate in order to make an appeal possible in the Supreme Court. Of course the Supreme Court is authorised to grant special leave but this would be highly inconvenient and expensive. A party may more easily apply to the High Court for a certificate, and a special leave matter before the Supreme Court will involve delay and expenditure which many persons may not be able to avail of. In these circumstances the net effect of the amendment suggested would be to allow the High Court to give a certificate of appeal to Supreme Court in case there is a substantial question of law.

Dr. Bakshi Tek Chand (East Punjab: General): In ordinary cases?

Mr. Naziruddin Ahmad : Yes.

Dr. Bakshi Tek Chand : That is covered by article 111 (1) (a) (b) and (c).

Mr. Naziruddin Ahmad : The difficulty is that these were drafted in conditions existing before we passed the Act depriving the Privy Council of its jurisdiction of appeal. Articles 110, 111 and 112 should be combined and redrafted. In fact there is plenty of duplication as well as of gaps. The simple thing is to say that where there is a question of law the High Court should be enabled to grant certificate and also the Supreme Court should be enabled to grant leave in cases involving question of law.

Mr. President : Does No. 111 cover cases of criminal nature also?

Mr. Naziruddin Ahmad : No.

The Honourable Dr. B. R. Ambedkar : We are making provision for that by a separate article.

Mr. Naziruddin Ahmad : I am very grateful to you, Sir, for pointing out that article 111 does not make any provision for criminal cases. In fact this is one of the difficulties felt, and it is an anomaly that while we are enabled to go to the Federal Court for ordinary civil appeals, for criminal cases involving the life and property of a citizen we have to go direct to the Supreme Court. I suggest that a simple test would be instead of making a distinction between a question involving the interpretation of Constitution and other question of law, the test should be a question involving a substantial question of law, whether of interpretation of Constitution or otherwise. The distinction between the question of law involving interpretation of Constitution and other questions of law was justified under old conditions where there was a division of jurisdiction between the Federal Court and Privy Council and the question turned upon the law involving interpretation of constitution or other questions of law. Now, as the functions of the Privy Council and the functions of the Supreme Court will unite, this nice distinction which was very much justified in old circumstances is no longer necessary. Therefore this distinction should be entirely wiped out.

Sir, as you have pointed out, there is a lacuna so far as criminal cases are concerned and article 111 does not deal with them, and we are told that something else is coming up. We would like to know when this kind of a new infiltration of important provisions will stop. In fact, for poor Members like us, it is impossible to keep pace with the great amount of laxity with which serious amendments are showered upon the Members. It is difficult for us, without sufficient time to take count of all the implications of these sections. The Members should have an overall and complete picture of the whole thing. Now criminal matters are omitted, and we are informed that another provision is to be made. I respectfully suggest that articles 110, 111 and 112 should be reconsidered. Article 112, according to me, would be absolutely unnecessary. If we give power to the High Court to give certificates in questions of law, and when we give special leave to the Supreme Court where the High Court refuses to give it, then the entire matter would be covered. Instead of making a distinction between interpretation of the Constitution and other question of law, instead of making a distinction between civil and criminal cases, the sole question will be a substantial question of law—one provision for the High Court and another provision for special leave to the Supreme Court. I think matters would be greatly simplified in the way I suggest and I think a fresh draft would be necessary.

Mr. President : There are certain other amendments to this article.

(Amendment Nos. 1905 and 1906 were not moved.)

Mr. President : There are two amendments arising out of amendment No. 1906, but I think they are covered by the amendment just now moved by Mr. Naziruddin Ahmed. It is in the same words, practically. Nos. 148 and 149.

Pandit Thakur Das Bhargava : I do not propose to move it.

Mr. President: Then No. 149 also goes.

(Amendment No. 1908 was not moved.)

Mr. President : No. 1909 in the name of Dr. Ambedkar.

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

“That in clause (3) of article 110, for the words ‘not only on the ground that any such question as aforesaid has been wrongly decided, but also,’ the words ‘on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court’ be substituted.”

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :—

“Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground.”

(Amendment No. 1910 was not moved.)

Mr. President : These are all the amendments to this article. If anyone wants to speak, he may do so now.

Shri Alladi Krishnaswami Ayyar : (Madras: General): Mr. President, Sir, I would like to make a few remarks in regard to certain observations made by Mr. Naziruddin Ahmad. The scheme of the different article is as follows. So far as article 110 is concerned, irrespective of any value, if a substantial question as to the interpretation of the constitution arises, an appeal lies to the Supreme Court. That has no relation to the value of the subject-matter. It has relation only to the nature of the question raised. The question may be raised in any proceeding; it may be raised in a criminal proceeding, it may be raised in a civil proceeding. It may be raised in an action in which the amount or value of the subject-matter is lakhs of rupees or a few hundred rupees. Though it has no bearing directly on article 110, it is necessary to bear in mind the scheme of the different articles. Article 111 deals with the general right of appeal to the Supreme Court. But if in the course of a general appeal to the Supreme Court in which civil rights are involved between two parties, it will be open to a litigant to raise a constitutional question, though he has not availed himself of the remedy under article 110, because the theory is that when the whole appeal is before the Supreme Court, it will be open for the aggrieved litigant to raise a constitutional question as incidental to the determination of the whole case. Now, the point has been raised that in every case of a wrong interpretation of law, irrespective of the valuation of the subject-matter, there must be a right of appeal to the Supreme Court. I believe that was the main substance of the argument raised by Mr. Naziruddin Ahmad. Now, such cases are provided for article 111 (c). There are Acts and Acts, regulations, orders and so on. Some immaterial point may be raised in the different courts in this great continent. It does not mean that every case, irrespective of the nature of the subject-matter must come up before the Supreme Court. Though the valuation may be a small one, still the point may be so important, may affect other cases, and may affect other litigants that it is as well that the Supreme Court is invested with jurisdiction to entertain an appeal. That is why in article 111, clause (c) the general provision is made “That the case is a fit one for appeal to the Supreme Court”. It has no relation to the value. It may be of any value. But if it is a matter affecting the general community, or if it is of such special importance, the litigant will have the right to appeal to the Supreme Court, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Even apart from article 111, you have article 112, which gives the Supreme Court the right to grant special leave “to appeal from any judgment, decree, or final order in any cause or matter passed or made by any court or tribunal in the territory of India.” That gives a very wide power to the Supreme Court. There again it will to some extent depend upon the discretion that is exercised by the Supreme

[Shri Alladi Krishnaswami Ayyar]

Court. It may be a civil case, a criminal case, a small subject-matter or a large subject-matter. But still under article 112, the litigant will have the right to appeal to the Supreme Court. There is absolutely no reason why the Supreme Court should not grant special leave if the case is of sufficient importance. Besides this, the Court has original jurisdiction in all cases involving fundamental rights. What other safeguard is necessary? Unless the courts are to be the sporting field of litigants there is absolutely no point in multiplying the right of appeal. You have a right of appeal, a right to seek the intervention of the Supreme Court when fundamental rights are involved. You have the right to seek intervention by way of special leave. Later on, I believe there will be an amendment even in regard to criminal cases to enable Parliament to invest the Supreme Court with criminal jurisdiction. I submit, Sir, that this much may be said of the Supreme Court. It has wider jurisdiction than any superior court in any part of the world, if only you survey the Constitution of other countries. Therefore under those circumstances, all the cases that can possibly arise, cases which involve constitutional questions, cases which do not involve constitutional questions, can come up before the Supreme Court and the litigant can have his wrong redressed before the Supreme Court.

So far as article 110 is concerned, it deals only with constitutional questions. It must raise a substantial question of law as to the interpretation of the Constitution. That is all that is necessary for the particular purpose: and if and when the appeal is lodged on a constitutional question, it will be open to the Court, not merely to deal with the constitutional question, but to go into the whole appeal and re-hear, so to speak, the whole case on merits, if the interests of justice demand it: and as a matter of fact, from my experience of the Federal Court, I can say that in several cases where an appeal has been lodged on a purely constitutional question, the Court has gone into the merits of the case and decided really on other points. Sometimes the constitutional point is like a peg on which the litigant wants to hang his own appeal. He merely starts a constitutional question. The High Court grants the leave. The matter comes up before the Supreme Court. Then the Counsel feels that there is not much force in the constitutional point and then he practically concentrates his attention on the other points in the case. That is good enough. But we need not go further and say that in every case in which a question of law arises in the whole of India in any court an appeal must lie to the Federal Court. It will certainly be in the interest of lawyers and it may be in the interest of rich litigants but certainly, it will not be in the larger interest of this country.

Shri Rohini Kumar Chaudhuri (Assam: General): Sir, I hope I am not rushing in where angels fear to tread ! But confusion was created in my mind by the speech of my honourable Friend, Mr. Naziruddin Ahmad. That was further enhanced by an amendment which was moved by my honourable Friend Dr. Ambedkar.

The plain question which I want to ask is whether, as in the past, a man convicted in a criminal case will have a right of appeal or of revision or anything of that kind to the Supreme Court or not. I think the lawyer Members of this House remember very well that Privy Council judgments were passed in at least two important cases where the persons accused had been

ultimately saved from the gallows. I want to know whether the provisions which have been laid down in articles 110, 111, 112 and so forth have left any room for such a remedy being sought in the Supreme Court or not. We find, Sir, that we can get a certificate only if we infringe the Constitution. But if otherwise a serious case of miscarriage of justice arises there is no room for getting a certificate from the High Court or leave from the Supreme Court. It is only when it has been proved that this Constitution has been infringed that you can file an appeal and then you can raise other points if you are allowed. As the article originally stood, once you can show that the Constitution has been infringed, and once you get a certificate on that ground either from the High Court or the Supreme Court, then you are entitled to appeal or raise other points not relating to the infringement of the Constitution at all.

Now the gate is closed in the very first instance. It is very difficult to find out cases where the Constitution has been infringed. It is only when some legislation or some ordinance is passed in direct contravention of the Constitution do we find that there has been an infringement of the Constitution. But in most cases there will be no such instances to complain of. Would it, then, in those circumstances be possible for any person, who is convicted and sentenced to death, or has received any other sentence, to go to the Supreme Court by any pretext or not?

I do not understand why we say here that the moment the Constitution is infringed you can raise any point before the tribunal. It may be that the Constitution has been only slightly infringed. As a matter of fact the ordinary law has been violated. Even in those cases the Supreme Court is competent to give you relief. But if you cannot show that the Constitution has been infringed, no matter how serious the injustice might have been, you are not entitled to go to the Supreme Court at all. I find, Sir, that article 111 allows you to move the Supreme Court even in civil matters. After all, the loss of property and the loss of money cannot be as important as the loss of life and liberty ! You have given ample scope to those who are aggrieved by the judgment of a Civil Court to go the Supreme Court. But you have left no door open for persons convicted or punished for loss of liberty or life by a Criminal Court. That, I think, is taking away the rights which we today possess in going to the Privy Council.

Thirdly, I find that there is a reference in article 112 where it is stated that the Supreme Court may interfere or allow an appeal on other grounds if they are affected by any judgment. Article 112 says:

“The Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any court or tribunal in the territory of India.....”

I want to know whether the word ‘judgment’ here covers also ‘judgment’ in criminal cases.

Here in article 110 you specifically mention ‘criminal courts’. You say here that an appeal shall lie to the Supreme Court, from a judgment, decree or ordinary order of the High Court of a State, whether in civil, criminal or other proceedings. In article 111 you mention only about civil courts; you do not mention criminal courts at all. In article 112 you mention about judgment and you do not say whether it is a judgment in a civil court or a criminal court. In article 113 you clearly state that if there is any doubt about interpretation of any law or any proceeding in a High Court then a reference will be made to the Supreme Court. There also you expressly state about civil, criminal or other proceedings. So that, one can interpret, from a reading of these articles, that you expressly bar the Supreme Court from exercising jurisdiction in a decision of a criminal court, unless the party

[Shri Rohini Kumar Chaudhuri]

aggrieved can show that the matter relates to the interpretation of the Constitution. You put no such restriction with regard to article 111; you put no such restriction with regard to article 113. Therefore, Sir, the question I would ask is a very simple one. As at present, the Privy Council can interfere in criminal cases where mandatory provisions of the law are violated. We have no such provision in these articles and I shall be glad if a similar provision is made.

Further, more, Sir, I have a grievance, so far as the amendment moved by the Honourable Dr. Ambedkar is concerned. Clause (3) of article 110 as it stood reads, as follows:

“(3) where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court not only on the ground that any such question as aforesaid has been wrongly decided, but also on any other ground.”

I submit, Sir, that the clause as it stands is much more liberal than the amendment which has been moved to this clause by Dr. Ambedkar.

Pandit Thakur Das Bhargava : Sir, I join the complaint of Mr. Naziruddin Ahmad that the provisions relating to the Supreme Court are so complex that they pass the understanding of an ordinary person like myself. The amendments that are coming in are not so clear as to give us an over-all, a clear picture of what the persons who are in charge of making the Constitution really mean.

Now, Sir, my honourable Friend, Mr. Naziruddin Ahmad has moved that the words relating to the interpretation of the Constitution appearing in clauses (1) and (2) of article 110 may be deleted. Exception has been taken on the ground that if these words are deleted, the door will be left very much wide open that there will be such a flood of litigation that the courts will not be able to cope with it. Sir, my humble complaint in this respect is that we have been proclaiming day in and day out that we want to give equality of status and opportunity to all people, that in the eyes of law all people would be equal. Now, Sir, I beg to point out that in cases where the amount of property involved is Rs. 20,000 and above, there will be direct appeal to the Supreme Court and in cases which are fit ones in which substantial questions of law arise in regard to civil matters, even then, if the High Court, certifies, there will be appeal to the Supreme Court. What about the poor people who do not possess so much valuable property? Why should not a man, say possessing in all property worth Rs. 5,000 which is involved in litigation have the right of appeal? The words relating to the interpretation of the Constitution, in my humble opinion, will so narrow down the beneficial effect of article 110, that in very few cases will appeals be allowed.

Then, so far as the criminal jurisdiction is concerned, my humble complaint is that it so appears that this Assembly is full of civil lawyers and they do not care about the criminal aspect of the jurisdiction of the Supreme Court. In article 110 the word “criminal” does occur, but there will not be many cases in which the question of interpretation of the Constitution will be involved so far as criminal jurisdiction is concerned. Substantial questions of law affecting the personal liberty and lives of individuals may arise, but those cases will be outside the purview of article 110, unless and until they relate to the interpretation of the Constitution. Similarly, article 111 also confines itself to civil cases. It will be pointed out, and it has been pointed out that article 112 to a certain extent concerns itself with the criminal jurisdiction of the Supreme Court and further we have an amendment by Dr. Ambedkar that Parliament may frame laws in regard to the criminal jurisdiction of the

Supreme Court. My fear is that it may take years and years to do so. What is then to happen between now when we are taking away the powers of the Privy Council and the time by when the law will be passed by Parliament? Many persons who would want to appeal to the Supreme Court will not be able to avail themselves of that opportunity. I want that any person who loses his life or loses his liberty should have an absolute right of appeal and not seek special leave to appeal. We know that the Privy Council does not interfere in ordinary cases, but there are many cases on record in which as soon as the conscience of the Judges of the Privy Council was touched, they transformed ordinary questions into questions of law.

My contention, Sir, is that when we are making a New Constitution for this country we should liberalise the jurisdiction, we should see that in all cases, in all fit and proper cases, the ordinary man gets full justice. It may be that there may be special leave to appeal. But such leave may or may not be granted. It is a matter of discretion. I want that in such cases when a person has been sentenced to death, or there is conviction by the High Court after acquittal order is set aside on Government appeal, there should be an absolute provision for every person to have the right of appeal.

It has been stated by Shri Alladi Krishnaswami Ayyar that if the scope of article 110 is widened many cases will arise in respect of wrong interpretation of law and that there will be a flood of litigation. But may I submit that the words are 'substantial question of law'? May I ask why should the Supreme Court be given these powers at all, unless the intention is to secure uniformity in the territories of India with regard to law as the declaration of law by way of judgments and decisions will have the effect of law itself? Therefore my submission is that when a question of law is concerned, it is not that you are opening the flood-gates of litigation; on the contrary if such a question is decided once for all you will be closing the gates of litigation.

It has been said also that in the case of a death sentence if such opportunity is allowed, the amount of appeal work would be so large that you will require many judges. It may be so. I do not want to deny that the amount of work will be very great. But it does not matter to the country at large if A holds Rs. 20,000 worth property or B does it, if the High Court decides once for all as to who is to hold it. This is enough for protection of civil rights. But the question of life and personal liberty is different. Those persons who are condemned to death cannot be recalled to life if the wrong sentence is carried out. Life is much more important than any amount of civil rights. Therefore, I submit that whereas you provide two or three appeals in civil suits involving Rs. 20,000 or so, in these cases of sentence of death you provide only one appeal. It is a long-standing complaint, and all legal practitioners know it, that in many cases in courts injustice is done. If we look at the number of appeals accepted as compared with the convictions, it will be apparent in a large number of cases appeals are accepted. It is quite true that a person does not get justice in the original court. I am not complaining of district courts. In very many cases of riots in which more than five persons are involved, a number of innocent persons are implicated. I can speak with authority on this point. I am a legal practitioner and have been having criminal practice for a large number of years. If we want to do justice to the people, we must make it a rule that in all questions of death an appeal as of right should be given to persons sentenced to death. When we proceed to consider the other articles we shall have to remember that if this article is not changed such appeals as I have mentioned will never come under its purview.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I rise to oppose the amendment of Mr. Naziruddin Ahmed. The whole scheme of this article has been taken from section 205 of the Government of India Act. The language used there is: 'if the High court certifies that the case, in-

[Shri Krishna Chandra Sharma]

volves a substantial question of law as to the interpretation of this Act.' Here in this article we have substituted the word 'Act' by the word 'Constitution'. Article 111 is a reproduction of section 206 of the Government of India Act. The cases mentioned by Mr. Naziruddin Ahmad are covered by article 111(c) 'that the case is a fit one for appeal to the Supreme Court'.

Then I may point out that criminal cases are covered by article 112. Those cases that are fit to go to the Supreme Court will be taken up by the Supreme Court for its final judgment. I submit that it is an impossible proposition that every case of murder or capital sentence should be sent to the Supreme Court, because in that event no less than a hundred judges would be required in the Supreme Court. Our judicial system has been modelled on that of the British. In England, before 1908, there was no appeal in criminal cases. It was only in 1908 that a provision for appeal was made. The argument against the appeal was that a jury and a judge decided the cases, the jury gave the verdict and the judge confirmed it; therefore, there is hardly any room for doubt as to the correctness or the validity of the judgment concerned. In India instead of the jury, in murder cases, there are the assessors and there is the judge. They decide the cases. There is a provision for the confirmation of death sentences by the High Court and an appeal lies to the High Court. I do not think that any further remedy in every case is necessary. As I said before under the circumstances, taking the facts as they are, it is impossible for the Supreme Court to deal with so many appeals coming from the different High Courts. Therefore, the provisions made in the Constitution are ample to meet the ends of justice and no further provision is necessary.

Prof. Shibban Lal Saksena : I wish to oppose this article, not from the point of view of a lawyer but from the point of view of a person who values the civil liberties of the people. My Friends, Messrs. Naziruddin Ahmad and Bhargava, have made out a strong case for the deletion of the words 'as to the interpretation of this Constitution'. It is difficult to disagree with Sir Alladi when he warned us just now against too much litigation. One should always wish that the habit of litigation should be given up. I fervently hope that the present system of justice will be soon changed, so that justice pure and simple should be guaranteed to the people, cheaply and quickly. I have carefully studied the provisions regarding the powers of the Supreme Court and listened to the speeches made here. I am not able to find any provision which guarantees to the citizen who has been condemned to death or whose civil liberty has been taken away that he shall have an inherent right of going in appeal to the highest tribunal—the Supreme Court. I have seen many cases where people were condemned to death. I had the misfortune during the 1942 movement to live in a condemned cell for about twenty-six months and about thirty-seven men were hanged in my presence. There were eight cells for condemned prisoners in one block and I occupied one of them. So I was privileged to be with the condemned prisoners, to meet them and to talk and to live with them. Out of the thirty-seven men, seven were acquitted, ten had their sentences reduced to transportation for life and the rest twenty were hanged. I am sure Sir, that many who were acquitted were real murderers, many who were sentenced to transportation for life were real murderers and many who were hanged were innocent. At least I was convinced in the case of seven persons that they were perfectly innocent. Still they were hanged. I do not say that the Supreme Court will always know by some divine inspiration what is true. That is why I stand for our abolition of Capital punishment altogether. But so long as we do not abolish the death penalty, I feel that the man who is condemned to death must have the right

of appeal to the highest Tribunal. This must be an inherent right and not limited by any conditions. I am fully prepared to accept the advice of Shri Alladi on other subjects. I am prepared to limit the functions of the Supreme Court in hearing appeals in Civil Cases, but I do wish that the men who are condemned to death should have the inherent right of appeal to the Supreme Court and no man should be hanged unless the Supreme Court has confirmed the death sentence. The other day I was hearing at another place my learned Friend, Dr. Bakshi Tek Chand, when he told us that when he was a judge of the Lahore High Court about three hundred cases of murder went to him in appeal every year. Probably the combined Punjab was very turbulent, considering the number of murders there, but the East Punjab and the other provinces are not so violent. I do not think that in the whole of India, the number of murder appeals will exceed seven or eight hundred. I do feel that the people who are condemned to death should have the inherent right of appeal to the Supreme Court and must have the satisfaction that their cases have been heard by the highest tribunal in the country. I have seen people who are very poor not being able to appeal as they cannot afford to pay the counsel. I see that article 112 says that the Supreme Court may grant special leave to appeal from any judgment, but it will be open only to people who are wealthy who can move heaven and earth, but the common people who have no money and who are poor will not be able to avail themselves of the benefits of this section. Therefore in the name of those persons who were condemned to death and who though innocent were hanged in my presence, I appeal to the House that either in this article or in any subsequent article there must be made a provision that those who are condemned to death shall have an inherent right of appeal to the Supreme Court.

Mr. Frank Anthony : (C.P. & Berar : General): Sir, I had no intention to participate in this debate until I heard my colleague, Pandit Thakur Das Bhargava, place his point of view before the House. I think that his point of view is an unexceptionable one and one which we, if we are earned about these provisions, are bound to accept. I have just looked at the provisions of articles 110 to 112 and I found that ample security has been given to the civil litigants. I cannot help feeling that the people outside are bound to say that these provisions have been conceived in the spirit of civil litigation, conceived by those who are interested as civil lawyers in continuing litigation. We have made no restrictions in the matter of civil appeals. Article 111 gives an absolute and automatic right of appeal to the Supreme Court in all suits involving twenty thousand rupees or more. I think this is an absolutely absurd limit. If we set the limit at one lakh or two lakhs, where is the hardship involved to the civil litigant? I confess I cannot understand why the Law Minister and those who think like him feel that this kind of justice must be done to the civil litigant in cases involving property of twenty thousand rupees and more, while on the other hand they say that where a man has been sentenced to death or has been given transportation for life it does not involve a denial of liberty or justice sufficient to give him an automatic right of appeal. My friends may say that article 112 gives a certain amount of discretion to the Supreme Court to allow any appeals in respect of criminal matters, but it is a matter of discretion and it is also qualified by the condition that it must involve a substantial question of law. I feel, Sir, as one who has had a lot to do with criminal cases and murder cases that we cannot give overdue or more than ample guarantees in criminal cases, particularly where a sentence of death or a sentence involving transportation for life has been imposed. As my Friend, Pandit Thakurdas Bhargava, has pointed out, any person who has handled criminal cases, particularly murder cases, will be able to testify from his personal knowledge to serious miscarriages of justice on account of misinterpretation of facts, tremendous diversity of conflict in the matter of legal interpretation. In India, in one High Court, in the case of two people where one inflicts a fatal injury while the

[Mr. Frank Anthony]

other holds the deceased, both might be sentenced to death, while in another High Court, one might be sentenced for murder while the other may only be fined for having committed simple hurt. And yet my Friend says that where we have this diversity of judicial decisions, when a man has been sentenced to death or transportation for life, it does not involve sufficient reason or sufficient justification to give him an absolute right of appeal. The argument is made that if we give an absolute right of appeal in each case where a sentence of death has been passed, we will have to have scores of judges. This, Sir, is a tenuous and untenable argument. It is axiomatic that the volume of civil litigation in this country is probably ten to fifteen times the volume of criminal cases. Yet there is an absolute right of appeal in civil cases involving twenty thousand rupees or more. They have set greater sanctity on property than on human life. If we really want to restrict the number of judges, if we really want to restrict the volume of cases going to the Supreme Court, we must restrict the property value in the case of civil appeals. What real hardship will it cause to a bloated capitalist, to blackmarketeers if for cases involving less than three lakhs or four lakhs they are not given any kind of right of appeal to the Supreme Court? Can it be said that there is anything more than the merest justice in providing that a man who has been sentenced to death should have the absolute and unqualified right of appeal to the Supreme Court irrespective of whether the case involves a substantial question of law or not? Any other decision by this House, to my mind, will involve a perversion of what should be a fundamental juristic principle. My honourable Friends sitting on the back benches say that other countries of the world do not recognise an absolute right of appeal when a death sentence has been passed. Are we to be guided by precedents from other countries? If conditions in our own country are such as Pandit Thakur Das Bhargava pointed out, what criminal lawyer is not able to testify that in nine out of ten riot cases, two, three, four, five or six innocent people, as a matter of course, are involved? Innocent people have very often been sentenced to death after having been falsely involved in riot cases read with murder. I cannot understand the argument of my honourable Friends who say that article 112 which gives discretion to the Supreme Court to call a case before it when any substantial question of law is involved, gives more than ample protection to people whose liberty may be taken away from them, and I also concur in the fear expressed by my honourable Friend, Pandit Thakur Das Bhargava when he says that to leave it within the discretion of Parliament is to practise escapism of the worst type. It is more likely that the effect of such a clause will be still-born especially with persons exercising a powerful influence such as the Law Minister. Parliament may do nothing in order to ensure that persons who have been sentenced or have been deprived of their liberty will get any substantial rights of appeal to the Supreme Court. For this reason, Sir, I feel that this is a vital matter, and it is a matter on which I would request the Law Minister should defer consideration, if necessary, so that the matter can be reconsidered more fully by the House at a later stage.

Dr. P. K. Sen : (Bihar: General): Sir, the intention seems to be clear that article 110 provides for a special set of cases where an interpretation of the Constitution is called for. Article 111 again provides for all civil cases which have not this special characteristic. I have no quarrel whatsoever with the wording or the spirit of either of these two sections. What I am concerned with is to place a few humble observations before this House in respect of article 112. I have very great sympathy with the point of view which has been expressed in this House by my honourable Friend, Pandit Thakur Das Bhargava. Although there is some provision with regard to special leave in article 112, it hardly gives that particular emphasis to the question of appeals against death sentence that it should. I do not know nor do I suggest in

what manner it should be done. It may be that it will rest with the Parliament to make provisions with regard to the acceptance of appeals in regard to cases that involve death sentence only or acceptance of appeals in regard to not only death sentence matters but also other important criminal matters. But one thing I am perfectly clear about in my mind and that is this, that in this question we should not by any means follow the British convention as a model one. In matters of punishment, in matters of penal legislation, Great Britain has been the most backward and the most conservative of all countries. Whereas we find that in most countries of the West and in several big States, at any rate, the death sentence has been abolished, Great Britain is still talking about it and the greatest of efforts has not succeeded in persuading public opinion that there should be some other way of dealing with criminals of that kind than by death sentence; it may be by incapacitation; it may be by segregation from ordinary society, so that they may no longer indulge in their anti-social acts; it may be anything, but it should not be met by capital sentence. That is the view which has been taken by most countries. Now, I am not here, Sir, to ventilate those views, but what I am referring to is the tardy recognition by Great Britain that many of the offences should be excluded from the list of capital offences. This tardiness has been most apparent from the time of Henry VIII, when there were 263 cases of crime to be met by capital sentence. When we come to 1797, even then there were 160 offences which used to be capitally punished. Then in 1833, there was a move for removing certain offences from the list of Capital offences. Take for instance, shop-lifting, petty cases of theft, etc. The offenders used to be sentenced to death—there is a recorded case of a boy sixteen who had not been able to resist the temptation to lift a little doll from the shop-window and he was hanged for it. British opinion was so obdurate that it refused to recognise that in these cases there was any other way possible—either punishment or correction or segregation. In 1833, when this question again arose of removing certain of these offences from the capital sentence list, Lord Ellenborough in the House of Lords gave a solemn warning : “Your Lordships”, said he, “will pause before giving assent to a Bill of this character which will endanger private property for all time”. I am only citing these instances to show why up to this time the Privy Council has been so chary in admitting criminal appeals against decisions by the High Court. Only in a very few cases where ‘natural justice’ was being violated—an expression which it is very difficult to define or explain, the Privy Council was prepared to entertain appeals. I submit that under the new set-up in India, surely, we should not follow that as a model precedent. On the contrary, we should give all consideration to the appeal which has been made today, to include cases of death sentences in the list of those cases which should go up in appeal before the Supreme Court. I do not suggest here and now in what manner it should be provided. Before you put it in the Constitution, it will call for careful thought and deliberation and it would rest with Parliament, perhaps to provide for details of procedure. But I do wish that some provision be made in the Constitution which would lead the Parliament to attach to it the importance that it deserves.

A point has been raised about funds. A number of judges would be needed in a vast country like India, if such appeals are allowed.....

Pandit Lakshmi Kanta Maitra (West Bengal: General): We have absolutely no statistics of such cases from the different High Courts. We cannot say whether the number will be enormously large.

Mr. Frank Anthony : A small fraction of your civil litigation.

Pandit Lakshmi Kanta Maitra : We have not got any statistics of murder cases that come before the High Courts.

Dr. P. K. Sen : That is a very easy matter; it could be ascertained with very little difficulty. What I submit is this. The sanctity of human life is being recognised more and more in recent times. There is no question that in the past there was no such sanctity attached to human life. Really the world was in a state of war and during war who cares whether lives are lost or not? But, now, there is no question whatever that in the West as well as in the East there is a great deal of sanctity attached to each individual human life. Are we not to recognise that in the new Constitution of India? Indeed, we have recognised that in the chapter on Fundamental Rights in several aspects. But, here, when it comes to a question of an appeal to the Supreme Court against death sentences, we say, "No money, we cannot afford to have so many judges"! Are we to be guided by these utilitarian considerations? Are we not to be guided by the extreme moral necessity of the case? Having been impressed with that moral necessity, we have got to find out ways and means in order that moral necessity may be met.

I have already submitted, Sir, that I am not moving any amendment or supporting any amendment. But, in the general discussion of this matter, I am expressing my individual views and I believe in those views intensely, with all the conviction that I can command. Therefore, I have no hesitation whatsoever in asking this House to lend its serious consideration to this matter, and not to shove it aside as a matter which is of no consequence whatsoever. I am not at all broaching the question now as to whether death sentence is right or wrong. That question requires careful reflection and deliberation. We cannot possibly go into that matter now, at any rate. But I do submit that we ought to provide in a handsome manner in the Constitution itself for a right of appeal to the Supreme Court in all cases of death sentence.

I thank you, Sir, for the opportunity you have given me to express my views.

Dr. P. S. Deshmukh : Sir, I had no intention of taking part in this debate. But, there is one aspect of this question which seems not to have been emphasised sufficiently and that is my excuse for intervening in this debate.

The point of view propounded by my honourable Friend Pandit Thakur Das Bhargava has been very ably supported by my honourable Friend Mr. Anthony as well as by Dr. P. K. Sen. I lend that proposition my wholehearted support not only from the point of view of important criminal cases, but also from the point of view of personal liberty in India. There is of course a provision

Shri B. Das : It is also a source of gain to the lawyer profession.

Dr. P. S. Deshmukh : If my honourable Friend feels concerned merely because of the gains to the lawyers' profession; and if that is his only grievance, it may be laid down that in certain categories of cases, lawyers shall not be permitted to appear. If he thinks that we are interesting ourselves simply for that reason and possibility of increased income to lawyers is the only reason why we want to support this, I am prepared for my part to say that in some of these cases, lawyers may not be permitted to appear, as in the case of the Gram Panchayat courts, where lawyers are prohibited from appearing .

We have in India at the present time the spectacle of personal liberties being very largely encroached upon in various places. If we take for instance the way in which provincial Governments are governing, the number of places

where section 144 Cr. P. C. is promulgated, the length of time for which it is in existence, we shall be aghast; if we were to compare these figures with any other period even in the British regime the result would be staggering. So far at least as the Bombay province is concerned, I have received many complaints where the Bombay Government have taken to wholesale externment of persons from one district to another. This is a very good way of avoiding or stopping a person from applying under the *habeas corpus*. It is not thus inconceivable that even apart from any encroachment on the constitutional provisions, there can be an encroachment on the civil liberties of the people in cases which cannot be covered by the Fundamental Rights or where the assistance of the Fundamental Rights could not be invoked. The ingenuity of the law Minister of the future Indian States being unlimited, I feel that there is every necessity to protect the liberties of the people by providing for reference to the Supreme Court in cases other than those involving interpretation of the Constitution or a violation of the Fundamental Rights. Even from this point of view, therefore, the suggestion that there should be equal facility of approach to the Supreme Court in criminal cases as we have provided for in civil cases should also be considered. I hope this point of view will be appreciated and adequate provision made.

Pandit Lakshmi Kanta Maitra : Mr. President, Sir, this part of the Constitution raises certain very important issues which the House would do well very carefully to consider.

Article 110 and 111 are there and in them we have provided for appeals in civil matters. The question is, what are we going to do with regard to criminal matters. As a member of the legal profession, I think I would be failing in my duty if I were not to tell the House that there is a considerable volume of opinion in the profession itself that whereas in civil matters, we have given the benefit of appeal as of right, in criminal matters, the accused has no real right of appeal as such. The question is whether or not in the body of the Constitution itself we should provide for it. It has been suggested in an amendment to add article 112-B, that Parliament should be invested with power to legislate in this matter,—to confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law. I maintain, Sir, that this article really raises a first-class issue whether or not we are going to place human life much below the value of property. If for property you would give a constitutional right of appeal, would you deny that in cases where death sentence is imposed? Such cases arise in one of two ways; either the Judge, agreeing with the Jury or Assessors whatever it may be, passes a death sentence; or a man has been acquitted by the Sessions Court, but an appeal is taken out by the Government against the order of acquittal and eventually the High Court reverses the judgment of the lower court and sentences him to capital punishment.

When the letter contingency arises—this conviction after acquittal, where is the forum where he can find redress against the judgment? There is no provision here. Perhaps that can be done under exceptional circumstances under special leave but there is no right as such. Perhaps it would be argued that if the volume of opinion in the country is strong, Parliament will take notice of that and will make the necessary law. I will join straight issue with those who hold that view, for what is going to happen in the interval? The Parliament may not be taking any action in this respect in the next five or six or even ten years. We do not know the future composition of the Parliament. Hence we want that this right should be embodied in the body of the Constitution itself. I would therefore suggest that article 112-B should be

[Pandit Lakshmi Kanta Maitra]

held over for the present. We should make another effort to get round our friends to the view that sanctity of human lives should be recognized. It has been argued and it will be argued always from the executive point of view that if capital sentences were allowed to be appealed against as a matter of course or as a matter of right, then what would happen is that we will have to employ a large number of judges for disposing of cases of Capital sentences. I do not know the real position-I do not know and I have no statistics before me, neither has the Drafting Committee any with them to show province by province the number of murder cases culminating in death sentences which have had to be disposed of by the High Courts. No figure is there. We have only been given a vague indefinite idea that in all the High Courts of India so many number of cases would come and that a large number of judges would have to be appointed. If that is so, I would assume for the moment that argument is correct that there would be larger volume of work, I would say that would be justified in view of the dangers involved in it. Sir, we have been nurtured in the British Criminal Law of Jurisprudence. We have been reared up in its spirit, which had always taught us that a dozen scoundrels may go scot-free but one innocent man must not be sacrificed.

Shri Mahavir Tyagi (United Provinces: General) : Sir, 'Scoundrel is unparliamentary.

Pandit Lakshmi Kanta Maitra : My Friend must know that these words by themselves are not unparliamentary but when they are used in relation to a Member, they are unparliamentary. The whole conception of the law of benefit of doubt is based on that. When the circumstances are evenly balanced, and the case for and against the accused is evenly balanced, then we give him the benefit of doubt. When the scales of justice hang anything like even, they should be tilted in favour of accused; the Judge should throw a few grains of mercy. That has been the cardinal principle of Criminal Jurisprudence which has held the field for one hundred years in the country. Who knows how many judicial murders we have not been committing by not giving the accused the final right of appeal on judgments which condemned them to death? Is this such a matter which should be lightly disposed of, simply because it might necessitate a few more Judges? We have provided for all manners of things in this Constitution but on this vital matter should we shirk our responsibility? Are the Constitution-makers going to shirk their responsibility, scared away by the prospect of having to employ more Judges? I do not think that is a consideration which should weight with them. Let me respectfully submit to them and I would respectfully suggest to my honourable Friend Dr. Ambedkar to hold his hands for a day or two more. Let us again meet and let us finally see if we can get something done for those classes of people who will be condemned to death and who will go practically at the final stage unheard. This is a very important matter; and personally speaking, I am definitely of the opinion that the right of appeal should be embodied in the body of the Constitution itself and not left to Parliament. With this point of view I agree entirely because that has been the view of the vast body of men in the legal profession. I have not known yet one single criminal lawyer of repute who does not hold the view that in this respect State legislation has been defective inasmuch as the State attaches more importance to property than to human life. I do not think this is a kind of argument which can be lightly brushed aside. I appeal to the House to consider this aspect.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, my honourable friend Mr. Anthony told the House that this section was moved in the interest of those who have been practising on the civil side. I cannot be guilty of being interested because both criminal and civil litigants have treated me with complete impartiality. We have to consider this question from not only abstract theoretical principles but from the practical point of view. Now, if the House is pleased to turn to article 112 whereby appeals can be entertained by the Supreme Court by special leave, the House will see that the present jurisdiction of the Privy Council, to intervene where there is miscarriage of justice in criminal matters, has been retained to the fullest extent. So far as that approach is concerned, it is there.

The next question is whether there should be criminal appeals and if so, under what conditions. For that purpose there is an amendment of the Drafting Committee which is going to be moved by my Friend Dr. Ambedkar—Amendment No. 154—New Section 112-B. It runs thus—

“Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.

A further amendment is also going to be moved to this clause saying that there can be a criminal appeal even from final orders. So the scope of this amendment is going to be widened. The question therefore is whether we should put a provision of this kind in the Constitution or we should leave it to Parliament to enact a law which would consider the whole thing from all points of view. Conceding a right of criminal appeal to the Supreme Court would mean not less than one hundred judges of the Supreme Court. Even if it is a question of death sentences, it would require a very large number.

Pandit Lakshmi Kanta Maitra : Have you statistics?

Shri K. M. Munshi : Yes, we have. At least in one province it could not be less than 100 or 150 and we will have something like fifteen provinces in the future. It must mean that in cases of death sentences there would not be less than a thousand appeals per year. The further question is whether the appeals are to be first appeals or on questions of law, whether they are from death sentence or from sentence of any particular rigour. The other question has also to be considered whether there should be appeals in cases where conviction has been one secured in the High Court in appeals by the Government from acquittal. These cases have to be considered in their fulness. Not only that, we have also to consider the conditions under which such appeals should be allowed. All these require a number of well-considered provisions of law which can only be enacted by Parliament. No member so far as I could see is opposed to criminal appeals in appropriate cases. What is necessary is that the appeal should be entertained under certain restrictions and conditions, and it would be better to lay them down by provisions of an Act than by the Constitution.

I may point out one defect. It is only in cases of miscarriage of justice, on matters relating to the nature of evidence or procedure that the Privy Council gives special leave. Article 112 embodies this jurisdiction. On question of law in criminal matters however, there is no right of appeal. But the matter is sure to be considered by Parliament. If an appeal lie in civil matters from a substantial question of law, or where the case is considered a fit one for appeal, why these considerations, I think, should be left to Parliament to consider, rather than to impose a liability on the Supreme Court to hear all criminal appeals irrespective of limitations or restrictions.

[Shri K. M. Munshi]

I further submit that this matter does not fall within article 110 or 111, and the discussion at this stage is premature. The proper time is when amendment to 112-B is considered. Article 110 relates purely to constitutional matters, and article 111 to civil matters. when we come to 112 then the question may be considered whether it is to be modified in some manner or whether it should go through as has been put forward by the Drafting Committee. I therefore, submit that this matter should not be debated in a hurry. That is my submission.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I want to associate myself with what has been said by many a previous speaker, with regard to conferring of the right of hearing criminal appeals on the Supreme Court. A very strong, convincing and un-rebuttable case has been made out by so many honourable Members of this House. It should convince everybody, excepting those who are bent upon not being convinced. I submit, Sir, that articles 110, 111 and 112 must, therefore, be amended suitably so as to cover the point of view urged so very ably by so many eminent lawyers who are Members of this House.

The one main ground which has been urged by the opponents of this view is that it will create a very large amount of work for the Supreme Court and a very large number of judges will be required to deal with those cases. I do not know whether we have in our possession any definite or even any approximate figures on the basis of which it could be said that the volume of work would increase to such an extent, even if the right of appeal is restricted to cases involving sentences of death. Sir, even if there be force in this contention of the opponents of this view that the volume of work would be very large, I submit that let them meet it, meet this point of view in a restricted manner at least. I would submit that let this right of appeal be limited only to cases which involve sentences of death. It may be said that even then, the number of cases would be very large. One very good suggestion has been thrown out by my honourable Friend Mr. Anthony that if you are afraid of the volume of work, that it would be too large, then some device should be adopted to reduce the number of civil appeals; and there seems to be no reason why, if we cannot afford too many judges, why we should not further limit the value of the civil cases which come up for appeal. We may increase it to Rs. 50,000 or a lakh of rupees. We hear so much about inflation of currency in these days and the value of money having gone down; I see no reason why the value of appealable civil case should not be increased to at least fifty thousand rupees or a lakh of rupees. Certainly the liberty of a person, the life of a person is much more valuable than Rs. 20,000 or Rs. 50,000 or even a lakh of rupees. In fact, the life of a person cannot be estimated in terms of money at all.

Apart from this, there is one very fundamental question involved here, and it is this. Should or should not a person convicted of an offence have at least one single right of appeal? I speak not of two or three, as we are prepared to give in the case of civil cases. The question is, should or should not a convicted person have at least one single right of appeal. I submit, Sir, this is a fundamental right for which provision must be made in the Constitution and the matter should not be left in the hands of Parliament. We know there are cases in which the accused secures an acquittal from the Subordinate Court, and some of these cases go up in appeal before, the High Court-the local Government putting in an appeal against either the order of acquittal from the Subordinate Court, and some of these cases go up in appeal before the High Court-the local Government putting in an appeal against either the order of acquittal or against an order according to which a light punishment has been inflicted upon the accused-the question to be considered is, when such cases go up in appeal before the High Court and the High Court for the first time convicts

an acquitted person and sets aside the order of acquittal of the lower court, and convicts the person to a sentence of death, the question is, should or should not such a person who has been convicted and sentenced to death for the first time, should he or should not he have the right of appeal? Must he not be heard even once against the order of the High Court sentencing him to death? It is a very fundamental question, and my submission is that even if you cannot accommodate our point of view in entirety, at least you must make some provision to the effect that in cases where a sentence of death has been inflicted for the first time by the High Court, on appeal against the order of acquittal of a subordinate court, in such cases at least an appeal shall lie to the Supreme Court. This is my submission. I think at least this much must be provided for in the Constitution.

Sir, I have nothing more to add, because so many eminent lawyers who are well competent to speak on the subject, so many lawyers who have had personal experience of conducting criminal cases extending over a period of thirty to forty years have almost unanimously urged that such a provision must be made in the Constitution itself. When so many experts are of this view. I see no reason why my honourable Friend Dr. Ambedkar should be so adamant on this question and not be prepared to yield even to this limited extent. Sir, he has always been very reasonable and has been trying to accommodate important points of view, but I am surprised to find that on this occasion, he is so adamant. I hope he does not want us to realise that he can be an exception to his own self on some occasions. I hope, Sir, that he will be prepared to consider this point of view, and I would suggest that he might hold a sort of conference with other eminent lawyers who are Members of this House and try to evolve a formula which would be acceptable to all.

Dr. Bakshi Tek Chand : After this lengthy debate. I have only a few words to say for the consideration of the House. There are three different aspects of the question which, if I may say, with respect, should have been kept distinct and considered separately and at the proper time.

Article 110, to which Mr. Naziruddin Ahmad has moved his amendment, is not concerned with several matters, which have been discussed by the previous speakers. That article seeks to replace section 205 of the present Government of India Act, which deals with appeals in cases in which questions of the interpretation of the Constitution are involved. In such a case, an unrestricted right of appeal is given, whether the case is of civil or criminal nature, or arises in other proceedings and regardless of the value of the subject-matter. This is a very valuable right which, I submit, must be preserved in the Constitution, subject, of course, to the conditions that the High Court certifies that the question of law involved is a substantial one. I would, therefore, ask the House to pass article 110, with the verbal alterations which have been suggested by Dr. Ambedkar. I do not think there can be any two opinions on that point. If honourable Members want to consider whether in ordinary civil cases the right of appeal to the Supreme Court should be cut down, or in ordinary criminal cases (where no appeal lies at present except by special leave), appeals should in certain cases, be allowed as of right, the proper time for discussion on these matters will be when the House will be considering articles 111 and the new article 112-B. It is curious that so far as article 110 is concerned, no criticism has been offered in any of the speeches that have been delivered. Without being disrespectful, I may say, that Pandit Thakur Dass Bhargava and Mr. Naziruddin Ahmad want to bring in questions relating to articles 111 and 112-B, as if through a back-door. I, therefore, ask the consideration of article 110 be not confused by mixing it up with the other questions. I wish to repeat that article 110 confers a very valuable right as the experience of the last twelve years has shown. Honourable

[Dr. Bakshi Tek Chand]

Members are aware of the cases involving the validity of Ordinances promulgated by the Governor-General or Governors of provinces or of laws passed by the Central Government or the provincial Governments since 1937, when the Government of India Act, 1935, came into force. In each case the matter was taken in appeal to the Federal Court which gave its decision on the questions whether such legislation was or was not *ultra vires* and set at rest very important and substantial questions. These questions arose in civil suits of which the value was much below Rs. 1,000. Similarly, in some criminal matters, the sentences were for imprisonment for small periods. But the constitutional questions involved were of very great importance. I submit, therefore, that this unrestricted right of appeal in cases involving substantial constitutional questions which is now available, should be kept intact in the future Constitution of free India. This is one aspect of the matter, which I will ask the House to keep in view and so far as article 110 is concerned, I would say that Mr. Ahmad's amendment be rejected and the article passed as it is.

Now we come to the second aspect, which relates to ordinary civil cases, for which provision is made in article 111. Mr. Anthony and some other honourable Members have observed that the framers of this Constitution were civil lawyers and that they have, in the interest of civil litigation, enlarged or maintained the jurisdiction of the Supreme Court with regard to civil matters. Fortunately for me, I am not one of the framers of this Constitution and that charge cannot be leveled at me. I may, however, draw the attention of Mr. Anthony and some other speakers, that in ordinary civil matters, the right of appeal to the Supreme Court has been reduced very considerably. The valuation limit under the present Civil Procedure Code is Rs. 10,000, but in the Draft Constitution it has been raised to Rs. 20,000. If you study the figures, you will find that in three-fourths of the cases, appeals in which go to the Privy Council, the value is between Rs. 10,000 and Rs. 20,000 and it is only in 25 per cent cases, the value is over Rs. 20,000. Therefore, article 111, as drafted has reduced appeals in civil cases to the Supreme Court by about 75 per cent. The charge which has been brought against Dr. Ambedkar and his colleagues is not at all correct. On the other hand judging from the amendments of which notice has been given and which have not yet been moved, many honourable Members seem to feel that the limit of Rs. 10,000 should not be raised to Rs. 20,000. Some others have given notice that the limit be fixed at Rs. 15,000. It cannot be said that the Constitution is conceived with a view to increase civil litigation or even to maintain the present volume of civil cases that go to the Privy Council. I submit, therefore, that Mr. Anthony's observation, besides being wholly irrelevant to article 110, which alone is at present before the House, is, if I may say so without any disrespect, completely misconceived.

Article 111 is except for this change in valuation, a mere repetition of section 110 and section 109 of the Civil Procedure Code which have stood on the Statute Book since at least 1861. Some of their provisions you will find even in the Charter (or Rules framed thereunder) of the Supreme Court of Calcutta, which was promulgated by the King in 1773. You will find similar provisions in Charters of the Supreme Courts of Madras and Bombay, which were promulgated in the early part of the 19th Century. But with regard to all the High Courts, when the High Court Act was passed in 1861 and the Letters Patent of the High Courts of Calcutta, Madras, Bombay and Allahabad were issued, you will find similar provisions and they have been incorporated in the Civil Procedure Code from that year up to now. Thus, so far as the type of cases in which the right of appeal in civil cases is concerned, article 111 keeps intact all those rights. But it raises the value and therefore, it indirectly

cuts down the volume of civil litigation by 60, 70 or 75 per cent. The percentage was 75 seven or eight years ago when I studied the figures and I do not think the difference is very much today. In fact, in some cases in smaller provinces like East Punjab, Orissa and the Central Provinces, there will be very few civil cases now coming up to the Supreme Court. In rich provinces like Bombay and West Bengal and Madras there may be more. In the U.P., which supplied a very large volume of civil litigation before the Privy Council, and also in Bihar, as there were big taluqdaris or zamindaris—the value of many cases was over Rs. 20,000. But now that taluqdaris and zamindaris will now be extinct, the number of cases from these provinces will also decrease. Therefore, there is no danger of civil litigation increasing to a large extent.

Now with regard to criminal matters. I will just place before you the present position in regard to appeals to the Privy Council in criminal matters. Under the law, as it stands today, there is no appeal to the Privy Council as of right in any case, whether the sentence is that of death or transportation for life or for a short period, or whether the question of law involved is very substantial. No High Courts has the power to certify any case as a fit one for appeal to the Privy Council.

It is only by special leave of the Privy Council that an appeal in a criminal case can lie. Such leave is not usually granted, even if there is a substantial question of law or there has been miscarriage of justice. But if there is a case in which the principles of natural justice have been violated, then the Privy Council might interfere. What those principles of natural justice are, has not been defined anywhere; they have not been explained with precision even in judgments of the Privy Council. If you examine the various cases which have been decided on appeal by special leave, you will not find—(I am speaking with very great respect)—any consistency; you cannot extract any rule as to when the Privy Council will grant leave and when it will not. I do not wish to take the time of the House of referring to cases in which a particular question was raised but the Privy Council refused leave; but several years later when the identical question was raised again, leave was granted on the ground that principles of natural justice had been violated. The whole thing is very indefinite. I do not know if the Supreme Court will follow the practice of the Privy Council; or lay down a different convention in granting special leave under article 112.

Pandit Thakur Das Bhargava : Does this article 112 of the Constitution give to the Supreme Court the same opportunity of doing justice, according to the principles of natural justice, as the Privy Council had, or are the rights taken away.

Dr. Bakshi Tek Chand : Article 112 says:

“The Supreme Court, may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matte, etc., etc.”

This leaves the matter to the discretion of the Supreme Court and we cannot say what tradition the Supreme Court will build up in this matter. If they are going to follow the practice of the Privy Council—which they generally do at present in many civil matters—then the same old case (*Dillet*) will be followed, leaving the whole thing undefined. Ninety-nine per cent of petitions for special appeals will be rejected, resulting in so much waste of time and waste of money.

Sir, I will make one or two observations with regard to Mr. Naziruddin Ahmad's amendment. If this amendment is accepted, the result will be that so far as civil matters are concerned, it will come into conflict

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with article 111. In every civil case, regardless of value, a litigant can go to the Supreme Court, even if he cannot get a certificate from the High Court. I do not think, Mr. Naziruddin Ahmad wants it, or any of the other honourable Members, who have supported his amendment, wants it.

In view of the various amendments which have been moved, the Drafting Committee has thought it advisable that Dr. Ambedkar should move an amendment that Parliament may, by law, confer on the Supreme Court power to entertain and hear appeals from any judgment, or sentence of the High Court in the territory of India in the exercise of its criminal jurisdiction, subject to such conditions and limitations as may be specified in such law. I do not think that this will be sufficient. I think some provisions should be made in the Constitution, giving a limited right of appeal in certain specified circumstances. If you leave the whole matter to Parliament we cannot say when such laws will be passed, and in what form they will be. The result will be that for three years—or may be more—no provision for appeal to the Supreme Court in such cases will exist at all. That is an aspect of the matter which has caused much concern among honourable Members and some of them have suggested that provision for appeal in certain class of criminal cases, should be made in the Constitution itself. I submit that the proper place to discuss this matter is not when article 110 is being considered, but it will be appropriate when article 112-B is moved.

There is a great deal in what many honourable Members have said in regard to cases in which the High Courts have reversed orders of acquittal and condemned accused persons to death. There are two other points. One is whether there should be an unrestricted right of appeal in every case when the accused has been convicted of murder, whether the sentence is death or transportation for life as Pandit Thakur Dass Bhargava and some other honourable Members want, or will the right of appeal be limited to cases when a sentence of death is passed or which involves a substantial question of law. Secondly, there might be other cases in which the sentence is a nominal one, but there is a question of law of very great importance and universal application. Again, there may be a third class of cases in which there is difference of opinion in the High Court as to the interpretation of certain provisions of the law e.g., some sections of the Evidence Act or the Criminal Procedure Code. Take, for instance, section 27 of the Evidence Act on the interpretation of which Full Benches of various High Courts have given conflicting decisions. Though the Evidence Act has been in force since 1872, for more than 75 years the matter is unsettled. It is in the public interest that such points should be finally settled by the Supreme Court. Article 112 will not cover such a case. At present, the Privy Council considers that where this does not involve violation of principles of natural justice, they will not grant special leave. There are obvious reasons, that in such cases, an appeal should be allowed, if the High Court certifies that it is a fit case for appeal. I do not think there is difference of opinion as to the desirability of allowing appeal in such cases. The only question is, whether this should be done in the Constitution or left for legislation by Parliament. The appropriate time to discuss this would be when article 112-B is being considered and, as that is not likely today, my suggestion is that the Drafting Committee may consider the whole matter again and bring it up later.

Article 110 does not deal with this matter and I submit that that article should be passed with the verbal amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmad, in his amendments Nos. 1904 and 1907. All that is before us is amendment

No. 1904. According to that amendment what my Friend Mr. Naziruddin Ahmad wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words 'as to the interpretation of this Constitution' should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase 'as to the interpretation of this Constitution'. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad : I believe I am right.

The Honourable Dr. B. R. Ambedkar : No question of certificate arises.

Mr. Naziruddin Ahmad : You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar : I think my honourable Friend Mr. Naziruddin Ahmad has probably not grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad : That is your stock argument.

The Honourable Dr. B. R. Ambedkar : We have in this Draft Constitution made separate provision for appeal in cases where questions of Constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where constitutional law are not involved are provided for in article 111. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmad. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of constitutional law, the minimum number of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made thereunder. Now, that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will be decided by a number of judges not less than five, while other cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words 'as to the interpretation of this Constitution' does not in anyway debar appeals other than those in which constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But inasmuch as a great deal of debate has taken place, I would like to say a few words. Members will find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of constitutional law. Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

[The Honourable Dr. B. R. Ambedkar]

Again, there is article 112 where the jurisdiction of the Privy Council has been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words 'decree or final order in any case or matter whether civil or criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112. I have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision

Pandit Lakshmi Kanta Maitra : Practising criminal law.

The Honourable Dr. B. R. Ambedkar : I am sorry, 'practising criminal law', that just as article 111 confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done? Should we do it by a specific clause in the Constitution itself that in the following matter there shall be a right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court? I am of the opinion for the moment—I do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although,—if may say so, it is not an empty mind—that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work—I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. (*Hear, hear.*) That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believe in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

Pandit Lakshmi Kanta Maitra : All the criminal courts also.

The Honourable Dr. B. R. Ambedkar : I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend, Mr. Naziruddin Ahmad.

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

The question is:

"That in clause (1) of article 110, for the words 'State' the words 'the territory of India' be substituted.

The amendment was adopted.

Mr. President : The question is:

“That in clause (1) of article 110, the words ‘as to the interpretation of this Constitution’ be omitted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 110, the words ‘as to the interpretation of this Constitution’ be omitted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 110, for the words ‘not only on the ground that any such question as aforesaid has been wrongly decided, but also’, the words ‘on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 110, as amended, stand part of the Constitution.”

The motion was adopted.

Article 110, as amended, was added to the Constitution.

Article 111

Mr. President : The first amendment is No. 1911 by Shrimati Durgabai.

Shrimati G. Durgabai (Madras: General): As the point involved has been covered by Dr. Ambedkar, I do not wish to move it.

Shri Raj Bahadur : Mr. President, Sir, I beg to move:

“That in clause (1) of article 111 the words ‘except the States for the time being specified in Part III of the First Schedule’ be deleted.”

While moving this amendment, I may submit, Sir, that the articles relating to the powers and jurisdiction of the Supreme Court were drafted at a time when the process of integration and democratisation of the Indian States had only commenced and the final shape of things as they have finally emerged was not before the country and before the Drafting Committee. As such we find that the Supreme Court which is the ultimate court of appeal in the land was not vested with jurisdiction in certain cases. Article 109 vests the Supreme Court with jurisdiction in certain matters which relate to disputes between the States *inter se*. But this jurisdiction is limited and restricted to some extent in cases relating to the States mentioned in Part III of the First Schedule. In article 111 a distinction and discrimination has been made between the case of judgments, decrees or final orders in civil proceedings arising from the High Courts in the provinces of India and those arising from the High Courts in Indian States. Similarly a discrimination has again been made against the people living in the Indian States under article 112. It is obvious that the Supreme Court being the final court of appeal should have equal jurisdiction or authority over the entire territory of India. It is only proper that the Indian States where the system of judiciary has not been so well developed and well organised as obtains in the Indian provinces, should be given an opportunity for reorganisation and development of their judiciary under the supervision of the Supreme Court. It is very well known that the administration of justice that the Indian States people have so far been receiving from their judiciaries has yet to come to the level and standard of that available to the people in the Indian

[Shri Raj Bahadur]

provinces. Similarly it is also well-known that we the people of the Indian States have been eagerly looking forward to the day when the Federal Court or the Supreme Court will be empowered to entertain and hear appeals from cases arising from the High Courts situated in the Indian States. When this is the general desire of the people of the Indian States, it is only proper that in articles 111, 112 or for the matter of that in 109, there should be no discrimination against the Indian States. May I submit, Sir, that the inclusion of the words "except the States for the time being specified in Part III of the First Schedule" detracts not only from the jurisdiction and authority of the Supreme Court over the entire territory of India, but also detracts from the fulness of the unity of our country and from the democratic freedom of the Indian States people. To a certain extent it detracts also from the sovereignty of the Sovereign Parliament of the Indian Nation *over* the Indian States. It appears to me that in case we retain these words in the articles concerned, we shall still be keeping alive a sort of lingering and intolerable vestige of the old order in our Constitution. The House and the Government of India stand committed to the principle of fully democratizing the Indian States. We also stand committed to bring the States on a par with the provinces. As such it is only desirable that all distinctions, discriminations and differences should be obliterated. We want no purple patches on the map of India. We want that the process of the integration and unification of our country should be accomplished at as early a date as possible. I may submit further that the Indian States people require greater protection for the vindication of their elementary fundamental rights which are now being secured by the constitution and for other rights than the people living in other parts of the country. It is well-known that feudalism and other forces which react against the fulness of freedom of the States People are still not fully put down in the Indian States and an outlet or opportunity should be there for the people of the Indian States to approach the Supreme Court, if need be, for the vindication of their rights and liberties. I may further mention that "the States specified in Part III of the First Schedule", if we retain the said words, would be invested with a sort of a better or different status, distinct or contrasted from the status given to the rest of the States in the Indian Union. It would place them on a level different from the Indian provinces. The High Court in the Indian States, and not the Supreme Court of the country, would become the final court of appeal for the people of such States. But this position should not be allowed to continue. I commend, therefore, this amendment for the acceptance of the House, in view of the fact that we have accepted the principle of unity and unification of the country, and hence there should be no distinction or discrimination between one part of the country and the other.

(Amendment Nos. 1913 to 1916 were not moved.)

Dr. Bakshi Tek Chand : Sir, I move:

"That in sub-clause (1) of clause (1) of article 111, after the words: 'not less than twenty-thousand rupees' the words 'or such amount as may be fixed by law by Parliament' be inserted."

The object of this amendment is very simple. In the article as drafted the value of the cases covered by article 111 (1) (a) and (b), instead of Rs. 10,000 as it is at present for appeals to the Privy Council, is fixed at Rs. 20,000. If the article is passed as it is, and incorporated in the Constitution, this figure will remain as a rigid limit until the Constitution is amended. Conditions in the country may however changed and it may be found that this limit is either too high or that it is too low and that it should be raised or reduced. In that case it will not be possible to make any change unless there is an amendment of the Constitution. That, of course, would be a long and cumbersome

process. The limit is being raised, as the value of property has gone up greatly; what was worth Rs. 10,000 twenty years ago is now worth Rs. 20,000. Circumstances may, however, change. The value may go down again due to various causes and the limit may have to be reduced. Or, the value may rise higher still and it may be necessary to raise the limit from Rs. 20,000 to Rs. 30,000, Rs. 40,000 or more. To meet such a situation power should be given to Parliament by law to make the necessary change in the article. The amendment therefore seeks to introduce in the article the words “or such amount as may be fixed by law by Parliament.”

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

“That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words ‘twenty thousand rupees’, the words ‘or such other sum as may be specified in this behalf by Parliament by law’ be inserted.”

(Amendment No. 1918 was not moved.)

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

“That in sub-clause (a) of clause (1) of article 111, for the words “twenty thousand”, the words ‘fifteen thousand’ be substituted.”

Sir, the present pecuniary limit is rupees ten thousand, but the Draft Constitution proposes rupees twenty thousand. Mine is a *via media* of rupees fifteen thousand. I want to raise it as the money has become cheap. I submit that the standard of appealability must not be very much. That is a very arbitrary standard of justice and that makes a distinction between the rich and the poor. If you have any distinction at all, I should think that the ordinary valuation should be slightly raised. There is a discretion in the Supreme Court which may in proper cases grant special leave; but I totally disagree with the amendment moved by Dr. Bakshi Tek Chand and Dr. Ambedkar leaving the matter in the hands of Parliament. I submit that as we are framing a Constitution and we are introducing a large number of small details—I would not say that they are irrelevant matters as Dr. Ambedkar is accustomed to say—a large number of small details, making the Constitution almost into departmental manual. In a vital matter like this which gives or takes away the right of appeal we must not shirk our responsibility and leave it to Parliament. The difficulty would be that valuation would fluctuate from day to day according to the temper of the House and according to the Constitution of the House. We cannot assume that the present House or the present strength of the various parties will remain the same for ever. Therefore, instead of allowing the limit to fluctuate with the temper of the moment, it should far better be fixed in the Constitution. You may make it ten thousand, fifteen thousand or twenty thousand; but it should be something fixed in the Constitution so that it may not be changed very frequently except by an amendment of the Constitution itself. This should be put on a more permanent basis. This is my reason for moving this amendment.

(Amendments Nos. 1920 and 1921 were not moved.)

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

“That to clause (1) of article 111 the following proviso be added :—

‘Provided that no appeal shall lie to the Supreme Court from the judgment, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.’ ”

Mr. President : To this, there is an amendment by Pandit Thakur Dass Bhargava No. 151. Are you moving that?

Pandit Thakur Dass Bhargava : Not moving Sir.

Mr. President : We shall stop there and adjourn to Eight of the clock on Monday. The Assembly then adjourned till Eight of the Clock on Monday the 6th June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 111—(*Contd.*)

Mr. President : We have to proceed with the discussion of article 111. We have got a number of amendments which purport to come under this article but which really do not belong to this article. On Friday last, I allowed a long discussion in connection with article 110 which was not quite germane to the article but that was with a view to shortening discussion later on in connection with the other articles which followed. In connection with 111 which deals with appeals in civil cases to the Supreme Court, I should like that this question should not be made complicated by bringing in amendments relating to appeals in criminal cases. If we dispose of 111 as it is with such amendments as may be acceptable to the House in regard to that article without bringing in appeals in criminal cases, I would allow all the amendments relating to criminal appeals to be moved at a later stage without reference to this article. That I think would lessen discussion and concentrate the attention of the House on the amendments which deal with criminal appeals.

Prof. Shibban Lal Saksena : (United Provinces : General): Sir, I have an amendment to 1912.

Mr. President : I have a number of other amendments.

Prof. Shibban Lal Saksena : You have finished them all, Sir.

Mr. President : But you can move that if you want to.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That with reference to amendment No. 1912 of the List of Amendments, in clause (1) of article 111 before the words ‘an appeal’ the words ‘subject to any law made by Parliament’ be inserted.”

This article 111 gives an absolute right of appeal to the Supreme Court in civil cases provided the case is a fit one for appeal to Supreme Court. Yesterday we saw that a similar right was not given in criminal cases even when death sentence was passed. I only want that the Supreme Court should not be flooded with civil cases and I want that the Parliament should from time to time review the working of the right of appeal to Supreme Court in civil cases.

Shrimati G. Durgabai (Madras: General) : What is the amendment?

Mr. President : It is with reference to amendment 1912 of the List of Amendments, namely,

“That in clause (1), before the words ‘An appeal’ the words ‘Subject to any law made by Parliament’ be added.”

Prof. Shibban Lal Saksena : Sir, I only want that the Supreme Court should not be flooded with appeals against High Court judgments in civil cases.

Mr. President : The amendment is the same as the one which Shrimati Durgabai had given notice of—No. 1911. She did not move it. He is moving it as an amendment to another amendment.

Prof. Shibban Lal Saksena : Sir, I want that the Supreme Court should have the liberty to permit appeals to the Supreme Court only in those cases which Parliament by law decides. This will restrict the number of appeals in civil cases. Suppose today Parliament feels that appeals in civil cases should be allowed, it is quite possible that after some time the Parliament may feel that it is not necessary. So Parliament has the initiative and it has the power to take this right away after sometime. If Parliament has not that power, then the Constitution will have to be changed to permit any alteration in the civil jurisdiction of the Supreme Court.

I have said that if even appeals in small cases of civil law can go to the Supreme Court, why should appeals in cases of murder not go there. I therefore think that in these cases at least there is no reason why rich persons should be able to go to the Supreme Court and utilise it for civil litigation whereas in cases where small people are concerned, they should not be able to go there even to appeal against sentences of death. Therefore, if Parliament is given the power to regulate the right of civil appeals to the Supreme Court it will be a much better situation than what is contemplated by this article. This article will be misused and the Constitution will become a battle-ground for lawyers. They will take all civil appeals to the Supreme Court. And the High Courts, when big Counsels appear to argue cases of rich parties, will give them permission to go to the Supreme Court for appeal and the Supreme Court will be flooded with these appeals. The other day it was argued that if appeals of persons sentenced to death are also to go there, we shall be required to have about twenty to thirty judges in the Supreme Court. If this article remains as it is, and all appeals in civil cases are permitted to go to the Supreme Court, then in that case we will require very many more judges than even 20 or 30. Therefore, this is a very simple amendment which asks for powers to be given to Parliament which may from time to time change the requirements for appeal in civil cases to the Supreme Court.

Shri M. Thirumala Rao (Madras: General): How does this conform with the amendment to 1911?

Mr. President : Anyway that is the notice.

We have three other amendments which have no reference to criminal appeals in connection with this article.

(Amendments Nos. 1924 and 1925 were not moved.)

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I move:

“That in clause (2) of article 111, for the words ‘the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided’, the words ‘a substantial question of law as to the interpretation of this Constitution has been wrongly decided’ be substituted.”

Mr. President : Does anyone now wish to speak either on the article or on the amendments?

Shri S. Nagappa (Madras: General): When is the last minute when an amendment to an amendment can be moved? Prof. Saksena has moved an amendment at the eleventh hour!

Mr. President : Before the sitting for the day commences. But it is not an amendment to an amendment. It is only an amendment to an amendment!

There is one other amendment in the name of Dr. Ambedkar.

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

“That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words ‘twenty thousand rupees’ the words ‘or such other sum as may be specified in this behalf by Parliament by law’ be inserted.”

Shri M. Thirumala Rao : The discussion on this clause has taken place on the last day of the sitting of this Assembly and it was a lawyer’s day. We thought that the provisions of the Federal Court may be restricted to lawyers. When one reads the newspapers about the report of the discussion that has taken place here, unless he comes either as a litigant in a civil suit or an accused or a criminal in a criminal case, he has not got much place in the discussions that have recently taken place. But as a layman and taxpayer who has got some interest in the administration of law, I stand before you and offer a few remarks.

I am a bit surprised how the stolid and sedate Dr. Ambedkar, who is both an eminent lawyer and a jurist, has been jockeyed into accepting so many details in the Constitution about the powers of the Federal Court. Perhaps it is on the advice of eminent civil lawyers like Shri Alladi Krishnaswami Ayyar and also like another eminent lawyer, my Friend, Mr. Munshi, who on his own admission, is half civil and half criminal. But nevertheless it passes the comprehension of a layman why you should burden this Constitution with so many details in regard to the powers of the Federal Court. Sir, it was a learned discussion that took place of experts the other day about the provisions that should be incorporated in this Constitution and they have gone into such details as to fix the limit of appeals with regard to the civil suits that should go before the Supreme Court and a very interesting discussion has developed round the amendment moved by Mr. Thakur Das Bhargava that every criminal appeal also should go to the Federal Court. It is difficult to understand why we have to get away from the moorings of our ancient civilization or the system of law that obtain in our country. We have evolved a constitution that is a hybrid of the several constitutions of the world that are obtaining today. Nobody seems to have got a proper conception of what our Constitution, and what our judiciary should be to suit the genius of our country.

Justice during the last century when the British ruled in our country has been so inordinately delayed that justice delayed is justice denied. Only the richest in the country could purchase justice. The poor man had to go to the wall in obtaining justice. The village panchayat has been given the go-by Justice that has to be dealt with on-the-spot has been long forgotten and a chain of courts have been evolved where the richest man has the greatest opportunity of fighting the poor man and succeeding.

We have seen in our experience interesting cases that have gone before the Madras High Court. A zamindar’s birth was disputed from the sixth year of his life and the man has gone about from court to court, from the lowest court in the land of the Privy Council without the question of his birth being decided, namely, whether he was the real and legal-born son of his father or not. For fifty years the zamindar has gone on indulging in litigation to get a decision whether he is the son of his father or not, yet the question was left open and the court relied on the will of the “father” who gave away his whole property to the zamindar. Fortunately the Congress Government has come to his rescue by abolishing the zamindari system. There are families where litigation has extended over three generations. The father started the litigation, the son

[Shri M. Thirumala Rao]

continued it and the grandson is still carrying on the litigation. The family has been reduced to impoverishment. That is the system of law which our legal pandits are discussing on the platform of this House. They are discussing what shape our Constitution should take.....

Mr. President : The honourable Member is delivering a very interesting speech but it has nothing to do with the article before us.

Shri M. Thirumala Rao : If I have got the right of opposing the article, though I do not want to exercise it, I take the opportunity of expressing my dissatisfaction at the way things are done in regard to this Constitution, incorporating every details into this Constitution. We have seen several Constitutions of the world. The Irish Constitution is a short one and it does not contain so many provisions in regard to the system of justice and administration.....

Mr. President : I am afraid we cannot at this stage go into the whole question whether the Constitution should be in the form in which it has been drafted.

Shri M. Thirumala Rao : My submission, is that we should not overburden the Constitution with so many details. Details as regards the Constitution such as the powers of the Federal Court and other courts should be left to the legislature of the country to be worked out. That is the point.

Mr. President : There is no amendment to that effect.

Shri M. Thirumala Rao : The amendment proposed by Dr. Ambedkar says that the powers of the Federal Court should be determined by law and not by the Constitution. That is the point I want to support.

I do not want to take up much time of the House but I want to draw the attention of the House to that fact that there is also an unexpressed silent opinion not only in the House but outside in the country also that the Constitution of our country should be as simple as possible, that the administration of justice should not be encumbered with too many technicalities which will ultimately result in the denial of justice to the poor. I urge that this House should not enter into legalistic details but should leave them to be decided by the legislature.

Shri Alladi Krishnaswami Ayyar : (Madras: General) : Sir, my sympathy is in support of the amendment proposed by Shrimati Durgabai, which she has not, however, brought under discussion, but which was later taken up by Mr. Shibban Lal Saksena.

Under article 111, if it stands alone without reference to any legislation by Parliament, the conditions of appeal will be crystallised and any change in the appeal procedure or in the right of appeal can only be by a constitutional amendment, which is not desirable. It ought to be an elastic provision. While the existing conditions of things may be perpetuated until Parliament intervenes, there is absolutely no reason why all the conditions of appeal must be stereotyped and moulded into a rigid pattern in the constitution framework of India. In that respect article 111 is a retrograde step. If you take into account the history of legislative powers in India from the time the Letters Patent were issued, the jurisdiction of the several High Courts in India was subject, even before popular element was introduced, to the general legislative jurisdiction of the Governor-General in Council: and today even an appeal to the Privy Council, under the provisions of the Civil Procedure Code, is subject to the jurisdiction of the central legislature in India. Under section 109 it is subject to any Order in Council that might be passed by His Majesty's Government. I am referring the days before the Dominion Act. Even an Order in Council by His Majesty's Government is a flexible provision and it is capable of change

without Parliament intervention because it is under the general jurisdiction conferred upon the Privy Council that the Order in Council is issued.

Now, the amendment of Dr. Ambedkar is a move in the right direction, though I feel that it does not go far enough. It at least takes away one defect, *viz.*, the amount or value of the subject-matter becomes a matter of constitutional provision under article 111 as it stands. It take away that defect in that article. But I feel that the whole of that article should continue to be under the general jurisdiction of the future Parliament of India and there is no reason why you should fetter the discretion of Parliament in regard to the class of appealable cases. That is my feeling in the matter but I feel however that half a loaf is better than no bread. Therefore inasmuch as Dr. Ambedkar is willing to yield so far as clause (a) is concerned that is good enough, though I wish he had gone further and made all the provisions subject to the intervention of the future Parliament of India. Much as we owe to the British system of administration of justice, I am one of those who feel that there is considerable room for improvement by making it more elastic and flexible to suit the economic conditions of India. Gradation of appeals no doubt is a normal feature of English jurisprudence in England which is a very rich country with a population of forty millions and which has greater wealth than this poor country of three hundred millions. While, justice must be guaranteed to every individual, while every individual, must get a fair and proper trial, the gradation of appeals is not a necessary *sine qua non* for the proper administration of justice. If there is miscarriage of justice, if there is any serious procedural flaw and if there is anything radically wrong, by all means let the highest court in the land interfere. But there is no reason why, for example, in the provinces of India collegiate courts should not be established and, the intervention of the High Court diminished and the Supreme Court made merely a court of ultimate appeal in these matters to see that errors are set right. But I do not want all that reform to be introduced immediately. What I would desire is that while perpetuating the existing provisions for appeal they may be made subject to the intervention of Parliament, so that if a special committee is appointed and goes into the whole question of the system of administration of justice, all necessary reform may be introduced into the legal system in this country.

Then my honourable Friend Shri Thirumala Rao had a jibe against the lawyers. It was entirely unwarranted for the reason that there are lawyers who think in a larger terms of society and there are laymen who are more legalistic than lawyers. I notice on the other hand that there is a tendency among the lay elements to rely upon legalism rather than in the lawyer who thinks in larger terms of society and advanced thought in the world. Therefore that speech was unnecessary. The reason why unfortunately we had to mention article 111 is this: A simple reference could have been made to the jurisdiction of the Federal Court or the jurisdiction exercised by the Privy Council without mentioning the details as to the condition of appeal and then that might be made subject to the intervention of Parliament. But the House knows the sort of discussion that cropped up when reference was made to Parliamentary privileges. If you refer to the jurisdiction the Privy Council was exercising up till now under the various Statues, both Indian and English, there may be a feeling that this is derogatory to the dignity of the House. There has been a serious controversy in the press and on the platform as to whether it is at all justifiable to refer to the jurisdiction and powers and privileges of Parliament when enacting our Indian Constitution. That might be a good reason. But I do not see for a moment how these could be made simpler. Reference may be made in article 111 to the existing state of things and provision may be made that that state of things might be modified, remedied or changed by the intervention of Parliament. These are the reasons which induced me to accept

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the amendment of Dr. Ambedkar though I wish he was able to go further and state that all these provisions shall be subject to the intervention of Parliament.

Shri B. Das (Orissa: General) : Sir, during the last three days while the House has been discussing the Chapter on Federal Judicature, I have been placed in an atmosphere of depression. My reaction was to oppose the amendment of Shrimati Durgabai, but when I heard my esteemed Friend Shri Alladi Krishnaswami Ayyar I felt much more confused and depressed. Sir, our foreign rulers have left us little. They bled us white and they left us with a number of lawyers here and outside who interpret the law for the maintenance of justice. In my boyhood days I used to pass through Calcutta and watch the Scales of Justice in the Writers' Buildings, the old Government Offices there. That Scale of Justice is the thing they have left behind and not real justice. Why my lawyer friends are so much enamoured of the interpretation of justice under the British system I do not know. I thought it unfortunate that during the transition stage we cannot suddenly think in terms of the Indian conception of justice. My conception of justice would be that justice should be based on truth. Whether in the Supreme Court or in the High Courts of Judicature, what is done is the interpretation of the laws left behind to us as heritage by our former British masters. So, Sir, I feel very much depressed. I wish that we had in this Chapter only three or four articles in which my honourable Friend, Dr. Ambedkar could put things in such a way that justice shall be rendered to everybody. But what we have are provisions for interminable and intermingling appeals from court to court finally ending in the Supreme Court. Now my honourable Friend Dr. Ambedkar is bringing out one or two more articles which, Sir, provide for criminal appeals being brought before the Supreme Court. In these circumstances, how will people get justice? Will it be justice or mere transfer of money from one pocket to another? This is all unproductive money. If my money passes to Shri Alladi Krishnaswami Ayyar's pocket or to Dr. Ambedkar's pocket, that will not be productive wealth. That will be unproductive wealth. Families have been destroyed in the past by these appeals to the Privy Council and their properties passing to the pockets of the lawyers who defended their contentions in the Privy Council.

I hope my honourable Friend Dr. Ambedkar and the legal luminaries in this House will conceive justice without expense. The moment you abolish the need for lawyers to defend litigants, litigation will come down. But I do not think that anybody would work for that end. Lawyer-ridden as we are, we are grateful to the lawyer classes because they are the first line of patriots who showed us how to agitate for our freedom. We are grateful to them. They are thinkers. They are scholars. But today I do appeal to them that they should suggest ways of reducing the cost of litigation. This Constitution provides nowhere that the cost of litigation should be brought down. The way discussion started the other day and responsible members suggested that hundreds of Supreme Court Judges would be necessary to hear every criminal appeal was disquieting to me. If there is justice based on truth it must be had in the first court or in the next appellate court. Why should we go on providing for appeals again and again doubting the judgment of the High Courts? We may soon have women judges in our High Courts too. I am very much disturbed. As a common man, I feel that justice is not justice, which ruins families, which brings destruction throughout justice is not justice, which bring out a new class which is parasite on the people of India *i.e.*, the lawyer's class. Something must be done. The Father of the Nation is no more. If the lawyer's class are true to the Father of the Nation, they should help to bring about justice in a way which will entail the least amount of expenditure.

I feel that Parliament should not interfere with the Supreme Court. Once we have decided to have a Supreme Court—though I protest against the expensive habit of having a Supreme Court, I am for it—we should help in its maintaining the highest standard of justice, and not allow Parliament to interfere with it. What do I know of the administration of justice? Why should I legislate and control the Supreme Court? Why should I lay down the rules of procedure for the High Court and Supreme Court Judges? We are not laying down the rules of procedure for the Federal Public Service Commission. We are not laying down the rules stipulating how the Auditor-General should control the expenditure that the Parliament of India will sanction. My point is that Parliament should not be too meticulous and should not exercise any power over the Judges of the High Courts or the Judges of the Supreme Court.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, Sir, I rise to support amendment No. 1912

Shri L. Krishnaswami Bharathi (Madras: General) : That amendment has not been moved.

Mr. President : It was moved on Friday.

Shri V. S. Sarwate : Which proposes the deletion of the words ‘except the States for the time being specified in Part III of the First Schedule’. I wish to restrict my observations to that amendment only. With that clause, the article limits the operation to the High Courts of provinces only. If this clause is omitted, that limitation will be taken away, but I would like to point out that this would not be sufficient for the purpose. It would not *ipso facto* invest the Supreme Court with power to hear appeals against the decisions of the High Courts in Indian States. To make my meaning clear, I would, in short, describe the present situation in the Indian States. Sometimes it is said that the States are in a backward condition. There are practically primitive conditions in the Indian States. There is no judicial service, etc. This sweeping generalisation is entirely wrong and gives a misleading conception of the state of the things in the Indian States. In most of the States enumerated in part III of the First Schedule, there is well constituted High Court and an efficient judicial service, but according to the constitution of the Indian States there is no appeal to the Privy Council from the judgment of the High Courts in these States. In most of the States a Judicial Committee had been appointed which heard appeals from the High Courts. In the minor States it is true that there is no judicial service of the kind which prevails in the provisions and there no High Courts, but the common people could have ready access to the Rulers. That acted as a check against the executive, and the Ruler in most cases gives them rough and ready justice. This met the requirements of the situation. In fact, in some cases with the limited area in which these Rulers exercised their jurisdiction, this did give better justice, for justice delayed is justice denied. In the provinces especially in civil cases the justice which is at present administered is so dilatory and so intricate that there is a saying in Hindi—

Jo diwani men jata hai woh diwana ho jata hai;

which gives a better idea of the state of things than the saying that justice delayed is justice denied. However, since the Unions were established in these States, things have changed. The minor States have been wiped off and they ought to have been, but the fact also remains that the masses of the people who had ready justice before have now been denied any effective substitute. In the States, where there were Judicial Committees, in most of the cases these Judicial Committees have disappeared. The result is that there is no appeal to the Privy Council and there is no appeal against the judgments of the High Courts. So there is this lacuna. Therefore in most

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of the Unions thinking people desire that their High Courts should be brought into line with the High Courts in the provinces and an appeal provided against the judgments of their High Courts. Recently a Pleaders' Conference was held in one of those Unions and a resolution was passed which recommended that an appeal should be provided against the judgments of the High Courts and also that the High Courts should be made entirely independent of the executive. Now, what I would point out is this: that, when this clause is taken away, there would lie an appeal from the judgments of the High Courts by virtue of this article, in the case of the provinces, but this is not the case with the High Courts in the acceding States. To my mind a further provision would be necessary which would make the judgments of the High Courts in these States appealable to the Supreme Court, and this provision could be made in three ways. In most of the Union States, there is a clause in the Covenant which provides that a Constituent Assembly be constituted in the Union. This Constituent Assembly could provide in its Constitution that an appeal from the High Courts in their territory shall lie to the Supreme Court. This is one way. Another way would be that according to the new Covenant which has been entered into by these unions, this Parliament has been given powers to make laws, which would be binding on the States regarding subjects mentioned in List 1. This list contains one item which gives power to this Parliament to make laws regarding the powers of judicial courts. So under this Covenant the Parliament may pass a law by which the appeals of the High Courts in the acceding States will be appealable. The third would be to make a provision to that effect in this Constitution itself. Now, the Part VI which deals with the constitution of the Provincial High Courts does not apply to the States. That is the difficulty. So the beginning of this Part, *viz.*, article 128 which reads:— In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule" needs to be amended appropriately: So that this part be made applicable to the High Courts in the acceding States: in the alternative a fresh part would have to be inserted by which similar provision could be made.

I would further point out that as a necessary corollary of this amendment No. 1912, article 113 would have to be dropped, because this clause provides for a reference to the Supreme Court against the judgment of the High Court in the acceding States and that would be no more necessary. Further in article 112 there is a similar provision "except the States for the time being specified etc." which may have to be dropped. My specific suggestions are that a provision would have to be made by which the judgments of the High Courts in acceding States would be appealable inasmuch as only taking away this clause from article 112 will not be sufficient and would not *ipso facto* invest the Supreme Court with that appellate power and further, article 113 would have to be omitted and a similar amendment would have to be made in article 112.

Shrimati G. Durgabai : Mr. President, Sir, while accepting and supporting the amendment moved by Dr. Ambedkar, I wish to offer a few remarks on this subject under consideration. I will say that I am in the main in agreement with the principle of the amendment moved by Prof. Shibban Lal Saksena. Though there was an amendment similar to that given notice of by me, I did not move it; but as I have already stated, I am very much in sympathy with the principle underlying that amendment. Sir, the article under consideration lays down, I am sure the House is aware, the conditions in detail for the appeals to the Supreme Court. These conditions are treated in sub-clauses (a), (b) and (c) of article 11. The effect of this article is to

make the conditions of appeal as part of the Constitution, and I am sure that it would be agreed that there should be an element of elasticity to the conditions of appeal, and if we have made these conditions as a part of the Constitution as we find sub-clauses (a), (b) and (c), that would introduce an element of rigidity and also the conditions will be stereotyped. So the object of my amendment, which I did not move, or the object of the amendment moved by Prof. Shibban Lal Saksena is to introduce that kind of elasticity and leave these conditions to the future Parliament to lay down if it finds absolutely necessary and essential. Now if there is to be a change and if we have made these conditions as part of the Constitution, the change could be brought about only by a constitutional revision. Therefore, I am sure that the House has realised the difficulty and the amendment given that there should be an elasticity by leaving this matter absolutely to the future Parliament is to, remove that rigidity and see that the conditions are not stereotyped.

Sir, in the law as it stood prior to the passing of the Federal Court Enlargement of Jurisdiction Act, the conditions of appeal were regulated by the Civil Procedure Code or by Order in Council made by His Majesty. This Civil Procedure Code was liable to be amended by Parliament. So, in answer to my friends who have just said that there should be no intervention of the Parliament, now I would say that this is not a new condition and the intervention of Parliament was not newly introduced because the Parliament could always intervene in the law as it existed today, that it could amend the Civil Procedure Code which would in the main regulate the conditions of appeal by bringing about a legislative change. So, Sir, it would have been very much better if a similar course could have been adopted and also I am sure that the House has noted this fact that the conditions obtaining today are not the conditions as existed some time back. They are radically different today, because we find that a large number of States are being brought under the Indian Administration and also the question is whether the Supreme Court should not be constituted as a Court of appeal from all over India and the idea also is to expand this jurisdiction and extend the jurisdiction to the States also. This position has been made clear by an amendment moved by my honourable Friend, Shri Raj Bahadur, which I am sure will be accepted. The effect of that amendment is to remove those restrictions with regard to the jurisdiction of the Supreme Court in relation to the States. Therefore the idea is to expand the jurisdiction and leave the conditions to the Parliament to lay down. Anyhow, I am very glad to support the amendment moved by Dr. Ambedkar, because it has accepted the major part of my amendment namely conditions (a) and (b) accepted, but condition (c) alone is now made rigid by having found a place in this Constitution. Even this matter could have been left to the future Parliament; it would have been open to the Parliament to say under what conditions an appeal should be considered as a fit one to come to the Supreme Court. Anyhow, Dr. Ambedkar has not considered it desirable, but while accepting the two, he has left this matter absolutely beyond the purview of Parliament. As Mr. Alladi Krishnaswami Ayyar stated, half a loaf is better than no loaf at all, and I also would agree with that view and support the amendment moved by Dr. Ambedkar.

Shri Yudhisthir Misra (Orissa State): Mr. President, Sir, I support the amendment moved by the honourable Member, Mr. Raj Bahadur for the deletion of the provision relating to the exclusion of the States specified in Part III of the First Schedule from the operation of article 111 of the Draft Constitution.

I endorse the arguments put forward in favour of the amendment. Besides that I want to submit another point for the consideration of this House. The

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provision as it stands excluding the Indian States from approaching the Supreme Court will create anomalous position for those States which have integrated, namely, the States of Bombay, Madras, C.P., and Orissa. These States have been integrated with the neighbouring provinces and are administered as parts of the provinces. They are under the jurisdiction of the provincial High Courts. In the Draft Constitution, they have been put in Part III of the First Schedule although in the Draft Constitution it has been provided that they will be administered as if they are parts of the provinces; a positive provision of this kind in article 111 would exclude them from approaching the Supreme Court, or at least create confusion in the minds of the States people. To remove this, Sir, it is necessary that the provision in article 111 excluding the States in Part III of the First Schedule from the operation of this article should be omitted. I therefore, support the amendment moved by my honourable Friend, Mr. Raj Bahadur.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, a great deal has been said in this House by some of my esteemed Friends against the lawyers as a class.

Mr. President : No reply to that part of the remarks is required. You had better leave those remarks alone. Please confine yourself to the article and the amendments.

Shri Rohini Kumar Chaudhuri : All right, Sir. What I wanted to say is this: that the responsibility for framing this Constitution is not on the lawyers, but is on the layman, on the Members of the Constituent Assembly, the majority of whom are non-lawyers. It is the strong commonsense of the Members of this House which will decide the several points of the Constitution. The lawyers are there to advise us. Just as in a trial by jury, you cannot lay the responsibility on the Judge and lawyers, but the case has to be decided according to the commonsense of the jurors themselves, similarly, in this House, the responsibility of framing the Constitution is entirely on the Members of this House, the majority of whom are not members of the legal profession. Therefore, I would invite the House to look at this question from a layman's point of view as well.

If you look at this question from the layman's point of view what do you find? A great restriction has been imposed in article 111, and that restriction is that a certificate has to be granted by the High Court. You are not going to file an appeal directly from any other Court; you cannot file an appeal from the District Judges' or Sub-judges' courts. The matter has got to go up to the High Court and the High Court has to grant a certificate in order to enable you to file an appeal. Can any man, whether he be a layman or a lawyer suppose for a moment that a High Court against whose decision an appeal is going to be filed, will promiscuously or without any sense of responsibility grant a certificate? That is a very big restriction. I should have thought that no other restriction was necessary after that. Even then, in this article you have laid down under what circumstances the certificate could be granted, and you have bound down the High Court to those circumstances. Therefore, the first restriction is that you cannot file an appeal without a Certificate from the High Court; the second restriction is that the High Court cannot grant the certificate in each and every matter and you have laid down that the matter should fall under certain categories in which alone a certificate could be granted. After this, I would ask, is it reasonable to lay down a further condition and say that it should be subject to any law which may be passed by Parliament?

I am rather diffident in making a strong appeal in this matter because no less a person than Shrimati Durgabai has sponsored the original idea and Shri Alladi Krishnaswami Ayyar has said that it has his fullest sympathy. Even then, I would venture to bring the matter to the special consideration of the House, the majority of whom are non-lawyers. Taking this question from the commonsense point of view, is it likely that ordinarily a court against whose decision a party is going to file an appeal, that court will inadvertently, recklessly grant a certificate? If you want that everything should be left to Parliament, why spend so much time over articles 110, 111, and 112? Just say that Parliament may by law lay down the procedure and the circumstances under which an appeal could be filed to the Supreme Court. That would finish the whole thing. Why go through all these articles 110, 111, 112, 113 and so on? Simply have one article that Parliament may by law prescribe the circumstances under which an appeal could be filed to the Supreme Court. You might mention there about the certificate just as it is mentioned in the Civil Procedure Code today. There is also mention about the valuation of Rs. 10,000 and about a question of principle being involved. But, having spent all the time in considering articles 110, 111 and so on, I should have thought that the House might consider whether it is necessary to adopt the amendment which has been put forward.

Mr. President : I think we have had enough discussion on this simple article 111 about which there seems to be no serious difference of opinion on the merits. Whatever may be said with regard to the people who have framed it, nothing has been heard against the provisions of the article. I would therefore request Members not to take more time over this when there is really no difference of opinion on the merits.

Dr. Bakhshi Tek Chand (East Punjab: General) : Sir, I will not detain the House for more than two or three minutes over this question. The amendment which Professor Shibban Lal Saksena has moved and which has been supported by Shri Alladi Krishnaswami Ayyar and Shrimati Durgabai is not as innocent as it appears to be. It is really of a very revolutionary character. If the amendment is carried, it will be open to Parliament at any time to take away entirely the jurisdiction of the Supreme Court in all civil matters. It was with a view to avert such a contingency that the Drafting Committee thought fit to include article 111 in the Constitution. If you add the words 'subject to any law made by Parliament' in the beginning of article 111, as is suggested in the amendment, Parliament may, at any time, if it so chooses, take away the jurisdiction of the Privy Council to deal with any civil matter falling *either* under clause (a) or (b) or (c) or in all of them taken together. That, I submit, will be a very serious matter. The provisions of article 111 as drafted and placed before the House are practically the same as those contained in the Civil Procedure Code. Indeed similar provisions have existed for more than a century, ever since the Judiciary Act of 1833 was passed and the Privy Council began to function as the Court of Appeal from decisions passed by the Supreme Courts of Calcutta, Bombay and Madras and later, from the various High Courts established under Letters Patent or the Indian High Court Act, 1861. The only difference in article 111 as originally drafted, and the provisions of sections 109 and 110 of the C.P.C. as they stand on the Statute Book today is that in clause (a) the valuation limit has been raised from Rs. 10,000 to Rs. 20,000. Dr. Ambedkar's amendment is that '20,000 *or such other value as the Parliament may fix by law*'. It gives the power to Parliament to raise or lower this pecuniary limit. But Parliament cannot take away the right of appeal in such cases, which is provided for in the Constitution Act, and which invests the Supreme Court with the power that has hitherto vested in the Privy Council. I submit that it will be improper

[Dr. Bakhshi Tek Chand]

to give Parliament power to take away that jurisdiction. This is a very important jurisdiction, and as has been pointed out by Mr. Rohini Kumar Chaudhuri, it must be maintained under the new Constitution. Honourable Members will see that it is not an unrestricted right of appeal in every civil matter which a litigant is given to go up to the Supreme Court. It is hedged in with several restrictions. Firstly, there must be a certificate from the High Court in every case. Where the value is Rs. 20,000 or such other value as Parliament may fix, and the High Court and the Court of first instance have differed, in that case an appeal will lie as of right. Then clause (b) provides that if the judgment is one of affirmance, the appeal will not lie as of right but only if the High Court certifies that the case involves a *substantial* question of law. This does not involve questions of law which may arise collaterally or incidentally! In those cases no appeal will lie. Then I do not see why any opposition is being offered to clause (c) being included in the Statute. This covers only those cases in which the question is of such general importance that the decision will affect a very large number of cases or is one in which a point of law is involved on which there is a difference of opinion between the various High Courts and it is necessary to have an authoritative pronouncement by the Supreme Court to resolve the conflict. Further, in such a case the particular High Court which has decided the case must certify that the case is a fit one for appeal. In that case only will an appeal lie. That will cover a very limited number of cases. So far as I know, at present not more than eight or ten appeals from all the High Courts of India go to the Privy Council under clause (c). It is a very very salutary provision, and must be retained. This article as drafted, with the modification suggested in Dr. Ambedkar's amendment should, I submit, be accepted and the amendment of Professor Saksena rejected.

Dr. P. K. Sen (Bihar: General) : Sir, may I offer a few remarks?

Mr. President : Is it necessary?

Dr. P.K. Sen : Very important, Sir.

Mr. President : I bow to the judgment of a Judge in this matter. He considers it important.

Dr. P. K. Sen : Sir I shall be very brief and I shall just touch upon the few points which I really consider to be very important. I rise to oppose the amendment of my honourable Friend Shri Shibban Lal Saksena. It has been supported by Shrimati Durgabai and some other honourable Members as also by no less an authority than Shri Alladi Krishnaswami Ayyar. The point on which they have laid stress is that article 111 should be made elastic, but the manner in which, according to them, elasticity is to be introduced would change the whole aspect of the article. Even elastic substances, Sir, if pulled violently give way and snap. Here, in this particular matter, elasticity is sought to be introduced in such a manner as to bring the article to the breaking point. Article 111 proposes to give power to the Supreme Court to hear appeals in certain specific classes of cases. The introduction of those words 'subject to such provisions of law as the Parliament may lay down' at the beginning of the article, which the amendment proposes, changes the whole aspect of the article. It really gives power to Parliament at any time to make a clean sweep of the article. Now if this article was worded in very extravagant terms, it would have been different but it really incorporates in it just the provisions which have been up to now in force in the Civil Procedure Code, and a very long course of years has proved that they are very salutary and satisfactory. The only question that might be raised was as to the minimum

figure of valuation and even that point has been relaxed by my honourable Friend Dr. Ambedkar who suggests that it should be 20,000 or such other valuation as may be fixed by Parliament later on. In that view it does seem to me that although as you have said, Sir, that it is a simple matter, it is not an unimportant matter at all. It really comes to this—shall we have the power vested now under the Constitution in the Supreme Court or shall we leave it *in vacuo*, as it were, to be done by Parliament at any further time? If we allow the amendment today, the power that is given in those introductory words will really enable the Parliament at any time to make drastic changes. Therefore, I submit, the House should give a very careful consideration to this question before supporting the amendment. The amendment should in my opinion be vigorously opposed by everybody who is interested in the welfare of this country and its highest tribunal.

The Honourable Dr. B. R. Ambedkar : Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments: one is the amendment moved by my Friend Prof. Shibban Lal Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments. I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Section 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this: that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therefore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High Court have a history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently in my judgment, it would require a very powerful argument in support of a plea that we should now, while enacting a provision for the constitution of the Supreme Court disturb a position which has stood the test of time for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of diminution or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place

[The Honourable Dr. B. R. Ambedkar]

of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech namely, Prof. Shibban Lal Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this: that the Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go the Privy Council, the last part of clause (1) of article 111, which is (c), ought to remain as it is and Parliament should not have power to dabble with it because it really is a matter not so much of law as a matter of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my Friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my Friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in Civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is really a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

Mr. President : I shall now put Prof. Shibban Lal Saksena's amendment.

The question is:

"That in clause (1) of article 111 before the words 'An appeal' the words 'Subject to any law made by Parliament' be inserted."

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 111 the words ‘except the States for the time being specified in Part III of the First Schedule’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words ‘twenty thousand rupees’ the words ‘or such other sum as may be specified in this behalf by Parliament by law’ be inserted.”

The amendment was adopted.

Mr. President : This disposes of amendments No. 1917 moved by Dr. Bakshi Tek Chand and also 1919 by Mr. Naziruddin Ahmad.

The question is:

“That to clause (1) of article 111 the following proviso be added :—

‘Provided that no appeal shall lie to the Supreme Court from the judgment decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being.’”

The amendment was adopted.

Mr. President : The question is:

“That in clause (2) of article 111, for the words ‘the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided’, the words ‘a substantial question of law as to the interpretation of this Constitution has been wrongly decided’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 111, as amended, stand part of the Constitution.”

The motion was adopted.

Article 111, as amended, was added to the Constitution.

Mr. President : As regards amendments relating to criminal appeals the best thing would be for Pandit Bhargava to move amendment No. 27 to which the other amendments may be taken up as amendments.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in regard to amendments Nos. 27 and 28 notice was received last night of an amendment by Dr. Ambedkar, No. 190. This amendment now included both 112-A and B. Similarly there is a large number of other amendments bearing on the question of appeal. These can be taken up together so that ultimately the point may be decided. If Dr. Ambedkar wishes to take up this matter subsequently it may be allowed to be held over and I have no objection. You may, Sir, consider this matter, so that all may be decided at one time.....

Mr. President : That was exactly the procedure which I wanted to follow. Your amendment has to be moved to enable the other amendments to be moved.

Pandit Thakur Das Bhargava : I do not know whether Dr. Ambedkar wants it to be held over so that a consolidated amendment may come before the House. I have gone through all the amendments and I understand that the

[Pandit Thakur Das Bhargava]

basic idea behind all the amendments is one of compromise. If you are pleased to hold them over one consolidated amendment shall come before the House.

Mr. President : I have no objection to that. But amendment No. 23 is a somewhat different matter.

Pandit Thakur Das Bhargava : Yes, Sir. It is absolutely different but that will remain as you have already ordered that it may stand over.

Shri T. T. Krishnamachari (Madras : General) : Sir, these provisions being a departure from the existing scheme in the Draft Constitution the House may be given some time to digest these new provisions.

Mr. President : I have no objection: it can stand over.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Amendment No. 37 also relates to that.

Mr. President : That will also stand over. All the amendments relating to appeals from decision in criminal cases will stand over.

Article 112

Mr. President : Can we take up article 112 now? I find that in regard to this also there are several amendments in regard to appeals. Perhaps this also may stand over, and the consideration of the article other than the portions concerned with criminal appeals may be taken up.

Shri Ram Sahai (Madhya Bharat) : *[Mr. President, I move my amendment which runs :—

“That in article 112, the words ‘except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply’ be deleted.”

My amendment consists of two parts. It is one of those amendments which I have moved in order to remove the distinction maintained between the Provinces and the States’ Unions. This amendment has two parts.

One part deals with the exclusion of Unions of States and States from the jurisdiction of the Supreme Court. I have moved this amendment against this exclusion. The second part deals with limitations of the rights of the Supreme Court in article 110 and 111. I understand that the second part of my amendment is covered by amendment No. 1932 moved by Dr. Ambedkar on behalf of the Drafting Committee. Hence I think that this part of my amendment will find no objection with him and he will accept it. As I understand that the House agrees with me that it would not be proper to apply such limitations on the rights of the Supreme Court, I think that the House will accept my amendment. I have particularly to place my views before the House regarding the amendment to the first part. The State and the Union of States have been kept entirely separate in the Draft Constitution and they have not been considered as provinces. When Dr. Ambedkar had moved the motion regarding the Draft Constitution in November last, he had expressed the view that there should be no difference between the Provinces and the Unions of States. He had rather declared that it would be better if the Constituent Assemblies going to be established in the States or the Unions of the States were abandoned. At that time I had made an appeal that this House, as it is constituted, can make a Constitution for the States and the Union of States, as it is doing for

*[] Translation of Hindustani speech.

the provinces. There is no person why we people assembled here cannot make the rules, laws or constitution or other things therein for the States as we like.

As regards this amendment, some difficulty may arise from the Instrument of Accession and the guarantee given by the Government of India thereby. But as far as I think there can be no difficulty in these things. Hence, so far as the question of bringing the provinces, States and the Unions of the States in line is concerned, there is no difficulty on account of the Instrument of Accession; particularly in regard to the jurisdiction of the Supreme Court. In the Instruments of Accession executed by the States and the Unions of States, all the subjects except taxation have been handed over to the Centre. When such a situation has developed, I do not understand what purpose can be served by keeping the High Courts of the States and the Unions of States outside the Jurisdiction of the Supreme Court.

I had submitted formerly that the States have such High Courts as possess very able persons who can do the same quality and amount of work as their counterparts in the provinces. There seems to be no reason why appeals from them should not go to the Supreme Court. I, therefore, submit that there should not be any difference on the question of appeals from the High Courts of the States and the Unions of the States to lie in the Supreme Court. It would be very much in the interest of the people of the States. In this way the Supreme Court will exercise a control over the High Courts of the States and the Unions of States, which will be beneficial to the people of those States. This will also end the question of depriving the people of the States of the justice of the Privy Council. As I have already submitted, Dr. Ambedkar had stated that there is no need for Constituent Assemblies there. I submit that a convention of the members of the States Constituent Assembly was held in November last under my Chairmanship. That Convention has issued a statement that there should be no difference between the Provinces, States and the Unions of States. In this connection they had also made a request to the States Ministry who later on appointed a committee to draw up a model Constitution for the States. I was also a member of the same. That Committee has drawn up a constitution for the States and Unions of States similar to the drawn up for the provinces. There is nothing in that to separate the States from the provinces. I would also submit that there is article 63 which is similar to article 111 here.

As article 111 makes a provision for appeal similarly a provision has been made for appeal to the Supreme Court from the decisions of the High Courts of the States and the Unions of the States. Here the President has been empowered to appoint Governors, but it has not been done there. There the Rajpramukh will be recognised by the President. I think there is no difference in that. I think there can be no two opinions about this. The representatives of the States in this House have been elected on the same basis on which the representatives of almost all the provinces have been elected. Then, why do they not frame laws in this House for the States and for the Unions of States? I mean to say, as Dr. Ambedkar has already suggested, that the Constituent Assemblies formed for the States are meaningless. I feel that this is really a waste of the time of the public as also of its money and energy. When we have assembled here to frame a constitution, we are competent to frame constitutions for the States and for the Unions of States also. I do not think that our framing of constitution will in any way prejudicially effect the Instrument of Accession. We see that our Rajpramukhs are working in such a way that our progress or the country's progress may not be hampered. They want to work strictly according to the advice of the States Ministry. If the States Ministry suggests to them that it would be futile to form any

[Shri Ram Sahai]

Constituent Assembly whatsoever in the States, they would fully agree to its suggestion and would gladly accept it. The people there have of course been always eager for it and will be so. There appears to be neither any reason nor any necessity for forming separate Constituent Assemblies for States, particularly when the States Ministry is going to adopt the draft of a model constitution for the States and the Unions of States prepared by experts and the representatives of States similar to that for the provinces. The proposition before the House is that the provision in article 112 for excluding the States and the Unions of States and the provisions in articles 110 and 111 to limit the powers of the Supreme Court should be deleted and the remaining portion should be adopted.

Without taking more time of the House, I only submit that both parts of my amendment are worth accepting and I hope that the House will accept the whole amendment.]

(Amendments Nos. 1929 to 1932 were not moved.)

Prof. Shibban Lal Saksena : What about 31?

Mr. President : But the decision has already been taken.

Prof. Shibban Lal Saksena : This is separate. This is No. 31 of List I, Fourth Week.

Mr. President : But that is dependent on 1931 which was not moved. 1932 also was not moved. But you can speak on the article in the general discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is a very important article in the Constitution. If there is a Supreme Court, it will have to have supreme powers. "The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India." By this article, the Supreme Court can entertain any appeal against any judgment. I would only wish that this power was extended. At Present, although it can entertain any appeal, it will have to decide that appeal according to the law of the land. It cannot go beyond those laws. But what I wish is that in cases where natural justice is under consideration the Supreme Court should be enabled to give judgments which may not be within the letter of the law. It should be permitted to give any judgment to satisfy the requirements of the cases. Even now, the Privy Council entertains appeals of this kind. Where natural justice is involved, they take appeals and give decisions which are not bound by the law of the land. I therefore wish that under article 112 where we give power to the Supreme Court to entertain any appeal, we should also enable it to decide those appeals on the principles of jurisprudence and considerations of natural justice. I therefore gave notice of my amendment, but I cannot now move it. But I hope that the point also will be taken into consideration. I would also like to say that my amendment to 111 was from the point of view that the Supreme Court should have power to entertain any appeal, whether it is civil or criminal. If this right is given under 112, there is no need for 111(1) (c), since the Supreme Court has discretion to entertain appeals. I hope that Dr. Ambedkar will try to extend the scope of the powers of the Supreme Court to enable the Supreme Court to go beyond the letter of the law where natural justice is involved.

Kaka Bhagwant Roy (Patiala and East Punjab States Union) : *[Mr. President, Sir, I have come to support the amendment moved by my honourable Friend, Shri Ram Sahai. Now that the petty States have been merged

*[] Translation of Hindustani speech.

into large unions, they have been raised to the status of provinces and thereby the subjects of the States have got rid of the personal rule of the princes.

Now when the Constitution of free India is taking shape, the distressed people of the States are looking up to this august Assembly so that there will be no discrimination between the general public of India and the States people.

I think that great injustice has been done to the people of the States by not allowing them the right to make an appeal in the Supreme Court. The people of the States should be given this right in view of the fact that it is being given to all the provinces.

I think that India as a whole cannot become strong unless the newly formed units of the States which form an integral part of India also become strong. Therefore, in order to make India strong, the States people should be given the same rights which are being given to the general public of other provinces.

So, I think that you who are making the Constitution of free India should not insert in it such a clause which would give a different status to the States people.

The People of the States are looking up to this august Assembly with great expectations that the people of the unions of States and the provinces would enjoy equal rights and that there will be no discrimination as such.

I hope that you will accept this amendment.]

Shri Krishna Chandra Sharma (United Provinces : General): Mr. President, Sir, the provision of this article 112 are very important and very comprehensive. It lays down one important principle of Constitution, namely, that while in the scheme of the Government of India Act, the executive was all powerful and both the legislature and the judiciary were subordinate to it, this article, a provision of which type has not found a place in the Government of India Act of 1935, has given a status to the judiciary, equivalent and in no way subordinate to the executive and legislature. Therefore, Sir, this comprehensive as well as necessary provision in the scheme of the Draft Constitution does a great deal of good to the people and gives them the right to go to the highest tribunal against the action of the executive and has an appeal from the High Courts. Sir, I support the provisions of this article and I would further add that this article gives ample power to do justice in the hands of the Supreme Court and with these provisions in the Draft Constitution, I do not find any justification or any necessity whatsoever of making any provision with regard to the criminal appeal to the Supreme Court. Much has been said about the power of the Supreme Court with regard to the appeals in the case of death sentences. I would submit respectfully that one fundamental principle has been ignored all through the discussion, that is, to appeal with regard to death sentence and in the matter of criminal justice it is not only the question of the liberty of the person or the liberty of the accused that is in question, but there is a further question and that is the stability of the State and the peace in the land. You cannot go on prolonging the decision with regard to the crime done by a man against the State for a very long time. It would be detrimental to the State and it is a pernicious principle to hold that the life of a person or his liberty is sacred as such without any regard to the stability of the State or the peace of the land. They are contingent; everything in the State, whether it is the life of the individual, whether it is the liberty of the individual has to be considered, to be cared for, if it is not dangerous or detrimental to the stability of the State, to the peace of the land; and in taking these two fundamental

[Shri Krishna Chandra Sharma]

questions, if the criminal law is administered in accordance with these two fundamental principles, liberty of the accused and the stability of the State, I submit, Sir, this article provides ample safeguard. There is enough safeguard with regard to the justice being done to the individual whether in a civil case or in any order, or in a criminal case. Sir, I support the article.

Pandit Thakur Das Bhargava : Sir, in regard to article 112, I want to make one or two observations. This article 112 is exceptionally wide. The words are “in any cause or matter” and I understand this a departure from the established law of the land also. Now perhaps in all the provinces the revenue jurisdiction is quite exclusive and the Privy Council had got nothing to do with such jurisdiction, but our Supreme Court shall be fully omnipotent as far as a human court could be and it shall have all kinds of cases and I think that so far as the other courts of other jurisdictions are concerned, for instance, if there is an International Court sitting in India, if there is a Court Martial, if there is an Industrial tribunal, if there is an Income-tax tribunal, if there is railway tribunal, all kinds of cases will come before the Supreme Court and it becomes, therefore necessary as to what ought to be the range of the jurisdiction. What does the Supreme Court do in cases of this kind? My humble submission is that article 112 is the remnant of the most accursed political right of the divine right of kings. At the same time the jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does complete justice between States and between the persons before it. If you refer to article 118, you will find that it says:— “The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament”. So far so good: but my humble submission is that the Privy Council also, which as a matter of fact belonged to Great Britain and which was a sign of our judicial domination by the British, even that had very wide powers and proceeded to dispense justice according to the principles of natural justice. What is this natural justice? This natural justice in the words of the Privy Council is above law, and I should like to think that our Supreme Court, will also be above law in this matter, in this sense that it shall have full right to pass any order which it considers just; and in this light. I beg to submit before the House that this is a very important section and gives almost unlimited powers and as we have got political swaraj, we have judicial swaraj certainly. The right of appeal is absolute in articles 110 and 111, but so far as the special appeal Supreme Court jurisdiction is concerned, it is of a special nature and it is above law. Even if there is no right of appeal, the Supreme Court can interfere in any matter where dictates of justice require it to do so. I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus the Supreme Court will be in this sense above law. I want that this jurisdiction which has been enjoyed by the Privy Council may be enjoyed and enlarged by our Court and not restricted by any canon or any provision of law.

Shri Alladi Krishnaswami Ayyar : Mr. President, it is necessary to realise the comprehensive nature and the Plenitude of the jurisdiction conferred by this article. The jurisdiction of the Supreme Court extends over every order in any cause or matter passed by any court or tribunal in the territory of India. Secondly, the Supreme Court is free to develop its own rules and conventions in the exercise of its jurisdiction. Sometimes we are labouring under a disadvantage, when we borrow the language of another enactment,

and of importing into the construction of the article all the self-imposed fetters by the Judicial Committee for various historical reasons.

There is nothing to prevent the Supreme Court from developing its own rules, its own conventions and exercising its jurisdiction in an unfettered manner so far as this country is concerned. The self-imposed restrictions of the Judicial Committee are traceable to the doctrine that the King is the fountainhead of all justice and it is not in the larger interests, as it was conceived, to extend his hand in every criminal case. No such fetter need be imposed on the exercise of that jurisdiction under article 112. For example, there is nothing to prevent the Supreme Court from interfering even in a criminal case where there is miscarriage of justice, where a court has misdirected itself or where there is a serious error of law. Purposely, the framers of the Constitution took care not to import into article 112 any limitation on the exercise of criminal jurisdiction. This discussion I hope will have a material bearing when we deal with the question whether any special criminal jurisdiction is to be vested in the Supreme Court or not. If only we realise the plenitude of the jurisdiction under article 112, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter.

With these words, I support article 112 as it stands.

Shri H. V. Pataskar (Bombay: General): Sir, article 112 has been specially incorporated for the purpose of giving special jurisdiction to the Supreme Court. I was a little surprised to find my honourable Friend Pandit Thakur Das Bhargava complaining that it was rather too wide. The article says: "The Supreme Court may, in its discretion grant special leave to appeal from any judgment decree or final order in any cause or matter....." No doubt the words 'any cause or matter' are such as to include any matter whether civil, criminal or revenue or otherwise. By special reference to revenue, it seems to me that Pandit Thakur Das Bhargava thought that it was not necessary that the Supreme Court should be in a position in special cases to interfere in matters which are decided on the revenue side. If you look at the history of the administration of certain Acts passed by the former Government in respect of revenue, and which are even continued in the present days, and the cases in which so much injustice has been done, you will find that it is necessary, when we are establishing a Court like the Supreme Court we should make provision in the Constitution that that Court should have the power in special cases of injustice, to grant special leave to appeal even in revenue matters. In our own province, there is the Revenue Jurisdiction Act against which for years there has been agitation on the platform and in public, because that Act was intended to put out the jurisdiction of the Court by the Executive. Certainly I appreciate that when we are establishing a Supreme Court for our country, it should have this special jurisdiction to grant leave to appeal in all matters whether they are civil, criminal, revenue or otherwise. Because, the Supreme Court is intended in this country to serve the functions of the King in some other countries where he is the fountain-head of all justice. Here, there is no King, and naturally therefore we must have some independent body which must be the guardian of administration of justice and which must see that justice is done between man and man in all matters whether civil, criminal or revenue. From that point of view, Sir, I think that having made a provision for a Supreme Court, it is necessary that special powers should be given to that Court as in this article 112.

There is another reason also. The Supreme Court is not likely to grant special leave in any matter whatsoever unless it finds that it involves a serious

[Shri H. V. Pataskar]

breach of some principle in the administration of justice, or breach of certain principles which strike at the very root of administration of justice as between man and man. I think article 112 as it stands is a very right one and should be there.

The Honourable Dr. B. R. Ambedkar : I do not think there is anything for me to say.

Mr. President : The question is:

“That in article 112, the words ‘except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 112, as amended, stand part of the Constitution.”

The motion was adopted.

Article 112, as amended, was added to the Constitution.

New Article 112-A

Mr. President : There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

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

“That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :—

‘112-A. Subject to the provisions of any law made by Parliament or any rule made under article 121 of this Constitution, the Supreme Court shall have power to review any judgment pronounced or order passed by it.’ ”

Review of judgments or orders passed by the Supreme Court.

Sir, the Draft Constitution, as it stands now,.....

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President : That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President : I have already said that I have taken it as a fresh article.

The Honourable Dr. B.R.Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras: General) : Sir, I am afraid that the drafting of this is not quite as happy as it should be. For one thing, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that power shall be limited by rules made by the Supreme Court. I think it is bad law. If you give a power to

the Supreme Court, it must be real power; you cannot say that that power could be limited by the Court itself. Again, the article says that the Supreme Court's power to review its judgment shall be regulated by law made by Parliament. I think this is altogether contrary to the article 112 which we have adopted, where you have given the Supreme Court the power to review any judgment or any order coming from anywhere. Parliament has no right to interfere even with its ordinary power of review.

Mr. President : This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgment. When it is allowed an unfettered freedom even in matters which are ordinarily dealt with by Parliament and State legislatures, why should the Supreme Court be fettered by law made by Parliament about the review of its own judgment? In these two respects, the thing is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar : I think my Friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article he will see that it reads thus :—

“Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc.”

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court and is to be exercised with the approval of President. Another thing which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

Mr. President : The question is:

“That new article 112-A do stand part of the Constitution.”

The motion was adopted.

Article 112-A was added to the Constitution.

Article 113

Mr. President : No. 113.

Shri T. T. Krishnamachari : The House has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar : That is so.

Mr. President : The question is:

“That article 113 stand part of the Constitution.”

The motion was negatived.

Article 113 was deleted from the Constitution.

Article 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

Does anyone wish to speak?

The Honourable Dr. B. R. Ambedkar : My attention has been drawn by my Friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

Mr. President : The question is:

“That article 114 stand part of the Constitution.”

The motion was adopted.

Article 114 was added to the Constitution.

Mr. President : We have already dealt with 115, and 116 to 120.

Article 119

Shri T. T. Krishnamachari : We have not dealt with 119.

Mr. President : Yes, 119. There is an amendment of which notice has been given by Mr. Kamath in 1952.

(Amendments 1952 to 1955 were not moved.)

There is another amendment No. 41.

Shri T. T. Krishnamachari : May I point out that 41 is substantially the same as 1953 and if nobody moves 1953, and if Mr. Kamath moves 1955, then 41 can be moved.

Mr. President : Neither 1953 has been moved nor is Mr. Kamath in a position to move 1955. He is busy otherwise. I understand it was moved on the 27th May. So we can take up 41.

Shri T. T. Krishnamachari : Sir, I move:

“That with reference to amendment No. 1955 of the List of Amendments, clause (2) of article 119 be deleted.”

Mr. President : The question is:

“That with reference to amendment No. 1955 of the List of Amendments, clause (2) of article 119 be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 119, as amended, stand part of the Constitution.”

The motion was adopted.

Article 119, as amended, was amended to the Constitution.

Article 121

Mr. President : 120, we have passed 121. There are several amendments to this. No. 1958.

Mr. Z. H. Lari (United Provinces : Muslim) : Sir, I move :

“That in clause (1) of article 121, the words ‘with the approval of the President’ be deleted.”

This article deals with certain provisions which are necessary to be made by the Supreme Court in the discharge of its duties and functions. If you look to the article, the main purpose of the article is that there must be such rules as shall govern persons practising before the Court, and the number of judges which shall hear particular kinds of cases, and rules as to granting of bail and the like. All these are such as should be left to the entire discretion of the Supreme Court. The necessity of having the approval of the President is in a way interference by the Executive with the Judiciary. I think that in all these matters, which really relate to internal arrangement by the Supreme Court, there should be no hand of the President therein, and as such, I think that these words are entirely superfluous. The Supreme court shall be competent enough to frame all the necessary rules and there is no necessity of securing the previous approval of the President.

I hope that this House will accept this amendment which is really intended to make the Supreme Court entirely immune from the influence of the Executive.

(Amendments Nos. 1959 to 1961 were not moved.)

Shri T. T. Krishnamachari : Sir, Dr. Ambedkar has gone out for the moment. May I move it ?

Mr. President : Yes.

Shri T.T. Krishnamachari : Sir, with your permission I move amendment 1962 standing in the name of the Honourable Dr. Ambedkar:

“That in sub-clause (b) of clause (1) of article 121, the words ‘and the time to be allowed to advocate appearing before the Court to make their submissions in respect thereof’ be deleted.”

Mr. President : There is another amendment with reference to this amendment. It is No. 42.

Shri T. T. Krishnamachari : Sir, I move:

“That with reference to amendments Nos. 1959, 1960 and 1962 of the List of Amendments, after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :—

‘(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;’ ”

This amendment is necessary in view of the fact that the House has already accepted a new clause moved by Dr. Ambedkar in respect of conferring powers on the Supreme Court to make rules for the purpose of reviewing its own decisions. This is a corollary to that amendment which the House has accepted.

(Amendment No. 1963 was not moved.)

[Shri T. T. Krishnamachari]

This amendment (No. 1964) has to be moved formally in order to enable the other amendments to be moved, of which notice has been given, namely, 42 and 43.

Sir, I formally move:

“That for the proviso to clause (2) of article 121, the following be substituted:

‘Provided that it shall be the duty of every judge to sit for the said purposes unless owing to illness he is unable to do so, or owing to personal interest or other sufficient cause he considers that he ought not to do so.’ ”

Shri Alladi Krishnaswami Ayyar : Sir, I move:

“That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clauses be substituted :—

(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.

(2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:

Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.’ ”

I do not think there is any need for comment on sub-clauses (2) and (2a) which speak for themselves. The only clause which requires some elucidation is the proviso. The main point of the proviso is that judicial time need not be unnecessarily wasted. A constitutional point may be raised by a party in the course of a general appeal in which other questions are raised. A court hears the appeal; it comes to the conclusion that really the constitutional point that is raised is not necessary for the disposal of the appeal, and that the case can be easily disposed of on the other point that has been raised. Under those circumstances it will be sheer waste of judicial time that a Bench of five Judges should hear this case, if otherwise a Bench of three Judges can under the rules of the Court dispose of the appeal. Therefore the provision is made—if the Bench that is hearing the case is satisfied that a real question of constitutional law has arisen, for the proper disposal of the case, the matter is referred to a full Bench of five Judges. They hear the constitutional question and the matter comes back before the three Judges who hear the original appeal and the other points of law that have been raised and that Bench disposes of the case. This is the normal procedure followed in cases where any point is referred to a full Bench for consideration by the High Courts in India. The idea is to assimilate this procedure to the procedure that is being followed for full Bench references to the High Court.

There is another point that I should like to mention so that the House may not think that I have brought it at a later stage and I have no doubt that Dr. Ambedkar will agree with it, namely, the express reference to article 111 of the Constitution in the proviso. Now there are various amendments tabled with a view to expand the jurisdiction of the Supreme Court and which have been left over. A constitutional question may be raised in the course of a criminal appeal if the Supreme Court is to be invested with criminal jurisdiction. Therefore possibly the expression “an appeal under article 111 of the Constitution” might have to be omitted. Or a constitutional point might arise even in the course of

a special appeal and if the court is satisfied that a constitutional question arises then it may be referred to a court constituted under this clause. I am mentioning it so that it may not be thought that we are trying to bring in new amendments at every stage.

With these words, Sir, I move the amendment that is tabled in the name of Dr. Ambedkar and myself.

Shri T. T. Krishnamachari : Sir, amendment No. 44 is no longer necessary, if as I suppose Mr. Alladi Krishnaswami Ayyar's amendment is to be accepted.

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

"That for clause (3) of article 121, the following be substituted :—

- '(3) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.' "

Sir, I shall move also amendment No. 1966:

"That for clause (4) of article 121, the following be substituted :—

- '(4) No judgment and no such opinion shall be delivered by the Supreme Court, save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.' "

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, article 121 has undergone considerable change as a result of several amendments moved, some of them by or on behalf of Dr. Ambedkar and some others by Mr. Alladi Krishnaswami Ayyar. In view of that, the necessity for the retention of the words "with the approval of the President" has further diminished. I therefore feel considerable sympathy with the amendment that has been moved by Mr. Z.H. Lari, notice of which was given by Mr. Shanker Rao Deo and others. In view of the changes that have been now effected there is no need for any reference to the President, because in most matters the whole position has been particularized and specifically stated. We have laid down the number of judges that should be there to hear particular classes of cases. We have also provided for cases falling under article 109. We have by the fresh amendments accepted that the judgment shall be in open court. The only powers that are retained with the Supreme Court under the article are those by which they can frame rules on matters more of day to day procedure which are not of such vital importance or significance as must be laid before the President before they can be made operative. The position is not very different from the powers of the High Courts in the provinces. The High Court has got wide powers of making rules in almost every matter as enumerated in this article and they are not required under any rule or procedure to refer them to the Governor or obtain his consent. I therefore feel that a reference to the President is unnecessary and it would be good if the House accepts the amendment moved.

Shri B. Das : Sir, I would like Dr. Ambedkar to clarify the words "No report shall be made under article 119 of the Constitution save in accordance with an opinion delivered in open court." This affects the liberties of the press. Suppose the press gets hold of some opinion which the Supreme Court has given to the President and if it is published, is the Government going to prosecute the paper which has published that secret information which the Supreme Court has tendered to the President? Newspapers have their sleuths. There are sometimes intelligent newspaper men who are able to anticipate the advice of High Court judges or Supreme Court judges. Is it contemplated that the Constitution will empower the Parliament under the present law that the liberty of the press will be affected? That is the question involved whether the liberties of the press will be affected and pressmen will be prosecuted.

Dr. Bakhshi Tek Chand : Sir, I support the amendment moved by Mr. Lari (No. 1958), that in clause (1) the words "with the approval of the President" be deleted. Article 121 gives the Supreme Court the power to frame rules, relating firstly, as to persons practising before the Court; secondly, rules regulating the procedure for hearing appeals and for determining what class of cases are to be heard in single Bench or in Divisional Courts or by Benches consisting of a larger number of judges. It also empowers the Court to frame rules relating to costs and other incidental matters, rules for granting bail, stay of proceedings, providing for summary determination of any appeal which appears to the court to be frivolous, vexatious or for purposes of delay. Now, Sir, these all are matters which ought to be solely within the jurisdiction of the Chief Justice and the judges of the Supreme Court and there is no reason why they should be subject to approval of the President. If you see the constitution of the High Courts, as they have functioned in the country for the last eighty years or more and also the provisions of the Government of India Acts of 1915 and 1935 relating to these matters, you will find that it is purely within the jurisdiction of the Chief Justice and the judges of the High Court to frame rules in such matters, as the admission of advocates, attorneys, etc. and the constitution of Benches. Sanctions or approval of the Governor-General or Governor is not obtained for promulgating these rules. In this connection, I would draw the attention of the House to clauses 9 and 10 of the Letters patent of the Calcutta High Court and similar provisions in the Letters patent of all the other High Courts, *i.e.*, the presidency High Courts, as well as the High Courts of Allahabad, Patna, Nagpur and of the East Punjab, Orissa and Assam which have been established recently.

Clause 9 reads :

"And we do hereby authorise and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels and Attorneys shall be and are hereby authorised to appear"

Then clause 10 says:

"And we do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys-at-Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause....."

These provisions are not subject to the approval of the Governor or the Governor-General, though in several other matters such as the creation of new courts, the fixation of salaries of the staff and so on, rules framed by the High Courts, are subject to the approval of the Governor-General in the case of Calcutta and provincial Governments in the case of the other provinces. But so far as the admission of advocates, vakeels, etc. are concerned, the framing of the rules is purely a matter within the jurisdiction of the Chief Justice and the other judges of the High Courts, and no approval of the Governor-General or the Governor is necessary.

With regard to the constitution of Division Benches, the provision in section 108 of the Government of India Act, 1915 was as follows :—

"Each High Court may by its own rules provide as it thinks fit for the exercise by one or more judges or by division courts constituted by two or more judges of the High Court of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice are to constitute the several division courts."

This provision was re-enacted with slight verbal alterations in section 223 of the Government of India Act, 1935. If this is the position relating to the

High Courts, why should a different rule be adopted in regard to the Supreme Court which will be the highest court in the country? Why should the previous approval of the President be necessary? In practice this will mean the approval of the Prime Minister. I submit this is a wholly unnecessary interference with matters which relate to the internal administration of the Supreme Court.

I have mentioned these two clauses relating to the admission, etc. of the advocates, pleaders and attorneys and with regard to the constitution of Benches. The other matters referred to in article 121 are matters of very small import; they relate to costs and other incidental matters. Obviously, the Supreme Court is the proper body to decide these matters.

Then there is the question of the granting of bail. Why should rules relating to this matter, which is purely a judicial matter, be referred to the executive? They should be left to the Chief Justice and the other Judges. Similarly rules as to stay of proceedings. When the Courts stay proceedings in a pending suit or appeal, generally security has to be taken for the due execution of the order which may ultimately be passed. Whether that security is to be certified before the Registrar of the Supreme Court or before the High Court are matters of detail which should be settled by rules framed by the Court.

This aspect of the matter seems to have escaped the attention of the Drafting Committee and there is no reason why the words "subject to approval of the President" should be imported, in the article. Sir, I support the amendment moved by Mr. Lari.

Prof. Shibban Lal Saksena : Sir, with regard to the amendment moved by my honourable Friend, Mr. Lari, there is a general feeling in the House, that Constitution allows too much interference with the work of the Supreme Court. We have given enough powers to the President, that is the Prime Minister, over the Supreme Court. If even in small matters like the framing of rules in regard to the powers vested in the High Courts, etc., we say that these should be subject to approval by the President, it is objectionable. We should make our Supreme Court etc. completely independent of the influence of the Executive. Once we have chosen a Supreme Court and the President himself has nominated the Judges there should be no further interference. They will frame rules which are contemplated in the section according to the canons of jurisprudence and in the best interests of the country. Sir, I support the amendment of Mr. Lari.

Shri T. T. Krishnamachari : On a point of information, Sir, may I ask the speaker whether he has changed his mind in regard to what he said with regard to article 111 where he wanted its provisions to be subject to the law made by Parliament?

Prof. Shibban Lal Saksena : Sir, I have not heard the question.

Mr. President : Mr. Krishnamachari has put a question which you do not understand and therefore need not answer.

Mr. Naziruddin Ahmad : Sir, I rise to support the amendment of Mr. Lari. As has been clearly explained by Dr. Tek Chand, with all the authority of his unique judicial experience, matters relating to rules under article 121 relate entirely to the procedure to be observed in Courts. In fact rules relating to practising lawyers and other things are matters of internal administration of the Courts. Such being the case, it will be extraordinary for the Court to send its proposals to the President for his approval. I could well understand and appreciate a provision which requires consultation with the President. That would have been something acceptable. I have no doubt whatsoever that if we delete these words the Supreme Court will always consult the Government.

[Mr. Naziruddin Ahmad]

But to make it a condition of the validity of the rules is somewhat extraordinary. I submit that the President, for all practical purposes, will mean the Ministry or the Government of the day. That is more objectionable. That the Supreme Court with whom vests the supreme authority of the judiciary and which should be absolutely independent of the executive should be required to take the approval of the executive in regard to internal matters of administration of the Court in its judicial functions, would be highly objectionable. With regard to rules for the grant of bails, whether bail should be granted or not is a matter for the legislature but the exact regulation of rules relating to the granting of bails, whether an application is to be made, whether a surety is to be taken, and so on and so forth, are matters for the internal administration of the Supreme Court. As regards stay of proceedings, it is a matter entirely in the discretion of the Court and it is impossible to provide in advance any definite rule as to stay of proceedings. They are matters entirely discretionary and change with the circumstance of each case. Nothing could be determined in advance. Rules should, therefore, be left to the discretion of the Court and somewhat general and elastic for easy application to individual cases. Again, matters which are incidental to the proceedings and matters for summary determination are all purely judicial matters. I do not wish to go into the details which have been so ably explained by Dr. Bakhshi Tek Chand. I submit that there should not only be no interference with the independence of the judiciary, but there should be no appearance of it even. For these reasons, these words are obnoxious and should be struck out. I have no doubt, as I have submitted, that the Supreme Court will always consult the Government and that should be enough. The matter should be left rather to convention than to legislation. With these few words, I support the amendment of Mr. Lari.

The Honourable Shri K. Santhanam : Sir, I am rather surprised at this support for the removing of the words "with the approval of the President." The consequence of this will not be the independence of the Supreme Court from the Executive; it will only give the right to the Executive to limit the rule making power by law. So long as the first portion of the article is there, "Subject to the provisions of any law made by Parliament", the words "with the approval of the President" form the safety valve for the Supreme Court. Because, it will be open to Parliament to make a law taking away the rule making power altogether from the Supreme Court and Parliament may prescribe every one of these things by law. Therefore, it is always better to have the things done with the approval of the President, if you want to vest the ultimate power in Parliament.

Then it is a matter of public policy also. Take for instance rules as to the person practising before the Court. Should it be open to the Supreme Court to say that they shall recognise the Degrees of a particular University and not of any other University? The whole question of legal education and inter provincial matter also arise. This is a matter probably in which the Supreme Court will not have sufficient materials for coming to a judgment and it will have to consult the Executive, not only the Executive in the Centre, but also the Executive in the provinces. The Education Department in the Central Ministry will be the authority to say which law college is conferring proper Degrees. Otherwise, the Supreme Court will have to appoint a Commission to go into the standard of education of every University to see whether a particular Degree should be recognised. I do not think this should be left to the absolute power of the Supreme Court. Similarly, in matters relating to costs and fees, it is also a matter of public policy. It is but right that the Supreme Court should also have the co-operation of the Executive. This idea that the Supreme Court has to be somebody which is absolutely separate from every other institution set

up by the Constitution is a wholly wrong and mischievous idea. The Supreme Court has to be one of our safeguards. But, If it is to be put in a position of hostility to the Executive or Parliament, then, the power of the Supreme Court will vanish, because, after all, it has to depend upon the goodwill both of Parliament and the Executive. I would suggest therefore that this idea of independence of the Supreme Court should not be done to death as many Members are attempting to do.

There is only one other small point which I would like to point out. In the new clause which has been moved by my honourable Friend Mr. T. T. Krishnamachari by amendment No. 42, it is stated, rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered". I would suggest that this is not wholly consistent with the new article 112-A as has been adopted. There, it is said, not only the procedure, but the power of review itself, or the conditions of review will be limited by rules. I personally objected to that provision. But, having passed that, I think the subsequent amendment should be consistent with the provision already adopted. I would suggest that the words "the procedure for" may be left out. "Rules as to the review of any judgment" will be sufficiently comprehensive, If you want that the word "procedure" must stand in the clause, the words "rules as to the conditions of and procedure for" may be adopted to be consistent with the provision which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I regret very much that I cannot accept the amendment moved by my honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule-making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. That may be a simple rule made by the Supreme Court. But undoubtedly, it would involve a burden on public revenues. There are similar provisions in the rules, for instance, regarding the regulation of fees. It is again a matter of Public revenue. It could not be left to the Supreme Court. Therefore, my submission is that the provisions contained in article 121 that the rules should be subject to the approval of the President is the proper procedure to follow, Because, a matter like this which imposes a burden upon the public revenues and which burden must be financed by the legislature and the Executive by the imposition of taxation could not be taken away out of the purview of the Executive.

I may also point out that the provisions contained in article 121 are the same as the provisions contained in article 214 of the Government of India Act, 1935 relating to the Federal Court and article 224 relating to the High Courts. Therefore, there is really no departure from the position as it exists today. With regard to the comments made by my honourable Friend, Mr. Santhanam relating to amendment No. 42 moved by honourable Friend, Mr. T. T. Krishnamachari, I am afraid, I have not been able to grasp exactly the point that he was making. All that, therefore, I can say is this, that this matter will be looked into by the Drafting Committee when it sits to revise the Constitution, and if any new phraseology is suggested, which is consistent with the provisions in the article which we have passed conferring power of review by the Supreme Court, no doubt it will be considered.

There is one other point to which I would like to refer and that is amendment No. 43. In amendment No. 43, which has been moved by my honourable

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Friend, Shri Alladi Krishnaswami Ayyar, and to which I accord my whole hearted support, there is a proviso which says that if a question about the interpretation of the Constitution arises in a matter other than the one provided in article 110, the appeal shall be referred to a Bench of five judges and if the question is disposed of it will be referred back again to the original Bench. In the proviso as enacted, a reference is made to article 111, but I quite see that if the House at a later stage decides to confer jurisdiction to entertain criminal appeals, this proviso will have to be extended so as to permit the Supreme Court to entertain an appeal of this sort even in a matter arising in a criminal case. I, therefore, submit that this proviso also will have to be extended in case the House follows the suggestion that has been made in various quarters that the Supreme Court should have criminal jurisdiction.

Mr. President : The question is:

“That in clause (1) of article 121, the words ‘with the approval of the President’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendments Nos. 1959, 1960 and 1962 of the List of Amendments after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :-

‘(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;’ ”

The amendment was adopted.

Mr. President : The question is:

“That in sub-clause (b) of clause (1) of article 121, the words ‘and the time to be allowed to advocates appearing before the Court to make their submissions in respect thereof’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clauses be substituted:—

‘(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.

(2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:

Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.’ ”

The amendment was adopted.

Mr. President : The question is:

“That for clause (3) of article 121, the following be substituted :

‘(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.’ ”

The amendment was adopted.

Mr. President : The question is:

“That for clause (4) of article 121, the following be substituted :—

‘(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.’ ”

The amendment was adopted.

Mr. President : The question is:

Article 121, as amended, was added to the Constitution.

The motion was adopted.

Article 121, as amended, stand part of the Constitution.

New Article 122-A

Dr. Bakshi Tek Chand : Sir I move:

“That with reference to amendments Nos. 1909 and 1926 of the List of Amendments, after article 122 the following new article be inserted :—

122-A. In this Chapter, references to any substantial question of law to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder or of the Indian Independence Act, 1947, or of any order made thereunder.”

Interpretation.

Sir, the necessity for adding this new article has arisen because in several sections of this chapter which relates to the powers of the Supreme Court, the expression used is “as to the interpretation of this Constitution”. For instance, in article 110 which takes the place of section 205 of the Government of India Act, power is given to a party to prefer an appeal to the Supreme Court in any matter, whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law “as to the interpretation of this Constitution.” “This Constitution” would mean the Constitution which is being passed by, this Constituent Assembly now. There may be other cases, however, in which the question of the interpretation of the Government of India, Act of 1935 or of an Order in Council by His Majesty or an order of the Governor General issued under the powers conferred on them by the Government of India is involved; similarly, questions relating to the interpretation of the Indian Independence Act of 1947 may arise. No provision for appeals in such cases is made in the article as drafted. Such questions may have arisen in such cases which are pending before the High Court or before subordinate Courts on the day the new Constitution comes into operation. What will happen to them? Unless we enlarge the meaning of this expression “this Constitution” in the manner in which it is suggested in this amendment, there will be no appeal at all from the decisions of the High Court in those matters. Those matters may be of very vital importance, and may arise in connection with legislation which has been enacted by the provincial or Central legislatures or in Ordinances promulgated by the Governor or the Governor-General. If these question arose in cases which had been decided by the High Court and are pending before the Privy Council on the date on which the New Constitution comes into force, they will be automatically transferred to the Supreme Court under the transitional provision, made in article 308(2) which will be placed before this House at the proper time. But there is no provision with regard to cases in which similar questions are involved. But which have not yet been decided either by the subordinate court or by the

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High Courts in India or which may arise in suits to be instituted hereafter. Under the existing law, appeals from such cases lie to the Federal Court; but the Federal Court will cease to exist on the date when the new Constitution comes into force. In order that appeals in such cases may under articles 110 and 111 or other articles, lie to the Supreme Court, provision must be made in the Constitution Act. Therefore, it has been found necessary to insert this interpretation clause, instead of repeating these words in article 110, or article 111 clause (2) or article 116, and in one or two other articles.

The effect of this will be that the words "this Constitution" wherever they occur in this chapter will mean questions relating to interpretation of the Constitution which is now being passed, but also include questions relating to the interpretation of the Government of India Act 1935 or any Order in Council or order made thereunder, of the Indian Independence Act or orders made thereunder.

The Honourable Shri K. Santhanam : Sir, I wish to raise a rather delicate point. From the date this Constitution comes into force, the Government of India Act, 1935 and all orders made thereunder, and the Indian Independence Act of 1947 and all orders made thereunder lapse altogether. They cease to have any kind of legal validity and if any laws made under them continue, it will only be in virtue of some provision inserted in this Constitution saying that all laws which are in force at the commencement provided they are not repugnant to this Constitution, shall continue. Their legal validity will depend upon the provisions of this Constitution and therefore question will arise only under this Constitution. I think this is a sort of juridical—I would not call it absurdity—impropriety, It is altogether meaningless. We can not ask our Supreme Court to go into the interpretation of constitution which have become absolutely dead and which have no kind of legal validity. It is possible that anybody can sue in a court of law under the Government of India Act, 1935, after this Constitution comes into force? There may be arguments based on some interpretation. Is it right that the Supreme Court should sit to consider and say that this is the interpretation of section 211 of the Government of India Act of 1935, because at that time the Government of India Act would have lapsed altogether, or can the Supreme Court interpret some articles of the Indian Independence Act of 1947? This Indian Independence Act was an Act made by the British Parliament. How can the Supreme Court of India say that this is the interpretation of a particular section made by the Parliament of Britain? They can only say how far the laws made under the Government of India Act, 1935 are consistent with this Constitution or have been continued by this Constitution. All questions of interpretation of the Constitution can arise before the Supreme Court only as interpretation of this Constitution. In interpreting this Constitution, they may refer to the Government of India Act or the law made by Parliament. I may also say that after discussion with Mr. Alladi Krishnaswami Ayyar, he thinks this point of view must be considered. I think this is a matter which requires proper consideration by lawyers who are better versed in law than myself.

Shri T. T. Krishnamachari: Mr. President, I am afraid my honourable Friend Mr. Santhanam has been rather hasty in opposing this amendment and holding it as ridiculous.

As a proposition in the abstract what he says may be correct; but there are certain contingencies which might happen and which will not be provided for by this Constitution coming into force without a saving clause of this nature. Because, certain things may be done under the old Constitution and the new Constitution may contain provision that are not only different but also the

opposite of what were contained in the constitution Acts which it supersedes. While some acts of State may be *ultra vires* of the old Constitution, it may be *intra vires* of the new Constitution. What will happen to such a contingency if it occurs? For example, supposing in the old Constitution, a provincial Government is not permitted to levy a tax on the betterment value of property or a capital gains tax and we in the new Constitution put a provision in the appropriate Schedule that that particular subject shall be within the competence of the provincial Government, what is to happen in respect of an action which may be initiated, provided it is not barred by limitation, by a person aggrieved by the action of the provincial Government in imposing a tax which was *ultra vires* at the time when it was imposed because the old Constitution did not permit it? It is rather a delicate problem; it is not a conundrum; it is a fact which may well come into being because there may be provisions in the new Constitution which will ease the strain that is being felt in regard to the distribution of powers between the Centre and the provinces under the Government of India Act. What is contemplated by this new clause is this. Cases where a change has been made in the new Constitution will be covered and the interests of affected parties will be protected. I do not think it is quite so easy as saying that merely because we pass the new Constitution, that Constitution applies to all that has happened in the past. There is undoubtedly room for considerable difference of opinion. Parties may be seriously injured by a provision of this nature not being put in the constitution. The matter has been discussed at some length in the Drafting Committee and the proposition before the House is a result of it. Notwithstanding the fact that I should be chary of criticising any view expressed by my esteemed Friend Mr. Alladi Krishnaswami Ayyar.....

Shri Alladi Krishnaswami Ayyar : I have not given any opinion in the matter.

Shri T.T. Krishnamachari : He may have expressed the opinion if he felt strongly on the point and there is no harm in it.

What I say is, this provides for meeting a lacuna which exists or which is likely to come into being when the interest of parties may be affected by the absence of a provision of this nature in the Constitution. While I would not like to say anything to detract from the value of what my honourable Friend Mr. Santhanam has said, I think on reflection he will find that this new article is not absurd. On the other hand, it is dictated by principles of wisdom and careful thought rather than with the intention of introducing an additional conundrum into the Draft Constitution.

I support the motion moved by Dr. Bakshi Tek Chand.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think there is a tempest in a tea pot. The article provides for a very likely and a very ordinary contingency which is likely to happen in Court from day to day. The Draft Constitution will come into operation on a certain date, but before the Draft Constitution comes into operation actions will be taken, Bills will be passed and other things done under the Government of India Act, 1935, and the Independence of India Act which now operates. All these acts will not necessarily be questioned or challenged during the pendency of those Acts and before actions taken and orders passed under the existing Constitution may be questioned after the commencement of this Act or even ten or twenty years later. Legality of deeds and grants made by the Mughal Emperors and the East India Company still now come into question. So this is a very important provision. If we do not pass it, there will be a lacuna and questions or cases will arise any time relating to past transactions. It is for this reason that I think that this really supplies and fills up a lacuna and it must be passed.

Prof. Shibban Lal Saksena: Sir, I would have wished to support Mr. Santhanam's view but I feel that if what he has said is necessary, this can be put in a Parliamentary Act. Why should it be in this Constitution? Why should it be for ever said that the interpretation of the Government of India Act and orders passed thereunder shall be interpreted by the Supreme Court? If, say, for a particular period or so, while these orders are in force or cases are pending under the Government of India Act, we require this provision, we can pass an Act of Parliament or we can pass an Ordinance on the very day this Constitution comes into force to meet this need, but why burden our Constitution with this? Therefore, I think that Dr. Ambedkar should remove this provision from our Constitution and either leave the Parliament to make such a provision to enable pending cases to be decided under that law or by an Ordinance until the Act is passed.

Dr. P. S. Deshmukh : Sir, my Friend Mr. T.T. Krishnamachari has explained the purpose of this new article that is before the House and the purpose is said to be that if we do not have this article, then the cases arising out of these various Acts and Statutes will probably not fall within the purview of the Supreme Court. My interpretation of the whole position is slightly different. In my view all that the new article wishes to provide for is to give cases arising out of the interpretation of the Government of India Act as well as the Indian Independence Act the dignity which is provided especially for interpretation of the Constitution in the various articles that have been incorporated in the Constitution. I do not think that this clause can be regarded as providing for the first time and only in this particular place a provision to save those cases which arise prior to coming into operation of the Constitution but arise out of the various enactment which have been mentioned in this article. The main purpose as it appears to me is to give the interpretation of the Government of India Act and the Indian Independence Act the same status as is given to the cases involving interpretations of the Constitution. I do not think however that the way in which the article has been worded is quite satisfactory. First of all, it puts the whole thing upside down. Instead of saying that the questions or interpretations of the Government of India Act and the Independence Act shall be interpreted as if they are question of interpretation of the Constitution, it puts the whole thing absolutely in the reverse; and secondly, if there is any provision necessary for saving those cases which arise out of Indian Independence Act, etc., I do not think the article as it stands provides for that. These are the observations I would like to make for the consideration of the Honourable Dr. Ambedkar. There are if I may repeat for the sake of clarity, two things: firstly that the wording of the article is not satisfactory, secondly, if the intention is that excepting for the article the cases arising out of the Government of India Act or the Independence Act will not be within the purview of the Supreme Court, then according to my view, the article does not seem to make adequate and proper provision for it.

Shri L. Krishnaswami Bharathi : May we have the benefit of Mr. Alladi's views? Shri Alladi Krishnaswami Ayyar: I do not want to say anything.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. Tek Chand. The point is a very simple one. We are undoubtedly repealing the Government of India Act, 1935, and the Indian Independence Act and the orders made thereunder from the date of the passing of this Constitution; but it has to be realised that while we are putting these Statutes, so to say, out of action, we are not putting an end

to the rights and obligations which might have accrued under the Government of India Act. Consequently if there are parties who have obtained certain rights under the provisions of the Government of India Act and whose rights have now been extinguished by any rule regarding limitations, it is obvious that some forum must be provided for the adjudication of those rights. It is to meet this contingency *viz.*, of persons who have their rights accrued under the existing Government of India Act and which have not come before a court of law, it is for such contingency that this article is necessary. This matter could have been provided for, I agree, in two different ways, first of all, by amending the language of the article 110 where we have used the word "This Constitution", if we had merely said 'any law regarding the Constitution relating to the Constitution of the country' that probably might have sufficed but the point is that we would have been obliged to repeat this formula in three or four places. Instead of doing that, It was decided that the best way is to put in an omnibus clause to define what this Constitution means. I think this provision is very necessary and ought to remain part of the Constitution.

Mr. President : The question is:

"That with reference to amendment Nos. 1909 and 1926 of the List of Amendments after article 122, the following new article be inserted:—

'122A. In this Chapter, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.'

Interpretation

The motion was adopted.

Article 122-A was added to the Constitution.

Article 123

Mr. President : Article 123.

Shri T.T. Krishnamachari: 123 refers to those portions which were specifically omitted all along. Therefore it might be put to the House and possibly the House might negative it because it is unnecessary.

Mr. President : Yes. The Question is:

"That article 123 stand part of the Constitution."

The motion was negated.

Article 123 was deleted from the Constitution.

Mr. President : After this we have to go back to the articles dealing with the States. We did up to 170. The subsequent articles deal with the procedure in the provincial Legislatures.

Article 191

Shri T.T. Krishnamachari: May I suggest that we might take up article 191 and the articles that occur thereafter. This and subsequent articles deal with the question of High Courts in the States and it would be easy for the House to deal with them because we have just now dealt with analogous articles relating to the Supreme Court.

Mr. President : If so, I am prepared to take up article 191 and subsequent article because they deal with High Courts, and as we have been dealing with the provisions regarding the Supreme Court and the provisions for the

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High Court are more or less similar, Members may not find it difficult to carry on with the discussion of these articles. So I take up article 191.

(Amendment Nos. 2563, 2564, 2565 and 2566 were not moved.)

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

“That in sub-clause (a) of clause (1) of article 191, for the words ‘the High Court of East Punjab, and the Chief Court in Oudh’ the words ‘and the High Courts of East Punjab, Assam and Orissa’ be substituted.”

Sir, I moved:

“That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:—

‘191. (1) There shall be a High Court for each State.

(2) For the purposes of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.’”

Shri T.T. Krishnamachari: We might take up the discussion of this amendment first because if this is accepted by the House all the other amendments will be unnecessary. This alters the entire contour of the article while, it also simplifies it.

Mr. President : There are some amendments of which I have got notice. I shall run over them and see.

(Amendment Nos. 2568 to 2577 were not moved.)

Mr. President : There is therefore no other amendment except the one moved by Dr. Ambedkar. Does anyone wish to say anything about the amendment or the article?

The question is:

“That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:—

‘191. (1) There shall be a High Court for each State.

(2) For the purpose of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 191, as amended, stand part of to the Constitution.”

The motion was adopted.

Article 191, as amended, was added to the Constitution.

Mr. President : I have left out one thing. There is a proposal by Prof. Shah—amendment 2562—that a new article, 190-A be added. I do not know if it will come at this stage. Does Prof. Shah wish to move it?

Prof. K.T. Shah (Bihar: General): Yes, Sir.

Mr. President : Have we not discussed this question in relation to the Supreme Court?

Prof. K.T. Shah : It has been discussed, I know.

Mr. President : It is any use going over the same ground?

Prof. K.T. Shah : In that case I shall not move it.

(Amendment 2562 was not moved.)

Article 192

(Amendment Nos. 2578 to 2580 were not moved.)

Mr. President : Amendment No. 2581 is in Dr. Ambedkar's name. This has to be formally moved.

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

“That in the proviso to article 192, the words beginning with ‘together with any’ and ending with ‘of this Chapter’ be deleted, and after the words ‘fix’ the words ‘from time to time’ be inserted.”

Sir, I move:

“That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:—

‘192. Every High Court shall be a court of record and shall have all the powers of such a court including High Courts to be courts the power to punish for contempt of itself.’
of Record

‘192-A. Every High Court shall consist of a Chief Justice and such other judges as the President may from Constitution of high Courts time to time deem it necessary to appoint:

Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that to that Court.’ ”

(Amendment No. 2582 was not moved.)

Prof. Shibban Lal Saksena : Sir, I only wish to draw attention to one fact. Article 192 says:

“Every High Court shall be court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.”

and in the proviso it was said:

“Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court.”

My only objection to the use of the word “President” in this clause is that this the function of the Supreme Court. If the court feels that justice cannot be dispensed unless a certain number of judges are in the court. It is their province to recommend this. I therefore think that the President should fix the number on the advice of the Supreme Court Chief Justice or in consultation with him, so that the Supreme Court may have the initiative in advising the President as to what is the number of judges required for each High Court, That should I think be provided for.

Mr. President : The question is:

“That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:—

192. Every High Court shall be a court of record and shall have all the powers of such a court including High Court to be courts the power to punish for contempt of itself.

‘192A. Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that Court.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 192, as amended, stand part of the Constitution.”

The motion was adopted.

Article 192, as amended, and 192-A were added to the Constitution.

Mr. President : Hon. Shri G.S. Gupta’s amendment relates to the language question which we shall not take up now.

Article 193

(Amendment No. 2584 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim): Sir, I beg to moved:

“That for clause (1) of article 193, the following be substituted:—

‘(1) Every Judge of a High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-three years.’ ”

There are two points involved in this amendment. Even in connection with the articles dealing with the appointment of Supreme Court judges I have made a reference to the recommendations in the memorandum of the Federal Court and the Chief Justices of the provincial High Courts. There fore I do not propose to deal with those points to which I had already referred. I would request the Members of this House to consider the points mentioned in the memorandum of the Federal Court and the Chief Justices of all the High Court in India. It is very valuable document and therefore proper weight should be attached to that by the House. I do not want to repeat those arguments to which I have referred on the previous occasion.

The important difference between my amendment and the article as it stands is that the amendment requires that the main recommendation must be from the Chief Justice of the High Court concerned after consultation with the Governor of the Province and the concurrence of the Chief Justice of India is insisted on. It is very necessary that the recommendation should be that of the Chief Justice of the High Court concerned and the Governor is only to be consulted. The concurrence of the Chief Justice of India is insisted on in my amendment which is an important thing. I do not want to repeat the arguments which I mentioned in connection with the appointment of the judges of the Supreme Court. The reason for the amendment is that in the matter of appointments to the High Courts there should be only consultation with the Governor and the Ministry should not have any real part in these appointments and they should be above political considerations.

Another point involved in the amendment is as regards the age. On this matter I would draw the attention of the House to the recommendation of the Federal Court and the Chief Justices of the High Courts in India. They state:

“It is essential that a difference of three to five years should be maintained between the retiring age of the High Court judge and that of the Supreme Court judge. The age limit for retirement should be raised to 65 for High Court judges and to 68 years for Supreme Court judges.”

They go to the extent of recommending that the age should be fixed for retirement at 65. We know cases in which retired High Court judges are very energetic and have held very responsible positions in life after retirement. When that is so, I do not see any reason why they should be compelled to retire at an earlier age. Therefore, I would request honourable Members to pay sufficient consideration to the recommendations made by the Federal Court and the Chief Justices of the various High Courts who put the age limit as high as 65, while my amendment only raises it to 63. I do not want to add anything more to what I have said.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 7th June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 7th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 193—(Contd.)

Mr. President : We were dealing with article 193 yesterday. We shall now resume consideration of that article. One amendment was moved but there are several other amendments. We shall take them up now. Amendment Nos. 2586, 2587, 2588 and 2589 are of a similar nature. The only difference is with regard to the age of retirement of the Judges in these amendments. There is another amendment No. 2592 which is in the name of Dr. Ambedkar which, I think, will cover all these amendments except about the question of age. So I think that if Dr. Ambedkar moves his amendment first, probably it may not be necessary to take up these other amendments with regard to matters other than the age. With regard to the age, we may take up that question separately.

The Honourable Dr. B.R. Ambedkar (Bombay: General): I am not moving that amendment.

Mr. President : Then we shall have to take up the other amendments. Mr. K.C. Sharma, amendment No. 2586.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I moved :

“That for clause (1) of article 193, the following be substituted :

‘(1) Every Judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, and in the case of appointment of a judge other than a Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years.’ ”

Sir, in that article there is the additional precaution of consultation with the Governor. I respectfully submit that in the case of the other Judges of a High Court in a State, consultation with the Chief Justice is quite sufficient. The Governor in no way comes in and consultation with him would be undesirable. Sir, I move.

(Amendment Nos. 2587, 2588 and 2589 were not moved.)

Prof. Shibban Lal Saksena (United Provinces: General): Sir, with your permission, I would like to move the amendment to this amendment No. 2590, of which I have given notice. Sir, I moved:

“That for amendment No. 2590 of the List of Amendments, the following be substituted:—

(i) ‘that in clause (1) of article 193, for the words occurring after the words ‘Chief Justice of India’s to the end of the clause, the following be substituted:—

‘and such of the judges of the Supreme Court and of the High Court of the State concerned as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted.’

(ii) that after sub-clause (b) of clause (2) of article 193, the following new sub-clause be added:—

‘(e) is a distinguished jurist.’ ”

[Prof. Shibban Lal Saksena]

Sir, I have tried to put this clause in line with the clause we have already passed for the Supreme Court. I have used the same language which has been used there. The only thing is that I have omitted reference to the Governor of the State. I feel that in the case of appointment of a Judge of a High Court, consultation with the Chief Justice of the High Court is enough. Consultation with the Governor of the State will, I think, not be proper. I also feel that the Judges of the Supreme Court should be consulted. I do not see why the language should be different here from the language used in article 103 for the Supreme Court.

I have also made provision for the appointment of a distinguished jurist. When we have made this provision in the case of the Supreme Court, I do not see why we should not provide that a distinguished jurist should be appointed as a Judge of the High Court also. I think, Sir that in view of the fact that the principle has already been accepted, this amendment will prove acceptable to the House.

(Amendment Nos. 2591, 2593, 2594 and 2595 were not moved.)

Prof. K. T. Shah (Bihar: General): Amendment No. 2596. This matter has been already discussed. It was rejected then. May I move it now?

Mr. President : I do not think any useful purpose will be served by repeating the same arguments once again.

(Amendment Nos. 2597, 2598, 86, 2599, 2600, 2601 and 2602 were not moved.)

Shri T. T. Krishnamachari (Madras: General): Sir, I formally move amendment No. 2603 and I move amendment No. 194 of List II, which reads as follows:—

“That with reference to amendment No. 2603 of the List of Amendments, In clause (1) of article 193 the words ‘or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State’ be omitted.”

Sir, the two amendments are more or less the same in substance except that the amendment which I have moved expressly states the words that are to be eliminated. By the elimination of these words, what will happen is that every judge of a High Court shall hold office only until the age of sixty and the object of this amendment is merely to crystallise the *status quo*. Sir, I do not think it is necessary for me to adduce any arguments, particularly when the amendment is one that seeks to confirm the existing practice. But there are undoubtedly many and weighty arguments against the provision which my amendment has sought to delete, namely, “or such higher age not exceeding sixty-five years as may be fixed by law of the Legislature of the State”; and whether it is the Legislature of the State or Parliament that has to make a law varying the age of retirement of judges, it is an unwholesome and unhealthy provision in a Constitution. Many Members of this House will undoubtedly agree with me that it is best to fix a particular age, no matter what it is and not leave it to canvassing by interested parties, so that either a private member will introduce a Bill or pressure will be brought to bear on the Government of the day, asking them to make a change in the retiring age of the judges, because the people who are interested in raising the age limit have some influence in the quarters, who might perhaps conceivably make the Government move in that direction. The advantage, therefore, lies in the direction of fixing a particular age and not allowing any room for any private canvassing or private endeavour, so that people will know definitely that this cannot

be changed except by an amendment of the Constitution. Sir, on the merits of the problem, I think there is much to be said in favour of the age of sixty. It is undoubtedly true that in this country the age of expectation has risen considerably during the last twenty years. We do find in public life and amongst lawyers people who have passed the age of superannuation, fixed by this provision that I am moving, in full possession of their faculties, able to control the destinies of the country and very adequately at that; but Sir, these people are only exceptions to the rule and the rule happens to be in a country like ours probably in about 30 percent of the cases perhaps, people who attain the age of sixty become unfit for active work. It is in my view safer to provide against even a fraction of the Judges of the High Court being incapable of doing their work rather than depend upon what happens outside the court and in public life where people who are well past the age of sixty are functioning very well and serving the country extraordinarily well. Sir, I feel that no further arguments are necessary in order to make the proposition which crystallises the *status quo* acceptable to the House; and if ten or fifteen years hence conditions of living in this country vary and medical science improves considerably so that senility can be avoided more or less in the generality of cases of people above the age of sixty, well probably that will be time enough for the Constitution to raise the age. I think for the time being the age of sixty is adequate and safe. For the same reasons I hope the House will accept my amendment.

(Amendment Nos. 2604 and 2605 were not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, in clause (1) (a) it is said that “a judge may, by writing under his hand addressed to the Governor, resign his office”. I want that he may resign his office only by addressing to the President or to the Chief Justice of India. I therefore move:

“That in sub-clause (a) of the proviso to clause (1) of article 193, for the word ‘Governor’ the words ‘Chief Justice of Bharat’ be substituted.”

It is the President who appoints the judges of the High Court and they can be dismissed only by two-thirds of the majority of both Houses of Parliament. Therefore, Sir, if he wants to resign his office, he must address either to the President who appointed him or to the Chief Justice of India who is the highest judicial authority in the land and there is no sense in his addressing his resignation to the Governor, and I do not know how the Governor can come in this matter. It should be either the President or the Chief Justice of India and I hope, Sir, that it will be corrected. Besides, if the word ‘Governor’ is put in here. I think it will not only be improper but will also be derogatory to the independence of the judiciary.

(Amendment No. 2607 was not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, I move :

“That in clause (b) of the proviso to clause (1) of article 193 after the words ‘Supreme Court’ the words ‘the State Legislature being substituted for Parliament in that article’ be inserted.”

Though this amendment I seek that the State Legislature might play an important role in the removal of a Judge of the High Court of that State. This clause as it stands provides that a Judge of a State High Court may be removed by the President in the same manner as is provided for the removal of a Judge of the Supreme Court. That is to say, the President after an address presented to him by both Houses of Parliament, supported by not less than two-thirds of the members present and voting in Parliament may remove the Judge concerned. If the sub-clause were passed as it stands here I feel that the legislature of the State will have no voice at all in such removal.

[Shri H. V. Kamath]

The crux of the matter is this. Should Parliament be the sole authority in the removal of the Judge or should we give power to the State legislature in this matter? It may be argued against this procedure suggested by me that Parliament is a superior authority and therefore more competent. Is that really so? To my mind, both Parliament and the State legislature are elected, the Lower House being entirely elected and the Upper House partly nominated, but the Lower House in either case is elected on the basis of adult suffrage. If we put trust in Parliament, can we not put trust in the State Legislature as well? Ultimately, it is a question of putting trust in the people. Shall we trust the people and their elected representatives or not, whether in the Centre or in the State? Moreover, where a Judge of the High Court is concerned, it is quite likely that Parliament being far removed from the scene may not be quite able to seize itself of the various matters pertinent to or germane to the issue, and the State Legislature being on the spot may be better able to deal with the matter. At this time of day when we have plumped for adult franchise, we should trust the State Legislatures as much as we trust our Parliament at the Centre. After all, if the House reads article 193, clause (1), it will see that so far as the appointment of a Judge of a High Court is concerned, it is not merely the authorities in the Centre that come into the picture, but also some authorities in the State as well, the authorities concerned being those referred to in clause (1) of article 193. The Governor of the State—he is a provincial authority—is consulted; Secondly, the Chief Justice of the particular State is consulted—he is a provincial authority. Therefore, if for the appointment of a Judge not merely the authorities in the Centre but also the authorities in the provinces are concerned, the question arises so far as removal is concerned, why should we not trust, or rather entrust the State legislature with conducting the investigation or impeachment or enquiry? If Parliament at the Centre is competent to present an address to the President for the removal of a Judge of the Supreme Court, to my mind it is quite logical and obvious that so far as a Judge of the High Court of a State is concerned, the legislature of the State ought to be competent, ought to be given powers to present an address in this regard to the President for the removal of a Judge of the High Court. It may be that the amendment of mine may have to be recast. I only seek here the acceptance of the principle that I am trying to embody in this amendment of mine. The amendment that I have suggested seeks to substitute the State legislature for Parliament in article 193. Once this principle is accepted that so far as the removal of a Judge of a High Court is concerned, the State legislature must deal with the matter and present an address to the President, then I am willing or amenable to the recasting of the amendment in any form that the Drafting Committee may please. I move.

Mr. President : Amendment No. 2609: that does not arise.

Shri T. T. Krishnamachari: Sir, I would like formally to move amendment No. 2610 in order to enable Dr. Ambedkar to move amendment No. 195.

Sir, I move:

“That in para (c) of the proviso to clause (1) of article 193, after the words ‘Supreme Court of’ the words ‘the Chief Justice’ be inserted.”

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

“That with reference to amendment No. 2610 of the List of Amendments in clause (c) of the Proviso to clause (1) of article 193, after the words ‘High Court’ the words ‘in any State for the time being specified in the First Schedule’ be inserted.”

Sir, the object of this amendment is to remove all distinctions between provinces and Indian States so that there may be complete interchangeability between the incumbents of the different High Courts.

Sir, I formally move amendment No. 2614 in the List of Amendments.

“That in sub-clause (a) of clause (2) of article 193 for the word ‘State’ the words ‘State for the time being specified in the First Schedule’ be substituted.”

Sir, I move:

“That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (a) of clause (2) of article 193, for the words ‘in any State in or for which there is a High Court’ the words ‘in the territory of India’ be substituted.”

“That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (b) of clause (2) of article 193, after the words ‘High Court’ the words ‘in any State for the time being specified in the First Schedule’ be inserted.”

“That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (b) of Explanation I to clause (2) of article 193, for the words ‘in a State for the time being specified in Part I or Part II of the First Schedule’ the words ‘in the territory of India’ be substituted.”

“That with reference to amendment No. 2614 of the List of Amendments, in clause (b) of Explanation I to clause (2) of article 193 for the words ‘British India’ the word ‘India’ be substituted.”

“That with reference to amendment No. 2622. . . .”

Mr. President : Before moving that, you may formally move amendment No. 2622.

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

“That for Explanation II to clause (2) of article 193, the following be substituted:—

‘Explanation II.—In sub-clauses (a) and (b) of this clause, the expression ‘High Court’ with reference to a State for the time being specified in part III of the First Schedule means a Court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this Constitution.’”

Sir, I move:

“That with reference to amendment No. 2622 of the List of Amendments, Explanation II to clause (2) of article 193 be omitted.”

The object of all these amendments 196 to 200 is to remove all distinctions between British India and the Indian States. Some of the amendments particularly amendments 199 and 200 are merely consequential upon the main amendment.

(Amendment Nos. 2611, 2612, 2613, 2615 and 2616 were not moved.)

Mr. President : No. 2617 does not arise. 2618.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move—

“That in sub-clause (b) of clause (2) of article 193, after the words ‘in succession’ the words ‘or has been a pleader practising for at least twelve years’ be inserted.”

I beg to move:

“That in sub-clause (a) of Explanation I of clause (2) of article 193, after the words ‘High Court’ the words ‘or has practised as a pleader’ be inserted, and for the words ‘which a person’ the words ‘which such person’ be substituted and the words ‘or a pleader’ added at the end.”

I beg to move:

“That in sub-clause (b) of Explanation I of clause (2) of article 193, after the words ‘First Schedule or’ the word ‘has’ be inserted, and after the word ‘Court’ wherever it occurs the words ‘or a pleader’ be inserted.”

Sir I had moved similar amendments as regards the appointment of the Judges of the Supreme Court. I want to give the same position to the Pleader lawyers as we are going to give to advocates, because I am of opinion that so far as qualification is concerned, they hold the same qualification and in the third amendment if it is accepted it will read thus—

“In computing the period during which a person has held judicial office in a State for the time being specified in Part I or Part II of the First Schedule or has been an advocate of a High Court or a pleader, there shall be included any period before the commencement of this Constitution, etc., etc.”

[Mr. Mohd. Tahir]

In explanation I clause (a) will read as follows:—

“In computing the period during which a person has been an advocate of a High Court or has practised as a Pleader there shall be included any period during which such person held judicial office after he became an advocate.”

With these few words, I move these amendments.

(Amendment Nos. 2619 and 2623 were not moved.)

Mr. President : All amendments have been moved and the article and amendments are open for discussion.

Dr. P. S. Deshmukh (C.P. & Berar: General): Sir, the appointment of the Judges of the High Court has been left to the President and only consultation with the Chief Justice of India and the Governor of the State has been provided for. I quite agree that for the independence of our judiciary the authorities appointing the Judges should be as high as possible but I would personally have preferred if the appointment was made by the President on the advice of the Premier and the Governor together. That however is not possible now, but next to that I would like some distinction to be made between Judges of the Supreme Court and the High Court so far as removal is concerned and thus I come to the amendment moved by my Friend Mr. Kamath which I strongly support. According to the provision that has been proposed the removal would be as difficult of a Judge of a High Court as that of a Supreme Court and it is only by reference to Parliament, the highest legislative body in the whole of the Republic, that a removal could be discussed and could be effected. Thus if this provision is retained, then the Legislature of the State will have absolutely no function to perform so far as the High Court and Judges are concerned except the fixation of the maximum age at any age between the ages of sixty and sixty-five and determining their salaries and some such insignificant matters. I do not think the Legislatures of the State should either be distrusted to this extent as to have no say in the matter of the removal of High Court Judges or it should be imagined that they would be trying to removed Judges on frivolous grounds. Secondly, the object of making it difficult for the Legislatures to remove Judges could be achieved by providing that the final order would be passed by the President himself but it should at any rate be competent for the State Legislature to present an address through the Governor to the President for the removal of any of the Judges of the High Court. I think this would be a salutary provision which would work for efficiency as well as better relationship between the Judicature and the State Legislature as well as the Executive in the State. We may further provide that a removal of a judge could take place on a limited and restricted grounds and we might not leave it to their discretion. The ground may be the same as have been stated in the previous 1935 Act, Section 220, where it has been provided that a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed. So these grounds may be taken from this section, and on these grounds appropriately modified it should be competent for the Legislature of a State to present an address to the President so that a judge may be removed. I do not think there is any other means excepting the Governor to know the capacity and the efficiency, character etc. of a Judge of the High Court. It is the Provincial Governor and the Provincial Legislatures who are more competent to know all these things and if they are convinced that a certain judge ought to be removed, I think it should be given the necessary powers for such removal.

So far as the amendment of Mr. Tahir is concerned, the principle has not been accepted that the pleaders should also be competent to be appointed as High Court or Supreme Court Judges and I think that is quite sound; because any pleader who has any practice and who has any competence generally gets himself enrolled as an Advocate—and there is not much difficulty in getting oneself enrolled as an Advocate—and after a few years when he acquires the necessary standing he would be considered eligible to be appointed as a High Court or Supreme Court Judge. So I do not think there is any substance in that amendment.

Dr. Bakshi Tek Chand (East Punjab: General): Sir, I have a few words to say on the amendment which Mr. Kamath has moved and which has been supported by Dr. Deshmukh. In the article as drafted the procedure for the removal of a Judge of a High Court and the authority by which he can be removed are the same as those provided in article 103 clause (4) for the removal of a Judge of the Supreme Court, *viz.*, that an address will have to be presented by Both Houses of Parliament to the President and it should be supported by a majority of the total number of members of either House and also by a majority of two-thirds of the members present and voting at the meeting when the matter is discussed and voted. The amendment seeks to substitute the Provincial Legislature in place of Parliament when the matter concerns a Judge of a High Court. This is the point that the House has to consider. My submission is that the provision contained in the Draft Constitution is the proper one. It is a very important matter—the removal of a Judge of a High Court—and the enquiry should be conducted in a very impartial manner by persons who are not swayed by local prejudices and who take a detached view of the matter. In the provinces—especially in those where the number of members is very small or where there is a sharp division of parties—the members may be swayed by local prejudices and other considerations. It is for this reason therefore, that the Drafting Committee has proposed in clause (b) of the Proviso that this matter should be left to the vote of the two Houses of Parliament. It is said that Members of the Parliament will be far away from the scene and will not be fully cognizant of all local matters. Well, that is the very reasons why this matter should not be left to the vote of the Provincial Legislature. In Provinces like Orissa, Assam, East Punjab, Central Provinces where the number of Members of the Legislature is small and in some of them there will be only one House—the vote of a few members only might decide so important a motion. If there is a Judge whom the leader of the party in power does not like, or who has by his judicial decisions or otherwise incurred the displeasure of that party, there is a chance of local prejudices coming in. In such a case the independence of the judiciary will to a very large extent be impaired. It is for this reason that the Draft Constitution provides that this matter should be left to Parliament. Formerly, under the Government of India Act, 1935, a Judge of a High Court could be removed if the Judicial Committee of the Privy Council, on reference by his Majesty, reported that he is unfit to hold office on the ground of misbehaviour or of infirmity of mind or body. Under the Draft Constitution, It will be on the address of both Houses of Parliament at the Centre that the President will act. This is very salutary provision indeed. I would ask the House not to disturb the provision in clause (b) of the Proviso and to reject the amendment which Mr. Kamath has moved.

Shri Prabhudayal Himatsingka (West Bengal: General): Mr. President, Sir, I beg to oppose the amendment moved by Shri H.V. Kamath in as much as he wants to make the removal of a High Court Judge easier than what has been provided for in the Draft Constitution. It will be a dangerous thing to do so and to empower the Provincial Legislature to be able to remove a High Court Judge. If for removal of a Judge of the Supreme Court provision has been laid down in article 103, clause (4), I do not see any reason why we should make it easier for removal of a Judge of a provincial High Court.

[Shri Prabhudayal Himatsingka]

As has been stated by the previous speaker, Dr. Bakshi Tek Chand, the Provincial Legislature can be very easily swayed by political considerations and by local influence when a Judge of the High Court gives certain decisions which are not acceptable or which may not be palatable to the party in power or to the majority party in the Legislature. Therefore it should not be made easy for a High Court Judge to be removed. After all, a lot depends on the integrity and the stability of a High Court Judge, and if his position be made so unstable that he can be removed by the vote of the Provincial Legislature it will be a dangerous thing, and that will affect the independence of the High Court Judges. Therefore I oppose the amendment moved by Mr. Kamath. I support the amendments moved by the Honourable Dr. Ambedkar inasmuch as the provisions are brought in line for all the High Courts, whether in the States or in the Provinces.

Dr. P.K. Sen (Bihar: General): Mr. President, Sir, I am thankful for this opportunity to enter into the general discussion of the provisions of article 193. There are several amendments which I had tabled with regard to other articles allied in character, but I am not moving them. I feel that a great many factors enter into the consideration of the provisions of article 193. These factors are scattered about in other articles like 196, 197 and so on. Unless and until we consider these other factors, or have them in view while deciding the shape of article 193, I apprehend that we shall not be able to come to the right decision.

Let us take these factors one by one. The essential point in article 193 is the retiring age of the Judge of the High Court—whether it should be sixty or sixty five. It is felt in some quarters—and I do not say that there is no ground whatsoever for that feeling—that at the age of sixty a man becomes incapable of working actively and making his contribution to the service of the country, that on the bench he finds it difficult to command that concentration of mind which is necessary and that therefore sixty should be the proper age for retirement. On the other hand it is felt—and there is very good ground for that feeling too—that the retiring age should be higher at the present moment, because people are often found to be very actively engaged in public life much after sixty. We have many instances of people who can devote a great deal of energy and who can command a great deal of concentration in very important kinds of work on behalf of the State. That being so, there is no reason why in judicial work one should be unfit and incompetent after the age of sixty. So far as I am concerned I make no secret that I am strongly in favour of making it higher than sixty—at least sixty two—for the High Court Judge. Now, the question that we have to consider is how the age-limit is affected by other considerations. Take it from the point of view of the Judge. The man who is going to be appointed and who has to make his choice as to whether he should accept the office when it is offered to him or decline it—what are the matters that will enter into his consideration? The question of salary comes in, the question of pension comes in, and also a very important thing,—the question as to whether or not after having held the office for a particular period of time, he will be allowed to practise in other Courts, if not in the same High Court, or in the courts subordinate to its jurisdiction. Now the man who is going to be appointed, we must assume, is one of the men pre-eminently fitted for the work in the province. The choice would naturally fall upon the man who is most distinguished in the province for legal acumen and ability. He has to make his choice: if he finds that there are only about five years to run, that there will be no pension at all after he attains the age of sixty, that he will have to be thrown back upon his own resources, or that the pension would be rather a small pittance and not that liberal pension which is awarded to the Judges of the High Court in Great Britain, for instance,

which is 75 percent of their salary; and when he finds also that there is no other way in which he can earn an income: that he cannot possibly go even to another High Court or to the Courts under the jurisdiction of another High Court and take up engagements in important cases; if he is debarred from practising altogether, then what is he to do? The only conclusion which he can come to is that although it is a post of very high dignity and prestige, he is reluctantly obliged to decline it. That will be the result. I submit that it will be a loss because the State will fail to command the services of men who really count, and instead of those men the second-rate or third-rate men will have to be selected for the office of the High court Judge. I submit therefore that it is a very serious matter. It is not at all a trivial matter—this question of age. It really acts and reacts upon other considerations. If he has to retire at sixty, well and good. But has he got a good pension provided for him? has he the right to practice, even if there is no pension? Can he make a living from the practice of law not in the High Court where he held office but in some other Court, in some other High Court, or in one of the Courts subordinate to that other High Court?

Sir, I had tabled another amendment which I submit—Although I am not moving the amendment formally—has a great bearing upon this question. Suppose a man at the age of fifty-eight is obliged on account of ill-health to retire. It is to be presumed that a man in that high office will not continue if for reasons of health he feels that he cannot possibly do justice to the work which has been entrusted to him. He will naturally say, “I am sorry I cannot go on any longer. I wish to retire”. Now in that case, I submit, there should be some provision about his being allowed full pension in spite of the fact that he has not been able to work till the age of sixty. It may involve a little expense, but that expense will be more than compensated for by the amount of efficiency secured by substituting in his place a person who is in full enjoyment of health. Thus it will be seen that the question not only of pension in the ordinary cases but pension in those cases where a person is obliged to retire on account of ill-health has to be taken into consideration.

Now we do not know as yet—because the relevant articles have not come up before us for discussion—whether there would be temporary judges or whether there would be additional judges appointed or not. There are certain articles relating to their appointment provided in the Draft Constitution. What will happen to those articles—whether the House will accept them or not—is a matter which one does not know. But assuming that temporary judges are to be appointed, or additional judges are to be appointed, the additional judges to hold office for not more than two years. After being two years in office as High Court Judge, would the additional judge be then able to practise? Well if he is not able to practise after two years of office as High Court Judge, the result will be that very few people will be prepared to accept the office of Additional Judge. It may be said that it will not be necessary to appoint additional Judges because if you have a full complement of judges, such as would be able to cover the work satisfactorily without any appointment of temporary or additional judges, then the question does not arise. But if it should be the desire of the House to provide for additional judges or temporary judges, then I submit that the right to practise or restriction in that behalf should be considered in their cases also.

I am pointing out these things. Sir, because I believe that without consideration of these points one will not be in a position to accept office if he is offered such a post when he is fifty-four or fifty-five because he will never be able to earn the full pension. Therefore, these are just the factors that will enter into his consideration in the decision which he has to arrive at.

[Dr. P. K. Sen]

I submit that these points should be kept in view in discussing the question as to the retiring age limit and that the question of age limit should not be considered as if it were utterly unconnected with these other factors which appear in several different sections of this chapter of the Draft Constitution.

Shri K. M. Munshi (Bombay: General): Sir, the age at which a High Court Judge is to retire has caused considerable differences of opinion and this age of sixty has been fixed after exhaustive enquiry and scrutiny at the hands of those responsible for this decision. I submit, Sir, that the decision to which the Drafting Committee has come, together with the amendments which are going to be moved and accepted, is the best one under the circumstances.

In the first instance, we must consider the point of view not of individual judges but of the judiciary as a whole and of its independence which we are so anxious to maintain and preserve. Firstly, the age limit of the judges of the High Court is kept at sixty. The provision as to higher age, not exceeding sixty-five, which finds a place in the existing article, has to be deleted. This is so because it would be cardinally wrong that a judge of the High Court should be in a position to canvass for the extension of the period, or that the retirement of judges at sixty-two or sixty-five should depend on the wish of the Legislature—central or provincial. Once a person is appointed a judge, there must be fixity of tenure during his good behaviour and no extension or dimunition of his term. In this view that clause has to go. Then the other amendment which will, I hope, be moved and accepted is for the elimination of the temporary judges and additional judges. It has been found that the appointment of temporary judges and additional judges is not a very satisfactory procedure in India as it leads to departure from that strict impartiality and independence which is necessary in a High Court Judge.

Then comes the other article to which my Friend Dr. Sen referred article 196 is a bar against a High Court judge practising in any court in India. Naturally therefore the question whether it would be possible to draw to the High Court Bench such talent as is necessary for the due administration of justice requires to be examined. We are accustomed to the present system. But we must see as to what kind of judiciary we are setting up by this Constitution. In the first instance, it is admitted on all hands that at the age of sixty most of the judges of the High Court—I do not say all—become unfit for further continuance on the Bench. If that is so, any further age limit prescribed by the Constitution would be a danger. The judges are not allowed to practise after retirement; otherwise during the last years of his tenure there may be temptation to so behave as to attract practice after retirement.

The question of pension has been referred to. I know that the pension given to judges is not adequate; but that is a matter that has to be considered by the legislature. The question therefore is restricted to talent which at 60 is sufficiently vigorous and whose services may be required for the country. The Constitution provides two avenues for judges who retire at sixty. The age of retirement of a Supreme Court Judge is sixty-five. The brilliant or the sound judges who are physically fit may have the opportunity to be appointed to the Supreme Court. There is also the provision of *ad hoc* judges in the High Court under article 200. Such of the judges who are physically and mentally fit after retirement can always be invited to administer justice under that article. Avenues therefore are open to those judges who are able to do their work after retirement. The difficulty, however, has been that, as experience has shown, in quite a large number of cases most of the judges becomes even before the age of sixty, not fit for their work. In the last year or two of their tenure on the Bench they are more of a handicap to the

administration of justice than otherwise. Therefore it is that the definite limit has been fixed at sixty. The scheme as a whole which has been adopted departs from the existing practice. Ultimately its success will depend upon whether the distinction and prestige of a High Court Judge is such as to attract talented people. Unfortunately in this country the tradition which prevails in England does not hold good. There, even for the ablest of practitioners with a very large amount of income, to be invited to the Bench is an honour and if the honour is twice offered by convention it could not be rejected. Even a lawyer like Justice Greene with one of the largest practices in the English Bar, when invited to be a judge, accepted the position. If we invest the High Court judges with the prestige which they enjoy in England, I am sure talent will be drawn to this office whether retirement is at sixty or sixty-five and whether the pension is meagre or adequate.

Shri Brajeshwar Prasad (Bihar: General): Sir, I am opposed to the fixation of any age limit for the High Court Judge. I feel that to say that after the age of sixty a judge becomes an imbecile and therefore he must retire is arbitrary. It should be left to the discretion of the President on the advice of the Governor and the Chief Justice to ask a judge to retire from the Bench. It is quite possible that even at the age of fifty he may not be in a position to discharge his functions efficiently and properly.

Sir, I feel that clause 2(a) which lays down the qualifications for a High Court Judge also ought to be omitted. It should be left to the discretion of the President to choose anybody he likes to be a judge of the High Court. This distrust of the President, the Governor and of the Chief Justice is not warranted by facts and experience. It is obvious that no judge will be appointed who is not a man of experience, who has not put in a practice of at least ten years in any court or who has not been in any judicial capacity as an officer for at least ten years. But there are cases of brilliant men who have not all these qualifications. After all, the creative period in a man's life centres round about the ages of 30-35. I do not see any reason why a young man should not become a judge of the high court.

I have another point to make. I oppose the amendment moved by Mr. Kamath. He wants that a judge should be removable on an address presented by the Lower House of the Provincial Legislature. I feel that when the provincial legislatures are reconstituted under adult franchise it will not be safe to vest such a power in the hands of the provincial legislature. Already passions and prejudices run very high in the provinces. Communalism and provincialism are rampant. Where there is political immaturity, a judgment passed by a judge is likely to be misconstrued and misinterpreted by political parties. Therefore, Sir, in the interests of efficiency, I feel that all power should be vested in the President and in the Parliament.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I have a few comments to offer. With regard to the amendment moved by Prof. Shibban Lal Saksena, I think there are some very good points in it. His amendment says that in appointing a Judge of a High Court in the States, the President shall consult the Chief Justice of India and such of the other Judges of the Supreme Court and of the High Court of the State concerned as the President may deem necessary for the purpose, and shall hold office until he attains the age of sixty. His proviso runs to this effect: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted. Sir, I find that this amendment is exactly on a par with article 103 which we have passed. Clause (2) of that article provides that every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts

[Mr. Naziruddin Ahmad]

in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years. The principle of consultation with the other Judges of the Supreme Court as well as with those Judges of the High Court as the President may deem necessary has already been accepted. This amendment is similar to clause (2) of article 103. In fact, this amendment is just an attempt to reconcile this article with the principle which we have already accepted. From a drafting point of view and also from the point of view of the necessity of consulting the other Judges of the High Courts, this amendment should be quite acceptable.

The second part of his amendment is that a distinguished jurist also can be appointed as a Judge of the High Court. In fact, we have adopted this in connection with article 103 which I have just mentioned. In sub-clause (c) of clause (3) of article 103 we have provided that a distinguished jurist can be appointed as a Judge of the Supreme Court. So the principles underlying the present amendment of Professor Saksena have already been accepted by the House.

With regard to the provision for compulsory retirement at sixty, I think this will not be a very good thing. I think longevity and effective age would increase in our country. Judges of the High Courts are not ordinary men. They are selected from the best legal talents and they have to keep in touch with legal literature. I do not think that a Judge would have spent his useful life at sixty. It is provided that he will retire at sixty unless he is appointed a Judge of the Supreme Court in which case he will retire at sixty five. He will not be able to plead before any court or before any authority after his retirement under article 196. The effect of fixing the age limit at sixty and article 196 would not be wholesome. In England there is of course a provision that a High Court Judge is not entitled to practise in any Court there. But there the age limit is seventy-two and then even after seventy-two distinguished Judges are appointed as Law Lords and they hold office as Members of the Judicial Committee of the House of Lords, as Lords in Appeal, etc., and they hold office for life. So they have a large span of useful life both as a Judge and later on as Law Lords. But after seventy-two they are working in an honorary capacity. There are these prospects before an English Judge but there is no prospect before an Indian Judge. After a Judge retires at sixty, he will be incapable of practising in any Court, practically incapable of holding any office under the Government because that would be wrong in principle. He will thus be a political untouchable of the worst type. I submit, Sir, that the age limit should be considered at a suitable opportunity whenever it comes. With these few words, I support the article with the amendments proposed by Professor Shibban Lal Saksena.

Shri H. V. Pataskar (Bombay: General): Sir, I wish to offer a few remarks only with respect to fixing the age limit for the retirement of a High Court Judge. In article 193, as it was drafted, it was fixed at sixty but there was a further provision that a Judge may hold office at such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State. Now, the general trend seems to be that this latter portion should be deleted from this article, and opinion seems to have gathered round the fact that we should fix the age limit at sixty. Under the Act of 1935 the age limit was fixed at sixty, and there was no provision for extension. Because there was no provision for extension the Drafting Committee has said in their note below this article on page 87 of the Draft Constitution that in view of the different conditions prevailing in different States, the Committee has added the underlined words in article 193 so as to enable the Legislature of each State to fix any age limit not exceeding sixty five years. At the time when this Draft was prepared, probably the Drafting

Committee was of the opinion that some provision should be made by which the age limit might be increased to sixty-five and they made it possible by adding the words "or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State". Subsequent to that, Sir, the Home Ministry made its own recommendations with respect to several provisions in the Draft Constitution. In their memorandum in this connection they said they were of the view that the normal age for retirement should be sixty for High Court Judges but that in exceptional circumstances the appointing authority may extend the service of an individual Judge of the High Court to a period not beyond the age of sixty-three and in the case of a judge of the Supreme Court not beyond the age of sixty-eight. They also say that experience has shown that most High Court Judges are well past the peak of their usefulness by the time they attain the age of sixty and an automatic extension of the age limit would not be in the public interest. Therefore they suggested that the President may extend the service of a High Court Judge for a maximum period of three years. That was their proposal. Now, Sir, the view seems to be that there should be no extension. My honourable Friend Mr. Munshi, who is also a member of the Drafting Committee, has said that towards the last year or two of their career most of the Judges are not able to work efficiently. Now Sir, this article is again connected with another article, *i.e.*, article 200. The original idea of the Drafting Committee was that the Legislature should extend this period; the Home Ministry stated that it must be left to the President in individual cases and now there is a provision in article 200 which says "Notwithstanding anything contained in this Chapter, the Chief Justice of a High Court may at any time, subject to the provisions of this article, request any person who had held the office of a judge of that court to sit and act as a judge of the court etc. etc." When a High Court Judge is to be made to retire at the age of sixty, I cannot understand the propriety of the Chief Justice of a High Court requesting a retired judge to come and fulfil the functions of a High Court Judge; and further if he comes, he can go on working as a High Court Judge with all the privileges, etc for an indefinite period. It really means that while we are laying down in article 193 that he must retire at the age of sixty without any question of extensions of an individual's career either by the President or by the Legislature, we are also laying down that the Chief Justice may call upon any person who has so retired to come and carry on the work of a High Court Judge and the view of the Home Ministry is that this right should be exercised by the President in individual cases. This is to my mind rather anomalous. Probably we have been landed in this difficulty by our hostility to the appointment of additional temporary judges, to which reference was made by my honourable Friend, Mr. K.M. Munshi. No doubt there have been cases in which people who have been appointed as temporary judges might have taken advantage of the fact that they happened to sit on the bench, but there are equally good instances of eminent people who have only worked as temporary Judges but who have subsequently taken no advantage of the fact that they were on the bench; it was not a matter of advantage to them, but was a matter of pecuniary and financial loss. I know of some persons who have worked as temporary judges and in their case, it cannot be said by any person whatsoever that they took advantage of their positions. All the same the present trend appears to be that there is a disinclination to the appointment of temporary judges for reasons which may be justifiable, but that has necessitated the fact that some arrangement must be made for clearing of arrears of work. Because judicial work might increase in any High Court and for various reasons we are against the appointment of temporary or additional judges, we have found it necessary to incorporate article 200. It seems to be intended that in such a case some retired judge may be called upon by the Chief Justice to attend to the arrears of old work or the disposal of new work. So far as the age limit of judges is concerned, while we are going to accept

[Shri H. V. Pataskar]

the recommendation of the Home Ministry that the President as the appointing authority should be authorised to extend the period of the High Court Judge, while we are also not giving power to Legislature for such extension, we are going to enable the Chief Justice to call upon any retired judge to come and work as a judge; it may be for two or three years. The result has been that while we provide in one article that he shall retire at the age of sixty, there in another article (200) by which any Chief Justice can call upon a retired judge to come and do the work of a High Court Judge. Thereby we are practically going to leave this question of extension of the work of a High Court Judge in the hands of the Chief Justice and as we know the Chief Justice may appoint a particular judge because he has been working for so many years and there may be so many reasons for which people will go on getting extension under this article 200. Therefore, I think that the whole question of the period of sixty years has been more confused than what it was before we took it up and it has undergone so many changes. The drafting Committee at one time thought that in individual cases there should be provision for extension of this period beyond sixty and they wanted it to be left to the Legislature. The Home Ministry had stated that it should be left to the President to decide in individual cases and in the final disposal of the matter it appears that we all determined that he must retire at the age of sixty. But by a kind of certain other reasoning and because we do not want any temporary or additional judges, we are again providing for this extension. Practically it will be easy for any High Court Judge to induce his Chief to say that there are a lot of arrears of work to be done and that he should be continued and there is no period even fixed for such extension. This is an anomaly which should be carefully attended to.

Mr. President : Dr. Ambedkar, do you wish to speak on this?

The Honourable Dr. B.R. Ambedkar : No, Sir. I do not think that any reply is called for.

Mr. President : The question is:

“That for clause (1) of article 193, the following be substituted:—

‘(1) Every Judge of a High Court shall be appointed by the President by a warrants under his hand and seal on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-three Years.’ ”

The amendment was negatived.

Mr. President : The question is:

“That for clause (1) of article 193, the following be substituted:

(1) ‘Every Judge of a High Court shall be appointed by the President by a warrants under his hand seal after consultation with the Chief Justice of India, and in the case of appointment of a judge other than a Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years.’ ”

The amendment was negatived.

Mr. President : The question is:

“That for amendment Nos. 2590, 2619, 2620 or 2621 of the List of Amendments, the following be substituted:—

(i) ‘That in clause (1) of article 193, for the words occurring after the words ‘Chief Justice of India’ to the end of the clause, the following be substituted:—

‘and such of the judges of the Supreme Court and of the High Court of the State concerned as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty years :

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted.'

- (ii) 'That after sub-clause (b) of clause (2) of article 193, the following new sub-clause be added:—
(c) is a distinguished jurist.' "

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2603 of the List of Amendments, in clause (1) of article 193 the words 'or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of the proviso to clause (1) of article 193, for the word 'Governor' the words 'Chief Justice of Bharat' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (b) of proviso to clause (1) of article 193 after the words 'Supreme Court' the words 'the State Legislature being substituted for Parliament in that article' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (c) of the proviso to clause (1) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of clause (2) of article 193, for the words 'in any State in or for which there is a High Court' the words 'in the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (2) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (b) of Explanation I to clause (2) of article 193, for the words 'in a State for the time being specified in Part I or Part II of the First Schedule' the words 'in the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (b) of Explanation I to clause (2) of article 193, for the words 'British India' the word 'India' be substituted.' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (2) of article 193, after the words 'in succession' the words 'or has been a pleader practising for at least twelve years' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (a) of Explanation I of clause (2) of article 193, after the words 'High Court' the words 'or has practised as a Pleader' be inserted, and for the words 'which a person' the words 'which such person' be substituted and the words 'or a pleader' be added at the end."

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (b) of Explanation I of clause (2) of article 193, after the words ‘First Schedule or’ the word ‘has’, be inserted, and after the word ‘Court’ wherever it occurs the words ‘or a pleader’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That Explanation II to clause (2) of article 193 be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That article 193, as amended, stand part of the Constitution.”

The motion was adopted.

Article 193. As amended, was added to the Constitution.

Mr. President : There is notice of an amendment that a new article, article 193-A be introduced, by Professor K.T. Shah, amendment No. 2624.

Prof. K.T. Shah : Mr. President, Sir I beg to move:

“That the following new article 193-A after article 193 be added:—

‘193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall be appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, consul, as well as of a Minister in the Government of India or under the Government of any State in the Union.’ ”

Sir, this is part of the principle which I have been trying to advocate, namely the complete separation and independence of the judiciary from the executive. One way by which the executive has tried in the past to tempt the highest judicial officers is by holding out the prospect of more dazzling places on the executive side which would be offered to those who were more convenient or amenable to their suggestions.

In this connection may I refer to the practice of the preceding Government. The then Government of India had a practice or convention by which, so far, at any rate, as the civilian Judges were concerned, at a very early stage in a civilian’s career, he was required to choose the executive or the judiciary side. Once the choice was made, generally speaking bifurcation remained complete. In those days the Executive and Judiciary were not as separate as we desire now; but even so this convention was in force. The transition, if any took place only at a higher level of High Court Judge and so on. The opportunities that that Government could offer being limited, the scope for this kind of influence upon the judiciary by the executive was also limited. In the new dispensation with full sovereign authority with us, the opportunities, the occasions, the number of offices which can be held out as a temptation to useful or convenient judicial officers of the highest level are very much greater, and therefore, the suggestion given in this amendment that it should be prohibited at least for people who have held any such high judicial office for not less than five years continuously. The possibility of establishing conventions or precedents which may serve in the place of a constitutional provision is also very difficult, especially in the years of transition through which we are just passing. For, any precedent now made or convention established may be regarded as an extraordinary thing under extraordinary circumstances and may not be binding. The provision is therefore suggested by this amendment that the Constitution itself should provide a power against any transition of judicial officers from a judicial post to an executive post of the kind mentioned in this amendment. The matter I take it is so-simple and the principle underlying it is so clear that there could be

no difference of opinion unless you desire your judiciary to be subservient or in any way influencible by the executive. I therefore commend the matter to the House.

Shri H. V. Kamath : Mr. President, I rise to support the amendment that has just been brought before the House by my Friend Professor Shah. The amendment seeks to subserve the cause of judicial independence and integrity. I believe Prof. Shah does not wish to debar retired Judges from aspiring to any office like that contemplated in this amendment, but this intention is that Judges in office, who are on the Supreme Court Bench or on other High Court Benches must be debarred from employment in the executive of the Government in any capacity whatsoever.

Dr. Bakshi Tek Chand : That is not the wording.

Shri H. V. Kamath : Yes, for five years. A judge can serve up to 65 years. Here the amendment seeks to lay down that a judge who has served for 5 years continuously should not be employed in any specified in this amendment. This is in my judgment a very healthy maxim. It has happened in many countries that a judge who has served for a term of 5 years or more has been shunted off to some executive job when his views or independence of mind and judgment became a little too hot for the Executive. I think it was President Roosevelt in the U.S.A.—I do not recollect the occasion when he tried this method but it was in the thirties of this century when he found that the views of some Judges of the Supreme Court were unpalatable, he tried to get over that by appointing more Judges, so that he might get the required majority for that particular measure that he wanted to push through. This is one of the methods—to increase the number of Judges who might favour a particular view. Because you will remember that the Supreme Court in our country will have to arbitrate and adjudicate upon disputes—constitutional disputes between the Centre and the Units as well as between unit and unit. The Executive is interested in many of these questions and it is very likely—more often than not—that a particular matter which is coming up before the Supreme Court may be such vital importance and interest to the President or the Executive that they might like the Supreme Court to give a particular decision upon that matter. They may find to their chagrin, to their discomfiture that the Supreme Court is not inclined that way and one of the methods may be to see that the inconvenient judges are shunted off to some less inconvenient positions. A Judge is after all human, and temptations such as Ambassadorships.

Pandit Thakur Das Bhargava (East Punjab: General): We are only discussing the High Court Judges under this Chapter.

Shri H. V. Kamath : I am sorry Pandit Bhargava has not read the amendment moved by Professor Shah. It relates to Supreme Court as well and as it has been moved in that form, I am entitled—I hope by your leave, Sir,—to speak with regard to judges mentioned in this particular amendment. If a judge aspires to or is made to feel that he can look forward to a job as an Ambassador, High Commissioner, Minister and things like that—he is human and after all we have our own weaknesses and it is human enough to suppose that he will not be above temptation that may be placed in his way by the Executive—that may, I submit, affect his judicial independence and integrity and I am sure none of us in this House desires that such a consequence should ensue. Our judges wherever they might be—in the States or in the Centre—must be models of Judicial independence, fearless in their judgments and action without fear or favour of the State authorities or the Central authorities. If about Judges in harness or in office a condition like this is not laid down, then it is likely that we may not find them as strong, as true, as we would like

[Shri H. V. Kamath]

then to be. I hope, however this bar will not apply to retired Judges. If they are competent for a particular job such as Ambassador, certainly they should be employed but for judges in harness I think it is very salutary that this House should lay down a principle of this nature—that so long as they are in service they should not aspire to any office in the Executive. I support the amendment moved by Professor Shah.

Prof. Shibban Lal Saksena : Sir, I also think that the amendment which Prof. Shah has moved deserves our careful attention. Some people might say that talent in this country at present is limited and if we lay down this provision, probably there might be dearth for appointments to these higher posts. But here we are framing a Constitution for the future of this country and it will not be only for a limited period but will last for a very long time and therefore a provision like this deserves our consideration. We have already laid down that Judges of the High Court shall not be allowed to practise after retirement at the bar in any Court. That of course is a very salutary provision and is very good but if the temptation of being appointed to other high positions after retirement is not removed, it will also be liable to be abused by the Executive or by any party in power and they may hold out such temptations which might affect the independence of the judiciary. I personally feel that the amendment is very salutary and healthy. Even though the language may have to be different I hope that somewhere in our Constitution the principle enunciated here will be embodied so that the judiciary may be above temptation and nobody may be able to influence it.

Mr. President : Dr. Ambedkar, do you wish to say anything about Prof. Shah's motion?

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I regret that I cannot accept this amendment by Prof. Shah. If I understood Prof. Shah correctly, he said that the underlying object of his amendment was to secure or rather give effect to the theory of separation between the judiciary and the executive. I do not think there is any dispute that there should be separation between the Executive and the Judiciary and in fact all the articles relating to the High Court as well as the Supreme Court have prominently kept that object in mind. But the question that arises is this: how is this going to bring about a separation of the judiciary and the executive. So far as I understand the doctrine of the separation of the judiciary from the executive, it means that while a person is holding a judicial office he must not hold any post which involves executive power; similarly, while a person is holding an executive office he must not simultaneously hold a judicial office. But this amendment deals with quite a different proposition so far as I am able to see it. It lays down what office a person who has been a member of the judiciary shall hold after he has put in a certain number of years in the service of the judiciary. That raises quite a different problem in my judgment. It raises the same problem which we might consider in regard to the Public Service Commission as to whether a Member of the Public Service Commission after having served his term of office should be entitled to any office thereafter or not. It seems to me that the position of the members of the judiciary stands on a different footing from that of the Members of the Public Service Commission. The Members of the Public Service Commission are, as I said on an earlier occasion, intimately connected with the executive with regard to appointments to Administrative Services. The judiciary to a very large extent is not concerned with the executive: it is concerned with the adjudication of the rights of the

people and to some extent of the rights of the Government of India and the Units as such. To a large extent it would be concerned in my judgment with the rights of the people themselves in which the government of the day can hardly have any interest at all. Consequently the opportunity for the executive to influence the judiciary is very small and it seems to me that purely for a theoretical reason to disqualify people from holding other offices is to carry the thing too far. We must remember that the provisions that we are making for our judiciary are not, from the point of view of the persons holding the office, of a very satisfactory character. We are asking them to quit office at sixty while in England a person now can hold office up to seventy years. It must also be remembered that in the United States practically an office in the Supreme Court is a life tenure, so that the question of a person seeking another office after retirement can very seldom arise either in the United States or in Great Britain.

Similarly, in the United States, so far as pension is concerned, the pension of a Supreme Court Judge is the same as his salary: there is no distinction whatsoever between the two. In England also pension, so far as I understand, is something like seventy or eighty per cent. of the salary which the Judges get. Our rules, as I said, regarding retirement impose a burden upon a man inasmuch as they require him to retire at sixty. Our rules of pension are again so stringent that we provide practically a very meagre pension. Having regard to these circumstances I think the amendment proposed by Prof. K. T. Shah is both unnecessary for the purpose he has in mind, namely of securing separation of the judiciary from the executive, and also from the point of view that it places too many burdens on the members who accept a post in the judiciary.

Shri H. V. Kamath : May I say that this amendment applies not to retired Judges but to Judges serving on the bench at the moment?

The Honourable Dr. B. R. Ambedkar : If I may say so, the amendment seems to be very confused. It says that it shall apply to a person who has served "for a period of five years continuously". That means if the President appointed a Judge for less than five years he would not be subject to this, which would defeat the very purpose that Prof. K. T. Shah has in mind. It would perfectly be open to the President in any particular case to appoint a Judge for a short period of less than five years and reward him by any post such as that of Ambassador or Consul or Trade Commissioner, etc. The whole thing seems to me quite ill-conceived.

Mr. President : The question is:

"That the following new article 193-A after article 193 be added:

'193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall be appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, Consul, as well as of a Minister in the Government of India or under the Government of any State in the Union.'

The amendment was negatived.

Article 194

Mr. President : The question is:

"That article 194 stand part of the Constitution."

The motion was adopted.

Article 194 was added to the Constitution.

Article 195

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

“That in article 195 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

It is a very formal amendment.

Mr. President : The question is:

“That in article 195 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 195, as amended, stand part of the Constitution.”

The motion was adopted.

Article 195, as amended, was added to the Constitution.

Article 196

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

“That for article 196, the following article be substituted:—

‘196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority by a person who held office as a judge of a High Court before any authority within the territory of India.’ ”

It is simply a rewording of the same.

(Amendments Nos. 87 and 2627 to 2631 were not moved.)

Shri Prabhu Dayal Himatsingka : In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

(Amendments Nos. 2633 to 2637 were not moved.)

Sardar Hukam Singh : (East Punjab: Sikh): Sir, I beg to move:

“That in article 196, for the words ‘within the territory of India’ the words ‘within the jurisdiction of that High Court’ be substituted.”

It is not necessary for me, Sir, to make a speech as the amendment is self explanatory.

Shri H. V. Kamath : Sir, article 196 has now been brought in an amended form before the House by the Chairman of the Drafting Committee. To my mind even the amended article imposes too sweeping a restriction on persons who have held office as judges of high courts. We had visualised that a person could be appointed as a high court judge either for a long tenure or a very short tenure too. I suppose the amendment that has been moved by Dr. Ambedkar does not do away with the possibility of a person acting or holding office as a high court judge for a few months. Suppose a person has held office as a high court judge for a few months, six or nine months, do we seek to impose a restriction upon him, a man who has acted as a temporary judge for a short time? Do we seek to debar him from pleading or practising not merely in any court but even before any authority within the territory of India? It passes my comprehension why a person who has sat on the high court bench for a short while should not be allowed to appear before any court or authority within the whole of India. There would have been some meaning, as my Friend Sardar Hukam Singh has suggested, if the judge was precluded from appearing

either in that High Court where he held office or within the jurisdiction or within that territory of the Indian Union, where the High Court held sway and jurisdiction,—what I mean to say is, in that high court or in courts or authorities subordinate to that High Court in which he held office as a judge. But to my mind this sweeping constitutional prohibition is unwarranted and, may I say, undemocratic. I am inclined to support the amendment of my Friend Sardar Hukam Singh and I hope that it will receive some serious consideration at the hands of the House, and the article amended accordingly.

Prof. Shibban Lal Saksena : Sir, I am very much surprised at the speech of my honourable Friend Mr. Kamath on this article. This article deserves whole hearted support. In fact I should have thought that the words “after the commencement of this Constitution” should be deleted. I do not see why it should remain there. Everybody who has been a judge should be debarred from practising. The prohibition which you want to impose now has a very salutary reason behind it. In fact in Britain nobody who has been on the bench can practise at the Bar. It is a very well known principle. It is also well known that once when Lord Birkenhead and some others wanted to revert to the Bar, public opinion was so vehemently against it that they did not dare to carry out their resolve and practise. You may ask why should it be so. First of all, the dignity of the High Court demands that an ex-judge should not come back to the Bar. A High Court Judge may not have much money but his dignity is far greater than that of anyone else. So if he comes back to the Bar he would bring down the dignity of his office. It is for that reason that a man who has been a High Court Judge should not revert to his practice at the Bar. I would go even further. I would even say that those who have been ministers of justice should not be allowed to practise at the Bar. I have seen some advocates who have been ministers of justice going back to the Bar thus bringing down the dignity of their office. Probably during office they cultivated especial relations with the Chief Justice and other judges as they knew they might have to revert to the Bar. This should not be permitted.

It has been said that temporary judges should not be debarred from practice. I hope that articles 198 and 199 would be so amended that there will no more be any temporary judges in our high courts and everybody who is on the bench will be there, once he is appointed, for the period the constitution allows him to be there. So the question of temporary judges not being debarred from practice does not arise. It is therefore a very salutary provision that a man who has once been on the bench should not come back to the Bar. I may be asked what are the practical reasons against it. First of all, a man who has been on the Bench and wants to come back to the Bar would always be thinking of the possibility of getting more clients. The clients will be attracted towards such a man and that will be unfair to his colleagues at the Bar. He may also try to develop contacts. It will not be very healthy when back to the Bar he may influence clients by saying that the Chief Justice is his friend. For these reasons I think a retired High Court Judge should not be permitted to resume practice. He should not even be permitted to practice in other High Courts. I agree that he should be given full pension, a sum almost equal to his salary so that he may maintain the dignity of the office which he once held. To enable a man to maintain his dignity and independence it is necessary that we must provide him full pension, seeing that we are not permitting him to revert to the Bar or seek other appointments which will interfere with his dignity and independence.

I am thankful to Dr. Ambedkar for the amendment he has moved. I only wish to remove the words ‘after the commencement of the Constitution.’ My object is that even those who have been judges before the commencement of the Constitution should not be allowed to revert to practice at the Bar.

Shri Mahavir Tyagi (United Provinces: General): Mr. President, I may be pardoned for venturing to give expression to my views on this issue. I am a layman and as such it may seem somewhat presumptuous that I should talk on academic matters concerning law. At another occasion, Dr. Ambedkar had objected to my saying that my feelings were such and such. He insisted that I should express my opinions and not feelings. It seems with literary men opinions vary with their feelings. To me feelings and opinion mean the same thing. I submit that in the case of judges of the High Court or of the Supreme Court, the seats that they occupy are the seats of God. It is so said in the villages. The villagers say: 'The seat of Justice is the seat of God'. The highest ambition of a man in any country therefore is to occupy the seat which is attributed to God. It has a great sanctity about it. Justice, in fact, does not depend on law. It is very strange that the British have created in the minds of people a sort of misgiving about justice. People have been made to think that a true interpretation of law is real justice. It is not so. In fact justice is an eternal truth; it is much to above law. At present what the lawyers do is to shackle the free flow of godly justice. Sir, the language used in the previous article is such that there is a possibility of laymen having godly qualities being appointed as justices. Why should we always have lawyers as judges? I do not know. Why should we presuppose that in future lawyers only will occupy the seats of judges? The provision for the appointment of judges says that the President, in consultation with the Chief Justice will appoint them. Why should we take it that a judge shall always be a graduate in law? I think there is a good possibility of persons, who are otherwise fully qualified to administer justice, occupying the posts of judges and attain the highest ambition of their life. It is wrong to think that the moment a non-lawyer is appointed a judge the dignity attributed to that post will be gone. My belief is that laymen would not only add to the dignity of this seat, but they would also make it more sacrosanct. If after retirement from this high office, its occupants were allowed to aspire for wordly wealth after doing the work of God, after imparting justice, they would stultify both the office and themselves. Sir, let me confess, I am opposed to the very profession of lawyers. They do not create any values or wealth. They attain knowledge of law and put their talents to auction or hire. Sir, if lawyers were appointed as judges and after retirement they were also permitted to carry on their legal practice in courts, the result would be that they would stultify the great office of 'Justice'; they would use these offices as spiring boards or ladders to build much more lucrative practice after retirement. I therefore submit that lawyers should not be permitted to have any practice in a court of law when they revert from the Bench. Sir, I am anxious that I should put in my views about the present manner of imparting Justice. I am afraid I am going slightly off the track. But I may be given this concession.

Mr. President : I am glad that the honourable Member has realised that he is going off the track.

Shri Mahavir Tyagi : You are also a lawyer and Sir, you will pardon me when I say that they stultify real justice, because they want to make God's justice flow through the artificial channels of law made by man. That is all what the lawyers do. Real justice is not bound by any shackles of law or argument. According to the practice of British jurisprudence justice is given only to the man who can engage a clever lawyer, because the realities are not taken into account. A judge is unfit to try a case if he has a personal knowledge about the incident. Unless he comes forward and gives evidence as a witness and is cross-examined, his knowledge of the facts of a case counts for nothing.

The present conception of justice does not appeal to me. The law courts at the present time are the nucleus and the fountain spring of all corruption, dishonesty and lies, and therefore the seats of judges are no more the seats of God in India. In our future set-up we should see to it that our courts achieve their old past glory and be not enslaved and dominated by "Law". Justice is a fact and Law a mere fiction. Justice is a reality and Law is only a mode of its expression. Let the man who is once appointed a judge, live a life of truthful glory. Once a judge, always a Judge. He must be content with his pension after retirement. If lawyers are ever appointed as judges they should not revert to practice because it is certain that if they do so they will use their posts as ladders for more practice.

I support the original proposition.

Shri B. M. Gupte (Bombay: General): Sir, I concur with my Friend Mr. Kamath in that this proviso is far too wide and drastic for our acceptance. According to the present situation the retired High Court judges are not allowed to practise in that High Court and in the courts subordinate to it. There is no further prohibition than that. I want to ask, what is our experience? Why do you want this change? Has this provision disclosed any defects? Has it brought forward any evil? If it has not, I do not see why there should be a change at all. Is the Bar flooded by retired judges? No, nothing of the sort has happened and can happen because success at the Bar is not so easy a thing that anybody can try his hand at it. The question of dignity may perhaps arise. I can understand that a man who has occupied the Bench should not in that very court set up practice. But apart from that, is it a fact that today no decent-minded person is prepared to accept the position of a High Court Judge because the proposed prohibition is not there? On the contrary the prestige of the post is so high that very able lawyers are prepared to accept it and aspire for it. I therefore submit that the answer to this question is again an emphatic 'No'. Then the point may arise that perhaps the retired Judge may exercise undue influence in the court. To that extent I concede that the ban should extend to all the subordinate courts throughout the territory. But that does not mean that he should be prevented from coming to the Supreme Court. Supreme Court is in no way subordinate to any High Court. He should also not be prevented from practising in other High Court. Therefore I submit there is no reason why we should make a departure from the existing practice.

I may be told the practice in England warrants the introduction of the innovation now being made. But, I ask, why go to England or America or Russia when we have got our own experience to work upon? I submit that the change is not warranted by the experience that we have already got. I am not saying that this change is merely unnecessary; it is undesirable. We have already been informed by the Drafting Committee in their foot-note to article 193 that: 'The result is that the best men from the Bar often refuse appointments on the Bench because under the existing age-limit of sixty years they would not have time to earn a full pension'. So, because of that age-limit, the best men are not coming. That is admitted by the Drafting Committee. Then the Committee has proposed that the salaries and pensions may be reduced. I quite understand Shri Mahavir Tyagi when he says that if pensions are sufficient as in England, the question does not arise. But there is a definite proposal by the Drafting Committee itself to reduce salaries. I am not prepared to say that it should be accepted. But there is that proposal for reduction of salaries and on top of that comes this prohibition that they shall not practise anywhere. What would be the cumulative effect of all these things? I submit the result will be that the best of men in the High Court Bar or mufassal Bar would not be prepared to accept the appointment. I am not urging this in the interests of the top men. They can take care

[Shri B. M. Gupte]

of themselves. They need no sympathy or pity from us. They would have their flourishing practice. But what would be the result of the whole thing on the independence of our judiciary? That is the problem. In the absence of top men, we shall have to choose men of lower calibre and men who have failed at the Bar will be raised to the Bench. Or otherwise practically the entire High Court will be manned by District Judges and Subordinate Judges. I put it to you whether it is a desirable position. We have all along been clamouring for the independence of the judiciary, but that cannot be achieved by merely laying down that a Judge shall not be removed from office except after an address by the Houses of the Legislature or by providing that their salaries and allowances are chargeable to the revenues of the State. The independence of the judiciary can be achieved only by making their conditions of employment such that men of really independent spirit would be attracted to those posts. I do submit that independent rising men would not be attracted if we make the prohibition so sweeping. I may be told that Sir Tej Bahadur Sapru was in favour of this provision. It may be. Sapru's is an honoured name and his views are entitled to our respectful consideration; but it does not mean that we should follow his views blindly irrespective of the merits of the case. To do that would be to bestow on him posthumously the position of a dictator, which he himself would have detested.

Mr. President : No Member who has supported this proposition has brought in the name of Sir Tej Bahadur Sapru. The honourable Member brings in his name and starts criticising his supposed opinion. I think it is not right.

Shri B. M. Gupte : Sir, I am anticipating an argument. Any way I would only submit, Sir, that we should consider all the relevant argument in favour of this proposal. And if we do that, the conclusion would be that the proposed provision is not such as would attract the proper men at the top to these very important position. I therefore submit that it is worth considering whether we should retain it in the form in which it has been put.

An Honourable Member : The question be now put.

Mr. President : I notice that about half a dozen Members still want to speak on this. I have noticed that in discussing the articles relating to the Supreme Court and the High Courts there is a tendency to prolong the discussion even where discussion is not required. I would ask Members not to have discussion for discussion's sake, as I feel in some cases we are having. I think we had better proceed with the voting on this article. Both points of view have been placed before the House.

The question is:

“That the question be now put.”

The motion was adopted.

Shri Prabhu Dayal Himatsingka : I want to draw the attention of the honourable the mover to amendment No. 2627 which says that no person who has held office as a Judge of a High Court shall be entitled to practice before any court. There are a number of temporary Judges in many High Courts at the present moment. As soon as this Constitution comes into being....

Mr. President : I am going to take the vote and you start speaking.

(Some honourable Members rose to speak.)

Mr. President : I will put the closure motion again.

The question is:

“That the question be now put.”

The motion was adopted.

Mr. President : Dr. Ambedkar do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh's amendment to the vote. If that is accepted, Dr. Ambedkar's amendment will stand amended by this.

The question is:

"That in article 196, for the words 'within the territory of India' the words 'within the jurisdiction of that High Court' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for article 196, the following article be substituted:—

'196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.'"

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.

The amendment was adopted.

Mr. President : The question is:

"Article 196, as amended, stand part of the Constitution."

The motion was adopted.

Article 196, as amended, was added to the Constitution.

Article 196-A

(Amendment No. 2639 was not moved.)

Mr. President : A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr. B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article (No. 103-A) was held over.

Mr. President : I agree. This article will then stand over.

Article 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.

Mr. President : I agree, this article also is held over.

Article 198

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

"That for article 198, the following article be substituted:—

'198. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other judges of the court, as the President, may appoint for the purpose.' "

Temporary appointment of Acting Chief Justice.

(Amendment No. 2649 was not moved.)

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by Dr. Ambedkar because it relates to clause (2).

[Shri T. T. Krishnamachari]

Dr. Ambedkar's amendment is substantially the same; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amendment.

(Amendments Nos. 2651, 2652 and 2653 were not moved.)

Mr. President : The question is:

"That for article 198, the following article be substituted:—

'198. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other judges of the court as the President, may appoint for the purpose.'

Temporary appointment of Acting Chief Justice.

The motion was adopted.

Mr. President : The question is:

"That article 198, as amended, stand part of the Constitution."

The motion was adopted.

Article 198, as amended was added to the Constitution.

Article 199

Mr. President : There are some amendments which want the article to be deleted. I do not take them as amendments. Amendment No. 2656 is one of a drafting nature.

Mr. President : The question is:

"That article 199 stand part of the Constitution."

The motion was negatived.

Article 199 was deleted from the Constitution.

Article 200

(Amendment No. 2657 was not moved.)

Shri Jaspal Roy Kapoor (United Provinces : General) : Mr. President, Sir, I beg to move:

"That in article 200, for the words 'The Chief Justice of a High Court' the words 'The President' be substituted."

To this amendment, Sir, I beg to move another amendment and that is this:

"That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The article, when amended would read thus:—

"Notwithstanding anything contained in this Chapter the Chief Justice of a High Court may at any time, with the previous consent of the President request any person who has held the office of a Judge of that court to sit and act as a judge of the court and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court."

Prof. Shibban Lal Saksena : Do you drop the proviso?

Shri Jaspal Roy Kapoor : I have not come to that yet. It is not necessary for me to read it. I only want to deal with amendments for the time being to the first para of article 200. I will come to the question of deletion of the proviso later on.

Sir, under this article a retired Judge of the High Court is liable to be called back to sit on the Bench of the High Court if the Chief Justice thinks that it is necessary for him to call such a judge back. Now recalling a retired judge to sit again on the Bench of the High Court virtually amounts to a new appointment, though it may be only for the time being and since the President is the appointing authority, I think it is only proper and advisable that before such a request is made by the Chief Justice to any retired High Court Judge, the previous consent of the President must be obtained. The words that appear in this article, as it stands at present, are:

“That the Chief Justice of a High Court may at any time request any person.....”

without of course, any reference to the President. That does not seem to be proper. I think, therefore, Sir, that my amendment needs being accepted so that no retired judge may be called back without the express consent of the President taken in advance. Now, Sir, there is another amendment of which I have given notice and it reads thus:—

“That with reference to amendments Nos. 2658 and 2659 of the List of Amendments, in article 200, the proviso be deleted.”

“The proviso is: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of the court unless he consents so to do.”

I do not desire to formally move this amendment, but I do certainly wish Dr. Ambedkar to consider as to whether it is really necessary that this proviso should be retained at all. To me it appears, Sir, that this proviso is not only redundant, but it also does not appear to be a dignified one. It is redundant in this way. It seems to presume that the Chief Justice of a High Court would request a retired High Court Judge to come back and serve on the Bench without having previously consulted the retired Judge that is going to be requested. We should presume that the Chief Justice would be acting as a prudent man of ordinary common sense and he would certainly not make a request to a person only to get a ‘no’ from him. He would certainly take the retired Judge into confidence, ask him whether he is prepared to come back to the Bench and perform certain duties, and then alone he would approach the President to obtain his consent. In this view, Sir, I think this proviso is absolutely unnecessary. It does not look dignified to have this proviso here because it means that a request would be made by the Chief Justice and thereafter it would be open to the retired Judge to say, ‘no’. Of course, it is always open to a retired Judge to express his inability to accede to the request. Once a request having been made to him and thereafter to ask whether he is prepared to accede to the request or not looks like putting the cart before the horse. Therefore, this proviso is both unnecessary and gives a rather undignified appearance to this article.

Again, I have given notice of an amendment which is No. 212 in List III which runs thus:—

“The term ‘privileges’ shall not include the right to draw salary.”

I am not moving this amendment even formally. But I would very much like the Honourable Dr. Ambedkar to make it plain on the floor of this House whether the term ‘privileges’ does or does not include the right to draw salary. I believe, Sir, it is not the intention of the Drafting Committee that a retired Judge of the High Court when called back to serve on the Bench of the High Court should be given again the salary which a permanent judge of the High Court is entitled to. I believe, it is not their intention. But I certainly wish that no ambiguity in regard to this matter should be left and it should not be open to interpret this term later on as meaning that salary also is due to the Judges

[Shri Jaspat Roy Kapoor]

who are called back after retirement. If the term were to include the right to draw salary, it only nullifies one of the previous articles which we have just passed laying down that a Judge shall retire at the age of sixty, because under this article, even after retirement at the age of sixty, a Judge can be called back even though he may be sixty-one, sixty-two, or seventy-five; if the Chief Justice or the President so like, they can call back a retired Judge even after the age of sixty and enable him to continue to sit on the Bench of the High Court for any number of years and give him even the full salary that a permanent Judge of the High Court is entitled to. That would be a position that we should not be prepared to accept. It is to be said that the President and the Chief Justice should be relied upon and that they would never like to circumvent a previous article which we have just passed, I would say, when we are framing a Constitution and when we are framing it in such an elaborate and detailed manner, we should not leave these things merely to the good sense of the Chief Justice or the President, but make a definite provision for everything. My purpose, of course, would be amply served if the Honourable Dr. Ambedkar makes it plain today that the word 'privileges' does not include the right to draw salary.

Mr. President : There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

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

“That in article 200, the words ‘subject to the provisions of this article’ be omitted.”

Mr. President : Two amendments have been moved. Does anybody wish to speak?

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, article 200 lays down the manner in which a retired High Court Judge can be asked to come back and perform the duties of a Judge temporarily. It says that it is the Chief Justice of that High Court who would request him to come and sit on the Bench. If he agrees, then, of course, he will be appointed for the time being. There is an amendment by my honourable Friend Mr. Jaspat Roy Kapoor which says that instead of the Chief Justice of that Court calling him, the President of the Union should do it. I think there is very little difference between the two, whether it is the Chief Justice or the President who should make the request. But I personally think in a matter like this where a retired Judge, who was appointed when he was appointed by the President of the Union and who is a man known to the Chief Justice, is being called back, there is no reason why in a matter of day-to-day administration, we should ask the President to perform this task. The Chief Justice knows every retired judge, the merits of each of the judges. I submit that this amendment of Mr. Jaspat Roy Kapoor is not right and therefore I oppose it. I think the article as it stands may be accepted and it is the Chief Justice who should make the request and not the President.

Shri Rohini Kumar Chaudhari (Assam: General) : Mr. President, Sir, I welcome this article as amended by my honourable Friend Mr. Jaspat Roy Kapoor. I fully endorse the remarks which have been made by him so far as the deletion of the proviso is concerned. I consider this proviso is absolutely meaningless and redundant. A request from the Chief Justice does not stand in the place of any command from a Sovereign and a request when it is made by the Chief Justice should not be treated as such. Everybody knows it. After all a request is a request. That is to say, when a Chief Justice makes a request to one of his ex-colleagues that request does not have the force of a command, and nobody would consider it disloyal if he does not comply with

that request. I am inclined to think there will be hardly any occasion when such a request will be disregarded. If the *ex*-Judge is not prevented by illness or some other serious reason, he is bound to accept that position with alacrity. We have seen how District Magistrates after retirement have scrambled for the position of honorary magistrates. Therefore, it is not very easy to imagine a position when an *ex*-Judge would refuse to hold the position temporarily or where he would be unwilling to accept that position without very strong reason.

I consider that article 200 as it stands amended by my honourable Friend Mr. Jaspat Roy Kapoor helps us a good deal. That helps us to get out of the hole which the amendment of my honourable Friend Dr. Ambedkar has put us in today. According to the amendment of Dr. Ambedkar, anyone who has held office as a Judge even for a single day will be disqualified from practising in any court in India; that is to say he will absolutely find himself out of employment, unless the Government is pleased to appoint him as an Ambassador or as a Minister Plenipotentiary or the finds his way through election and becomes a minister of some State, because the amendment which was moved by Prof. Shah has not been accepted by this House. The Chief Justice or a Judge of any Court even after retirement can look forward to the position of an Ambassador or High Commissioner or Minister or any other similar executive office. I do not understand why a Judge who has been sitting as Judge for five years and who has—so to speak—acquired the judicial habit—how can he be called upon to accept the position of a High Commissioner or that of an Ambassador is more than I can grasp.

Mr. President : The honourable Member is now discussing a proposition which we have already disposed of.

Shri Rohini Kumar Chaudhari : I am only talking of the position which has been created after the rejection of the amendment of Professor Shah and after the acceptance of the Honourable Dr. Ambedkar. The only solution which can relieve us of that position is the present article 200 which enables us to make provision for employment of *ex*-Judges, who have left the service at a fairly good age. He is fit to hold the responsible position of Minister or High Commissioner or Ambassador and still he is not in a position to practice in any Court in India, and the only help you can render to that man who had fortunately or unfortunately been selected as High Court Judge and held that position for one year or so is that his plight should be borne in mind by the Chief Justices of the different High Courts that whenever any opportunity occurs of providing any employment for such *ex*-Judges, they should be remembered and they should be requested to render service. Therefore I welcome this provision because in this method there is no limit of age; if only the Chief Justices of different High Courts in India will only bear in mind their *ex*-colleagues and try to provide for them in every opportunity, then the question of finding employment for *ex*-Judges gets solved to some extent at least.

I also wanted to mention another fact which require clarification, *viz.*, whether these *ex*-Judges who will be requested to sit as Judge will get any emolument. The article says that they will be given privileges of a High Court Judge. Whether the word 'privileges' includes also salaries or emoluments or remuneration, I want to know whether they will be honorary Judges or whether they will be stipendiary Judges, whether they will be merely content with the privileges of a High Court Judge which are of different variety or whether they will also be in the same status as the other Judges of the same Bench and whether they will get any salary or not, and whether there can be any limit of the term of their office or whether they can be requested to hold the office for any term exceeding two years, because in one of the articles I find that it was intended that in no case a temporary Judge should be appointed in this manner for more than two years. This is a point which requires clarification. I also want to know what designation they will have, whether

[Shri Rohini Kumar Chaudhari]

they will be called Judge of the High Court or not for the term in which they are working, but the article says they will not be deemed to be Judge of that Court for any other purpose excepting for sitting as a Judge. What will be their designation, will they form the personnel of the Judges of that High Court or they will have no designation and be merely requested to work for seven or eight days temporarily? I hope Dr. Ambedkar will clarify these two points, *viz.*, what will be their designation, what will be their salary, if any, and what would be the term of their office.

Dr. Bakshi Tek Chand : Mr. President, Sir, I had no intention of taking part in the debate on this article, if it had not been for the speeches which have been made by Shri Jaspat Roy Kapoor and Shri Rohini Kumar Chaudhari. It seems to me that the whole purpose and object of introducing article 200 in the Constitution has been misunderstood. It has been thought that this article is intended to nullify the article which has been passed already by the House that the Judges of the High Courts shall retire compulsorily at the age of 60. It is supposed that a Chief Justice of a High Court, acting under the powers given to him in article 200, may ask a retired Judge who is his friend or favourite to come and join the Court and may keep him there for any length of time. Mr. Chaudhari's suspicions are that this period may be two years or longer, that is to say, a Judge who has retired at the age of 60 may two years later, when he is 62, be recalled and may be asked to work again for a year or two or a longer period. Surely, if that is the underlying idea, there is a great deal in what the honourable Members have said. But if I may say so with great respect, that is not the intention of this article and that could not have been the intention of the Drafting Committee.

Pandit Thakur Das Bhargava : The question is whether this article is susceptible of this interpretation or not.

Dr. Bakshi Tek Chand : This article has been introduced in order to make it possible for the Chief Justice to introduce here the practice which has been in vogue in England and U.S.A. for a very long time. There, retired Judges are not invited to come back and become regular members of the Court even for 6 months or 8 months. It is only for decision of a particular case, or a group of cases of difficulty and importance, where it is thought that the ripe experience and expert knowledge of persons who had retired but who are still available in the realm will be very helpful, that their services may be requisitioned by the Chief Justice for assistance. In England a retired Judge when he is asked to do so, receives no salary at all. He gets only a small allowance, which used to be 2 guineas a day *plus* conveyance expenses—something like the Rs. 45 a day which the Members of this House receive when they sit in the House. It is considered derogatory to the position of a retired Judge to be re-employed as a regular member of the Court for six months or for a longer period and it will be very improper—indeed, it is inconceivable—that the Chief Justice of the Court will resort to this method of having his own “favourites” back on the Bench in order to get a particular decision in a case when he finds that his other colleagues do not take the particular view that he takes. Such a thing is unthinkable. Certainly, that could not be the object of enacting article 20. In England, eminent Judges—*e.g.* Lord Darling to be asked at the age of 82 to come and sit for a particular case or group of cases, in which difficult questions of law had arisen and it was thought necessary to have the benefit of his talent and expert knowledge in that branch of law. After deciding the particular case or cases the Judges go back to their retirement. They come to London, stay there for a short time, receive this meagre allowance to meet hotel charges. About ten years ago they used to get two guineas a day *plus* taxi expenses, which used to come to twelve shillings a day that is Rs. 30 to Rs. 40 a day and no more.

It is considered a compliment by the Judge also, that the Chief Justice thinks that though he is retire, his talent will be of assistance in deciding cases. He therefore ungrudgingly placed his services at the disposal of the court. It is the Lord Chancellor who invites Members to sit in the Judicial Committee and it is the Chief Justice who asks the assistance of retired Judges in the High Court. I take it that that is the intention and all suspicions and fears, which have been expressed, are unfounded. Similarly it will be undesirable that when arrears pile up the Chief Justice should invite a retired judge at the age of 63, or 65, or 67 or more to come back to clear off these arrears. This would be very derogatory to the retired Judge and very improper for the Chief Justice to do so. If such a Judge is not to receive an allowance, then it will be introducing a system of having 'Honorary' Judges of the High Court, something like glorified Honorary Magistrates with all the attendant evils, of the system. That is not the intention. It could never have been the object of introducing this article in the constitution. The idea is to introduce in India the time-honoured practice which has been in vogue in England and U.S.A. for many many years and which is resorted to very rarely-once or twice a year for a period of a few weeks or so to decide a particular case or set of cases of every great difficulty and importance. That is what the article contemplates. I therefore submit that the article, as drafted, should be passed without any amendments and Members should have no apprehensions of the kind that have been expressed.

Shri H. V. Kamath : Mr. President, I desire to sound a note of caution. I am afraid that this article, if we adopt it in its present form incorporating the amendment of Dr. Ambedkar, or my Friend Mr. Kapoor, might entail unpalatable consequences at some time, consequences to my mind other than those which the wise men assembled here have intended. I am not aware from which written constitution of the world this article has been borrowed. In this article, neither the circumstances under which certain judges can act, nor the time during which they should sit has been mentioned. My learned Friend Dr. Bakshi Tek Chand, has stated that a judge will not be employed merely to dispose of accumulated arrears. I agree with him that it would be derogatory to the dignity of a High Court Judge to be called upon to dispose of some arrears. If that be not the case, then for what purpose will his talents be utilised? Obviously to my mind there is only one other category of cases, and that might be important cases involving issues of vital constitutional importance—issues that might arise between the Centre and the units, or between different units. Here as I stated earlier, it may be that the Executive may like to have a decision in a particular fashion and we have already decided here in this Assembly that the Judiciary shall not be completely separate from the Executive. We might take steps some time or other, but.

Dr. P. S. Deshmukh : May I point out that this section refers to the High Court and not to the Supreme Court?

Shri H. V. Kamath : We have laid down that the Judiciary will not be independent of the Executive and so long as that is so, there is no obviating the possibility or no guarantee against the judiciary being the handmaid of the executive: or if that is too strong a word, the judiciary kowtowing to the executive, not on all occasions but on some occasions, now that the House has not accepted Prof. Shah's suggestion that the plums of executive office should not be open to judges in office. So there is no guarantee that the judiciary will be actuated by a sense of the completest integrity and independence.

Dr. Ambedkar has moved another amendment seeking that the power of appointing the High Court Judges or the acting Judge of the High Court should be divided between the Chief Justice and the President. The Chief Justice

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shall consult the President. It may be making assurance doubly sure that the right man will be called in. But we are not always sure—in fact none of us here can be sure—about the calibre of the men who will be filling these exalted offices and becoming the high dignitaries of our State in future. So long as the constitution does not ensure the separation of the judiciary from the executive, nor its independence, if the President is inclined to meddle in the judiciary, or is inclined to see that the judiciary. Kowtows to his will, or his subservient to his will, or is the handmaid of the executive, then the President will on certain issues dictate to the Chief Justice. But it is also quite likely that in effect the President will tell the Chief Justice to do such and such.....

Mr. President : Article 107, which we have already adopted relating to similar judges being invited to the Supreme Court is in exactly the same wording as this article, and all this argument now seems to me to be beside the point.

Shri H. V. Kamath : Have we incorporated this amendment about the President?

Mr. President : Yes.

Shri H. V. Kamath : I thought it was not there. I thought this was a new amendment, inserting the President in connexion with the appointment of acting Judges to the High Court. I should therefore submit so far as the High Court is concerned, if it is not merely to dispose of accumulated arrears then it must be to deal with certain cases which may involve technical or constitutional issues. In that event, I feel that the Chief Justice, so far as the acting Judges are concerned, is the competent authority and he need not consult the President at all. So far as the acting period is concerned, Dr. Bakshi Tek Chand has mentioned four, five or six weeks, and he has mentioned the case of Justice Darling. There was another great Judge, Justice Haldane. But such judges are rare and I hope that this system of appointing acting judges will not occur in our country.

Mr. President : The word “appointment” does not occur in the article at all. It is not an appointment but a request for particular occasions.

Shri H. V. Kamath : The article says that he acts as a Judge of the high court. It may not be technically an appointment.

Dr. Bakshi Tek Chand : He has to “act” because he has to decide cases.

An Honourable Member : He is not an acting judge.

Shri H. V. Kamath : He is an acting judge certainly. He acts as a judge of the high court, and is certainly an acting Judge of the High Court. Let us not do hair-splitting here.

To my mind when it is a case of a small period of ten days or a fortnight, as Dr. Bakshi Tek Chand told us, I do not see why the President should come into the picture at all. The Chief Justice is competent enough to ask any judge to dispose of any cases for the time being. The President, to my mind, need not come in, and the Chief Justice should be entrusted with the task of requesting a retired judge to act as a judge on any particular occasion.

Lastly, Sir, the proviso is absolutely meaningless, purposeless, redundant and superfluous. I do not know why the wise men of the Drafting Committee thought fit to incorporate the proviso here. It must have been in a fit of, may I say, adding a little verbiage to the constitution. No person can be compelled to do this work, unless you are going to enforce a system of *begar* in the country. We have done away with *begar* and I suppose, so far as the judges are concerned too, we shall not enforce *begar*. If the judge agrees to work he will

comply with the request of the Chief Justice. The proviso is therefore absolutely meaningless and pointless, and I hope the wise men of the Drafting Committee will see their way to delete the proviso.

Prof. Shibban Lal Saksena : It has been said in the note to this clause that the employment of retired judges follows the practice in the U. K. and the U.S.A. That has been said in defence of retaining the section. In the U.S.A., as has been pointed out by the Chairman of the Drafting Committee himself the judges get a pension almost equal to their salary and in England they get a pension equal to 80 per cent of the salary which they drew as judges. If after retirement they are called to the Bench, it is not a matter of monetary gain to them, it is only a matter of distinction and of duty done for the state. I give my conditional support to this clause. If we also lay down that the retired judges of the High Court shall get as pension the full salary which they were getting when in office or at least 80 per cent of it as they do in England, then judges will not try to seek the favour of the Chief Justice so that they may be called back by him to the Bench. My friend, Bakshi Tek Chand, said that this is only for particular occasions and for particular periods but the wording of the article does not warrant this. Under article 189 we should not have any additional or temporary judges. It is quite possible that there may be arrears and this may be a device to be adopted by the Chief Judges to recall retired judges and ask them to dispose of the arrears. The article does not say that the men requested shall not continue to act for two or three years. In fact I feel that this is calling back judges by the back door. I should have personally preferred a higher age of retirement for judges, sixty-six for High Courts and seventy for the Supreme Court. We could then have said that these judges will not have to be recalled. You retire them at sixty and then call them back. It only means that you are throwing open possibilities of nepotism and favouritism. The judges will be inclined to see that they do not get on the wrong side of the Chief Justice with the result that they will have no chance of recall. My suggestion is firstly, that the pension of the judges should be almost equal or 80 per cent. of their salary when in office and secondly, that they shall be called only in particular cases and for a stated period. They shall not be acting judges brought in by the back door.

The Honourable Dr. B. R. Ambedkar : Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar article has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked me certain definite questions, I am here to reply to him.

My friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the footnote itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath). In fact, if I may say so, article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like 200. As the House will recall we have now eliminated altogether any provision for the appointment of temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have been eliminated from the Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with

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respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of court. We do not want such penalties to be created against a retired High Court Judge who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word 'privilege' in article 200 will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post minus the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the pension rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the point of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United States?

The Honourable Dr. B. R. Ambedkar : I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor : May I know whether it is the intention that the interpretation of the term 'privileges' should be left to the Parliament?

The Honourable Dr. B. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that the word 'privilege' may be determined and defined.

Shri Jaspat Roy Kapoor : But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary.

Mr. President : Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

The question is:

“That in article 200 after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

The amendment was adopted.

Mr. President : I will not put to the House amendment No. 2659.

The question is:

“That is article 200, the words, ‘subject to the provisions of this article’ be omitted.”

The amendment was adopted.

Mr. President : Now the question is:

“That article 200, as amended, stand part of the Constitution.”

The motion was adopted.

Article 200, as amended, was added to the Constitution.

Article 201

Mr. President : There are no amendments to article 201. If nobody wants to speak on it, I will put it to vote.

The question is:

“That article 201 stand part of the Constitution.”

The motion was adopted.

Article 201 was added to the Constitution.

Article 202

Mr. President : Article 202 is now for discussion.

Shri H. V. Kamath : Mr. President, I move:

“That in clause (1) of article 202, for the words ‘to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warrantis* and *certiorari*’ the words ‘to issue such directions or orders as it may consider necessary or appropriate’, and for the words ‘and for any other purpose’ the words ‘or for any other purpose’ be substituted respectively.”

If amendment No. 2660 were accepted, clause (1) of article 202 will read as follows :—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue such directions or orders as it may consider necessary or appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution or for any other purpose.”

The second part is purely verbal but I think this change is necessary. The clause as it stands relates both to the enforcement of the rights conferred by Part III and for any other purpose. If the word ‘or’ is substituted for the word ‘and’, it would make the meaning quite clear, that is to say, that the High Court has power to issue orders not merely when both are affected but on either ground. I think there should be no difficulty in the way of the House accepting this second part of the amendment. I sent in two separate amendments and that is why I am speaking about them separately.

As regards the first part of the amendment, I believe that in the interests of brevity, not however, at the expense of precision or clarity, we can omit the mention of the various writs. The courts should be competent to issue whatever

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orders or writs that may be necessary for the enforcement of any of the rights enumerated in Part III, *i.e.* Fundamental Rights. By omitting the mention of these writs, the meaning of the clause would not be affected adversely in any manner. We have already stated in Part III, article 25, the writs that can be issued for the enforcement of the various fundamental rights. I remember that there was an amendment accepted by Dr. Ambedkar and the House on that occasion which slightly modified it by saying that the Supreme Court shall have powers to issue orders or writs including writs in the nature of *habeas corpus*, etc., or something to that effect; but in any case I believe that this clause, as it stands, is loaded with unnecessary and useless verbiage. The High Court Judges know what particular writs or orders or directions should be issued in particular cases. We need not lay down in the Constitution what particular writs or orders may be appropriate on particular occasions. The passage of time and the evolution of case law may bring to birth decrees or writs of some other nature. Why should we bind the High Courts to these particular writs mentioned in this clause? The verbal amendment substituting the word 'or' for the word 'and' will make the meaning clearer. Sir, I move.

Dr. Bakshi Tek Chand : Mr. President, Sir, I formally move:

"That in clause (1) of article 202, before the words 'in the nature of' the words 'including those' be inserted."

There is another amendment which I would like to move with your permission as an amendment to this amendment, which is of a verbal character and will clarify the position. This amendment to amendment reads as follows:—

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

This amendment to amendment brings the phraseology of this article in line with that of article 115 which we have already passed in regard to the Supreme Court, and also of article 25, where similar powers are given to the Supreme Court in respect of the Fundamental Rights. This amendment is, therefore, purely of a verbal character and I would ask the House to accept it. In doing so, I may make one or two observations with regard to the remarks made by my Friend, Mr. Kamath. He suggests that it is not necessary to enumerate or specifically mention in the article the writs of *habeas corpus*, *mandamus*, *prohibition quo warranto and certiorari*. With great respect, I entirely differ with my honourable Friend. It is, in my opinion, very necessary that these writs should be mentioned by name. We have done so with regard to the Fundamental Rights in article 25 and we have also mentioned them in connection with the Supreme Court in article 115; and for the reasons for which these writs were specifically mentioned in these articles, they should be mentioned here also. These are the writs which, I may remind the House, have been among the greatest safeguards that the British judicial system has provided for upholding the rights and liberties of the people, and it is very necessary that they should be incorporated in our Constitution. At present High Courts which are not Presidency High Courts, *viz.*, the High Courts of Allahabad, East Punjab, Patna, Nagpur, Orissa, Assam, etc. have not got any of these powers. The writ of *certiorari* cannot be issued by any of these High Courts. Even in the provinces of Bengal, Bombay and Madras, this particular writ can be issued only within the limits of their respective ordinary original jurisdiction. For instance, in the province of Madras, if a particular proceeding is pending in the court of Trichinopoly or Madura, the High Court in Madras has got on jurisdiction to issue a writ. It is only in regard to cases coming from the city of Madras and a few miles around that the High Court has got this power. Outside these limits, it had got this power only with regard to European subjects. The reason for this was that the jurisdiction of these

High Courts was supposed to be derived from the Charters of the Supreme Courts which had been established in these provinces during the time of the East India Company by charters issued by the King of England, and it was said that their jurisdiction was limited only to the Presidency towns or to subjects of British extraction wherever they are found. In the new Constitution it is intended to give the power to issue these writs to every High Court, and will be exercised throughout the territories within its jurisdiction, and in order to put matters beyond doubt, it is necessary that these writs be specifically mentioned. Sir, we all know that the writ of *habeas corpus* is, the most important of these writs. With regard to this writ, until section 491 was added to the Code of Criminal Procedure, there was no power to issue this writ in the High Courts of Allahabad, Patna, Lahore and Nagpur. Section 491 gave this power to these High Courts only partially. Recently, before the East Punjab High Court the question arose whether the powers and procedures of the High Court under section 491 were co-extensive with the powers and procedure of the High Courts of England in this matter. As you know, Sir, if a writ is refused by one Judge, the party can move a second Judge, and in succession, a third Judge or a fourth Judge and so on, until he has exhausted all the Judges. In the East Punjab High Court the question was raised some six or eight months ago whether a party had a similar right to go to each Judge in succession, and it was held that this cannot be done, because they have not got the same powers as the High Courts of England to issue writs of *habeas corpus*. The power of non-Presidency High Court in India is derived from section 491 and under it you can apply for a writ only once. This will illustrate as to why it is very necessary that these writs should be mentioned by name so that there be left no ambiguity that the power and the procedure prevailing in England is to be followed here. I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

Mr. President : Dr. Ambedkar, do you wish to move amendment No. 2663?

The Honourable Dr. B. R. Ambedkar : No, Sir, I accept Bakshi Tek Chand's amendment. I do not think that any reply is necessary.

Shri H. V. Kamath : There has been an amendment to substitute "or" for "and".

The Honourable Dr. B. R. Ambedkar : There is no difference as to the substance of the article.

Shri H. V. Kamath : It makes a difference as to the meaning.

Mr. President : The question is:

"That in clause (1) of article 202, for the words 'to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*' the words 'to issue such directions or orders as it may consider necessary or appropriate', be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 202, for the words 'and for any other purpose', the words 'or for any other purpose' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 202, as amended, stand part of the Constitution."

The motion was adopted.

Article 202, as amended, was added to the Constitution.

Article 203

The Honourable Dr. B. R. Ambedkar : Sir, I wish that article 203 be held over.

Mr. President : Article 203 is held over.

Article 203-A

(Amendment No. 2673 was not moved.)

Article 204

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

“That in article 204, for the word ‘shall’ the word ‘may’ be substituted.”

The amended article would read thus:

“If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it may withdraw the case to itself dispose of the same.

Explanation.—In this article, ‘High Court’ includes a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

Mr. President : It may withdraw the case to itself.

Prof. K. T. Shah : I do not wish that the withdrawal of the case must be compulsory or mandatory, but some discretion must be left, and the case may be withdrawn if the judge so decides, but not necessarily, as this article requires him to do as a clear compulsion on the judge to ask the case to be withdrawn.

There may be points of law, or even other issues involved; and in the absence of specific reasons or grounds on which you make it mandatory for him to withdraw the case, I think it would as well to make it permissive, and allow the case to be withdrawn if the judge so chooses, but not as a matter of necessary obligation. Had there been grounds stated, *viz.*, in the following events or in the case of any political or other factor being involved, then it would be compulsory to so withdraw, I would not have objected to the article as it stands. The substitution of “may” for “shall” will really help the courts of justice rather than hinder them. I therefore commend my amendment for the acceptance of the House.

Mr. Mohd. Tahir : Sir, I beg to move:

“That in article 204, after the words ‘it shall’ the words ‘after taking the opinion of such court in writing’ be inserted.”

If the amendment is accepted, the clause will read thus :

“If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall after taking the opinion of such court in writing, withdraw the case to itself and dispose of the same.

I have moved this amendment, Sir, because if any question of interpretation of this Constitution arises in any subordinate court, there can be no objection to such a matter being disposed of by the High Court after the case is withdrawn if such questions to arise in subordinate courts. I think it is better that the opinion of such court in writing should be obtained so far as the interpretation of such matter is involved in that court, because in many cases we find that the High Courts do agree with the judgments of the subordinate courts. Therefore, Sir, it does not mean that the subordinate courts are not in a position to

give their opinion so far as the constitutional matter is concerned, because they are not given this power to dispose of such matter the case has to be withdrawn by the High Court and when they are going to withdraw such matters, it is not only desirable but reasonable that the opinion of such subordinate courts where the questions of interpretation of constitution do arise should be taken before it is disposed of by the High Courts. With these few words, Sir, I move my amendment.

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

“That the explanation to article 204 be omitted.”

Sir, it is unnecessary.

Dr. Bakshi Tek Chand : Sir, I wish to say a few words in opposing the amendments which have been moved by Prof. K.T. Shah and Mr. Mohd. Tahir. The Amendment of Prof. Shah is to the effect that the word “may” be substituted for the word “shall” in the first part of article 204. If this amendment is accepted, then the whole of this article 204 will become unnecessary, as both under Section 24 of the Civil Procedure Code, and 526 of the Criminal Procedure Code the High Court has the power to withdraw in its discretion, any civil or criminal cases pending in any court subordinate to itself. The reason for inserting the word “shall” in article 204 is to make it obligatory on the High Court to withdraw the case, provided it is satisfied that the case pending in the Subordinate court involves a substantial question of law as to the interpretation of this Constitution. If the High Court is satisfied that such a question is involved, it shall withdraw the case to itself and dispose of the same. It is very necessary that all questions relating to the interpretation of the Constitution should be decided as early as possible. A case in a subordinate court may last for a year or two or more. Then, there may be an appeal to the District Judge and the case may come in the first or second appeal to the High Court after a very long time. In the meantime, the important question of constitutional law will remain unsettled. This will be very undesirable, indeed.

The second reason in this. There should be an authoritative decision on these questions by the highest court in the province at the earliest possible date. Otherwise, a particular point may be involved in a case pending in one district; the same point may be involved in three or four other cases pending in other districts and there may be contradictory decisions by these various subordinate courts, and this will result in great confusion. In order to ensure a speedy decision of important constitutional questions, and at the same time to see that an authoritative decision is given on those points by the highest court in the province, it is necessary that the word ‘shall’ should remain. It was with this object that this special provision is sought to be incorporated in the Constitution Questions relating to the interpretation of the Constitution are likely to arise soon after the Constitution comes into force. For that reason alone it is necessary that speedy and authoritative decisions should be given. From such a decision of the High Court, an appeal may, if necessary, be taken to the Supreme Court and the matter finally decided for the whole country. It is therefore, desirable to make a provision with regard to this in the Constitution.

The other amendment moved by Mr. Tahir, is that the opinion of the court in which the case is pending should be taken in writing. I do not know what useful purpose will be served by taking the opinion of the subordinate court on these points. It should be borne in mind that the article does not lay down that every case in which a question of law as to the interpretation of the Constitution is involved will automatically be transferred to the High Court. There are two very important conditions which must be fulfilled. One is that the question involved must be a substantial question of law as to the interpretation of this Constitution, and not every question involving such interpretation, even if it

[Dr. Bakshi Tek Chand]

arises incidentally or collaterally. It should be a question of importance which goes to the very root of the case. Even then, it is not necessary that the case will be transferred to the High Court. The words of the article are that "the High Court is satisfied." The High Court shall examine the matter when it comes to its notice. If the Judges are satisfied that the question involved is a substantial question of law as to the interpretation of this Constitution, only in that case, will the case be withdrawn to the file of the High Court. Why it is necessary in such a case to obtain the opinion of the Subordinate Judge before coming to the High Court? This amendment will have the effect of delaying the decision of the point and of holding up the proceedings unnecessarily. I submit, therefore, that the article as drafted should be accepted with the amendment moved by Dr. Ambedkar, that the Explanation be deleted. That amendment is necessitated because, the explanation originally made this article applicable only to the provincial High Courts. Now, as in the new setup, the High Courts of the Indian States are being brought in line with the provincial High Courts, the Explanation has become unnecessary. The article, without the Explanation, contains a very important and salutary provision and should be accepted.

Shri L. Krishnaswami Bharathi : (Madras: General): Mr. President, Sir, I have only a small suggestion to make to Dr. Ambedkar. This article is very necessary. When a High Court is satisfied that a substantial question of law as to the interpretation of this Constitution is involved, it should certainly withdraw that case and decide it. But as the article reads, the High Court shall withdraw the case to itself and dispose of the same. It is for the Drafting Committee to consider whether it is necessary to withdraw the whole case and dispose the same. There may be many cases in the Munsiff's courts where this question may be raised. In my view, it is not quite necessary for the High Court to withdraw the whole case and try the case itself. It is quite enough that it may decide this question relating to the interpretation of the Constitution and then refer it back to the particular court to dispose of the case in conformity with the decision given regarding the interpretation of the Constitution. We have made a similar provision with reference to the Supreme Court. The Supreme Court is not bound, whenever there is mention of a question of interpretation of the Constitution, to refer it to a Full Bench of five Judges. If they are satisfied that it is a substantial question, they may refer it to a Fuller Court, get their opinion and thereafter the original court will decide the case in conformity with the opinion so given. Therefore, I think it may quite suffice if we say, it shall withdraw the question to itself. The High Court need not to be bound to dispose of the case. It may be very difficult for the High Court to be disposing of all manner of cases. For instance, in an injunction suit, the question may arise. It is not necessary for the High Court to try the whole case. I would therefore wish that the High Court may only withdraw the question relating to the interpretation of the Constitution and then refer it back to the original court to dispose of the case in conformity with the opinion so given. I leave it to Dr. Ambedkar to decide this matter.

Mr. Tajamul Husain : Mr. President, Sir, the High Court has got an inherent power to call for the record of any case and dispose of it. Article 204 says that the High Court shall, if there is any substantial question of law as to the interpretation of this Constitution involved in the case, call for record of the case and dispose of the case. My honourable Friend, Prof. Shah, wants that instead of the word 'shall' it should be 'may'. If you want to have the word 'may', the inherent power is already there and according to the inherent power, if there is a substantial question of law, or no point of law at all, it can call for the record and dispose of the case. Therefore, the word 'may' does not

help us at all. This point has been dealt with very thoroughly by my honourable Friend Dr. Bakshi Tek Chand and I do not wish to repeat the arguments. The only thing that I wish to say is this. Suppose a substantial question of law is involved, according to Professor Shah, the High Court may call for the record or it may not. It is not incumbent on the High Court to call for the record. Suppose, the High Court does not call for the record, look at the waste of time. By the time a case is decided in the subordinate court and goes to the High Court, it may take three or four years. Also look at the amount of expenses that will be incurred in the lower court as well as in the appellate court. Apart from that, a very important point of law will be pending and nobody will know what the decision is going to be. The sooner a substantial question of law is decided by the High Court, the better it is. Therefore, I oppose the amendment moved by Professor Shah.

As regards the amendment moved by Mr. Mohd. Tahir, he says that the opinion of the subordinate court should be taken. It always happens that in every case that the High Court calls for record, it takes the opinion of the lower court. It is absolutely unnecessary and redundant to have these words here. With these words, I oppose this amendment also.

The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

Mr. President : I want to dispose of this article before we rise. It is already twelve.

The Honourable Dr. B. R. Ambedkar : I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

Mr. President : Then I do not think there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

The Honourable Dr. B. R. Ambedkar : With regard to the observations made by my Friend Mr. Bharathi . . .

Shri H. V. Kamath : Sir, you have called upon me to speak, I shall not take more than 2 or 3 minutes. Shall I speak now to tomorrow?

Mr. President : Tomorrow.

The House now stands adjourned till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Wednesday the 8th June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 8th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Shri B. Das (Orissa : General) : Sir, may I know whether the House is sitting tomorrow or not?

Mr. President : I understand it is a public holiday.

Shri B. Das : Republican as I am I do not like a holiday on the English King's birth day.

Mr. President : You are free not to attend any functions.

Shri T. T. Krishnamachari (Madras : General) : Are we working on Saturday as a compensation for tomorrow's holiday?

Mr. President : I have no objection if the House has none.

Shri R. K. Sidhwa (C. P. & Berar : General) : We have some other Committee meetings on Saturday.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We have already fixed so many other engagements for Saturday.

Mr. President : It seems the Members are not willing to sit on Saturday.

Shri T. T. Krishnamachari : It has to be remembered that the taxpayer has to pay Rs. 45 to each Member for every day spent here.

Shri Mahavir Tyagi (United Provinces : General) : If we sit on Saturday the King will feel that he is hoodwinked by us !

Article 204—(Contd.)

Mr. President : We shall not take up the discussion of article 204.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I would like to move an amendment to article 204. I mentioned that I would have to consider the position; I have since considered it and I would like to move the amendment. Sir, with your permission I move :

“That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article be substituted :

‘204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- (a) either dispose of the case itself, or

[The Honourable Dr. B. R. Ambedkar]

- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.' ”

That is the amendment. If you like, Sir, I will speak something about it now. But I would rather reserve my remarks to the end to save time instead of speaking twice.

Mr. President : Just as you please.

Shri H. V. Kamath (C.P. & Berar : General) Mr. President, at the outset let me say that this article comes at the fag end of a long series of articles dealing with various procedural matters. In the first place, I am at a loss to understand why our Constitution has to be cumbered with so many rules of procedure. I have gone through various constitutions of the world and I find that no constitutional precedent supplied by our secretariat contains so many rules of procedure relating to High Courts or the Supreme Court. Yesterday also I raised his point as to why Article 200 should find a place in the Constitution. But Dr. Ambedkar twitted me with a facile gibe that I had not read the Draft Constitution. I gladly concede this to him, if it is a debating point that gives him pleasure, and I will freely admit that I have not perhaps read the Draft Constitution with the same care that he has done. But may I point out to him that the point I raised was quite different? As is sometimes usual with him he, however, evaded my question and gave a different answer. I had definitely and explicitly asked him whether articles of this nature had been incorporated in any written constitution of any of the countries of the world. Dr. Ambedkar pointed out to the foot-note and twitted me by saying that I had not read the Draft Constitution. I have read it with some care though not with the same care as he has done. When I went home last evening took up the various constitutions of the world and went through all of them. I found to my surprise that so many rules of procedure as we have tried to provide here.....

Mr. President : Are you replaying to yesterday's debate?

Shri H. V. Kamath : I am trying to show that this article need not be incorporated in the Constitution itself like so many other articles.

Mr. President : Then you may confine yourself to this point and not reply to something that happened yesterday.

Shri H. V. Kamath : I am more or less in a quandary. The other day you were good enough to tell us that you would not encourage the practice of asking questions of Dr. Ambedkar when he was speaking; and if you would not let us clarify our position at a later stage in connection with another article we are in a fix.

Now I will come to article 204. Because it is on a par with the articles that we have adopted already, dealing with procedural matters, I thought I could say something germane to the article in question by reference to the previous articles.

Dr. Bakhshi Tek Chand yesterday expounded saying that it shall be obligatory on the High Court to dispose of cases involving substantial questions of law. So, now, I suppose, there is no dispute so far as this matter is concerned : that is to say, that wherever cases involving substantial questions of law are pending in a subordinate court, the High Court shall withdraw such cases.

Mr. President : Relating to the interpretation of the Constitution and not merely a question of law.

Shri H. V. Kamath : Yes, Sir, that is so. The High Court shall be bound to withdraw such cases it itself. The amendment which was moved by Prof. Shah, and which stands in my name as well, sought to make it discretionary with the High Court. My Friend, Mr. Bharathi, raised a very pertinent point, which I thought my amendment would more or less indicate, if not completely cover. Mr. Bharathi cogently argued that if the High Court were to *dispose* of all these cases that come up before a subordinate court, involving substantial questions of law as to the interpretation of the Constitution, the High Court might become burdened with hundreds and thousands of cases and it would become perhaps more a court of original jurisdiction than appellate jurisdiction. To take only one instance, we have a whole chapter on Fundamental Rights—the third chapter—and when that was being discussed in the House, the criticism was frequently voiced here that we were creating more or less a paradise for lawyers with every article containing provisos restricting the freedoms and rights conferred by the article—the article conferring a right or freedom with one hand and the proviso taking it away with the other. I am afraid that when courts are moved for enforcement of these rights, substantial questions of law as to the interpretation of the Constitution are very likely to arise, because there are so many loopholes and so many provisos provided that ingenious lawyers are bound to take advantage of them—I do not say unfair advantage but fair advantage—and try to raise questions of law as to the interpretation of these articles in the Constitution. Therefore, I suggested through my amendment seeking to substitute the word “may” for the word “shall”, that the High Court being a very competent body—we do not differ on that point—must be left to decide which question should be considered to be a substantial question of law as to the interpretation of the Constitution, and if it thinks it necessary to dispose of it itself, it should withdraw the case and dispose of it accordingly. Otherwise, the High Court can send it back to the subordinate court and ask it to dispose of that case and if the parties are aggrieved by the decision of the subordinate court there is the avenue of appeal and the High Court will sit as an appellate authority on that question.

With regard to the amendment of Dr. Ambedkar, I find that the first of the amendment is to the effect that the High Court, if it feels that a question of law is involved as to the interpretation of the Constitution, the High Court may dispose of the case itself. So I think, with a view to avoiding needless verbiage and wordy padding, the word “may” should be substituted leaving it to the High Court entirely to deal with the matter as it likes. I therefore feel that the amendment seeking to substitute the word “may” for the word “shall” will serve the purpose in most cases.

One last point. This article is silent on the point as to whether the reference to the High Court as regards a case involving substantial questions of law as to the interpretation of the Constitution should be made by the subordinate court itself or by the parties concerned. If the parties make the reference and invite the attention of the High Court, there is no difficulty. But if we intend that the subordinate court itself, when it entertains a case of this nature involving a substantial question of law, must invite the attention of the High Court and send the case to the High Court for a decision, then we must make the article clearer and we should say that it shall be the duty of the subordinate court to refer to the High Court a case pending before it, involving a substantial question of law as to the interpretation of this Constitution. But if we leave it to the parties, then this question does not arise. I hope Dr. Ambedkar or Mr. Munshi will throw some light on this point when either of them answers the debate. I personally feel that the simple word “may” for “shall” should meet the requirements of the article.

Prof. Shibban Lal Saksena (United Provinces : General) : The criticism which my Friend, Mr. Kamath made that this article is an article of detail and should not have found a place in this Constitution applies to most part of this Constitution. We have framed a Constitution which is a detailed Constitution, and therefore to complain now at this stage and try to chop off some portions of it will interfere with the whole scheme of things. That is something that we cannot help now.

The question raised in this article is an important one. We have provided in article 110 that all questions as to the interpretation of the Constitution shall be referred to the Supreme Court and the Supreme Court shall decide them. Therefore, if some cases involves such a question of law, it is only proper that the question regarding the Constitution should be settled first by the High Court and if the parties want to go in appeal against the order of the High Court, by the Supreme Court. Otherwise, the whole case will have to be gone through in the Lower Court, the appellate court and the Supreme Court and the expenditure will be very heavy. It is much better that when a case involves a question of the interpretation of the Constitution, this should be resolved first by the High Court and if an appeal is preferred, then by the Supreme Court. After that it remains as to who will decide the case.

The amendment moved by Dr. Ambedkar provides that the High Court may either withdraw the case to its own file or it may refer it back to the Lower Court to resolve it. I think this is a good compromise. Personally, I feel that it would be much better if such a case was originally filed in the High Court. This will mean that the litigants will not be first put to the expense of filing the case in the Lower Court and then in the High Court. I think the original case should be filed in the High Court and the High Court could, after resolving the constitutional point, send the case to the Lower Court. If there is a big case—and there have been such cases in the past, such as the Taiji case of Poona—I feel that it should be disposed of not by the High Court but by the original court. Such a case should be originally filed in the High Court and it should first decide the question of constitutional law and then decide whether it should take the case on its own file or send it to the original court. This will be fair to the litigants and the people at large.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I wish to say a few words on this article. I feel that article 204 will lead to many practical difficulties. In fact it may be mentioned that a question of interpretation of the Constitution may be raised in a petty case in a Munsif's or a Magistrate's Court. The provision is that as soon as it is known to the High Court that a question of the interpretation of the Constitution is raised, it must withdraw the case to itself and decide the question of such interpretation. The matter is not so simple as that. The question of interpretation of Constitution might depend upon the determination of facts in a particular case. It may be that a question is raised in the written statement which on the examination of witnesses and a decision on facts may no longer arise. So it may be premature for the High Court to interfere and give a decision on the interpretation of the Constitution. The question may arise in an appeal or a motion or even in the midst of a jury trial in a Sessions case. The hearing must stop and the High Court must decide the question and the case must be adjourned. After decision by the High Court, a new jury will have to be called. Endless complications will arise.

Then again, supposing the High Court withdraws the case for the interpretation of the Constitution and after its decision it goes back for determination of facts. The trial is resumed and the Court gives its finding on the facts. I would ask what would happen to a man who is dissatisfied with the preliminary

judgment of the High Court? Will he go to the Supreme Court on appeal or will he wait till the facts are decided by the original court? These are complications which the article will give rise to.

Then again, as soon as the Court or the jury, after the preliminary decision by the High Court, tries the case, is his decision open to appeal? Also, may I know whether the decision given by the High Court on the interpretation of the Constitution is subject to appeal? Will the decision of the High Court be deemed to be a decision by the trial Court or deemed to be a decision by the High Court? In the meantime the trial Court will be in a great difficulty as to what to do. The question of transfer must not depend upon a mere interpretation of the Constitution. There is no charm in a law involving interpretation of the Constitution. The vast majority of questions of law do not involve interpretation of the Constitution. The article does not say that only difficult or intricate questions of interpretation of the Constitution will be the criterion of transfer. I submit that at least it should be so limited to difficult and important questions. It may be that the question of interpretation of the Constitution that is raised is easy or extremely frivolous or unimportant. If every case must be taken up by the High Court merely because there is a contention that an interpretation of the Constitution is involved some way, it will be flooded with all sorts of petty cases. It will again paralyse the administration of justice in the *mofussil*. I submit therefore that the best thing to do would be to delete the clause altogether. The clause will lead to endless complications. I may also mention that the High Court has already got unfettered power to transfer to itself or to any other Court any case pending in a subordinate Court under section 24 of the Civil Procedure Code and also under section 528 of the Criminal Procedure Code. Of course the question of interpretation of the Constitution may sometimes be important and may concern the interests of the territory of India as a whole. In such cases the High Court may in its discretion transfer the case to itself or to any other Court without difficulty. As all questions of law are ordinarily interpreted by the lower Courts the question of interpretation of the Constitution in ordinary cases may likewise be left to be dealt with by them. This sort of artificial division of labour will otherwise lead to difficulties. There is a section in the existing Government of India Act 1935, from which I think this idea has been taken. But many important features of that section have been departed from and I think it would be better to refer to that section now. That is section 225 of that Act. That section says :

“225. (1) If on an application made in accordance with the provisions of this section High Court is satisfied that a case pending in an inferior Court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made except in relation to Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.”

One can understand a provision of this kind, namely, a decision which involves the declaration of the validity of an Act. Such question would involve questions of general importance affecting the public at large. In such circumstances the High Court must transfer the case to itself on the application of the Advocate-General of India or the Advocate-General of a province. That is a thing which is necessary and desirable. The application of the Advocate-General of India or of a province is a guarantee of its importance. Such cases would be rare. But the present clause gives the High Court no discretion whatever. It is bound to withdraw the case. It is going too far to say that even petty cases involving the pettiest interpretation of the Constitution should be transferred to, and decided by, the High Court. I need not go into these matters in greater detail. I submit that the clause should be withdrawn and if any provision is found necessary it

[Mr. Naziruddin Ahmad]

should be made on the lines of section, 225, of the Government of India Act, 1935. That is something which can be accepted. Even if we have this clause in this amended from complications will arise. It may be that in some cases the parties may be poor and if the High Court withdraws such cases to itself, it may have to give a decision *ex parte*. It will be extremely unfair, even in cases of interpretation of the Constitution, that decision should be given *ex parte* and the party put in an embarrassing position. As I have submitted, an application of a law or its interpretation may depend on questions of fact. If it is a question of fact, first of all the decision on facts should be given before taking up the question of the interpretation of the Constitution. Otherwise it will be like putting the cart before the horse. I submit that in these circumstances the clause should be withdrawn.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I have given notice of two amendments, one of which was in respect of the substitution of the word 'may' for the word 'shall' and the other was about the deletion of the clause. Now, Sir, I am convinced that this clause ought not to be passed at all, and knowing as I do the merits of the amendment which has been moved, I still stick to the opinion that it will not be fair to pass the article. The clause, reads :

"If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case....."

In fact, the Supreme Court is the final authority in matters like these. Logically therefore if the interpretation of the Constitution is the sole monopoly of any court, it is that of the Supreme Court. The High Court does not come in at all. In my humble submission, so far as the administration of law in this country for the last one hundred years or more is concerned, all courts have possessed the right of interpreting the Constitution and I do not think that there is any question of principle involved in withdrawing this jurisdiction from the ordinary courts. On the contrary I think that our entire Constitution is based upon the idea that every court is competent to decide this question. I know that in certain countries, there are different courts for dealing with the constitution, for dealing with the administration etc. In France, for example, there are *droit* administrative courts and other courts. In India, we have courts which are competent to decide each and every question. In fact, my complaint is that we are seeking to depart from the fundamental principles of the administration of justice as it has been and will be vogue till this proposed amendment will come into force. I deprecate the principle of pecuniary jurisdiction and special jurisdiction courts. How can one justify the wrong principle that if the dispute involves greater amounts, then the court dealing with it should have greater jurisdiction and should be more competent? I think this is a very pernicious principle. We have guaranteed equal opportunities and equality before the law to every person in this country and it is but meet that we should see that every litigant in this country gets full justice in the most competent court. It is said that the subordinate courts are not competent to interpret this Constitution, but we have started with the guarantee, with the postulate, that every court should be competent, and we have guaranteed that every person should have the fullest opportunity, of getting justice. When such is the case, it is unfair to say that the High Court and the High Court alone is the appropriate place where this Constitution should be interpreted. Now, Sir, apart from this, this question of interpretation will arise in two classes of cases. One class is between Government and Government, where both parties to the dispute can engage the best of counsels and incur any amount of expenses and the case may be decided by the High Court or by the Supreme Court. The second class of cases is between private parties. If it is a small

case involving hundred rupees or less, the parties will go to the court little knowing what the Constitution is, little knowing what a substantial question of law is. A party to the dispute may be met by the other party with the plea that the case involves an interpretation of the Constitution, involves a substantial question of law. In that case, the court will have no option but to refer the case to the High Court. Supposing the other party does not raise this question, then the Court itself may raise this question and send it on to the High Court, even though both the parties to the dispute may not desire to take the case to the High Court. In that case they shall have to go to the High Court which will involve them in more expenses by way of engaging counsels, etc., than in ordinary courts. Looking at the question from all these points I consider that this compulsory reference to the High Court is certainly not calculated to bring about the administration of justice in a less expensive manner to the ordinary litigant.

Apart from this, Sir, I think that cases may involve many points. First of all, two questions have to be decided, substantial question of law and the question of interpretation of the Constitution. Now, Sir, I do not think that these questions are of such a nature that they can be divorced from facts. After all, the question of law will not ordinarily be such that it can be determined without reference to facts. Facts have to be gone into. Absolute questions of law will never arise. Then again, even if it is a question of law, it is not sufficient; it must be a substantial question of law. This will be another difficulty. In section 225 of the Government of India Act 1935, the words used are "involves or is likely to involve the question of the validity of any Dominion or Provincial Act". Here, the words used are "the interpretation of this Constitution" which have got very extensive meaning as compared with the words "validity of any Dominion or Provincial Act". Apart from this, Sir, even today the High Court are competent to withdraw any case, to transfer any case they choose. When there are, say, five hundred cases involving interpretation of any statute, I can understand the High Court withdrawing all these cases and then deciding on them. But in individual cases, one or two cases, there is no occasion for calling up these cases. I cannot repress my feeling and I cannot desist from expressing it that those who are at the helm, who want this Constitution enacted in this form, they are not fully conversant with the difficulties of the poor man. I feel that they are putting an obstacle in the way of the poor man getting justice. Why, Sir, may I ask, this question of interpretation of the Constitution is so sacrosanct that an ordinary court cannot be entrusted with it? When those ordinary courts can give justice in regard to civil claims, I cannot see any reason why they cannot decide the question of interpretation of the Constitution? Why compel the poor man, the villager, to go to the expense of going to the High Court? We are taking away from the dignity of the ordinary courts which is a characteristic of Anglo-Saxon institutions. Sir we are making a very dangerous experiment and tampering with the prestige and utility of subordinate courts and making the dispensation of justice more dilatory, onerous and expensive.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, I should like to make a few observations on the article as is now proposed. I feel considerable misgiving as to the utility and the appropriateness of the article and as to the advisability of departing from the existing provision. If a case raise a clear constitutional issue, which is sufficient to dispose of the case there is no difficulty. The case can be withdrawn to the High Court and from any decision of the High Court there will be an appeal to the Supreme Court as is already provided in the article relating to appeals to the Supreme Court. The real difficulty arises in cases where the constitutional issue that is raised, though a material point, is one of several issue that are raised in the case. In such cases, if the case is to be withdrawn to the High Court, though the power to send it back to the sub-

[Shri Alladi Krishnaswami Ayyar]

ordinate court for the taking of evidence and for the disposal of the other points in the case is there, the question arises : is an appeal to be provided for the Supreme Court at this stage, though it may turn out that in spite of the decision on the constitutional question one way or the other, the ultimate decision in the case may not be affected at all and the party who loses on the constitutional question in the final court may ultimately win on other facts and other evidence in the case? Supposing you provide for an appeal on the constitutional question to the Supreme Court, is the case to be hung up in the meantime until you have the decision on the constitutional question one way or the other? The jurisdiction of the Supreme Court in respect of constitutional matters is very wide under our Constitution; it may raise the question of the Construction of an order, it may raise the Construction of any article of the Constitution; it may relate to the distribution of powers between the Centre and the units. Therefore, all and sundry constitutional questions might be raised in the court in the first instance; they may ultimately turn out to be material or not material for the disposal of the case. Even if material, the party who loses the case on the constitutional question may ultimately win in that case. Is the High Court to be a battle-ground for the fighting of lawyers on constitutional questions? That is the point which the House will have to take into consideration and decide.

Again a constitutional question may arise in a civil case or may arise in a criminal case. The decision on the constitutional question may be in favour of the accused or may be in favour of the Crown. What is to be happen in regard to those criminal cases? There is also the further point to be considered. It is not as if every constitutional question can be considered in vacuum without reference to the facts of a particular case. That is one of the reasons, for example, the Supreme Court of the United States never entertains what is called "consultative jurisdiction" though we have departed from that principle to some extent. In effect, this amendment practically resolves into enlarging the consultative jurisdiction on a point of law, which is one of the several points that may arise in the case. Withdrawal of the case for the decision of a particular point is a very novel procedure. In the Australian Constitution, for example, there is a provision that if a question arises as to the *inter se* powers between the Commonwealth and the States, the case itself may be withdrawn to the High Court of Australia. Therefore, it is not the withdrawal of any particular point or the decision on a particular point that is contemplated; it is the withdrawal of the whole case. Therefore, I should think it is much better that there is a general provision that the High Court can withdraw a case if on a perusal of the pleadings and material records in the case it is of the opinion that a substantial question of constitutional law arises which is enough to dispose of the case. The Court will not then direct a withdrawal of a case if it is satisfied that the constitutional question is one of the several questions that arise in the case, even if it be a material question. I ask the House, whether in the larger interests of the litigant public, leaving alone any other consideration, and in the interests of even sound constitutional jurisprudence and securing as far as possible, the ultimate decision of the ultimate tribunal at as early a stage as possible, this kind of procedure is calculated to further the ends of justice. I have considerable doubts in regard to the new proposal and I place before the House my ideas for what they are worth, for your careful consideration : "I am not wedded to any particular theory; I am not against the disposal of constitutional question as early as possible, but there must be a finality. If the constitutional question will ultimately determine the case, by all means, have a decision as early as possible. If, on the other hand, it hinges on other facts or other considerations, if it is one of the several issues in the case, the whole case must be taken up by the High Court. If the constitutional question alone is to be decided,

is there to be an appeal or is there not to be an appeal? If there is to be an appeal, the case will be hung up. As it is, I am quite clear that there can be no appeal at all because we have already provided an order is a final order only when, if it is decided in one way, it completely disposes of the case". That is that definition which we have given to the words "final order" in the chapter on Supreme Court.

With these words, Sir, I trust that Dr. Ambedkar will take these facts into consideration and after a fuller consideration will place the necessary amendment before the House. I may at once state that I am not wedded to any particular theory; I am quite open to conviction, but I do feel that this is calculated to delay proceedings, prolong litigation, and lead to unnecessary expenditure. I might mention similar things have happened already, that is in regard to cases where there was no definition of 'final order'. Every case was brought up before the Federal Court and the Federal Court decided at this stage "it is no use deciding this; we must have further facts before deciding the case". I trust that these considerations will be borne in mind by my honourable Friend, Dr. Ambedkar and other friends of the House before this clause is proceeded with.

Shri Rohini Kumar Chaudhuri (Assam : General) : *Mr. President, Sir, my honourable Friend, Mr. Alladi Krishnaswami Ayyar has asked us to consider this article taking into account the larger interests of the litigant public, and I have no hesitation in saying that if you take into account the larger interests of the litigant public, there should be no doubt that this article must be dropped. This is one of the few articles which have not been taken from the Government of India Act. There is no such provision in the previous law and I would most earnestly request the authors of this article to explain to the House the utility of this article, the circumstances which have led to the framing of this article, what were the difficulties before and what are those difficulties which this article is going to remove.

Sir, as matters stand at present, any one who is affected by the Constitution may bring a suit in the lowest court which has jurisdiction to try that suit. Sometimes, the parties may compromise in the very initial stages and the case may not at all go to the High Court. A lot of expenses will be saved. A large number of cases are disposed of in the lower court by compromise and settlement. Every one is afraid of going to the High Court because of the expenses which it involves and the delay which it involves. Suppose a party has got some grievance arising out of the interpretation of the Constitution, he files a suit against a particular party from whom he claims damage. If the matter is settled then and there in the *moufussil* court, why should you drag him to the High Court at all? There is no necessity for him to go to the High Court. After all, what is the object of filing a suit? If the quarrel involved is settled without going to the High Court, why should we have a provision which would compel the party to go to the High Court? That is the first question which strikes me.

Again, even now if an erroneous decision is giving by the Munsiff or the subordinate Judge, the party affected may always go to the High Court and there have the matter settled. Under the present arrangement every case shall necessarily go to the High Court. As far as I can foresee, the State will be one of the parties to suits of this nature. When this provision is there, the Government who has not got to fear either for the expenses or the delay,— in almost all such cases, the Government will be the defendant—will at once take the case to the High Court. If that is the position that in every case the party must, by virtue of this article 204, necessarily go to the High Court, I say, why not give to the High Court the exclusive jurisdiction to entertain the suit itself? In that case, you at least avoid filing a suit in the lower court first and after some time to take it to the High

*Uncorrected speech.

[Shri Rohini Kumar Chaudhuri]

Court. That is to say, such cases, if at all, must first be instituted in the High Court. The High Court can dispose of the case if it likes or it can send back the case to the lower court in order to assess the damage, or in order to find out the relief to be granted. I ask why have this lengthy procedure of filing a suit in the lower court? Every plaintiff must know that it is a case which will involve an interpretation of the Constitution. Even if he does not know, every case of this nature in which the Government will be a party will be taken to the High Court. In order to avoid double expenses to the litigant, it should be laid down in the Constitution, if you want this article at all, that the High Court shall have exclusive jurisdiction in such cases. Personally speaking, I do not see any utility of this article. No one has suffered by the absence of this article for so many years in the Government of India Act. I have not found any complaint in the press or in the platform that on account of the absence of such an article, injustice has been done or that parties have been seriously affected. After all, everybody knows that the number of such cases will be limited. If such cases are limited, why not give the High Court exclusive jurisdiction to entertain such suits? After deciding the question of interpretation of the Constitution, the High Court may either dispose of the case or send it back to the lower court for the purpose of adjudication of damage or to find out what is the relief that should be granted. I particularly request my honourable Friend to take this aspect of the matter into consideration. I tried to place this aspect of this matter before him outside the House; but I failed. I am at my wit's end to get clarification from that quarter, but I have always been ignored and sometimes ignored with contempt. I believe in a small piece of poetry which I read in my school days:

“Once or twice though we may fail,
Try, try, try again.”

In my case, I have tried several times and failed. I always say, “try, try again” and this is one of my attempts. I shall also make future attempts.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, no doubt this question is fraught with difficulties and the House has to consider as to the best method of solving the difficulties.

I find that three points are raised against either this particular article or the wording of the amendment as moved by my honourable Friend Dr. Ambedkar.

The first is that there should be no such section. The second is that if there is to be such a power in the High Court, the whole case should be disposed of by it and not merely the point of constitutional law. The last position is that if a constitutional issue is a preliminary issue, it may be referred to or withdrawn to the High Court; but where it is a mixed question of law and fact, it would not be proper to do so. These are the three positions that have been taken up in the debate so far.

In this connection, it is necessary to remember the position of a constitutional issue. A law is passed affecting, say the liberty of a citizen, which contravenes the Fundamental Rights. In that case, he has the constitutional right straightaway to go either to the Supreme Court or to the High Court. Therefore, in most criminal cases, the citizen has a right to go to either of the two courts with a view to have a constitutional question determined. That is the first position.

The second position is that by articles 110 and 112, the Supreme Court is invested with the jurisdiction of deciding constitutional questions from any judgment or decree or final order from any court or tribunal by way of appeal, or where special leave is granted. Therefore, in all matters relating to constitutional questions there is a final resort to the Supreme Court.

There are certain classes of cases which do not fall within the one category or the other, and the question is whether a special method should be devised by which the constitutional question is decided before going into other unrelated questions of fact or law in a case or whether it should be left to be decided in the ordinary course till after a first and second appeal, the case reaches the High Court. We have to consider two sets of difficulties. One difficulty has been placed before the House by my honourable Friend Shri Alladi Krishnaswami Ayyar and other honourable Members of this House. But the more important set of difficulties which we have to consider is this. A constitutional issue goes to the root of the matter and if that is not taken up and decided at the earliest stage, there will be considerable doubt as to the position in law. Take, for instance, the question whether a particular law falls within the ambit of the legislative power of a State or the Centre. That question may be so important that if not decided as early as possible, it would lead to transfer of interests; to extinction of rights or to divesting vested rights. After all this is done for a number of years, say four or five years, the Supreme Court or the High Court declares the legislation to be *ultra vires*. Is it not much better therefore that the constitutional provision should be construed at the earliest possible opportunity to avoid such difficulties?

This article is intended to provide against such difficulties. What has happened in the past is this. One subordinate judge decides a question of law in one way; in another district another view is taken; and this diversity persists till the matter is decided by the High Court. It is desirable that this kind of diversity of judicial interpretation should prevail as regards a constitutional point? If not, a method has to be devised which would enable a litigant, if he so desires, to have such a point decided as early as possible.

This is nothing new. The House will remember that even under the C.P.C. Order 46 there is a power in the subordinate courts to refer a question of law to the High Court on reference if the question of law becomes important. Again as already mentioned to the House by my honourable Friend Mr. Naziruddin Ahmad, under Section 225 of the Government of India Act, it is competent to the High Court or rather it is incumbent on it to transfer to itself all cases in which a constitutional point has been raised. There is already precedent for deciding certain issues of law or constitutional issues by the High Court by taking it out of the hands of the subordinate courts. The amendment which is now moved, therefore, makes a provision that if in a subordinate court a question dealing with constitutional propriety is raised, one or the other party could go to the High Court and satisfy the High Court as to two things : first, that there is a substantial question of law as to the interpretation of this Constitution; and secondly it is necessary for the disposal of the case, not any issue which has no bearing on the disposal of the case. If these two conditions are fulfilled, then only will the High Court withdraw the case. In withdrawing it, the High Court will do exactly what it can under Section 225 of the Government of India Act, but without the limitation that the High Court must dispose of the whole case. We have two alternatives in this article, one is that the High Court can dispose of the case itself or if it thinks proper, it shall determine the question of law only. In the latter case it will decide the particular question of law and send the case back to the subordinate court for the decision of further issues. In mixed questions of law and fact the High Court will consider the question whether it is possible to isolate the constitutional question and of course if it is not possible to do so, it will dispose of the case itself as it could do under the present Section 225 or ask the first court to determine the question of fact necessary for the determination of the legal issue. There is no clear-cut way out of the inconvenience involved but on a balance of convenience it is much better that there should be uniformity in the construction of the constitutional provisions rather than it should be left to the subordinate courts to take divergent views.

[Shri K. M. Munshi]

I am surprised at the opposition to this article for this reason that vast powers of issuing constitutional writs which the House has vested in the Supreme Court are such that a very large number of cases relating to constitutional propriety will be determined by the Supreme Court or the High Court before anything else is done in a case. My Friend Pandit Bhargava raised two objections, one of the cost of litigation and the other of delay. If the whole position is analysed neither of these arguments will be found to be valid. As regards cost, is it not much cheaper that a constitutional issue which goes more or less to the very foundation of the case should be decided at an early stage rather than evidence which will be useless is led in the case before the party comes in appeal to have the constitutional issue decided? The latter course is bound to be more costly. Most cases would practically be decided one way or the other by the decision of the constitutional issues. Then as regards the delay, it is common knowledge that in subordinate courts it takes a long time before a case is disposed of and the party which wants to raise a constitutional issue is sure to go to High Court at an earlier stage of the case and there will be no additional delay so far as the progress of the case in the lower court is concerned. Long before a case ordinarily reaches the hearing stage in the subordinate court such an issue would have been decided by the High Court.

The next point is this that such a decision at an early stage would be of an all India application. Clause (b) of the new amendment says:

“(2) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.”

The word used is ‘Judgment’—the same as in article 110. Therefore on this question of law if necessary parties can straightaway go to the Supreme Court in appeal so that there may be uniformity of decision throughout the country. It is in the nature of consultative jurisdiction—though not quite—but the way in which the Constitution has set up the Judiciary as the arbiter of constitutional propriety it is absolutely essential that at the earliest possibility there should be one decision, one definite binding decision throughout the province if not throughout the whole country on constitutional provisions. The whole machinery devised in article 25, 120, 112 is to facilitate such uniformity and this article only adds to the scope of this constitutional forum. I therefore submit that this is the best way out of the difficulties and I hope the House will accept it.

Shri T. T. Krishnamachari : Mr. President, Sir, as a layman who has been listening to the dissertations on law by the lawyer Members of this House for a number of days past, I feel that the time has come when a word of warning has to be uttered against the manner in which amendments are moved, changes are made, jurisdiction is being extended to cover cases which are purely based on conjectures and on hypothesis with all the uncertainty that goes with such procedure as one hypothesis is as good as another. Today we have heard a number of lawyers one contradicting the other, one visualizing instances where contingencies which we seek to incorporate in an article, are not likely to occur or are likely to be controverted. In fairness to all these speakers it is perhaps safe to assume that everybody is right up to a point. After all if the whole thing is going to be based on hypothesis there is certainly nothing sacrosanct about what occurs to Mr. Munshi as against what occurs to Mr. Alladi Krishnaswami Ayyar.

Sir, I have no desire to controvert the utility or otherwise of the article before the House and the amendment proposed by my honourable Friend Dr. Ambedkar. But I would like to say this that in matters like this it is best to leave it to Parliament to make laws or allow the matter to be regulated by rules that

might be made by the Supreme Court or by the Supreme Court in conjunction with the High Courts, which will have the approval of Parliament, if necessary. The whole point really is, are we here in a position to visualise all possible contingencies that are likely to arise? I do not think it is possible. Much as I respect the legal wisdom of those concerned with the drafting of this amendment or the amendments that have been agreed to and approved by the House in regard to the previous articles, I feel a certain amount of hesitancy in controverting the allegation made by some Members of this House that this will tend to increase the possibilities of litigation in the country.

Attempts have been made right through the discussions in regard to the judicial provisions to extend the scope of the work of the Supreme Court. It has been said that that is the only way in which we could guarantee the liberties of the individual. On a subsequent occasion probably an opportunity will occur, when I would like to deal with the point whether liberties can best be defended by a multiplication of appeals. In the present instance regarding this particular amendment in regard to article 204 and those that preceded it, Mr. Munshi says that we want one binding decision which will cover all possible cases in future. Is it possible? If one decision were binding would there be so much case law in the world? Mr. Munshi is undoubtedly familiar with the history of judicial procedure in America, where the country has suffered a great deal of uncertainty by the constitutional provisions being terse instead of being elongated to fit into it all manner of contingencies that are likely to arise which the human brain can visualise in the manner in which we are considering the article before the House.

At the same time, I feel that there is no particular magic attached to Mr. Munshi's interpretation as against Mr. Alladi Krishnaswami Ayyar's interpretation. A friend has asked me what happens if article 110 operates and the question involves a matter of interpretation of the Constitution. Does it go to the Supreme Court? We do not know, but there is no use Mr. Munshi saying "this and this will happen and everything will ultimately be all right". Every thing cannot be all right. We are dealing not merely with all contingencies such as we think are likely to arise but we are also dealing with the human material. One judge may hold one opinion and give a decision in a particular manner and another might give another decision. The decision of one set of Judges cannot be binding on those that decide similar questions later on. There is always the possibility of one decision being over-ruled by another.

While this amendment might go through for the time being I do feel that right in this Constitution there must be some provision by which most of these lacunae can be covered by parliamentary legislation. I am not one of those who believe that we must defend the country, the litigant the lawyer and everybody else as against the vagaries of Parliament. I would rather trust five hundred people with less than even mediocre abilities than four or five people with perhaps some claim for superior abilities but at the same time having their own personal prejudices. And in this matter I am undoubtedly right in view of what is happening in the United States, where the judges are influenced by political considerations and a whole series of judgments given by them until 1936 had been changed after 1936 as in some instances even the same Judges have been interpreting the provisions of the Constitution in a different way. Therefore it seems to me that somewhere in this Constitution there must be a provision so that most of these difficulties can be removed by parliamentary legislation, even though it might mean that you are allowing Parliament to arrogate to itself a certain amount of jurisdiction over the Courts as a relative quantum of jurisdiction will thereby be taken away from the Supreme Court and the High Courts. That seems to be the only way in which we can prevent increase of litigation in the Courts.

[Shri T.T. Krishnamachari]

I would like before I resume my seat to tell the House that all that we are doing today is we are running right counter to popular opinion, which does not want multiplication of litigation, and we are merely providing opportunities for more and more litigation. I do not want to claim any particular type of wisdom for having uttered on a previous occasion that this Constitution might well prove a paradise for lawyers. Whether I was right then or not, I do feel that I am more than right today in view of the provisions that we have introduced both in regard to the Supreme Court and the High Courts. We are multiplying the possibilities of litigation increasing tremendously. My honourable Friend Mr. Munshi said in a different context that the opportunities for employment of High Court judges will increase tremendously. If that were to be so litigation must increase. Who will pay for it? It will be an unnecessary waste of the wealth of the people, who in most cases cannot afford to pay. Ultimately when two litigants begin to quarrel it ends up like the proverbial fight between the Kilkenny cats; what is left is only the tails. This might profit the lawyers, this might profit the judges and also provide revenue for the State. But the people of the country will suffer. I therefore feel that unless the House or those who are responsible are guided by considerations purely of the immediacies of the situation or whether a particular case they have in mind can be covered or not, they should provide, in the interest of the country, a saving clause somewhere by which most of these matters will be dealt with either by Parliamentary legislation or by rules made by the Courts with the approval of the Parliament, so that possibilities of any phenomenal increase in litigation might be avoided.

I do not know anything about the present amendment except that it looks simpler than other amendments that have been suggested, since the House adjourned yesterday, which were longer and therefore more difficult to understand. Therefore, perhaps, there is something in this amendment to commend itself to the consideration of the House. I would only submit that this should not be treated as the last word on the subject and the House must empower the Drafting Committee or those responsible to go through the whole series of articles passed in this connection and provide some kind of safety valve, by which parliamentary interference can avoid an increase in litigation.

With these reservations, Sir, I support the amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any very long discussion is necessary to come to a decision on the amendment I have moved. The House will remember when we were dealing yesterday with article 204 my Friend Mr. Bharathi raised a question which related to the last sentence in article 204, *viz.*, that the High Court shall withdraw the case to itself and dispose of the same. The question which Mr. Bharathi put, which I thought was a very relevant one, was this. Why should the High Court be required to withdraw the whole case and dispose of it, when all that the main part of article 204 required was that it should deal with a substantial question of law as to the interpretation of the Constitution? His position was that in a suit many questions might be involved. One of them might be a question involving a substantial question of law as to be interpretation of this Constitution. The other question may be questions as to the interpretation of ordinary law made by Parliament. If there was a case of this sort which was a mixed case, containing an issue relating to the interpretation of the Constitution and other issues relating to the interpretation of the ordinary law while it may be right for the High Court to possess the power to decide and pronounce upon the question relating to the interpretation of law, why should the High Court be required to withdraw the whole case and decide not merely on the issue relating to the interpretation of the Constitution but also upon other issue relating to the inter-

pretation of ordinary law? As I said, that was a very pertinent question the force of which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept back.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121, which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges. The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say-for the purpose of getting the benefit of a Bench of five-raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment, List No. I, Amendment 43, they will find that we then introduced a proviso which said that in a case of this sort where an appeal comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary Bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judges. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal may be referred to a Bench of five Judges. Even then Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original Bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making this amendment to article 204 which I have moved this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure...

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if it is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment, I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

[The Honourable Dr. B.R. Ambedkar]

Then two questions have been raised. One is with regard to the use of the word 'judgment'. It has been said that the word 'judgment' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purposes of determining the constitutional issue may not be in a position to approach the Supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgment or the final order of the High Court. The contention is that the judgment may not be regarded as a judgment within the meaning of articles 110 or may not be regarded as a final order. Well, having used the word 'judgment' in article 110 in that particular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understand why the use of the word 'judgment' in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word 'decision' instead of 'judgment' and adding an explanation such as this that "the decision shall be regarded as a final order for the purpose of article 110". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly be open to the party whose case has been withdrawn to do what it likes. Once the judgment has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightaway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something sitting there. I could not hear him. But in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High Court should not be encumbered with a decision of all the issues when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole

case. It has no power of partial withdrawal, while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, is that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am therefore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the Assembly has passed.

Mr. President : I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President : Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :

“That for article 204 the following article be substituted :

‘204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- (a) either dispose of the case itself, or
- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.’ ”

The amendment was adopted.

Mr. President : Now this becomes the original article. It disposes of all the amendment moved.

The question is :

“That article 204, as amended, stand part of the Constitution.”

The motion was adopted.

Article 204, as amended, was added to the Constitution.

Article 205

Mr. President : The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

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

“That for article 205, the following be substituted :—

‘205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct the expenses of High Courts.

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultations with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.’ ”

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President : You can move it.

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

“That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, the following proviso be substituted :—

‘Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.’ ”

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President : That covers your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir it obviates the necessity for moving my amendment.

Mr. President : There are two amendments by Mr. Mahboob Ali Baig to this article. No. 141 and No. 142 in the printed List of Amendments to amendments.

(The amendments were not moved.)

Now the article is for general discussion.

Shri Brajeshwar Prasad (Bihar : General) Mr. President, Sir, I am not in favour of any whittling down of the powers of the High Courts. I feel, Sir, that in matters of salary, leave, pensions, etc. consultation with the Governor is necessary, if the word ‘governor’ here does not mean governor in consultation with the cabinet—with the Prime Minister. It is not clearly mentioned—it would have been better if it had been—that the Governor in his discretion should be consulted so far as the salaries, allowances and pensions of the Judges and other servants of the High Courts are concerned. Sir, there is another

provision that the conditions of service should be prescribed by the Chief Justice subject to any law made by the State Legislature. I do not want that either the Governor or the State Legislature should have anything to do with the provincial High Courts. There should be an integrated judiciary in this country. All the High Courts should form an integral part of the Supreme Court. I am against the provincialisation of the High Courts. I am against the interference of the executive authorities, the Governor and the Legislature, because of my well-known feeling against provincial governments. If these authorities are allowed to have any say in the administration of the High Courts, then there will be no independence for the provincial High Courts. Already the feeling is rampant, charges have been made, that there have been cases of interference with the administration of justice. I am definitely of opinion, Sir, that instead of the State Legislature and the Governor, we shall have to make a provision that Parliament and the President should be consulted. I know that the administrative expenses of these High Courts shall be charged upon the provincial revenues, but I think this difficulty can be obviated by charging this expenditure upon the Central revenues. Of course, this suggestion will entail an adjustment of the sources of the Central and provincial revenues. But in the interests of efficient administration, in the interests of one judiciary in the country, whatever difficulty there may be in the way must be overcome, and all questions of pensions, salaries, leave, etc. of the Judges and other servants of the High Courts should be placed in the hands of the Parliament and the President in consultation with the Chief Justice of the Supreme Court.

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

The Honourable Dr. B. R. Ambedkar : No, Sir.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, I should like to oppose this amendment moved by the Honourable Dr. Ambedkar. Apparently it looks to be very innocent, but I am afraid this might have far-reaching repercussions so far as the independence of the Judiciary is concerned. If we look at the different stages through which our Draft has been developing, I am constrained to conclude that we have been receding from democratic principles and centralising all powers in the executive or the legislature; rather I might say that we are proceeding towards the evolution of a police State. The history of this article is only one instance of so many and posterity would judge whether we are growing wiser everyday or whether we are going against democratic principles recognised all over and trying to centralise most of the powers in the legislature. If we just have a look at the original Draft, we will find that article 205 as drafted in February 1948 only provided that the salaries, allowances, pensions, etc. payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat. But when in November this List of Amendments was published, there was some change and then it was laid down in the proviso to this article :

“Provided that the salaries, pensions, etc., payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat.”

I think that so far there was no harm done, if we confine ourselves to this consultation. But now the present amendment says :

“Provided that the rules made under this clause shall, so far as they relate to salaries; allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.”

[Sardar Hukam Singh]

This substitution seems to me to be a very serious one, though it looks to be a small matter on the face of it. The judiciary is the only safeguard against any infringement of public liberties and any encroachment however small on its independence, so far as I can make out, should be carefully watched and jealously guarded against. The judiciary itself, it is admitted, is too feeble to defend itself against the encroachment by the executive and the legislature and any dependence of it or inter-linking it with the legislature or the executive would jeopardise its independence. There is always a danger of its being overpowered by the executive or the legislature. As I have said already, I find this change towards vesting of more and more powers in the legislature and impairing the independence of our courts. In my opinion such a change as this amendment provides may turn out to be a source of friction between the judiciary and the executive by creating pinpricks. When you ask the Chief Justice to have the approval of the Governor, I think, it would humiliate him and bring him to a subordinate position. Psychologically at least such a procedure would have that effect. The very fact that the Chief Justice has to consult the Governor would be a sufficient guarantee that the rules would be framed in a spirit of accommodation. Can't he be trusted that he would not unnecessarily burden the exchequer by extravagant expenditure? No doubt the Governor is the keeper of the purse, but at the same time the judiciary is the guardian of the civil liberties and nothing should be done to jeopardize the independence of the latter. Consultation would be sufficient and I think this amendment now moved is a dangerous one and I oppose it.

Mr. President : The question is:—

“That for article 205, the following be substituted:—

‘205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct :
Offices and servants and the expenses of High Courts.

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State. And any fees or other moneys taken by the Court shall form part of those revenues.’”

The amendment was adopted.

Mr. President : The question is :

“That article 205, as amended, stand part of the Constitution.”

The motion was adopted.

Article 205, as amended, was added to the Constitution.

Article 206

The Honourable Dr. B. R. Ambedkar : Sir, I move that this article be deleted.

Mr. President : The question is :

“That article 206 form part of the Constitution.”

The motion was negatived.

Article 206 was deleted from the Constitution.

Article 90—(Contd.)

The Honourable Dr. B. R. Ambedkar : Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President : We had a number of amendments to this article which were moved that day before we adjourned discussion. They are amendments Nos. 3, 4, and 6 standing in the name of Dr. Ambedkar.

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

“That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted :

- ‘(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;”

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not moving it.

Sir, I also move :

“That in sub-clauses (e) and (f) of clause (1) of article 90, for the words ‘revenues of India’, the words ‘Consolidated Fund of India’ be substituted.”

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with this matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

[The Honourable Dr. B. R. Ambedkar]

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is "Public Account of the Governor-General of India". If honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. "Public Account of the Central Government means the Consolidated Fund into which moneys received on account of the revenues of the Governor-General as defined in section 136 of the Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word "Consolidated Fund" is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund. This notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was this. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Often times, the King spent the money for purposes quite different from the purposes for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage, Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the budget. In order to avoid this squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it comes to decide upon the budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary thing in order to prevent the proceeds of taxes being frittered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I there fore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the Constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be pooled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this : the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94 dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93

what happens is this : Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head, item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This thing is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the provisions contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in his discretion and in his individual judgment. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgment were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under our new Constitution the President has no functions at all either in his discretion or in his individual judgment. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Governments in Canada, Australia, South Africa and in Great Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself, as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

[The Honourable Dr. B. R. Ambedkar]

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has to be presented under heads, sub-heads and items. Parliament has to pass the budget with regard to heads, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz.*, no money is to be spent unless all the details are passed by Parliament and if you also have the provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions of article 93 you cannot spend any money unless the budget had been passed in all its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93 or you may make another provision making an exception to article 93. The vote on account procedure which we propose to introduce by an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length—I don't say fully—the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.*, lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition—unless you make a provision for a vote on account you will not get time to discuss the budget at any greater length than what you have now. The House will remember that the last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called 'Provision for Votes on account'. These are, if I may say so, the three main changes that we have made in the Draft Constitution. Sir, with these words I move the amendments I have tabled.

Mr. President : Does anyone wish to speak now?

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, the speech that has just been made, explains in some details the new nomenclatures we are going to adopt as well as make certain provisions which were not thought of upto this moment. Sir, the whole structure which was embodied in the Draft articles as we have before us was really based wholly on what is provided for in the Act of 1935. Now the Honourable Dr. Ambedkar wants certain alterations and modifications so that the procedure in financial matters approximates greatly to the procedure which obtains not only in the British Parliament but which has been copied by the various Dominions. Therefore, we are required to have phraseologies and terms which are altogether unfamiliar to the

House. The learned Doctor has undoubtedly given a very brief and exquisite commentary on the various proposals he has to make and if many Members of this House find it difficult to comprehend all that they signify, I do not think the intelligence of any Member can be blamed for it. (*Laughter*). For the first time we are having—instead of the well-understood and well-explained familiar terminology of the revenues of India (that was one phrase which was used, probably for various purposes and a phrase which is well understood by all of us)—what is termed as the Consolidated Fund. It is impossible, Sir, from the speech that has been made to understand exactly why it is necessary to change the name. The purpose has been explained but I do not feel convinced. I do not see why it is not possible to continue to call it “the revenues of India” and then make provision for the solution of certain difficulties which have been encountered in our financial procedure. And for this purpose I am not absolutely certain that the nomenclature need be changed. Undoubtedly, one difficulty which the Honourable Dr. Ambedkar wants to overcome is that there should not be any restriction on passing the budget by a certain date. There should be some amount of elasticity about it. The Parliament of India could go on discussing the budget and the expenditure for months if they like, even after the first of April, by which time, according to the present procedure the budget must be approved. But if that is the only difficulty which it is sought to overcome, I do not think the whole structure of all these articles need be altered. The provision for allowing the executive to carry on the day to day administration, irrespective of the fact whether the whole budget has been discussed and passed or not, does not, I think, make the alteration of so many articles necessary. But if our anxiety is to bring ourselves into line with the British House of Commons and the various Dominions, then of course the changes that have been suggested ought to be accepted.

In the change of nomenclature and the introduction of the words ‘the Consolidated Fund of India’, a common man’s interpretation would be that this would be a certain fund which is over and above or something different from the revenues of India : otherwise there would be no sense in substituting or incorporating this new phraseology called the Consolidated Fund of India. Then the various new terms such as “Vote on Account”, “Vote on Credit” etc.—the Honourable Dr. Ambedkar will have to incorporate sooner or later because these are the things which follow in the wake of the whole structure of the financial business and financial transactions of a State. I am referring to the procedure in the House of Commons where besides the Consolidated Fund, there are a variety of things, and I am sure that sooner or later all will have to be incorporated. The Honourable Dr. Ambedkar has explained that Vote on Account is a grant in advance for the estimated departmental expenditure for the year before complete and detailed sanction has been given to that expenditure. Then there will be Votes on Credit, of which we have not heard so far but probably at a later stage it will have to come in. It has been defined by the British Parliament as “an unexpected demand upon the resources of the United Kingdom for example for the defence of the Empire or for a military service”. It is on account of the magnitude or in definite character of the service that the demand cannot be stated with the details given as in an ordinary estimate to be laid before “Parliament on an application based on the demand of the total sum required etc.”

Then, Sir, we will be incorporating more or less the whole procedure that is current in the British Parliament. I am so far not fully convinced that we should alter the structure of our financial transactions that has stood the test of time, and excepting the difficulty of finishing discussions by the 1st April, no other grave difficulty has arisen so far. But if the learned Doctor can say that unless we alter this we will have insurmountable difficulties and for an independent Parliament of India it would not be possible or feasible to

[Dr. P. S. Deshmukh]

work, then of course we will have to accede to his request and accept the motion that he has made. I feel, Sir, not at all convinced that without having the Consolidated Fund, without providing for a Vote on Credit, without providing for a Vote on Account, it is not possible to manage the finances of India. The terms which are current are very well-known phraseologies and the procedure is well established here and I would much rather keep to the old phraseology and other provisions rather than embark upon a whole set of altogether new terms and phrases. My ground for saying so is that in spite of my carefully listening to the speech, I have not been able to follow that it is absolutely necessary to alter the whole structure of these provisions. I have already said that excepting one practical difficulty, no other difficulty is such as, under the existing of the Draft provisions which are before us, cannot be solved. So, Sir, I for one feel that if it is possible to keep to the well-understood terminology and procedure, it would be far better. After all the whole thing is not very complicated. The main fundamental principle is that there should be no appropriation of any revenues of a State unless Parliament's sanction is there. With regard to this provision my Friend Mr. Sidhwa also stressed that even the Auditor-General must not pass a single transaction unless it finds a specific place and has been approved by Parliament. All these things, namely, that without the sanction of Parliament no expenditure shall be voted, no expenditure shall be incurred, is a thing which is not jeopardized by the provisions as we have, and therefore I suggest that if it is possible we should not have these new phrases, which probably are very appropriate for the Parliament of England but for which we have no very specific use. Even under the foreign Government we have managed our finances fairly well. There has never been an instance like the one the Independent Parliament of India had to face of the appropriation of crores of rupees without their ever having been mentioned in Parliament or having been specified at any time. That is a contingency which did not arise even under the British regime and these were the exact provisions under which the whole financial administration of the country was going on. Therefore, I feel that if it is possible to keep to the old phraseology and restrict ourselves to it, it would be far better than incorporating provisions which are not familiar to us. The explanations and interpretations by the various lawyers in the Parliament will also involve us in a considerable amount of trouble and that is my fear. If there is no other difficulty except the one I have mentioned I am not convinced that this alteration of the whole structure is necessary.

Shri R. K. Sidhwa : Sir, with my parliamentary experience of three decades I can safely say without exaggeration that the present procedure and system of discussion of money Bills and budgets in the various legislatures is nothing but a farce and a waste of public time. I am yet to know any legislature where a budget is discussed, where the members had any occasion to curtail or reduce the amount of expenditure under any head. The entire power under the 1935 Act or even before was vested in the executive as far as the finances of the State were concerned. It was merely to show to the world that the demands and income were brought before the legislature and after a few days' discussion the legislature had to accept all the items both on the expenditure and income side.

After independence we have adopted the same procedure in regard to the two budget that came before our Parliament. Barring the fact that a few more days were allowed during the last session, after a great deal of complaint, for the discussion, we were able to do no more substantial work or contribute any suggestion towards the expenditure or income side of the budget. I therefore welcome now the amendment moved by Dr. Ambedkar. It is a

very healthy amendment and I am rather surprised to hear my friend Dr. Deshmukh saying that there is no necessity to change the present system or nomenclature. Crores or rupees could be raised and crores spent without the legislature in the true sense having any voice in it. Even under the article as originally drafted I can safely say that the members would have had no opportunity to judge the money Bills or the budget. Therefore, this amendment has come at the right moment.

It was argued by Dr. Deshmukh that it should be left to the Parliament. Matters like this should not be left to the Parliament but should be embodied in the Constitution. After Dr. Ambedkar's amendment a minister had to state openly that the present procedure is perfect and there is no necessity, as Dr. Deshmukh stated, to make any amendment. I know ministers will object to any latitude or privileges given to members, because I know from my experience of two sessions that so far as the ministers are concerned they feel the sooner the budget discussion closes the better it is for them, because they come under criticism. If it is left to Parliament I am positive that the ministers will combine or the government of the day will combine and will not allow any kind of law to be passed for such a purpose. Therefore it is in the fitness of things that such a provision should be made in the Constitution. There should be no loophole left for any future government as far as the State's finances are concerned.

What happens during the budget discussion? Only five or ten minutes are allowed to a member to discuss an important financial item. He could not place properly and explicitly his viewpoint before the House. A number of members have to speak and within the seven days allotted for the Demands nothing material ultimately turns out. After the clamour of the members during the last session, three more days were allowed but I must say straight away that even those extra three days were merely given to the members to ventilate their views and nothing substantial was done. We want that the members should have a stronghold on each item spent by the executive. Unfortunately few members take interest in the budget. Perhaps they do not understand it. Finance is a complicated item and obviously members are at sea at times. The executive, under Contingencies and other headings, provide lakhs of rupees without any details and the House has to pass them. Do you want to give that kind of power to the executive still? How are we going to influence the Government unless and until sufficient time is given to the members to place their views before the House? It is one of the fundamental duties of a member to voice his views and those of his electorate, otherwise he is not worth being returned by the people to this House. Our people want to know what kind of taxes are being imposed, what is the necessity for them and how the Government propose to spend the money. If members have no opportunity to ventilate their views and those of the people who returned them, there will be no value in their being members of the legislature. We could understand the executive not wanting to give power to the legislature. Today we are ourselves the masters and yet Dr. Deshmukh has the audacity effrontery to come and say "I do not want this. The present procedure is very good and there is no necessity to change the nomenclature. Parliament will do its duty." It was very surprising. I thought every member of the House would welcome the proposal of exercising his rights properly. I am sorry for the opposing to this. I wholeheartedly welcome the proposition and I repeat that if you leave it to Parliament, the Ministers will combine and never allow you to go into the details of the Budget. Therefore, the provision in the Constitution suggested by Dr. Ambedkar is very necessary. I am sure the House will give credit to the Drafting Committee that, even at this late stage, from our experience of the last two Sessions of Parliament, they have come to the right decision that while the Auditor-

[Shri R. K. Sidhwa]

General alone should be a watch-dog, members also should be watch-dogs of finances of the State. We could give on credit certain amount for salaries of the staff etc. before 31st March. The House can then have ample time to go item by item and reduce or increase the demand. The executive will then have no alternative but to accept it.

Dr. P. S. Deshmukh : Is that your object?

Shri R. K. Sidhwa : I have much more in view than this but all could not be incorporated in the Constitution. Fundamentally you are opposed to this provision. From your speech, I felt that you wanted the *status quo* to remain I object strongly to it.

Dr. P. S. Deshmukh : That was not my idea.

Shri R. K. Sidhwa : If you cannot express your mind clearly I cannot help it. If that was not your idea, I am glad.

This is the part of the important question which was held over last time. The House should unanimously pass the amendment moved by Dr. Ambedkar. I welcome the amendment.

Prof. K. T. Shah (Bihar : General) : Mr. President, the amendment proposed by Dr. Ambedkar makes certain innovations in the practice and procedure in dealing with the Budget, to which we have been accustomed all these years. This is what I may call the mechanics of getting the Budget passed through Parliament; and as such a matter of procedure rather than of principle.

Before I speak on the specific changes made, may I draw the attention of the House to certain basic principles of the Constitution, which are implied in this amendment, and which seem to be liable to misunderstanding if they are not properly clarified?

I think it is a perfectly sound principle to urge that there shall be no taxation without a law imposing it. The Constitution should lay down an equally sound proposition that there should be no tax levied except with the authority of the legislature. It is one of the basic principles of our Constitution. It is a very sound principle to incorporate in the Constitution.

Secondly, there shall be no expenditure without also the authority of Parliament by an Act and not merely by resolution of the Legislature. That is to say, there would be two Acts, a Finance Act, and an Appropriation Act, both separately, one sanctioning and authorising the raising of revenues for the year, and the other permitting expenditure by authority of an Act of the Legislature.

These are sound principles implicit in this amendment. The other parts of the motion, that is to say, the introduction of Votes on Account and Votes on Credit appear to me to be matters, more of procedure, or practical detail, or parliamentary time-table, to get the Budget passed through Parliament in due time. This may, I think, be more conveniently left to Parliament to look to, and not included as intrinsic parts of the Constitution itself.

I am afraid there is a tendency, inconvenient at times, to burden the Constitution with too many details, which, in a changing world and under changing conditions, may become very difficult always strictly to apply.

The question moreover that the Vote on Account or Vote on Credit or Estimates may be introduced as and when and where may be convenient is in no way undermining the sovereignty of Parliament as a watch-dog of the financial administration of the country. That all of us accept. But the actual experience has been that members more often talk rather than watch.

There is no provision except for talking. To scrutinise or watch the finances of the country is, under the present time-table, almost impossible to provide. The Constitution, however, which is an act of the sovereign people, in the exercise of their absolute sovereignty need not, in my opinion, go into the details of the various votes and procedures by which the several items may be provided for.

An Act of Parliament, however, the Legislature's authority given in the most solemn form of an Act, is indispensable and absolutely necessary. But it may also be provided for by the rules made by Parliament, so that the various stages of the Budget, and the various results of the Budget, presented to the House, in the shape of the Finance Act or Appropriation Act can be regulated so as to keep pace with the requirements of the country and also maintain the supremacy of Parliament in enacting such legislation.

I am afraid some members seem to have misunderstood the nature and purpose of this amendment when they declared that, by such provision as we are now considering the power of the executive would be reduced and the power of the legislature would be increased. There is no such suggestion in this amendment. The executive power will not be increased or diminished whether or not you accept this proposition. Parliament's power to superintend, to scrutinise, regulate and determine the financial administration as indicated in this amendment must be an essential safeguard for the sound administration of the national finances. But I repeat that it is not necessary to burden the Constitution with these things. And that too from a somewhat different angle than is customary in the British model from which we seem to be copying these things as pointed out by Dr. Ambedkar. But even the copying also is not complete and exhaustive, inasmuch as the "Votes on Credit" and Estimates for instance have been omitted. They may become necessary not only in hour of emergency, but even in any ordinary commercial or economic crisis—and consequently the practice of presenting the Estimates in order to allow the House to consider the policy of the various spending departments is also not mentioned in this mechanical stage of Budget passing through the legislature hereafter.

The nature, moreover, of the two funds mentioned specifically in the amendment—Consolidated Fund and Contingency Fund—leaves, in my opinion, some room for clarification and proper understanding. A Consolidated Fund has become necessary from the standpoint of certain items or expenditure, which are not open to annual voting by the express desire of Parliament itself, such as the Civil List, the judges' salaries, interest on the National Debt, and so on. Now, the idea that the Consolidated Fund is, as suggested in this amendment, a mere collection of the revenues collected may be all well in its place; but the origin and nature of the Consolidated Fund must also not be lost sight of.

As regards the Contingency Fund, I am afraid I must plead ignorance of that Fund. I do not remember if in the British practice there is any corresponding Fund. Even if it is, I feel it is liable very much to be abused under circumstances that we can all imagine. I see therefore no reason why we should make provision for such a Fund in the Constitution itself. If and when it becomes necessary for Parliament, in the event of there being special requirements or special emergency to establish such a Fund. I take it that Parliament is supreme and sovereign enough in these matters to be able to do so. There is no necessity for us to provide a constitutional authority in the basic law of the land, to enable Parliament to do so, because Parliament would have supreme financial authority. All the various, necessary stages of the procedure and the time table would and should be regulated by Parliament whether it is the necessity for a Contingency Fund or any special

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provision that any emergency may require for the moment. I do not think it, would be wise to tie down the future Parliament by constitutional provisions, even if they were to have the appearance of a special facility. I am afraid this is likely to be abused and so I feel inclined to propose it.

On the whole, therefore, the changes made, while improving the procedural side, appear to me to burden the Constitution too much with details, which are liable to detract attention from the basic principles that are perfectly sound and liable also to create occasions for future abuse against which we cannot be warned too much.

Shri Jagat Narain Lal (Bihar : General) : Sir, I have been trying to follow the arguments of Dr. Ambedkar in support of the amendment and also the vehement eloquence spent upon it by Mr. Sidhva. I feel that Dr. Ambedkar has given us the history and the origin of the Consolidated Fund as it came into existence in the United Kingdom. I do not know if that history has any relevancy to the method of expenditure, the budget expenditure, which is followed in our country and which has been followed for years past. I do not think there has been felt any such difficulty or inconvenience which was felt in the United Kingdom when that Consolidated Fund was brought into existence and he has given the reason for the origin of that fund, *viz.*, the misuse by the Crown and so on. I was surprised to hear Mr. Sidhva arguing so eloquently in favour of this change on the ground that it would create watch-dogs for the budget. If he were really to understand what a Consolidated Fund or a Contingency Fund is, I think he will be arguing just in the reverse way. I will read from a House of Commons publication called "Manual of Procedure for the Public Business", page 164 :

"The object of a consolidated fund is to empower the Treasury to receive out of the Consolidated Fund for the service of the departments for whose use money has been granted such sums as may be required in anticipation of the final sanction given by the Appropriation Act."

This is just the reverse of what he thinks. What the amendment seeks to do is only to substitute the words "Consolidated Fund or the Contingency Fund" for the words "revenues of India" in clause (1) of article 90. Instead of the revenues of India out of which expenditure could be met only according to the sanctioned budget, a Consolidated Fund or a Contingency Fund would be created, and the purpose is that the Government could go on spending out of the Consolidated Fund or the Contingency Fund without any difficulty. I wonder and I would like Dr. Ambedkar to think over it, whether it is at all necessary. Firstly, as Dr. Deshmukh has said, the term "Consolidated Fund" will be very much misunderstood. The term "revenues of India" is very simple and has certain implications. The budget procedure as followed in the Central Legislature and in the Provincial Legislatures has been understood by all. The term "Consolidated Fund" is apt to be misunderstood, and especially when this construction is going to be put on it that out of this you will have the right to spend as you like even when the Appropriation Act has not been passed, it is liable to be misinterpreted and will lead to a good deal of hostile criticism. I would therefore like Dr. Ambedkar to consider whether it is at all necessary to have it here and whether we could not retain the article as it stands. I do not like to say much more on this amendment, and I think that what I have said will be taken into consideration.

Prof. Shibban Lal Saksena : Mr. President, Sir, I have been surprised to hear the speeches of the two friends who have raised some doubts about the proposal of Dr. Ambedkar. I have very carefully read all the amendments of which he has given notice and also studied and practice which obtains in the

British Parliament. Sir, I have been in the U.P. Provincial Assembly for about ten years and in this Assembly for the last three years and I have seen so many budgets passed, but I do not remember one single item of any "single estimate" in the budget proposals either in the provinces or in the Centre ever changed. What actually happens is that the Finance Ministry brings out a printed book containing all the detailed estimates. When the budget is presented before the Provincial Legislature or the Central Legislature, copies of the printed estimates are distributed to the members and we are allowed only to ventilate our grievances, to say something about each item and then to pass the whole budget by a certain fixed date. I ask the House whether we, who are sent here by the country to act as the watch-dogs of their money, are merely here to put our seal of approval on what the Finance Ministry puts in that booklet known as the "estimates"? I feel, Sir, that Dr. Ambedkar has done a very great service by bringing in even at this late stage these amendments which will put the procedure in our Parliament on a par with the position in Great Britain. Probably we have been so much accustomed to the procedure adopted here that we have almost fallen in love with it. We still cannot get out of the habits of slavery of the past so many years and we think what has happened is what should continue to happen. If only we tried to review how the British Parliament is enabled to examine each single item in the estimates, then I think we shall realize that Dr. Ambedkar's amendments are very sound and the House must give him wholehearted approval. Sir, after the King's speech in the British Parliament at the commencement of the year, the House of Commons fixes a date for resolving itself into a Committee of Supply and so consider the estimates which are presented to it. The estimates are presented in our parts, the estimates for the Navy, estimates for the Army, estimates for the Air and Civil estimates, so that the House can examine them separately. The procedure they follow is this. The House resolves itself into a Committee of Supply and a motion is made : "Mr. Speaker do now leave the Chair". On that motion a general debate follows on each estimate for one or two days and then all the estimates are discussed in a general manner by the House. After that when that motion is carried the whole House resolves itself into a Committee of Supply.

Dr. P. S. Deshmukh : Has my honourable Friend seen any such amendments in the proposed amendments?

Prof. Shibban Lal Saksena : I will tell you that this Constitution need only provide those amendments which are necessary to enable the Parliament to adopt the British Parliamentary practice. It is not necessary that every single thing which is done in Britain should be brought into the Constitution. These procedural matters will be provided for under the rules of Parliament, but those portions of the procedure which are necessary to be incorporated in the Act of the Constitution are being provided for in these amendments. Therefore, Sir, this amendment is essential if we want to adopt the system which prevails in Great Britain.

Then in the Committee of Supply the period for consideration is fixed as 20 days, and the estimates are closely examined and discussed. In the Committee stage every member has got the right to speak as many times as he deems necessary. At present while the Budget is presented, we cannot speak more than once and if we really want to change the estimates, we must be able to speak a number of times. Thus, when the House resolves into the Committee of Supply, the whole thing is discussed threadbare. It must be remembered the House of Commons meets for about nine or ten hours a day and for twenty days in all, so that almost every single estimate is closely

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scrutinised and examined and thereafter on the twentieth day, the whole thing is passed and then a report is submitted to the Speaker and the House again meets to consider the report and there may again be a debate. Thus for each estimate there is a debate for one or two days at the beginning, then there is the detailed consideration of the estimates by the Committee and there may again be a debate at the report stage, so that in this manner the whole thing is discussed threadbare and thus the necessary changes are brought about in the estimates. The members of Parliament do not accept everything that the Treasury place before them, but they alter them according to the needs of the country. After the Committee of Supply there is the committee of ways and means. The Committee of Supply votes the expenditure and the Committee of Ways and Means discovers the methods to provide for that expenditure by changing the Income-tax laws, etc.; that also has got a limited time of ten days and in that time the proposals for new taxation are examined carefully and after the Committee of Supply has reported, the Committee of Ways and Means meets and they also pass those estimates. Thus, Sir, the whole thing is properly scrutinised and then passed. As I said there are four estimates and there are thus about twelve debates in all in the open House, besides detailed scrutiny in the Committee of Supply and the Committee of Ways and Means, so that you can understand that the Parliament does not spend a single pie which has not been carefully considered and voted upon by the Members of Parliament. Every one knows that here in India at present we finish the whole general discussion and the discussion of cut motions in seven days and the entire budget is then passed finally and we never have again an opportunity to go through the estimates and ultimately the guillotine is applied and the whole thing is passed. This really means that the Assembly does not get the opportunity to perform its duties and whatever the Ministry of Finance says is carried. I am therefore extremely grateful to Dr. Ambedkar and I hope posterity will be grateful to him for these amendments through which he has provided in the Constitution for real power to the Parliament over the Exchequer. The Parliament will henceforth be able to scrutinize the estimates and even to alter them by their votes. Now, Sir, this elaborate procedure takes time and therefore, there must be a Vote on Account, so that during the time that Parliament scrutinizes the expenditure, Government may carry on its work. For that the Vote on Account is passed. I do not think that the Vote on Account should be rigid and this is provided for in the amendment which Dr. Ambedkar has moved. It is an important thing and it is essential to the Constitution, and I do not agree with Prof. Shah that it is one of detail. Therefore I fully support that portion of the amendment.

Then, Sir, when the House of Commons meets there are also supplementary estimates for the previous year which are discussed along with the Votes on Account. By the 31st of March, the House of Commons passes the Consolidated Fund Act, with the result that this Act gives the Government authority to carry on the Government until the Appropriation Act is passed. It must be remembered that at present we are only about a hundred and fifty members in the Parliament, I mean those who attend it. In the new House of the People there will be five hundred members and if only seven or eight days are allowed for discussion of the budget in Parliament, nobody will be able to say anything about it. I therefore think that by adopting the provisions we are here making, we shall bring our procedure exactly in line with that of the British Parliament and in that way we shall be able to examine every portion of the Budget in detail and then give our consent.

Then, Sir, as I have said, there is the Consolidated Fund Act, and then there is the Appropriation Act. The Appropriation Act, in fact, is the docu-

ment in which the amounts to be spent from the Consolidated Fund are included, so that the Appropriation Act is really the authority of the Parliament under which Government can spend any money.

That is the scheme of things which, as I understand it, Dr. Ambedkar has placed before the House. I hope the House will be grateful to him for the labour which he has taken over the matter and for the wonderful manner in which he has incorporated this Scheme into our Constitution. Although we were copying our democracy from the British model. We had so far left out the kernel of that system, for the perfect control of popular representatives over the finances is the essential feature of British democracy. This scheme of Dr. Ambedkar will now enable us to model our Parliamentary procedure on the British lines.

In this connection. I wish to mention that in Britain the financial year commences in April. I wish to state that the months of May and June are very hot here. We may also change the financial year from the 1st of November to 31st October, so that we can finish our Appropriation Act by the beginning or March or April and we can have more time to discuss all matter in detail. I therefore propose to bring this suggestion before the House when the proper time comes, by an amendment. I think in our country it has been the practice from times immemorial to commence the financial year from the Dipawali which falls about the first of November.

I heartily support the proposals of Dr. Ambedkar and I hope the House would be grateful to him for these proposals.

Shri B. Das : Mr. President, Sir, I join in the plethora of congratulations which have been showered on Dr. Ambedkar. Sir, the House is indebted and we are all indebted to Dr. Ambedkar, my honourable Friend Mr. T.T. Krishnamachari and other members of the Drafting Committee for evolving a new draft to suit the tempo of Parliament during the last two years. We were very unhappy at the way in which budgets were introduced and passed. We were very unhappy at the close imitation of former budgets that were being presented by alien rulers to the former Assembly. I am grateful to Dr. Ambedkar for nothing how 118 crores of Rupees were passed as supplementary estimates on the last day of the year 1948-49.

That there should be a certain amount of money "charged" to the Consolidated Fund of India is essential to maintain the credit of India and soundness of our India national finances. The several items have been detailed in article 92 and there is no use the Parliament trying to vote down. Parliament ought not to reduce those charged items that will be placed by the President or the Finance Minister before it. Some of those charged items have been bequeathed to us by those alien rulers. They did commit us to an enormous debt and we are paying the interest charges on that debt. The Parliament will be justified in condemning the past Rulers for their extravagance and for their large public debt. But, as those debts are now national debts, interest charges on those must be paid. Similarly, the establishment charges of the President, the Supreme Court, the High Courts, the Auditor-General, and one or two other items should be charged to the Consolidated Fund. The future Parliament will be justified in criticising any extravagance in any of the charged heads of expenditure; but it will be improper for us to reduce them, or to treat them as voted items of expenditure. Therefore, I think, in the present juncture of our national finance, such a system of financial control should operate.

I could not follow why my honourable Friends Professor Shah or Shri Jagat Narain Lal fought shy over the word Consolidated Fund or the Contingency Fund. In the past we were committed to large capital expenditure. Money

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is voted; but the money is never spent during the year. If there is a system of creating this Contingency Fund of India, the moneys voted on these particular items of capitals expenditure, whether they are multi-purpose projects or heavy industries, may be consolidated and spent in the next year or years to come. I believe that is the idea of creating this Contingency Fund which is a carry forward fund apart from the Consolidated Fund for the year under review before Parliament.

Sir, we have to evolve our own traditions. If I have revolted previously against the mention of British Parliament or Canadian Parliament or any Dominion Parliament on the floor of this House, I do not fight shy today to follow the British system of financial control in India. We have followed, and we were forced to follow it, under the foreign rulers. Today, we are just trying to modify it to suit our new status and at the same time to exercise full financial control. Dr. Ambedkar has already referred to the point that Parliament is given power to extend the time for discussion of the budget. Mr. Sidhva also criticised on the point. But, it is not the discussion in the Parliament, talking about small things, forgetting that we are discussing the financial estimates presented by the Finance Minister, the important part of the Parliament's duty. It is better that when a Budget is introduced in Parliament, the House resolves itself into an Estimates Committee to which my honourable Friend Prof. Shibban Lal Saksena has already referred. In the Estimates Committee, without discussing the principles of finance and expenditure, we may go into the items of expenditure of every Ministry so that we may control their extravagance of budgeting or their Utopian ideas of planning over which large sums have been spent in the past. I hope in the future no expenditure on Utopian planning will be allowed to the various Ministries. In the Estimate Committee, where the whole House has resolved itself into a Committee—I again apologise if I quote the British practice—the President will have to retire and a Chairman like my honourable Friend Pandit Thakur Das Bhargava will have to preside. In that Committee we may discuss every item of expenditure and not leave it to the Departments to appropriate or reappropriate as they have been doing in the past. If that Estimates Committee comes into functioning soon after the declaration of the Republic of India early next year, much money will be saved. It is not a surprise, but I wish to repeat today that the Government is a bankrupt Government which borrows money, some 26 to 28 crores of Rupees to run its normal expenditure for the year 1949-50. That means every year a crore of Rupees is being added to the interest charges which under this article are going to be a charge on the Consolidated Fund of India. The House will be chary to permit its future Finance Minister or the present Finance Minister who will be naturally functioning in the next year to incur loans to meet the normal expenditure. We know in the last two years the budgetary affairs of the Government of India are running at a loss of 150 to 200 crores if we include the capital expenditure also. If capital expenditure is properly designed, it will pay its own way. But today there is a huge staff under the Government and extravagant ideas of expenditure in the various Ministries and they function not as one Government but each Ministry is functioning as an autonomous Ministry defying the Finance Ministry or the Auditor-General. I am glad that the Auditor-General's position has been assured by the Constitution, but it is for the cabinet of the Government of India to see that the Finance Ministry also exercises proper financial control over the various Ministries. It is not done today properly and therefore every year the unproductive debt of India is going up by 20 or 30 crores—it was 288 crores in 1938-39 and it is 900 crores today—and it is disgraceful to us if we borrow money and live on it and show our grandeur of administration under independent

India throughout the world or inside the country. Sir, I again feel happy being always interested in the national finances and in proper financial control of expenditure of the Government of India—I again feel happy that these article, as now going to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Sir, before I speak, I would like to ask Dr. Ambedkar some clarification of certain points. Does this amendment force the Government of India to have a fund which is to be called a Consolidated Fund? Or is it an enabling amendment?

The Honourable Dr. B. R. Ambedkar : It is already there. It is only a change of name.

The Honourable Rev. J.J.M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session?

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J.J.M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministers of the Government of India or it might be by the Governments of the provinces. I suppose the principles in this article 90 will apply to the provincial Governments also—the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J. J. M. Nichols-Roy : A complaint has been made here in this House that in the Legislatures no time has been allowed for the discussion of the cut motions or the demands for grants. That may be a very just complaint but that may also be avoided by giving more time to the Legislature. Why can't the Legislatures have more time for discussion of cut motions? The rules of legislatures can be changed in order to allow more time for discussions re. cut motions and demands. Why should there be any other method different from what we have had all these years in this country in order to give more time to members to discuss demands for grants? The Appropriation Act to be passed will take some time and it may be inconvenient for provincial legislatures to do that. Some provinces will find it very difficult to pass the Act in the same session, but it is provided by the Votes on Account that a lump sum amount may be provided by the Legislature for meeting the expenditure for some time. But that also will be inconvenient to some provinces. In Assam sometimes we have had to shorten the days fixed for the budget session. Many members wanted to go back to their work. In our last budget session we had to curtail a few days by the agreement of the members of legislature.

Shri L. Krishnaswami Bharathi (Madras: General): If they are unwilling, they have no business to be members of the House.

The Honourable Rev. J. J. M. Nichols-Roy : In Assam we have had some times to curtail the days which have been provided for the work of legislature. There are different conditions in different provinces. Therefore to say that there must be another method of allowing the legislature to extend to days for discussion of the cut motions and demands for grants—seems to be unnecessary. This should not be a reason for any change at all. Then there has been also some criticism about the waste of money by the Ministries. I do not believe that such an accusation is based on facts. This accusation cannot be made of the Ministry of our province at least, and I believe of other provinces also. There is a demand from the Legislature to spend more

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money for the good of the people of the province and we are not able even to meet the demands of the Legislature on account of the lack of money in the province, and to say that the Ministry is wasting money is rather unreasonable; and to base any action of ours here on that supposition is, to my mind, wrong altogether. I think that this system which we have had so far for the Governor of a province of the President to certify will not in any way affect badly the administration of revenues of the country, but if this Appropriation Act is not forced upon a province but it is only an enabling Act in order to allow a province if it wants to pass such an Act or if it wants to continue the present condition, to do so, then there would be no objection at all. I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account it may ask the Legislature.

The Honourable Rev. J.J.M. Nichols-Roy : Suppose the Ministry in Assam or in any province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to it to do so?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

Shri L. Krishnaswami Bharathi : There will be no difference in the procedure.

The Honourable Rev. J.J.M. Nichols-Roy : There will be difference inasmuch as it means so much time. In my opinion I think this will not be necessary at all. It will mean time and will be a waste of public money for the Legislature to continue when it is not necessary for it to continue. It may be necessary at the Centre but I do not think it will be necessary in all the provinces to have this. For the provinces there must be permission to continue the present system or to adopt the system which you have proposed for the Centre.

Shri T. T. Krishnamachari : Mr. President, Sir, I am glad that the House has taken a cue from Dr. Ambedkar, and taking advantage of his lucid explanation of the changes that the Drafting Committee have made in the financial provisions both at the Centre and in the provinces they have discussed the whole scheme threadbare. Though we have not yet reached the provision in which the major changes have been made, I take it that when discussion of the various clauses take place these arguments will not be repeated since the House has fully discussed the whole scheme in all its aspects. I am also happy to see that this new scheme, if it could be called, has had the enthusiastic support of my honourable Friend Mr. Sidhva and my honourable friend Prof. Shibban Lal Saksena I do feel that they have understood the scope of these new amendments correctly and they find in them the essentials of those elements which can be developed if Parliament so wills so as to provide effective control by the representatives of the people over expenditure by the executive. I would at once say that that was the intention of the Drafting Committee in making these changes.

I also listened with considerable respect and attention to the speeches made by my honourable Friend Dr. Deshmukh as also the short speech made by Pandit Jagat Narain Lal. So far as Dr. Deshmukh's criticism is concerned it seems to revolve rather on an affection for the *status quo* than on a positive objection to the new provisions that have now been suggested by Dr. Ambedkar. He sees no harm in the *status quo* continuing and the revenues of the Government of India being called the public revenues of India; and he sees no particular in the new provisions. On the other hand he see

a lot of trouble in the introduction of the words 'Consolidated fund' and 'Contingency Fund'. I am afraid if he holds those views even after the explanation given by Dr. Ambedkar, I will have to leave it at that rather than attempt to convert him. If he had understood Dr. Ambedkar aright he would have realised that the introduction of the words Consolidated Fund is merely a change in name but is nevertheless a change that is appropriate at a time when we are framing a Constitution for ourselves. Dr. Ambedkar has very rightly called the attention of the House to an analogous provision in other constitutions, to the Canadian Constitution where article 102 refers to the Consolidated Revenue Fund, as it is so called there, and to article 81 of the Australian Constitution where a similar reference is to be found to a Consolidated Revenue Fund. There is also a similar reference, though in a different way, in the South African Constitution. But if anybody goes into the history of the Consolidated Revenue Fund as it began in England I would at once say that we have no idea of following the implications of that history because the Consolidated Fund of Great Britain came into being some time in 1787 and the only change it made was a departure from the practice obtaining before that time, namely, that particular taxes were appropriated to particular heads of expenditure. At that time the whole of the public account was brought under one scheme under the head the Consolidated Fund and it was decided that particular taxes should not be appointed to particular heads of expenditure but that the whole expenditure should come out of the Consolidated Fund and be appropriated to different heads, of expenditure. Therefore, it has a historical background which has no validity so far as we are concerned.

Dr. Ambedkar has very rightly pointed out that there have been occasions when our rulers in the past had thought of making a change in the accounting procedure and also in the financial provisions so far as the Legislature was concerned, and it was met by serious opposition from the executive of the day. I have gone through the discussions at various stages before the passing of the 1935 Act and at every time when a change in the procedure was suggested it was merely met by an argument similar to that put forward by my honourable Friend Dr. Deshmukh, namely, that the existing provisions were all right in practice and no change need be made. But I would at once say this with my experience both of the Central budgeting and also Provincial budgeting: I have always felt that the procedure followed was one of the most lax in the world. In fact, so far as the Centre is concerned, the demands are passed by the Legislature—at any rate some of them are discussed and so far as the others are concerned the guillotine is applied—and a consolidation of those Demands is done by means of the Authenticated Schedule presented to the House under the signature of the Governor-General. As Dr. Ambedkar has very rightly pointed out, in the New Constitution the responsibility will be taken over by the Parliament itself by providing for an Appropriation Bill in which Parliament will give its *imprimatur* to a summary or a consolidation of its decisions while passing the various Demands. In the Province also there is a similar procedure of placing before the Legislature an Authenticated Schedule. But while at the Centre some discussion on the financial administration and on the general administration is made during the time of the discussion of the Finance Bill, because we have provision for an annual Finance Bill for the reason that the Income-tax proposals should necessarily be brought up every year and the Schedule of rates must be sanctioned by the Legislature every year—we have no such provision in the provincial Legislatures. In this connection I was happy to see a Provincial Minister taking interest in these new proposals. So far as the Provinces are concerned there is no provision for discussion of the general policy of the Government similar to what takes place in the Finance Bill discussion at the Centre. There might be a taxation legislation if a new tax is to be levied—often times there is. But it is not a consolidated statement of providing the ways and means for a particular year for the provincial

[Shri T. T. Krishnamachari]

administration, and therefore it does not provide for a general discussion of the financial set-up or the financial administration of the Province concerned. If, as Mr. Nichols-Roy wants, these provisions should, if necessary, apply only to the Centre and not to the Provinces, then the lacuna which I think is more serious in the Provinces will continue to exist, which is very undesirable. What is now sought to be done, as Dr. Ambedkar has explained, is that we shall have an Appropriation Bill. We have not made provision for a Finance Bill in the Provinces—it all depends on the Province to make an appropriate change if it so desires.

But in regard to one particular objection made Mr. Jagat Narain Lal where in he objected to a difference in the wording of the amendments—No. 5 in List No. 1 in the name of Pandit Kunzru and the amendment moved by Dr. Ambedkar—I would ask him to study the amendment in its context. Though we have discussed the entire scheme that is now sought to be introduced, the field covered by the scheme that is that subject of discussion is very limited. It is in regard to terms of sub-clause 1(c) and 1(d) of article 90 where there is an enlargement of the definition of a Money Bill and in defining a Money Bill it is perfectly right to say that it includes the custody of the expenditure out of the Consolidated Fund or the Contingency Fund, because various other items are also enumerated and certainly the word “or” is perfectly correct in the context and there is no place for the word “and”.

There is only the point I would like to stress at this stage and it is this. There is no compulsion in this scheme, excepting in two matters; one is in the change of the name of the public revenues of India—if it is made in the Centre it has to be made in the provinces as well so far as the public revenues are concerned. The second thing is that instead of the authenticated schedule presented to the Legislature by either the Governor-General or the President, or by the Governor in a province we shall have an Appropriation Bill which will be passed by Parliament or the appropriate legislature as the case may be. So far as the other provisions are concerned, they are purely optional. If it is the intention of a particular Provincial Government to maintain the target date of 31st March for the passing of their budget provisions which has the concurrence of the legislature concerned there is nothing in this particular series of amendments to prevent a province from doing so. If Mr. Nichols-Roy wants his province to stick to the present system, they may do so. There is absolutely no obligation for them to change the system. If they find that the Legislature is tractable enough to say that they will not take advantage of these enabling provisions that they will discuss the entire budget scheme but the 31st March and expect the Government of the day to put in an Appropriation Bill which will also be passed on the 31st March, there is nothing to prevent them. But what we have sought to do by the amendment in article 95 by introducing the Vote on Account is merely that the inexorable necessity of passing a budget on a particular day will not be there if the Parliament or the legislature of a State so wills it.

The House might ask for how many days do you want to extend the budget discussions. That is a point that might be raised. But we wish to leave it entirely to Parliament or the legislature concerned to fix the number of days that the budget discussions can go on after the beginning of the financial year; and for the purpose we have sought to introduce an enabling provision in 98(A) of which Dr. Ambedkar had already made mention, which provides that the Parliament can make any law relating to the financial procedure and it may be that the Parliament will follow the same system as in England by fixing a day in August by which the budget must be passed, or it may be that Parliament might consider one month's extension adequate. It is left to the Parliament of the future, either to make that change or to make no change, and leave it entirely as it is. The same thing applies to the provinces. Therefore this provision of a Vote

on Account is an enabling provision and it is not a compelling provision. It gives Parliament room for escaping the rigidity of a target date. Members of this House might have been aware that a similar rigidity exists in regard to budget procedure in the French Parliament, and last year owing to the political difficulties which they had, made them stop the clock in Parliament House just before it reached the dead line. The clock was stopped just a few minutes before 12 o'clock at midnight on the last day of the year though it does look absurd that merely for the reason that the clock stopped it can be taken for granted that movement in the whole world had stopped! Such devices will not be necessary and the new scheme will be flexible enough for Parliament to make suitable arrangements. The procedure to be followed for a Vote on Account will be very much the same as for an Appropriation Bill. Parliament might make the necessary legislation undertaking that such and such shall be the procedure to be followed in such matters. It can lay down that the executive must present the demand for a Vote on Account, or call it a Consolidated Bill No. 1, to cover expenditure for two months. All the heads represented in the budget demand must be represented there and the demand must be *pro rata* for the period covered. It might say that no new expenditure must be incurred during this period. All these conditions can be imposed by Parliament, or the Parliament might decide that it does not propose to take advantage of the new scheme but would prefer to follow the existing practice. At any rate the next Parliament may not and the budget discussion will go on as it is at present.

With regard to the other objections, I would say at once that most of us responsible for this new scheme were chary of making any change which was a change having far-reaching consequences. We feel therefore that we have not made any serious departure. At any rate there will be no obligation for the Parliament at the Centre or the Legislatures in the Provinces to make any serious departure and they could continue the existing scheme, if they wish to do so. If Parliament wants to exercise full control, as it ought to—and so should the State Legislatures—there is room for them to take advantage of the powers given to both the State Legislatures and Parliament by means of these amendments to exercise that type of control which goes along with any decent democratic system of Government. I think that the various points raised by the Speakers I have tried to meet, at any rate in part, and the rest will be probably met by Dr. Ambedkar in his final reply. After that there should be no need of further discussion so far as the general principles of the scheme are concerned. Sir, I support the amendment of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think I can add anything usefully to what Mr. T.T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

Mr. President : The question is:

“That in clause (1) of article 90, the word ‘only’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That at the end of sub-clause (a) of clause (1) of article 90, the words ‘duty, charge rate, levy or any other form of revenue, income, or receipt by Governments or of expenditure by Government’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (e) of clause 1 of article 90, for the words ‘the increasing of the amount’, the words ‘varying the amount of, or abolishing’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted:—

- ‘(c) the custody of the Consolidated Fund of the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;’ ”

The amendment was adopted.

Mr. President : Now I will put amendment No. 6 to vote.

The question is:

“That in sub-clauses (e) and (f) of clause (1) of article 90, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

Mr. President : Now I will put article 90, as amended, to vote.

The question is:

“That article 90, as amended, stand part of the Constitution.”

The amendment was adopted.

Article 90, as amended, was added to the Constitution.

Mr. President : Article 91 was passed the other day.

Therefore the House will take article 92 into consideration.

Article 92

Prof. K. T. Shah : Sir, I move:

“That in clause (1) of article 92, after the word ‘President’, the following be added:—

‘or the Finance Minister acting under the authority of the President, specifically given for the purpose’; and for the words ‘both the Houses’ the words ‘the People’s House’ be substituted and after the words ‘estimated receipts’ the following be inserted:—

‘On revenue account as well as from borrowed moneys, or transfer of sums from other accounts to Revenue Account.’ ”

Sir, there are two points in this amendment which I would like to place before the House. In the first place the clause as it stands makes the Budget Presented by the President only, as it were, or caused to be presented to Parliament by the President. The House has accepted the principle that all executive action of the Government of India shall be always in the name of the President. Accepting that, it does not still seem to be appropriate that, in this matter, the President should be made to figure as the authority for getting the Budget presented to Parliament. The obvious person who could and should act in relation to this would be naturally the Minister in charge of the finances of the country. He is in the House and is in direct touch with it and with the financial administration of the country. The room that this article provides for any alternative or other Minister for the matter, to come before Parliament seems to me improper and ought not to be permitted.

Retaining the sense of the principle previously accepted in the article whereby the Government of the country is to be carried on in the name of the President, I have nevertheless tried to improve it by making the Finance Minister specially, though acting with authority given for that purpose to be in charge of the Budget. Speaking for myself I would have liked the President to be wholly excluded from acts of this kind. Complete and exclusive supremacy and authority of Parliament over matters financial should be left unquestioned. As it is, however, I would try to meet the principle of the previous article or the sense of it by requiring

that the Finance Minister should, for this purpose, have specific authority from the President, and therewith do the needful in the Houses of the People.

This may seem a mere matter of procedure, or a matter of nomenclature. I hold, however, that it involves a great principle of Parliamentary democracy and responsible Government inasmuch as it excludes the executive head from taking part even by implication in matters of this kind.

The second principle that is involved in my amendment which is of greater importance is the association with the Budget.....

Shri L. Krishnaswami Bharathi : On a point of order, Sir. Is this amendment in order, because the executive function of the Union is to run in the name of the President? The Finance Minister as such does not come into the picture. The amendment is that the Finance Minister shall lay the Statement before Parliament. It runs counter to the very scheme of the Constitution under which all things are done in the name of the President. There is no point in the amendment that the Finance Minister should come into the picture. Article 42 says that the Executive Head of the State shall be the President.

Mr. President : He started by saying that he was aware of that principle, but in spite of it, he thinks that the Finance Minister should also come in.

Prof. K. T. Shah : The second point is much more important, inasmuch as the financial supremacy of the People's House should, in my opinion, be asserted categorically, and no room left for any sense of equality between the two Chambers so far as matters of finance are concerned. As the article stands, it suggests a question of equality between the two Houses of Parliament in financial matters, which I think is fundamentally opposed to the basic idea of the Constitution as we have provided it so far. Hence it is that I, by this amendment, suggest that this matter of finance must be left entirely to the House of the People; and, if necessary, as a mere matter of information, the other House may be informed only, just as the public and the various Departments of the administration are informed and supplied with copies of the Budget. As a matter of constitutional right and constitutional requirement or policy, I think it would be but correct and proper that the only body interested in and concerned with finance should be the People's House. If you desire the supremacy of the popular representatives of the people to be unquestioned in matters financial, then I think this amendment, which provides for the Budget to be presented only to the People's House, should be unopposed. The other House may have joint and equal association in ordinary legislation, and may even be entitled to suggest some modification, if they so like, in matters financial. But theirs cannot be the last word. The pre-eminence of the House of the People, the primary interested and concerned authority of the People's representatives in matters financial, should be left utterly undoubted.

I therefore make this amendment affecting not merely the revenues, but all items of expenditure whether from borrowed funds, or transferred from other funds, which are to be utilised for the service of the country.

I suggest that the amendment I am proposing here is in full accord with the basic principles of the Constitution as we have been developing them and as such would be acceptable to the House.

Mr. President : Will you move the other amendments also? 1694 is already included.

Prof. K. T. Shah : Sir, I move:

“That in clause (1) of article 92, after the word ‘expenditure’ the words ‘whether charged upon the revenues of India or on other account’ be added.”

[Prof. K. T. Shah]

Sir, this is in tune with the general line of argument I am advancing. There shall be no discrimination, from the standpoint of presenting to the House of People all items to be spent on account of the country's services whether they are charged upon the revenues or on the Consolidated Fund or on the ordinary Revenue Account. I hope the amendment will be accepted.

Mr. President : There are two other amendments in your name—Nos. 1697 and 1698.

Prof. K. T. Shah : I would like to move them.

Mr. President : You can move them on Friday.

The House stands adjourned till 8 o'clock on Friday.

The Assembly then adjourned till Eight of the Clock on Friday the 10th June, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 10th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr President (The Honourable Dr. Rajendra Prasad) in the Chair.

HINDI NUMERALS ON CAR NUMBER PLATES

Seth Govind Das (C.P. & Berar: General): *[Mr. President, before you proceed to take up the business of the House fixed for today; I would like to draw your attention to a news item appearing in the *Hindustan Times* dated 9th instant which relates to the explanation submitted by the Delhi Police to the Home Department regarding the question of number plates on motor cars which had been raised by me here. It is stated therein that:

“It is understood that the attention of the Home Ministry has been drawn to the Indian Motor Vehicles Act of 1949, according to which the number plates must bear the number of the vehicle in English letters and numerals. The letter further points out that the Indian Motor Vehicles Act applies to the whole country and the Delhi administration have no power to amend it.”

I would like to say that the same law is followed in United Provinces as well as in the province of Central Provinces to which I belong. In spite of that the number plates on cars, even those, which belong to Ministers, are in Hindi. Sir, you are aware of this fact too that according to the rules of the Parliament speeches may be delivered there in English, but the Speaker of our Parliament Shri Mavalankar has declared it again and again that under the changed circumstances of today there can be no justification for enforcing this rule. Speeches are continually being made in the Parliament in Hindi. I would like to submit it to you that the argument advanced by the Delhi Police administration is devoid of commonsense and is in contradiction to the existing circumstances. It is a most absurd argument. I request you to kindly do something in this matter so that an untoward situation may not arise.]

Shri L. Krishnaswami Bharathi (Madras: General): Sir, ordinary there must be some motion on which we being speaking and I want to know how Seth Govind Das is in order in springing on us something which is not before the House. If there is any grievance, it is much better he goes and meets the Honourable the President and not mention all these matters here. There must be a motion for any Member to speak on; and what is the motion, may I know, on which he is speaking? Is there any motion before the House, Sir?

Mr. President : There is no motion before the House. The honourable Member the other day drew my attention to the fact that one honourable Member had been interfered with because the number plate of his car was in Hindi. As I said, I would look into the matter. The honourable Member has drawn my attention to something which has appeared in the *Hindustan Times* relating to the same matter. That is what he was reading out.

Shri L. Krishnaswami Bharathi : Sir, the usual practice is for him to contact you in your chamber and I think he should not bring all these matters before the House. It may not be a good precedent, Sir.

Pandit Balkrishna Sharma (United Provinces: General): It is a question of the privilege of the Members.

*[] Translation of Hindustani speech.

Shri L. Krishnaswami Bharathi : I do not minimise the importance of the subject.

Pandit Balkrishna Sharma : I want to submit for your kind consideration that my honourable Friend seems to be a little ticklish about the whole thing for the simple reason that it concerns the privilege of the Members and he seems to attach little importance to it. An honourable Member has every right to bring the matter before the House with or without notice. The point of order raised by my honourable Friend is that there was no motion. There have been so many instances and I myself was in such a position and you were kind enough to permit me to raise the question regarding the coins that are in contemplation to be issued, and naturally, we being the Parliament, we have got to raise the subject here even though there may not be any notice.

Mr. President : I have looked into the matter because it was raised the other day and I would not give a ruling about the question of privilege and I would refer the matter to the Government.

Pandit Balkrishna Sharma : I am also one of those who have suffered at the hands of the Delhi Administration in this respect. My car was *challaned* from the 1st of April and I did not rush to the Press. I wrote to the Deputy Commissioner, and if I am not betraying a confidence—I hope I am not—I had the pleasure of meeting the Deputy Commissioner in the At Home which the Honourable the Prime Minister gave the other day and brought to his notice the matter of the number plates being in Hindi language and the Deputy Commissioner said that the Motor Vehicles Act contains a clause under which all the cars should bear the number plates in English characters. He further said that in view of the Act as it stands today, he cannot instruct the Delhi Administration otherwise and that the Delhi Administration takes notice of such of the cars as do not bear number plates in English characters. My submission to him has always been that Delhi as a Province is surrounded on all sides by provinces which have declared Hindi as their Government language and Devanagari as the Government script.

Mr. President : Order, order. I have got the information which you wanted to give me. As I said, honourable Members will not insist upon my giving a ruling on the question of privilege. It may not be in their interest. As I have said, the matter will be taken up with the Government.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): There is no privilege to break the law.

FLYING OF UNION JACK OVER COUNCIL HOUSE

Shri B. Das (Orissa: General): Sir, I wish to draw your attention to the fact that Union Jacks were flying aloft in this Council House building yesterday, though not, over this august sovereign Chamber. I wish you will order that as long as the Constituent Assembly sits in this place no Union Jack is to be unfurled in this Council building.

Mr. President : The honourable Member may not like it, but there is no help, at any rate, at present.

Maulana Hasrat Mohani (United Provinces: Muslim): May I bring to your notice as well as to this Assembly a very serious matter? The Indian Government is taking a sort of police action inside the Sikkim State; it has not acceded to the Indian Union and the Government appear now to be compelling them to accede.

Mr. President : Order, order. I am afraid I cannot take notice of such things. These are not matters for the Constituent Assembly, but for the Legislative Assembly when it sits.

Honourable Members : Hear, Hear.

DRAFT CONSTITUTION—(Contd.)

Article 92—(Contd.)

Mr. President : We shall proceed with article 92.

Prof K. T. Shah (Bihar: General): Sir, I beg to move:

“That at the end of clause (1), the following proviso be added:—

‘Provided that once the annual financial statement has been laid before Parliament, and Parliament has become seized of the statement, it shall not be competent for the President, or any Minister acting in his name, or any other person, to alter or modify any item in any particular, or withdraw the entire statement; and that the House of the People shall alone be competent to alter or amend or modify, accept or reject, in part or wholly, the financial statement thus placed before it; provided further that only the People’s House or Parliament shall be competent to make any modifications, addition or alteration in the financial statement or to accept or reject it, in part or in *toto*.’ ”

This, Sir, is intended to establish the principle of the supremacy of the House of the People in matters financial. Once the financial statement has been prepared and presented to Parliament, Parliament should be the sole authority for disposing of it; and no other person or authority can do so except, of course, by a vote of the House of the People.

By this amendment, I desire that the supremacy of Parliament, and in that the House of the People, in matters relating to Public Finance should be made absolutely clear beyond doubt. Hence the provision should be made that once the financial statement has been placed before the House, and the House has become seized of the matter, neither the President nor any Minister acting under his authority or in his name, would be competent to alter, or modify, or even withdraw any item in the statement in any way. If any change has to be made, that change can be made only by the House of the People by a definite vote of that body; and not by even Parliament in both Chambers.

This matter is so self-evident in any parliamentary democracy which wants that the Lower House should be the sole custodian, watch-dog of matters financial, that it seems to me that this proposition should be unchallengeable. It is in no way departing from the spirit or accepted convention of the model Constitution which we have been following in this Draft, I mean the British practice. There it is very clear by convention, because there is no written constitution in Britain, that the House of Commons is the sole supreme authority in matters of Public Finance. Those of us who follow that model, and provide a written Constitution, would be doing nothing more than giving effect to a well-known convention whereby the Parliament or the House of the People alone would be competent to make any alterations in such financial provisions, whether they relate to expenditure or revenue, or whether they relate to otherwise disposing of or altering the financial provisions for a given year. Only the vote of the House of the People should be supreme and final in these matters and no other authority should have a say in it. Once the Financial Statement is placed before the House of the People, no other authority should have or can have anything to do with it. I therefore commend this to the House.

May I move the next amendment also, Sir?

Mr. President : Yes.

Prof. K. T. Shah : Sir, the next amendment is:

“That after clause (1) of article 92, the following new clause be added:—

‘(1a) At the time the annual financial statement is presented to the People’s House of Parliament, the President may invite the members of the Council of States to be present in the People’s House of Parliament.’ ”

Sir, this is a practice which follows as a corollary from the principle I have just suggested: that the House of the People alone is competent to deal with,

[Prof. K. T. Shah]

and has unchallenged supreme authority in regard to matters financial. The other House, whatever its powers and authority may be in regard to other legislation, should, in matters financial, be kept out altogether.

To give effect to this, not only would I suggest that the financial statement can be laid only before the House of the People, I would go further and say that, if any information is to be conveyed to the other House in this regard, it may be conveyed by inviting the other House to be present on the occasion of the presentation of the Budget. The formal presentment and dealing with the budget or financial statement should be and must be only by the House of the People.

This amendment is only making clear the general principle which I have been enunciating all this while, that the Council of States should have no say in matters financial.

I commend these amendments to the House.

(Amendments Nos. 1699 and 1700 were not moved.)

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

“That in sub-clause (b) of clause (3) of article 92, for the words ‘emoluments’ the words ‘salaries’ be substituted.”

That is the usual wording we are using.

SHRI H. V. Kamath (C.P. & Berar : General) : Sir, I move :

“That after sub-clause (b) of clause (3) of article 92, the following new sub-clause be added:—

‘(bb) the salaries and allowances of Ministers and Members of Parliament.’ ”

Sir, I do not wish to speak on this amendment at all. I would only like to know, when the emoluments of the President, the Chairman and Deputy Chairman of the Council of States, the Speaker and Deputy Speaker of the House of the People have been regarded as expenditure charged to the revenues of India, why the salaries and allowances of the Ministers and members of Parliament should not be so treated.

Mr. President : The salaries of the Ministers come for the vote of the House because the Ministers are responsible.

Shri H. V. Kamath : The Chairman and Deputy Chairman of the Council of States, the Speaker and Deputy Speaker.....

Mr. President : They are not responsible in the sense in which the Ministers are.

Shri H. V. Kamath : There is one difficulty, Sir. No article in this Constitution says that the salaries and allowances of the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People shall not be reduced during their term of office. But, there is such a provision with regard to the salaries and allowances of the President. So it appears that Parliament may alter the former.

Mr. President : I am afraid your amendment cuts across the whole principle of responsible Ministers.

Shri H. V. Kamath : Sir, I formally move the amendment.

(Amendments Nos. 1703, 1704 and 1705 were not moved.)

Prof. K. T. Shah: Mr. President, Sir, I beg to move:

“That is sub-clause (f) of clause (3) of article 92, the words ‘or by Parliament by law’ be deleted.”

The amended proposition would then read:

“any other expenditure declared by this Constitution to be so charged.”

Here I think is a matter of very basic importance in regard to the financial administration of the country, and its public economy at large. Under this article a number of items are specifically laid down by this Constitution as charged on the revenues of India,—now as being in the Consolidated Fund, and as such not likely to be voted upon in every year. The various items do not, in my opinion, all stand on a par. It the intention is to keep some of these items out of the vicissitudes of party politics, if the intention is to keep them fixed and unchangeable at least for some given period, such as for instance the salary and allowances of the President during the term of his office, or the salary and allowances of the presiding authorities in the two Chambers of the Legislature, or the salaries, pensions and allowances of the Supreme Court Judges, then it is but right that we should keep these items as limited or as few in number and as small in volume as we possibly can.

There should be in my opinion no room left for increasing the amounts, and widening the nature of the items that can be so kept out of the annual vote of the House. There are items actually mentioned here, which appear to me to be utterly unnecessary, and even unwise, to be so included in the charged list or the Consolidated Fund. Take for instance item (c) which relates to debt charge for which the Government of India is liable. That includes interest and sinking fund charges, redemption charges, other expenditure relating to the raising of loans, and the service of the debt, *i.e.* paying interest, registering transfers etc. Now here is an item the justice of which being included in the items charged on the revenues of India, or those put in the Consolidated Fund, may be open to question. I quite realise that, in the interest of the national credit and its stability, it is but proper that the ordinary debt charges may be not open to annual vote. At the same time it must be known to every student of Public Finance that frequently countries obliged again and again, the most highly credit-worthy countries have had recourse to altering or reducing the rate of interest on their permanent debt. All Conversion schemes that have been adopted in the past, and are being applied even today have changed the rate or interest and varied the contract unilaterally. If those items are left outside the voting power, then I am afraid the possibility of effecting economies and of adjusting our obligations to our resources from time to time might be very substantially curtailed.

I have, however, in view of the transition through which we are going, in view also of domestic as well as foreign complications that may arise in connection with this question of using our national credit and borrowing abroad, not given notice of any amendment regard to that particular item, though I confess that I feel very reluctant to see it included in this article.

Even if the interest and sinking fund charges are kept outside the annual vote, I do not see why the incidental charges, like brokerage or the management charges paid to Reserve Bank on the administration of the debt service should be included in this manner. I think it is really inappropriate to do so. But for the reason I just mentioned—that somewhat delicate financial situation of the present moment—I would have ventured to offer an amendment even on these matters.

But when you come to such a promiscuous on an omnibus provision as is included in sub-clause (f) which permits Parliament hereafter to add any

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other item of expenditure as being in the non-votable list, then I am afraid the Constitution leaves the door very wide open to the withdrawal of the powers—to the curtailment of the financial authority of the Lower House, which I think is highly inexpedient and unacceptable. If you trust to our people, and believe that the future Parliament is for all these purposes sovereign, it would be unnecessary for us to lay down in this article here, in the manner in which it has been done, the power of Parliament to make any alteration in the items that cannot be voted upon every year. You give no power to increase the votable list; why then do you give power to increase the non-votable list?

On the other hand, if you mean this Constitution to be a kind of restrictive instrument, if you design this Constitution to lay down specifically those items which and which alone can be excluded from the vote of the Parliament, as my amendment provides, then I suggest that the best course is to keep them as few in number, and as small in amount as possible. But by an omnibus provision of this kind that you are making, you propose to make parliamentary authority function ineffectively and restrictively in matter financial. For, once an expenditure is withdrawn from the annual vote, any amount of abuse may occur. Parliament, at least in a given year or until the Constitution is revised, may not be able to alter.

I suggest, therefore, that here is a matter of very grave consequence to which attention should be paid by those responsible for this Constitution. The amendment I have attempted to bring in does not affect any necessary safeguard for maintaining public credit. The article gives power to include in the Consolidated Fund or as charges upon the revenue, certain items necessary and proper to be kept outside the annual vote. It only prevents the future Parliament legislating, and thereby withdrawing, so to say, from the competence of its own successors, the right of voting upon certain other items in the financial statement. Remember it would be curtailing the power of a sovereign body, its successor, which no Parliament should really have as against its own successor by such device as this clause contains. It would only open the door to frequent alterations, and to party influences or other transitory factors of that kind, which is,—to say the least—most undesirable. I therefore commend this amendment to the House.

Mr. President : Dr. Ambedkar. No. 7 of the First List.

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

“That in sub-clauses (a) and (b) of clause (2) of article 92, for the words ‘revenues of India’ the word ‘Consolidated Fund of India’ be substituted.”

“That in clause (3) of article 92, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

“That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted:—

‘(dd) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India.’ ”

With regard to 9, all I need say is that the House has already passed article 124, clause (5) which contains the present amendment. It is therefore here because it was felt that all items which are declared to be charges on the Consolidated Fund of India had better be brought in together, rather than be scattered in different parts of the Constitution.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, my honourable Friend Mr. Kamath has moved an interesting amendment which says that the words “salaries and allowances of Ministers and Members of Parliament” should be added to the sub-clause so that they will be a charge on the revenues

of India. It means that they will not be votable with the result that the executive will become an irremovable one. I am rather perplexed at this. The charges which will be charged on the revenues of India are the salaries of the President, the Speaker, the Judges of the Supreme Court and now the Auditor-General. They will become non-votable under article 93. I do not know whether the sovereign Parliament of the nation should be denied the opportunity to vote upon the salaries of even these high dignitaries. Probably Mr. Kamath wants to reduce the provisions of this article to an absurdity; otherwise there is no meaning in his amendment. I agree that we are bringing in a dangerous thing in the Constitution by these provisions. I wholeheartedly support the amendment of Prof. Shah for deleting the last clause, which says that parliament can declare any expenditure to be non-votable. This, I think, is unprecedented in any constitution of the world and I would like Dr. Ambedkar to enlighten us how sub-clause (f) of article 93 is in consonance with democratic procedure. I feel that the sovereign Parliament of the nation should have the right vote on every item of expenditure. I can see some argument for making the salaries on the Judges of the Supreme Court, the Auditor-General and the Speaker to be charged to the revenues of the State. It is possible that a party in power by a majority might vote down the salaries of the judges of the Supreme Court so that the judges will try to humour the party in power and that will detract from their independence. But this is far-fetched and no party dare vote down salaries of Supreme Court Judges, etc. That the salaries of the other people should also be permitted to become non-votable is not fair. Clause (f) must go.

Mr. President : I shall put the amendment of Prof. Shah (1693) each item separately to the House.

The question is:

“That in clause (1) of article 92, after the word ‘President’ the following be added :—

‘or the Finance Minister acting under the authority of the President, specifically given for the purpose.’ ”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 92 for the words ‘both the Houses’ the words ‘the People’s House’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 92 after the words ‘estimated receipts’ the following be inserted :—

‘on revenue account as well as from borrowed moneys, or transfer of sums from other accounts to Revenue Account.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 92, after the word ‘expenditure’ the words ‘whether charged upon the revenues of India or on other ‘account’ be added.”

The amendment was negatived.

Mr. President : The question is:

“That at the end of clause (1) the following proviso be added :—

‘Provided that once the annual financial statement has been laid before Parliament, and Parliament has become seized of the statement, it shall not be competent for the President, or any Minister acting in his name,

[Mr. President]

or any other persons, to alter or modify any item in any particular, or withdraw the entire statement; and that the House of the People shall alone be competent to alter or amend or modify, accept or reject, in part or wholly, the financial statement thus placed before; provided further that only the People's House or Parliament shall be competent to make any modifications, addition or alteration in the financial statement or to accept or reject it, in part or *in toto*.' "

The amendment was negatived.

Mr. President : The question is:

"That after clause (1) of article 92, the following new clause be added :—

'(a) At the time the annual financial statement is presented to the People's House of Parliament, the President may invite the members of the Council of States to be present in the People's House of Parliament.' "

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (b) of clause (3) of article 92, for the words 'emoluments' the word 'salaries' be substituted."

The amendment was adopted.

Shri H. V. Kamath : Sir, may I ask for leave of the House to withdraw my amendment No. 1702?

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

Mr. President : The question is:

"That in sub-clause (f) of clause (3) of article 92, the words 'or by Parliament by law' be deleted.

The amendment was negatived.

Mr. President : The question is:

"That in sub-clauses (a) and (b) of clause (2) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted :—

'(dd) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India.' "

The amendment was adopted.

Mr. President : The question is:

"That Article 92, as amended, stand part of the Constitution."

The motion was adopted.

Article 92, as amended, was added to the Constitution.

Article 93

(Amendment No. 1707 was not moved.)

Prof. K. T. Shah : Sir, I move:

“That in clause (1) of article 93, after the word ‘Parliament’ the words ‘unless Parliament has by law previously passed in any year for that purpose enacted that any expenditure under article 92(3) shall be deemed not to be charged on the revenues of India’ be added.”

Here again I attempt to bring out the governing principle of the supremacy of Parliament, and particularly the House of the people, in matters financial. While the entire system of grouping of public expenditure is considerable chunks in the Consolidated Fund, and making it outside the vote of Parliament is in itself, at least to me, objectionable, as reducing the extent of parliamentary control over expenditure, even granting that these amounts are necessary to be in the Consolidated Fund, as under the peculiar circumstances of today such practice may be necessary, I would not like Parliament to be utterly deprived of any right under the Constitution to withdraw from these non-votable items anything that it by law desires should not be so included.

I would therefore, like power to be left to Parliament hereafter to legislate—such legislation must be in the previous year—and say that, in the subsequent year, a given item shall not be deemed to be charged upon the revenues of India, or to be in the Consolidated Fund from that time onwards, so that it would be open to the vote of the House. What under the peculiar circumstances of India may be included in the Consolidated Fund, should be open to Parliament to withdraw from that Fund by a law.

This practice of distinguishing between votable and non-votable items, or those open to the annual vote of Parliament and those withdrawn from that vote, but permitted to be discussed, is a legacy of the preceding regime, which, I think, was open, and is today still more open, to strong objection. For that regime, no doubt, it can be understood that there were many items of expenditure which it did not care, would not dare, to bring before the representatives of the Indian people. For instance, its huge defence expenditure, or its Home charges, and so on, if open to Parliamentary vote, would never allow the Budget to be passed. But that cannot be an excuse which the authorities of today could hold out for following the same practice. The present Parliament, or the Parliament under this Constitution, would be the supreme financial authority. It would be a sovereign legislative body which *ipso facto*, should have the right to discuss every item of expenditure and also to vote upon it. In this case, the present article provides that discussion may be allowed; but that on certain items described in the preceding article, which are said to be charged upon the revenues, or are in the Consolidated Fund, there shall be no voting.

In my opinion this is adding insult to injury. You say to the Legislature: “you are entitled to discuss, but you have no right to vote upon such items”. What is the use of a discussion of this futile character, which is self-frustrating, and which, if anything, can only result in irresponsible, destructive negative criticism which our leaders seem so utterly to dislike?

I, therefore, do not see any justification for this article, except in the plea, commonly urged now-a-days, of extraordinary circumstances, or the delicate position today of our credit and finance. Hence, even if you may be persuaded to accept what in my opinion is fundamentally objectionable, for special extra-ordinary reasons of today, I think for the future of any rate room must be left for Parliament to legislate,—and by legislation—that is to say, after a solemn discussion of the principle as well as the provision of that particular law—that any item be withdrawn from the charged list, or the non-votable list, and made open for the vote of the House.

[Prof. K. T. Shah]

It may quite possibly be, that for instance, in the item of public debt, which is charged upon the revenue, or in the charge of the service of that debt which also may amount to a considerable figure, there may be room hereafter for Parliament to demand scrutiny and voting instead of being merely content with discussion of it. In a case like this, while I am not suggesting that the basic Constitution should be varied by Parliament, the national Legislature should, under the Constitution, have the right to make its own law in any previous year, and say that in a subsequent year, it would be entitled to discuss as well as vote upon specified items previously in the charged or non-voted list.

In asking this, therefore, I am not making any really fundamental variation from the scheme of this article. I am only suggesting that the power of Parliament should not for ever be mortgaged to the executive, as this Constitution tends to do; and that it should be left open to it by legislation to withdraw any item, now charged upon the revenues, from such charged list, and make it open to the vote of the House. I commend the proposal to the House.

(Amendments Nos. 1709 and 1710 were not moved.)

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

“That in clause (1) of article 93, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

Mr. President : The question is:

“That in clause (1) of article 93, after the word ‘Parliament’ the words ‘unless Parliament has by law previously passed in any year for that purpose enacted that any expenditure under article 92(3) shall be deemed not to be charged on the revenues of India’ be added.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 93, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 93, as amended, stand part of the Constitution.”

The motion was adopted.

Article 93, as amended, was added to the Constitution.

Article 94

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

“That for article 94, the following article be substituted :—

‘94. (1) As soon as may be after the grants under the last preceding article have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India all moneys required to meet—

- (a) The grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

- (2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.
- (3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.’”

As I explained yesterday the object of this new article 94 is to replace the provisions contained in the old article relating to the certification of a Schedule by the Governor-General.

(Amendment Nos. 1711 to 1716 were not moved.)

Mr. President : Does any Member wish to say anything on the new article moved?

The Honourable Shri K. Santhanam (Madras: General): Sir, while there may be no material objection to the substitution of the original article by this new article, I cannot help feeling that this is a wholly unnecessary formality inflicted on our procedure. Dr. Ambedkar no doubt explained that we are trying to adapt our procedure to the procedure of the House of Commons, but there is one material difference which he has not touched upon. In the House of Commons, votes on estimates are taken in committee, the whole House going into committee. The votes taken there have no legal validity. Therefore they have to put in a special Appropriation Act to give legal validity to the votes taken. But our procedure is that the votes on demands for grants are taken in the full House with the Speaker in the Chair. Therefore the votes are as valid as the Appropriation Act itself. When once votes are taken in the House it is not possible for anyone to change them. Therefore I do not see why we should again have the procedure of a Bill and a vote taken. After all it is provided that you cannot make any change whatsoever in the Bill. When the House has legally done something I do not see any particular purpose in again bringing it as a Bill and providing for further speeches wasting two or three days of the time of the Legislature.

Dr. Ambedkar said that it was constitutionally objectionable to invest the President with the power of authenticate. If that is the objection, I submit that the Speaker may be asked to authenticate whatever is passed. Thus the entire formality could be avoided.

My purpose in coming to the forum is not so much to speak about it as about clause (3)—I want to draw the attention of the House to clause (3) of this article. I want them to vote on it knowing fully the implications. It says: “Subject to the provisions of the next two succeeding articles, no money shall be drawn from out of the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.” Article 95 provides for supplementary or excess grants. Therefore clause (3) means that for the purpose of supplementary and excess grants money can be drawn without the vote of Parliament. Is that the purpose? I can understand expenditure being incurred by the Government at their own risk, but payment should be deferred till vote is given by Parliament. But as the clause stands payments can be made by someone or other out of the Consolidated Fund without a vote of Parliament. I think that more or less nullifies the entire effort to see that no money is paid without a vote. Therefore I suggest that clause (3) must go and necessary provision should be made in article 95. I suggest that this is essential to make the law effective.

I agree that Parliament’s power over the finances should be effective. I am as emphatic as Mr. Sidhva himself that this should be effective. But let us not

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pretend to be effective and nullify it by a provision which makes it ineffective. If clause (3) stands, a hundred crores of rupees can be spent as supplementary or excess grants and then the whole thing will come before Parliament for mere ratification. Therefore clause (3) of the new article must go.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir, my Friend Mr. Santhanam has suggested the deletion of clause (3) from the amendment moved by Dr. Ambedkar.

The Honourable Shri K. Santhanam : Not the whole of clause (3). I want the deletion of the words "Subject to the provisions of the next two succeeding articles". It must be article 95. I object only to the "two succeeding articles". I do not object to article 96 being there in this clause (3).

Shri R. K. Sidhwa : I have followed you correctly. You know very well how the House applauded article 92 for the new provisions inserted there in so as to make the question of Money Bills more liable to scrutiny. My Friend Mr. Santhanam also desires it. He too wants to make it more effective. But his argument is, why do you bring in another Bill and waste the time of the House giving it the opportunity to repeat the arguments and making speeches for two or three days more? His feeling is that the time of the House will be taken by such an unnecessary procedure being followed. I do not share his views in this matter. On the contrary this provision provides for a second check upon what has been done on an earlier occasion. Therefore there is nothing wrong. Under article 92 which we have passed we want that our whole financial procedure should be effective. As that is so, this clause is absolutely necessary. As I said the other day, question of time is no consideration in matters like finance. Only a provision of this kind will enable a complete and thorough check being made upon the expenditure that will be made from time to time by the executive. If you delete this I feel that the very object on which we have concentrated our attention will be frustrated. I therefore feel that the amendment as it stands should be accepted. If you take away anything from it, it will detract from the importance we attach to it. I do not think that Mr. Santhanam has made out a case for his proposition. I am sure he would have supported this article if he were not a Minister. He now feels that the discussions on the Budget and Money Bills should be disposed of as early as possible. I have noticed that feeling of his. I ask him, however, to have consideration for the feelings of Members who have also some things to discharge. He should not stand in the way of Members desiring to keep a check upon what is being done by the executive who are responsible to the Ministers. The actions of the Ministers can only be questioned in Parliament by the Members. Therefore this amendment which has been moved after mature consideration to satisfy the desire of the House should be adopted.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I do not desire to say anything on the merits of this amendment. Experienced experts have differed from certain provisions of this amendment. I however desire to draw the attention of the House to a growing and alarming tendency to introduce new amendments to the Constitution itself.

You have already ruled that amendments to amendments may be given but new amendments of the Constitution itself should not be submitted. Amendment No. 11 on the First List totally replaces article 94; amendment No. 12 replaces article 95 and amendment No. 13 replaces article 96. These amendments are new and are amendments to the Constitution itself. I am not raising a mere technical objection, but these embody very serious changes. I have no doubt whatsoever that the way we are proceeding with the consideration of the Draft

Constitution, the way we are proceeding backwards and forwards, considering one article here and then switching over to another article there, I think this is certain to lead to anomalies and inconsistencies which cannot be detected on the spur of the moment. It is for this reason that I had suggested that we should have a final production from the Drafting Committee. The House should have a complete picture of what is really intended. Instead of this, we are showered daily with absolutely new amendments, new ideas and new thoughts. This, to say the least, is extremely difficult and inconvenient, if not utterly confusing. I submit, Sir, that the suggestion that I made a few days ago that there should be a little adjournment was made so that the Drafting Committee may have time to give us a final picture of their own mind to enable us to come thoroughly prepared. Unfortunately that suggestion of mine was taken to be a dilatory move. I had nothing like that whatsoever in my mind. I have already detected serious inconsistencies in the Draft Constitution as we have accepted and I do not know how many more inconsistencies are lurking behind these innocent looking new amendments. I ask you, Sir, to consider whether it would be easy or convenient for the Members to consider these new amendments to the Constitution itself if they are sent in from day to day. I do not, I confess, possess the mental dexterity of some of the Members. I am a little slow to understand these things and I therefore desire that things should proceed in such a way that the slowest Member like myself may be easily to follow them. I suggest that something should be done to relieve this difficult situation. At present what happens is that when Honourable Dr. Ambedkar gets up, and proposes a new clause, it has a paralysing effect on the House. The majority are not in a position to understand it, and it is passed as a matter of course. Sometimes after general discussions has begun, Dr. Ambedkar has proposed an amendment and even that has been accepted. If it is the desire that the Members should only hear what he says and must agree as a matter of courtesy, then it is all right. But I contend that every Member has a duty to follow what is happening.

Mr. President : I am afraid this complaint of the honourable Member is not justified. Notice of this particular amendment was given as long ago as the 28th May which is nearly a fortnight ago, and this has been taken up after the pretty long discussion which we had day before yesterday about the nature of these amendments. I do not think any Member has been taken by surprise particularly with regard to these articles where there is a fundamental change of procedure suggested.

Mr. Naziruddin Ahmad : I cited these articles by way of illustration only. We are given every day absolutely new ideas. We are faced with amendments which are nothing other than new ideas. I protest against this tendency, which is not a little confusing and inconvenient to Members. It is not easy for all the Members to follow these changes. This is not by way of complaining against these present amendments only, but everyday new ideas are given and they are changed from day to day, and at the last minute something is proposed and we have automatically to agree to it. I contend that what I say is not to delay matters but to facilitate matters. These are inconveniences felt by some Members and I have ventured to come here and place them before you.

Mr. President : When we are considering the Constitution, we cannot altogether rule out new ideas. Changes are bound to occur from time to time and whenever they do occur, we have to take note of them. Therefore the Chair has reserved to itself the right to allow amendments even at a later stage, if it thinks that an amendment is such that it requires consideration. If there is any complaint from any Member that time should be allowed to consider any particular amendment, it shall always be considered. So far as these particular amendments are concerned, I think we have had enough time to consider them.

Mr. Naziruddin Ahmad : I simply submit that something should be done to stop this tendency or at least to allow Members time to follow them. This is only by way of a general complaint. There is now-a-days a tendency to submit new amendments which are in the nature of changing the Constitution itself. This tendency is rather confusing and very inconvenient to Members. I never suggested anything about your ruling. That is a recognition of the need for changes, but I am really feeling myself hopeless about the way these amendments are coming in. If they were one or two isolated cases, it would have been different, but new amendments to the Constitution itself has become the rule.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, this amendment to substitute a new article for article 94 has been fully dealt with by Dr. Ambedkar in his speech day before yesterday while outlining the nature and scope of the changes that the Drafting Committee have sought to make in the scheme of financial control. He made it very plain that this suggestion of an Appropriation Bill is to substitute the authentication of the President, a practice which has been followed all along for reasons totally different from what we have in mind about the new set up of the Constitution of this country. Sir, it must also be understood that there has been no vital change in the procedure. Dr. Ambedkar was at great pains to explain to the House that the changes made are such that they are only enabling provisions, to give power, to the Parliament if it so desires, to make changes in the scheme of financial control and in the discussion of the budget and the procedure to be followed thereon, and very rightly he has drawn attention to the new article that is proposed, viz., 98-A, whereby Parliament would have the complete right and freedom to do what it likes in regard to the laying down of any procedure if it so wishes. The article before the House involves merely a change in the nomenclature rather than one of substance. Instead of the President authenticating the decisions arrived at when the voting on demands is carried on in the House, the House will take upon itself the duty by making the executive present the whole set of decisions in a concrete form which it will then approve, and the rules with regard to the discussion on such an Appropriation Bill will be made by Parliament or by the Speaker of the House until Parliament itself makes the rules. Sir, I fail to appreciate the basis, the validity of the complaint made by my honorable Friend, Mr. Santhanam, who, as the other speakers before him have stated, is one of the most well-informed critics of the Constitution as well as of procedure in the House and who had been taking a lot of interest in the budget activities in the Parliament before his elevation to the Ministry. His objection apparently was not fundamental, though he failed to see the necessity for an amendment of this nature. He did not raise any fundamental objection to the changes sought to be made by the Drafting Committee. Sir, the objection that he raised to clause (3) of article 94, which enables the operation of articles 95 and 96 that follow hereafter arises, in my view, from an imperfect understanding of the scheme.

Article 95, Sir, if the House will permit me to explain briefly and anticipate Dr. Ambedkar when he moves his amendment thereon, combines two functions allowed to the executive, one of which the Parliament would approve of later, that is, after the event. Actually, either in approving of supplementary or in approving of excess grants made, the Parliament or any Legislature always dealt with a situation after the fact. It was definitely an *ex-post facto* decision. My honourable Friend, Mr. Santhanam says: "you want to tighten up the procedure. Why do you allow the executive to incur expenditure and then come to the Parliament for approval, to make a deviation in the estimates, in the demands passed and the estimates approved of by the House and then come to the Parliament for approval thereafter?"

The Honourable Shri K. Santhanam : I was not objecting to expenditure, but to the demand out of the Consolidated Fund.

Shri T. T. Krishnamachari : I am coming to that point. In fact it is an extremely pedantic way of looking at a simple fact. The sanction of the expenditure, the entering into a commitment and the payment of money in discharge of the commitment are all one and the same action. You cannot ask the Government to enter into a commitment and say, well, the Parliament will not pay, after the Government had entered into a commitment. It means a Government which cannot persuade a Parliament to honour a commitment that they had made by paying the moneys due under that commitment will have to go out of office as it has thereby ceased to command the confidence of Parliament. I am rather surprised that a Minister of Government who will be a daily faced perhaps when he rises to a position of greater responsibility than the one that he now occupies and would find himself in a peculiar position when he makes a commitment for an expenditure which the Parliament may or may not permit him to fulfill, should say that he should not be permitted to incur the expenditure until Parliament approves of the Scheme and thereafter allows him to put out the money for the purpose. It really means that a commitment made by a member of Government is absolutely worthless and if the Parliament really refuses to pay, it means, he ceases to have the confidence of the Parliament. But apart from that, the idea really in this new scheme is not to make a radical alteration from the existing scheme that Dr. Ambedkar already made mention of and I repeated it the day before yesterday. We do not want to put the Government into a straitjacket; we have assured the House more than once that the idea is not to make a serious departure from what obtains now and thereby embarrass the Government, but at the same time make enough provision so that if the Parliament of the future wants to exercise greater control, they can do so. There is one aspect in regard to the new articles, both 95 and 96 that are to be moved by Dr. Ambedkar hereafter, which is covered by clause (3), and that is a certain amount of initiative is to be left to the executive in this matter. That initiative might however, be curtailed by frequent meetings of Parliament, by the executive realising their responsibility and placing demand for large amounts of expenditure, if they have the reason to incur it, before the Parliament in the form of a supplementary budget. Sir, the Members of this House spoke of supplementary demands covering a large amount of over Rs. 100 crores having been passed by this House acting in the other Chamber during the last Budget session. I quite agree that it is something which is not correct. In proportion to our total Governmental expenditure, Rs. 100 crores is something very big. The only way in which the House could have made the Government come before them before the bulk of the expenditure was incurred was by compelling Government to present a supplementary budget,—if things had happened in a way that it had exceeded the best anticipations of Government in regard to expenditure. Even here, the procedure outlined in article 96, namely a Vote of Credit might partially serve as a means of obtaining approval of Parliament in the future. If the Government feel that they have to incur expenditure of a character which they did not anticipate, a new war or an increased expenditure in a war they are carrying on, they might always go to the House and ask for a Vote of Credit. That is the procedure that has been made possible by the new set of amendments that are to be moved and that is the only type of control that the Parliament can exercise. The provision envisaged by clause (3), namely articles 95 and 96, is put in any scheme of Financial provisions if the intention is that the Government is to carry on the Government of the day and the control that the Parliament might ultimately exercise is only by an understanding with the executive that the executive limits its expenditure up to a particular amount and for increased

[Shri T. T. Krishnamachari]

expenditure the convention has to be established that the Government will go before the Parliament with a supplementary budget. If clause (3) is taken away, then article 95 becomes inoperative and I would at once point out to my honourable Friend Mr. Santhanam that it would make it impossible for the Government to be carried on without the Parliament sitting practically every day, so that Government can go to Parliament as and when occasion arises and say; "We have made this excess expenditure; this is unforeseen expenditure, please grant it, or else we will go out of office." The Honourable Mr. Santhanam's objection might be due to his dislike of the corollary to this scheme, namely, that Parliament will have to sit for a longer duration, probably three or four or six months, which he does not like. I am afraid, Sir, that though it is not my intention to disprove the validity of anything that Mr. Santhanam has said, I think it is my duty being *particeps criminis* in making the suggestions that have been put before the House in regard to the changes in the financial structure that this House.....

The Honourable Shri K. Santhanam : On a point of personal explanation; I made no such speech.

Shri T. T. Krishnamachari : And the public at large will have to be assured that the idea of these amendments is not to embarrass the Government, the idea is not to make the Government impossible, but merely to allow Parliament both by convention and rules of procedure to tighten up their control on expenditure generally. Sir, I trust there will be no need for any further explanation and the House will pass the amendment of Dr. Ambedkar without further discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, I only wish to draw the attention of the House to clause (2) of the new article 94 and I would request Dr. Ambedkar to explain the need of this clause in this article. This clause (2) says: "No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final." Such a clause does not find a place in the constitution of England; of course, their constitution is unwritten. I feel that this could have been left to the conventions of the House or to the rules to be made by Parliament for itself. But, if it is put in the Constitution, it puts a limitation on the sovereignty of Parliament. Although what is contemplated is that the Estimates will be scrutinised in the Committee of Supplies and the Committee of Ways and Means and an Appropriation Bill will be framed on the decisions of the Committee of Supplies and Committee of Ways and Means, actually, there will not be any necessity for varying the items in the Appropriation Bill. But, suppose some Government does not frame the Appropriation Bill in accordance with the recommendations of the Committee of Supplies and the Committee of Ways and Means, then, there is no provision left for the members of the House to bring forward amendments to bring it in conformity with the decisions of these committees. I therefore think that this should not be a provision in the Constitution, but should be left to the rules or the conventions of the House so that on such occasions, the House may bring to the notice of the Government that they have not carried out the proposals agreed upon by the Committee of Supplies and the Committee of Ways and Means. That, I hope, would be much healthier. I would request Dr. Ambedkar to explain what is the real need of putting this clause in the Constitution.

Mr. Mahboob Ali Baig Sahib : (Madras: Muslim): Sir, I will confine myself to article 94 and the amendment moved by Dr. Ambedkar, to the new article.

The difference between the proposed amendment and the original article is this: whereas in the original article the grants made by the House of the People will have to be authenticated by the President, according to this amendment, an Appropriation Bill will be moved before the House of the People and passed. That is the only difference that I find. In his introductory speech, Dr. Ambedkar said that in the past the Governor-General used to authenticate the expenditure granted by the Assembly for several reasons. He had to act in his discretion and in his individual judgment and therefore it was necessary that this table of expenditure approved by the Assembly should go before him so that he may make any changes if he pleases. These circumstances do not exist now; although the President is there as the executive head, it is more appropriate and more democratic that the House of the People should approve the table of expenditure which it has granted. That is the argument advanced by him. I entirely agree with him that the President or any executive head should not authenticate the expenditure, but it is the House of the People only that should do it. The question is whether an Appropriation Bill is necessary and what is the purpose of this Appropriation Bill. If it is merely to authenticate the several grants that have been made by the House of the People, why should there be an Appropriation Bill? As stated in clause (2) of this amendment, no amendment shall be proposed to the Bill, and no changes could be proposed in the matter of the expenditure charged on the Consolidated Fund. What is the purpose, then, I ask, of having an Appropriation Bill brought before the House of the People? If you want that after the grants have been made by the House, a table of the grants should be placed before the House, I agree. This Schedule of expenditure will be approved by the House automatically. It is a mere formality. Whereas in the case of the Governor-General, he had the right to interfere in his discretion and in his individual judgment, now there is no scope for that at all. It is merely a formality to place the Schedule of grants that are made by the House from day to day; and get it sanctioned. The House passes that Schedule automatically. Therefore, I do not see any reason why this Appropriation Bill should be brought before the House at all. If you want to call it an Appropriation Bill, because some other Governments have called it an Appropriation Bill, it is just an unnecessary thing. That can be done by stating that instead of the President, the House of the People will authenticate the schedule of expenditure granted by a certain date; that would be enough. Therefore, Sir, my submission is that it serves no useful purpose at all, as Mr. Santhanam put it. It will serve no useful purpose because, when this Appropriation Bill is brought before the House the House cannot move any amendment to that and cannot change the expenditure charged to the Consolidated Fund. Therefore, I say, why go through this process of placing an Appropriation Bill before the House? It is just enough to say that the Schedule of expenditure granted by the House of the People will be laid before the House of the People, which must be considered to have been authenticated. If necessary, the signature of the Speaker of the House of the People authenticating that these items have been passed by the House of the People is enough. Therefore, my submission is that the manner in which the article has been re-drafted is unnecessary and that appropriate changes should be made with regard to this matter and that it is quite enough to say that the schedule of expenditure granted by the House should be placed before the House of the People and it should be deemed to have been authenticated. Sir, I am not now referring to any matters that are going to be moved under article 95 and 96. I reserve my remarks thereon.

Shri L. Krishnaswami Bharathi : Mr. President, Sir, my Friend Mr. Santhanam's point, in my opinion, certainly requires clarification. Clause (3) reads :—

“Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.”

[Shri L. Krishna Swami Bharathi]

Article 96 relates to three categories of votes, votes on account, votes on credit and exceptional grants. In these three cases Parliament authorises such expenditure; and therefore so far article 96 goes, I think we can have no objection to that being mentioned in this. As for article 95, it allows for what are known as supplementary grant and excess grants. The whole point of his contention and the whole matter is that we do not want to give the executive power to spend money over and above what Parliament has granted. Clause (a) of 95 says :—

“if at any time the executive finds that a sum granted is found to be insufficient that is No. 1—and also if there is any new service not contemplated at the time of the passing of the Budget—then in such a contingency the President shall cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure, etc.”

The words ‘estimated expenditure’ show that the expenditure may not be actually incurred but they are able to foresee the possibility of an expenditure and it is likely that they will come forward to Parliament and say “The amount granted by you is not sufficient and we want a little or more or there is a new service which was not contemplated at the time of passing the Budget and therefore we want more money”. That is a supplementary grant which may be allowed. It is clause (b) of No. 95 which Mr. Santhanam takes exception to *viz.*, if money has been spent on any services during the financial year in excess of the amount granted for that service and for that year. In fact last year there was a great argument in the Legislative Assembly that a sum of over 100 crores without any authorisation had been spent. I want to ask Dr. Ambedkar if it is not possible for the executive to spend any amount as they did last year without any specific grant by Parliament and therefore is it not giving a free latitude to the executive to spend any money in that year in excess of the grant made by Parliament during that year? Is it not against the democratic principles to allow the executive such a power? I understand in England that is not the procedure followed. Whenever the executive wants to spend an amount over and above, the officer-in-charge of disbursements informs the executive. “Well you are nearing the end of your grant and you must make provision.” They are not allowed to spend a pie more than what Parliament has authorised. I see no reason why we should have any departure. It is just possible that Parliament may not meet and they may have to incur the expenditure. It is equally possible they may spend crores—hundred of crores—and therefore it seems to me rather going against the fundamental principles that every amount spent must have the sanction of Parliament; and we seem to be going against that principle in allowing clause (b) of No. 95 as it stands at present. Therefore so far as 96 goes, Parliament exercises its judgment and mind and is to vote on grant but this is something in which the executive has unbridled power and I would like Dr. Ambedkar to explain this aspect of the matter.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I thought that the observations made by my Friend Mr. T. T. Krishnamachari would have been regarded as sufficient to meet the objections raised by my Friend Mr. Santhanam, but since my Friend Mr. Bharathi by his speech has indicated that at any rate his doubts have not been cleared, I find it necessary to rise and to make a few observations. My Friend Mr. Santhanam said that we were unnecessarily borrowing the procedure of an Appropriation Bill and that the existing procedure of an authenticated schedule should have been sufficient for our purposes. His argument if I understood him correctly was this: that an Appropriation Bill is necessary in the House of Commons because the supply estimates are dealt with by a committee of the whole House and not by the House itself. Consequently the Appropriation Bill is, in his opinion,

a necessary concomitant of a procedure of estimates being dealt with by a sort of Committee of the House. Personally, I think there is no connection between the Committee procedure of the House of Commons and the necessity of an Appropriation Bill. I might tell the House as to how this procedure of the House of Commons going into a Committee of Supply to deal with the estimates came into being. The House will remember that there was a time in English political history when the King and the House of Commons were at loggerheads. There was not such pleasant feeling of trust and confidence which exists now today between the House of Commons and the King. The King was regarded as a tyrant, as an oppressor, as a person interested in levying taxes and spending them in the way in which he wanted. It was also regarded that the Speaker of the House of Commons instead of being a person chosen by the House of Commons enjoying the confidence of the House of Commons was regarded as a spy of the King. Consequently, the members of the House of Commons always feared that if the whole House discussed the estimates the Speaker who had a right to preside when the House as a whole met in session would in all probability, to secure the favour of the King, report the names of the members of the House to the King who criticised the King's conduct, his wastefulness, his acts of tyranny. In order therefore to get rid of the Speaker who was, as I said in the beginning, regarded as a spy of the King carrying tales of what happened in the House of Commons to the King, they devised this procedure of going into a committee; because when the House met in Committee the Speaker had no right to preside. That was the main object why the House of Commons met in Committee of Supply. As I said, even if the House did not meet in Committee of Supply, it would have been necessary for the House to pass an Appropriation Bill. As my friend—at least the lawyer friends—will remember, there was a time when the House of Commons merely passed resolutions in committee of Ways and Means to determine the taxes that may be levied, and consequently the taxes were levied for a long time—I think up to 1913 on the basis of mere resolutions passed by the House of Commons Committee of Ways and Means. In 1913 this question was taken to a Court of law whether taxes could be levied merely on the basis of resolutions passed by the House of Commons in the Committee of Ways and Means, and the High Court declared that the House of Commons had no right to levy taxes on the basis of mere resolutions. Parliament must pass a law in order to enable Parliament to levy taxes. Consequently, the British Parliament passed what is called a Provincial Collection of Taxes Act. I have no doubt about it that if the expenditure was voted in Committee of Supply and the resolutions of the House of Commons were to be treated as final authority, they would have also been condemned by Courts of law, because it is an established proposition that what operates is law and not resolution. Therefore my first submission is this: that the point made by my Friend Mr. Santhanam, that the Appropriation Bill procedure is somehow an integral part of the Committee procedure of the House of Commons has no foundation whatsoever. I have already submitted why the procedure of an authenticated schedule by the Governor-General is both uncalled for, having regard to the altered provision of the President who has no function in his discretion or in his individual judgment, and how in matters of finance the authority of Parliament should be supreme, and not the authority of the executive as represented by the President. I therefore need say nothing more on this point.

Then my Friend, Mr. Santhanam, said, if I understood him correctly, that article 95—I do not know whether he referred to article 96: but he certainly referred to article 95—would nullify clause (3) of the new article 94. Clause (3) stated that no money could be spent except under an appropriation made by law. He seemed to be under the impression that supplementary, additional or excess grants which are mentioned in new article 95, and votes on account, or

[The Honourable Dr. B. R. Ambedkar]

votes on credit or exceptional grants mentioned in the new article 96 would be voted without an Appropriation law. I think he has not completely read the article. If he were to read sub-clause (2) of the new article 95 as well as the last part of new article 96 and also a further article which will be moved at a later stage—which is article 248A—he will see that there is a provision made that no moneys can be drawn, whether for supplementary or additional grants or for votes on account or for any purpose, without a provision made by law for drawing moneys on Consolidated Fund. I can quite understand the confusion which probably has arisen in the minds of many Members by reason of the fact that in some place we speak of a Consolidated Fund Act while in another place we speak of an Appropriation Act. The point is this: fundamentally, there is no difference between a Consolidated Fund Act and an Appropriation Act. Both have the same purpose, namely, the purpose of authorising an authority duly constituted to draw money from the Consolidated Fund. The difference between a Consolidated Fund Act and the Appropriation Act is just this. In the Consolidated Fund Act a lump sum is mentioned while in the Appropriation Act what is mentioned is all the details—the main head, the sub-heads and the items. Obviously, the procedure of an Appropriation Bill cannot be brought into operation at the stage of a Consolidated Fund Bill because Parliament has not gone through the whole process of appropriating money for heads, for sub-heads and for items included under the sub-heads. Consequently when money is voted under a Consolidated Fund Act, it means that the executive may draw so much lump sum out of the Consolidated Fund which will at a subsequent stage be shown in what is called the final Appropriation Act. If honourable Friends will remember that there is no authority given to the executive to draw money except under a Consolidated Fund Act or under an Appropriation Act, they will realize that so far as possible an attempt is made to make these provisions as fool-proof and knave-proof as one can possibly do.

Mr. President : The question is:

“That for article 94, the following article be substituted:

‘94. (1) As soon as may be after the grants under the last preceding article have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India all moneys required to meet—

- Appropriation Bill
- (a) the grants so made by the House of the People; and
 - (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament,
- (2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.
- (3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 94, as amended, stand part of the Constitution.”

The motion was adopted.

Article 94, as amended, was added to the Constitution.

Article 95

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

“That for article 95, the following article be substituted:

Supplementary, additional or excess grants. ‘95. (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or
 - (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
- (2) The provision of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of Appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.’”

Shri R. K. Sidhwa : Sir, I move:

“That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95—

- (i) in sub-clause (a), the word ‘or’, occurring at the end, be deleted;
- (ii) sub-clause (b) be deleted; and
- (iii) at the end of clause (1), the following words be added :

‘and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’”

Sir, the amendment moved by Dr. Ambedkar is in consequence of the previous articles passed. I welcome the amendment but I feel there is a flaw which requires to be remedied. The amended article would then read:

“The President shall..... cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’”

We are all unanimous on the point that under the new set-up a new system should be introduced, so that as regards the finances there should be a thorough check by the Parliament. At present the procedure in the Parliament is most objectionable inasmuch as supplementary grants exceeding 100 crores are brought in, which are equal to one-third of the budget amount. It is most extraordinary and because of that power which the executive have got they have been most reckless in preparing the budget.

I will give you an illustration. In the last budget estimates of income the estimates of income increased by nearly fifty crores over the estimated amount and the expenditure increased by eighty crores. All that sixty crores over and above the estimated budget amount was spent by the executive and yet there was a deficit and new taxation was proposed. This is nothing short of hoodwinking the House by presenting misleading budget statements. I am sorry I cannot use less strong language. These inflationary budgets are intentionally brought before the House so as to show lesser revenue so that when the actuals are prepared they would show a deficit and if the budget is not balanced, they might propose new taxation. As I said sixty crores more were derived from revenue last year, yet eighty crores were spent over it and the budget was deficit and new taxes were proposed. There is no check on it. The executive feels

[Shri R.K. Sidhwa]

that they have a long rope, and that they can do what they like. Even today the Auditor-General has no right to pass a single item more than what the House has sanctioned in the budget. Yet when excess expenditure is incurred the Auditor-General goes before the Minister who tells him to pass the items and the Auditor-General puts his rubber stamp "No objection" and payments are made. This is very objectionable. There is no respect shown to the House by the executive. Is it fair? The budget has no sanctity. The budget statement is brought before the House, the House scrutinises it and tells the executive that they shall not spend more than what the House has sanctioned and yet the executive disregard the decision of the House and go on spending money.....

Mr. President : The honourable Member seems to think that he is delivering a speech before the Legislative Assembly when the budget is under discussion. He is on the amendment and I would like him to confine himself to it, that is to the principle underlying the amendment and not to expatiate on something that happened at the time of the last budget discussion.

Shri R. K. Sidhwa : I am giving only an illustration....

Mr. President : The same illustration has been given by the honourable Member more than once.

Shri R. K. Sidhwa : This amendment is so important that unless our responsibility is realised I can assure you, Sir, that our whole object will be frustrated by the Constitution we are framing.

Mr. President : If the amendment is incorporated in the Constitution that will be a sufficient safeguard and the honourable Member's speech will not be remembered.

Shri R. K. Sidhwa : I was making a case as to the justification for this amendment being incorporated in the Constitution. If the matter is left to the executive there is no chance of any likely improvement.

I was referring to the constitution of the free city of Danzig. There I found almost similar provisions. No supplementary amount is to be spent unless the House authorises it. It may be argued that in the event of an emergency what would happen? I want the executive to take stock of the whole year. The emergency does not happen for the purpose of spending money to the tune of hundreds of crores. It may involve a few lakhs but I object strongly to supplementary demands to the tune of hundreds of crores. Unless my amendment is accepted the very good object with which we are providing this article will be to that extent frustrated. These articles have been healthy and sound and they will be there for our future guidance. But as regards supplementary demands unless an amendment like the one proposed by me is incorporated in the Constitution the flaw will remain there and I can assure you (I repeat it again knowing the mind of the executive) there is not going to be any improvement as far as supplementary demands are concerned.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendment No. 12 of List I (Fourth Week), after clause (2) of the new article 95, the following new clause be added:

- (3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.'"

Sir, the new procedure which is contemplated by this new amendment intends to give Parliament more time for the scrutiny of the estimates on the model of the British Parliament. In the British Parliament an Appropriation Act must be passed by the end of August. That means, five months after 31st

March. In England the months of April, May, June, July and August are some of the best months of the year. If our Parliament is to sit always during the three months of May, June, and July in Delhi, it will be very difficult. I therefore want that the consideration of the Budget should be taken up in the best months of the year in our country. Just as five months are allowed, after 31st March, for the Parliament to pass the Appropriation Act, I want that after the commencement of the financial year we should also get at least five months for passing the Appropriation Act. That means November, December, January, February and March. This will bring our procedure exactly in line with the procedure in British Parliament, Sir, in our country also, the financial year generally begins with Deepavali about the beginning of November, so that the fixing of the new financial year will be in consonance with our ancient traditions. I think therefore that in order that the purpose laying behind the amendment, which is to give the House more time and full facility to scrutinise all the estimates, may be achieved, it is necessary that the Budget should be discussed from the Deepavali to Holi, *i.e.*, from November 1st to March 31st. I think that if these days are fixed, we shall have the best portion of the year for the discussion of the Budget and passing the Appropriation Act. I hope Dr. Ambedkar will accept the amendment and spare the members of the new Parliament from having to sit in Delhi during the months of May and June as we are now doing.

Shri B. M. Gupte (Bombay: General): Sir, even after listening to the explanation given by Dr. Ambedkar I am inclined to oppose the provision in this article as far as the excess grants are concerned. I do not see how an occasion can arise for such a grant after the innovations we have made in the preceding article. It seems to me rather anomalous that after laying down a mandatory provision in one article we should provide in the next article for the regularisation of the breach of that mandatory provision. That is what it amounts to here. Perhaps the Mover of this amendment has overlooked the circumstances that have changed. I understand that this provision for excess grant was made on the recommendation of the Expert Committee that was appointed to consider the financial provisions. It has been said so in the footnote. So it is the Expert Committee that has proposed that such a provision should be made. I submit that the entire basis of the recommendation of the Expert Committee has been changed now by the proposals we have already adopted. I will invite attention to paragraph 79 of the report.

“It is usual in democratic constitutions to provide that no money can be drawn from the Treasury except on the authority of the legislature granted by an Act of Appropriation, but in this country the practice has been to authorise expenditure by resolutions of Government after the payments have been made and not by law. As the existing practice has been working well in this country appropriation by law does not appear to be necessary.”

So they definitely rejected the idea of an Appropriation Act which we have now adopted. That is one fundamental change that we have made. Formerly the Auditor-General could withdraw the amount in spite of the fact that it was not sanctioned by Parliament, because it was the executive that authenticated the Schedule. Now we have made a stringent provision by saying that it shall be done by an Act of Parliament. So, what the Auditor-General will now have to do is to defy an act of Parliament.

Another fundamental change we have made is this: The Expert Committee contemplated that the old system will continue. They took it for granted that the wording that is in the Government of India Act will also be maintained. I shall invite the attention of the House to the corresponding provision in the Government of India Act, 1935, as adapted. Section 35 says:

“Provided that, subject to the next succeeding section, no expenditure from the revenues of the Dominion shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.”

[Shri B. M. Gupte]

So the present wording is that only that expenditure shall not be considered as authorised—not that ‘no money shall be withdrawn’. We have made the wording especially stringent in article 94. So, under the Government of India Act as long as the Auditor-General was confident that the executive would get the sanction of Parliament later on, there was no objection for him to withdraw the amount. But here under article 94 (3) he will have no power to do this unless he infringes the Appropriation Act of Parliament. I submit that it is not only that this provision about excess grant is inconsistent with clause (3) of article 94, but that it is hostile to the spirit of stricter control by Parliament of the finances of the country. I therefore submit that the point may be reconsidered whether the excess grant provision should be retained.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I find that the financial provisions which are placed before this House have given considerable worry to the Members. I can appreciate that, for I remember that when, Mr. Churchill’s father became the Lord Chancellor, a budget was placed before him showing figures in decimals and dots thereon. Evidently he was not a student of mathematics and could not understand what the figures meant with a dot in it. So he wrote on the file, “What do these damned dots mean?” asking for an explanation from the Secretary of the Finance Department. Having regard to such difficulty of understanding from persons so highly placed as Mr. Churchill’s father. I am not at all surprised if the Members of this House also find similar difficulty in understanding these provisions. I should therefore like to go somewhat into elementary propositions in order to place the House in a right frame of mind.

Sir, I should like to tell the House the effect of the Provisions contained in article 92, article 93 (2) and article 94. Article 92 places upon the President the obligation to lay before Parliament a financial statement for the year—I would like to emphasize the words “for the year” showing the expenditure in certain categories, those charged on the revenues of India and those not charged on the revenues of India. After that is done, then comes into operation article 93 (2), which states how the estimates are to be dealt with. It says that the estimates shall be presented to the House in the form of demands and shall be voted upon by the House of the People. After that work is done, article 94 comes into operation, the new article 94 which says that all these grants made by the House of the People shall be put and regularised in the form of an Appropriation Act. Now, I would like to ask the Members to consider what the effect is of articles, 92, 93 (2) and 94. Suppose we did not enact any other article, what would be the effect? The effect of the provisions contained in articles 92, 93 (2) and 94 in my judgment would be that the President would not be in a position constitutionally to present before Parliament any other estimates during the course of the year. Those are the only estimates which the President could present according to law. That would mean that there would be no provision for submitting supplementary grants, supplementary demands, excess grants or the other grants which have been referred to such as votes on credit and things of that sort. If no provision was made for the presentation of supplementary grants and the other grants to which I have referred, the whole business of the executive would be held up. Therefore, while enacting the general provision that the President shall be bound to present the estimates of expenditure for that particular year before Parliament, he is also authorised by law to submit other estimates if the necessity for those estimates arises. Unless therefore we make an express provision in the Constitution for the presentation of supplementary and excess grants, articles 92, 93 (2) and 94 would debar any such presentation. The House will now understand why it is necessary to make that provision for the presentation of these supplementary demands.

The question has been raised as to excess grants. The difficulty, I think, is natural. Members have said that when it is stated that no moneys can be spent by the executive beyond the limits fixed by the Appropriation Act, how is it that a case for excess grants can arise? That, I think, is the point. The reply to that is this: We are making provisions in the terms of an amendment moved by my Friend, Pandit Kunzru, which is new article 248-B on page 27 of List I, where there is a provision for the establishment of a Contingency Fund out of the Consolidated Fund of India. Personally myself, I do not think that such a provision is necessary because this question had arisen in Australia, in a litigation between the State of New South Wales and the Commonwealth of Australia, and the question there was whether the Commonwealth was entitled to establish a Contingency Fund when the law stated that all the revenues should be collected together into a Consolidated Fund, and the answer given by the Australian Commonwealth High Court was that the establishment of a Consolidated Fund would not prevent the legislature of the Parliament from establishing out of the Consolidated Fund any other Fund, although that particular fund may not be spent during that year, because it is merely an appropriation although in a different form. However, to leave no doubt on this point that it would be open to Parliament, notwithstanding the provision of a Consolidated Fund to create a Contingency Fund, I am going to accept the amendment of my Friend, Pandit Kunzru, for the incorporation of a new article 248-B. It is, therefore, possible that apart from the fund that is issued on the basis of an Appropriation Act to the executive, the executive would still be in possession of the Consolidated Fund and such other fund as may be created by law from time to time. It would be perfectly possible for the executive without actually having any intention to break the Appropriation Act to incur expenditure in excess of what is voted by Parliament and draw upon the Contingency Fund or the other fund. Therefore a breach of the Act has been committed and it is possible to commit such an act because the executive in an emergency thinks it ought to be done and there is provision of fund for them to do so. The question, therefore, is this: when an act like this is done, are you not going to make a provision for the regularisation of that act? In fact, if I may say so, the passing of an excess grant is nothing else but an indemnity Act passed by Parliament to exonerate certain officers of Government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the ideas of an excess grant and I would like to read to the Members of the House paragraph 230 from the House of Commons—Manual of Procedure for the Public business. This is what paragraph 230 says:—

“An excess grant is needed when a department has by means of advances from the Civil Contingencies Fund or the Treasury Chest Fund or out of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year.”

Therefore, there is nothing very strange about it. The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is a necessity, unless you go to the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant.

The Honourable Shri K. Santhanam : May I ask if under the provisions of the law as stated in the new article 95 (2) the three preceding articles will have effect? Does it mean that every supplementary demand should be followed by a supplementary Appropriation Act?

The Honourable Dr. B. R. Ambedkar : Yes; that would be the intention.

The Honourable Shri K. Santhanam : The appropriation will not be for the whole year?

The Honourable Dr. B. R. Ambedkar : There may be supplementary appropriation. That always happens in the House of Commons.

Prof. Shibban Lal Saksena : What about my amendment, Sir?

The Honourable Dr. B. R. Ambedkar : I am very sorry. Prof. Shibban Lal Saksena says that the financial year should be changed. Well, I have nothing to say except that I suspect that his motives are not very pure. He perhaps wants a winter session so that he can spin as long as he wants. If he wants longer sessions, he must sit during summer months as we are now doing.

Prof. Shibban Lal Saksena : You will then long for a holiday in the hills, not I. Summer will not influence my speeches at all.

Mr. President : The question is:

“That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95—

- (i) in sub-clause (a), the word ‘or’ occurring at the end, be deleted
- (ii) sub-clause (b) be deleted; and
- (iii) at the end of clause (1), the following words be added:

‘and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’ ”

The amendment was negatived.

Mr. President : The question is:

“That for article 95, the following article be substituted:—

Supplementary additional or excess grants.

‘95. (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
- (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 12 of List I (Fourth Week), after clause (2) of the proposed new article 95, the following new clause be added:—

- (3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.’ ”

The amendment was negatived.

Mr. President : The question is:

“That article 95, as amended, stand part of the Constitution.”

The motion was adopted.

Article 95, as amended, was added to the Constitution.

Article 96

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

“That for article 96, the following article be substituted:—

‘96. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the Votes on account, Votes on People shall have power— credit and exceptional grants.

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;
 - (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
 - (c) to make an exceptional grant which forms no part of the current service of any financial year; and to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purpose for which the said grants are made.
- (2) The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.’ ”

(Amendment No. 1720 was not moved.)

The Honourable Shri K. Santhanam: Sir, I do not want to reopen the general principle which has been accepted; but I wish to say that the drafting of this article is rather defective.

For instance, in clause (1) it says, “ the House of the People shall have power”, and this is followed by, after sub-clause (c), “and to authorise by law.....” I think according to the Constitution, the House of the People cannot authorise by law.

The Honourable Dr. B. R. Ambedkar : I should say, Sir, that the Drafting Committee reserves to itself the liberty to re-draft the last three lines following sub-clause (c).

The Honourable Shri K. Santhanam : Sir, I am unable to understand this. In the House here we pass something which is obviously wrong and unconstitutional and then leave it to the Drafting Committee. I do not think we can leave it to the Drafting Committee to temper with the provisions we are making unless there is some lacuna or a mistake. We do not want to be faced with a new Constitution altogether and subjected to the trouble of looking at it article by article again. I do not think it is right for this House to pass a clause which is obviously wrong. Either he must say Parliament shall have power.....

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment right now. You may suggest it. "Parliament shall have power to authorise by law....."

The Honourable Shri K. Santhanam : Sir, the amendment may be, "and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made."

Coming to clause (2), it says "that the provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant....." I want to know if this means that there will have to be an Appropriation Act for this and that Appropriation Act will also show all the divisions, charged and non-charged, votable and non-votable as stated in the previous article. If that is the implication.....

The Honourable Dr. B. R. Ambedkar : That cannot be.

The Honourable Shri K. Santhanam : Article 93 says.....

Shri T. T. Krishnamachari : If it will help honourable Member, we can say, there will be a Consolidated Fund Bill No. I before an Appropriation Act. Which will give the main skeleton.

The Honourable Shri K. Santhanam : What I want to know is whether the Consolidated Fund Bill No. I will also consist of the charged and non-charged amount and voted and non-voted amounts, or will give only the votable portion.

The Honourable Dr. B. R. Ambedkar : The charged portion occurs only in the final Appropriation Act. This voting account gives what in the technical language of the House of Commons are called Supply services as distinct from services charged on the revenues.

The Honourable Shri K. Santhanam : This article says that the provisions of articles 93 and 94 will have to be compiled with.

The Honourable Dr. B. R. Ambedkar : Articles 93 and 94 mean the voting of Appropriation Act.

The Honourable Shri K. Santhanam : Article 93, first part, says that the charged portion would be shown and the second part says that such portion as is votable shall be presented to the vote. I want to know whether both these portions will be applicable to the voting account.

The Honourable Dr. B. R. Ambedkar : Article 93 says that the vote of the House is not necessary for services charged on the revenues of India.

The Honourable Shri K. Santhanam : But, they will have to be shown in the Appropriation Act.

The Honourable Dr. B. R. Ambedkar : When passed. This is what is called Consolidated Fund Act I.

The Honourable Shri K. Santhanam : Article 94 does not deal with Consolidated Fund Act.

The Honourable Dr. B. R. Ambedkar : That is also the Appropriation Act. As I stated before, there is no distinction. The Appropriation Act shows the details while the Consolidated Fund Act does not show details.

The Honourable Shri K. Santhanam : I do not think Dr. Ambedkar's explanations can override the precise provisions of an article. As the article stands,

all the provisions of articles 93 and 94 will apply to this Consolidated Fund as to the other. Therefore, the entire budget procedure will have to be duplicated.

The Honourable Dr. B. R. Ambedkar : If the honourable Member will read carefully sub-clause (2), he will see what sub-clause it deals with. It says, "The Provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1).

The Honourable Shri K. Santhanam : Please read on.

The Honourable Dr. B. R. Ambedkar : As I stated, there is no question of grant will regard to services charged on the revenues.

The Honourable Shri K. Santhanam :“and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure.....” Therefore the Consolidated Fund Act I will be a duplicate—of course it may be of smaller dimensions—of the Final Consolidated Fund Act. It must contain the charged and non-charged, the voted and non-voted and everything. That to my mind, is what we are going in for if we adopt the provision as it is.

Shri T. T. Krishnamachari : Mr. President, Sir I quite realise that the wording has given room for some misconception, but I may assure my honourable Friend Mr. Santhanam that the whole budget procedure would have to be gone through though in a very cursory manner. For instance, the convention so far as the Consolidated Fund Bill No. I in Parliament is concerned is that the executive does not demand payment for supply services which is in considerable variance with what was obtained in the previous year. After all, that is only for a period of three or four months that Parliament makes the grant. Undoubtedly, if there is going to be a Bill, there must be a Schedule and the Schedule must give the details probably in the same set-up as the Schedule that will be attached to the Appropriation Bill. If my honourable Friend reads article 94 again which the House has accepted, he will find that reference to payment out of the Consolidated Fund is there and he will be able to realise better the explanation given by Dr. Ambedkar that after all, the Appropriation Bill is the same thing as the Consolidated Fund Bill. The initial Bill will be the Consolidated Fund Bill No. I and the Schedule attached to the main Bill will comprise all that was contained in the Consolidated Fund Bill No. I. The validity of the initial Bill will cease the moment the main Bill is passed. The exact procedure that has got to be followed will depend on the temper of the Parliament and the nature of the demand made. If they would accept a token Schedule giving the various heads and giving roughly the total amount needed, as being sufficient, the labour involved would be negligible. But, if they want all the items that are now enumerated in the Book of Demands, even that possibly could be done, because it would only be *pro rata* of the total estimates placed before Parliament but there may be a certain amount of clerical work necessary; it all depends upon the demands made by Parliament. The matter is one of procedure and as my honourable Friend has accepted the principle, I do not think there need be any further difficulty about accepting this suggested procedure. The mere fact that mention is made of articles 93 and 94 that procedure having to be followed therein does not raise, in my view at any rate, insuperable difficulties. I may assure my honourable friend Mr. Santhanam that what we have aimed at right through is to avoid creating a procedure which would be difficult for Parliament to follow, and at the same time avoid creating a situation which will alter the present state of things all of a sudden. Parliament might change these things as it wants later on. Perhaps, Sir, it may be necessary in the first budget session after this Constitution has been passed when the provisional Parliament will be sitting, we may have to allow Parliament a certain amount of elasticity in either following or varying the rigid provisions mentioned in these articles which are now being discussed. Every care will be taken in

[Shri T.T. Krishnamachari]

regard to making the transitory period easy. This is a mere matter of procedure and I see no difficulty in meeting the wishes of Parliament as may be indicated by them from time to time.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think there is any necessity to say anything more. I am only moving an amendment:

“That after sub-clause (c), of clause (1), the following words be added after ‘and’ and before ‘to’:—

‘Parliament shall have power.’ ”

Mr. President : The question is:

“That for article 96, the following article be substituted:—

Votes on account, votes on credit and exceptional grants notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the People shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude of the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of current service of any financial year; and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.
- (2) The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.”

The amendment was adopted.

Mr. President : The question is:

“That article 96, as amended, stand part of the Constitution.”

The motion was adopted.

Article 96, as amended, was added to the Constitution.

Mr. President : There is notice of amendment by Professor Shah to add a new article 96-A. No. 1721.

Prof. K. T. Shah : After the vote on Mr. Saksena’s amendment of the same kind, I do not know that it would be proper to move this. But if you will permit me I will make one submission *apropos* the remarks made by Dr. Ambedkar in reply thereto ascribing motives by saying that such amendments as this were inspired by people who wanted longer sessions. I have expressed that view twenty-five years ago in my books, and if Dr. Ambedkar says it is a bad motive, I think it most unfair.

Mr. President : I think he did not mean it seriously. We go to article 97. Mr. Kamath—1722.

Article 97

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

“That in clause (1) of article 97, the words ‘and a Bill making such provision shall not be introduced in the Council of States:’ be deleted.”

This clause is another instance among several others of tautology or mere repetitious performance. If the House will turn to articles 89 and 90 and read them together, the House will see that there is no need for a clause like this here. Article 89 clause (1) provides that a Money Bill shall not be introduced in the Council of States. Article 90 defines what a Money Bill is for the purposes of this Chapter. Putting these two articles together it is clear and it needs no repetition whatever. There is absolutely no valid reason whatever for repeating this provision in this article. Sir, I move.

Prof. Shibban Lal Saksena : Then no Bill can be moved even in the House of People without President’s permission.

Shri H. V. Kamath : I do not think that that interpretation can be put on my amendment.

Mr. President : No. 1723.

Prof. K. T. Shah : Sir, I beg to move:

“That in clause (3) of article 97, after the word ‘India’ the words ‘outside the frontiers of India in war-like operations’ and; before the word ‘passed’ the words ‘considered or’ be inserted; and the following proviso be added at the end of the clause :—

‘Provided that whenever the President makes any such recommendations he shall give his reasons for the same in writing.’ ”

The amended clause would read:

“A bill which, if enacted and brought into operation, would involve expenditure from the revenues of India outside the frontiers of India in war-like operations shall not be considered or passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.”

Sir, I have been induced to move this amendment in view of our past experience under British rule. The greatest waste of Indian money used to occur in connection with the war-like operations of the preceding Government, and those operations outside the frontiers of India, in support of the imperialist or aggressive wars of Britain. There had been a provision in the previous Government of India Act, 1915, which precluded the then Government from spending a single pie in war-like operations outside the frontiers, without the authority of Parliament which was then the trustee so to say, or had made itself the trustee, of the welfare of the Indian people. Not that it ever objected of Indian money being spent in this way; but still it was a healthy check.

In the present provision I would like to insert a corresponding safeguard against similar misuse or excessive use of Indian revenues in war-like operations outside the frontiers of India. This article relates to excess grants; and if such money is used outside the frontiers of India, then I would like to provide a safeguard of some kind. I do not mean that such funds shall not be used, nor that India will not be able to engage in defensive or even offensive wars outside the frontier of India, and spend money in connection therewith but that, if that necessity arises, then the President must bring the matter before the House, and give his reasons in writing. The House of the People will then have an opportunity to consider whether the expenditure now required is justified in the interest of India, and then, knowing the full position give its authority for the same.

I repeat that it is not my intention by this amendment to handicap in any way the executive in their necessary action on matters of national defence.

[Prof. K. T. Shah]

But it is necessary in my opinion-in view of past experience that some such safeguard be inserted, lest the tendency we all have to spend money freely be utilised to our own disadvantage.

Sir, I move.

Mr. President : Mr. Shibban Lal Saksena, No. 231 of the List of Amendments to Amendments.

Prof. Shibban Lal Saksena : Sir, I move only the last part of my amendment No. 231:

“That in article 97, clause (3) be deleted.”

Mr. President : You are not moving the other amendment?

Prof. Shibban Lal Saksena : No, Sir.

Sir, I have not seen the necessity of this clause in this article. It is already said that money Bills have to go through a particular procedure. After that I do not see the necessity for this clause. In fact if it is strictly interpreted, there is no Bill which any House may pass or Parliament may pass which will not involve the Government in some expenditure. Even if it is an ordinary Bill, there too if enforced and brought into operation, it will involve an expenditure from the revenues of India unless of course it is intended to mean that any such expenditure will be an expenditure which is non-votable as contemplated in article 92. Then of course it is a different matter but as it stands at present, I think it will mean that any Bill which involves any expenditure may not be moved in any House. Sir, I move.

Mr. President : All amendments have been moved and the clause and the amendments are open for discussion.

Shri T. T. Krishnamachari : I have only one word to say in regard to the last amendment moved by Professor Saksena. He wants to cut out the initiative of the executive which has been preserved right through in these articles dealing with the financial provisions so far as expenditure and taxation are concerned. Actually it is a tradition which we have been following in this country which we have also incorporated in this Draft Constitution from the British model which has all through the centuries made it a matter of pure executive responsibility to initiate motions which involve taxation or expenditure. If it happens that a private member of Parliament can initiate Bills which will involve taxation and expenditure then the responsibility of the executive will be blurred for one thing and then it will be difficult for them to devise the ways and means to cover the expenditure. It is a principle well accepted in all constitutions that this initiative must rest with the executive. Of course I see that Professor Shibban Lal Saksena has not moved his other amendments wherein he wanted to give power to the Legislature to move amendments which would have had the effect of permitting Parliament to raise the rates of taxes in Bills seeking to impose fresh taxation or alter the existing tax structure. Apparently he has seen the unreasonableness of an amendment of that nature and he has given it up. But I do feel that if he follows the same line of thought he will find that a provision of this nature which he seeks to amend is already in the Government of India Act today and is to be found in the standing orders of the British Parliament and in practically every other Legislature following this method of parliamentary system of Government, that the initiative must be kept absolutely without any dilution in hands of the executive. Therefore there has been no attempt in any of the Dominion Legislatures to take away this particular power that has been given to the executive. I think the amendment of Professor Shibban Lal Saksena cannot therefore be accepted and the clause must remain as it is.

So far as Professor Shah's amendment is concerned I do not know If I need anticipate Dr. Ambedkar. The reasons that he has adduced are fairly clear, namely, that he does not want to give the President or the executive any powers for initiating any Bill which will involve expenditure to be incurred outside India for the reason that he does not want the future Government of India to participate in any Imperial wars. It is quite possible that a future Government of India may have to take some steps to safeguard the frontiers of India the operations in respect of which might take it just a little beyond the frontiers, and the very purpose of his wanting to preserve the integrity of this Government in the future will be defeated if Professor Shah's amendment is accepted and the hands of the executive are tied by a provision of his nature. It might be very reasonable from a point of view which considers that all wars are Imperialistic. Sometimes countries have got to participate in wars for purely defensive purposes and even that purpose will be jeopardized by accepting the amendment moved by Prof. Shah. I therefore suggest to the House that these two amendments have no validity so far as the particular article is concerned and they have to be rejected.

The Honourable Dr. B.R. Ambedkar : I do not think any reply is called for, but I would like, Sir, with your permission to move one amendment myself. I move:

“That with reference to amendment No. 1723 of the list of Amendments, in clause (3) of article 97, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

Shri H. V. Kamath : The words at the end of the clause have been needlessly repeated.

The Honourable Dr. B. R. Ambedkar : I do not think so.

Mr. President : The question is:

“That in clause (1) of article 97, the words ‘and a Bill making such provision shall not be introduced in the Council of States:’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That for amendments Nos. 1722 or 1723 of the List of Amendments, the following be substituted:—

‘That in article 97, clause (3) be deleted.’ ”

The amendment was negatived.

Mr. President : I shall put Prof. Shah's amendment which is in three parts. The question is:

“That in clause (3) of article 97, after the word ‘India’ the words ‘outside the frontiers of India in war-like operations’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 97, before the word ‘passed’ the words ‘considered or’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That the following proviso be added at the end of clause (3) of article 97:—

‘Provided that whenever the President makes any such recommendations he shall give his reasons for the same in writing’.”

The amendment was negatived.

Mr. President : I shall now put Dr. Ambedkar's amendment.

The question is:

“That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97 for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 97, as amended, stand part of the Constitution.”

The motion was adopted.

Article 97, as amended, was added to the Constitution.

Article 98

Shri H.V. Kamath : Mr. President, Sir, I move:

“That in clause (1) of article 98, for the words ‘Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution’ the words ‘Subject to the provisions of this Constitution, either House of Parliament may make rules for regulating, be substituted.’”

There are two separate amendments in this: one is the transposition of a phrase in one clause and other is substitution of the word ‘each’ by the word ‘either’. These are amendments of a drafting nature but in my humble judgment I believe that this is better English and it conforms more to the rules of syntax. I do not think there will be any objection or difficulty in the way of accepting this amendment and I hope the House will endorse my suggestion. Sir, I move.

(Amendments Nos. 1725 and 1726 were not moved).

Mr. Naziruddin Ahmad : Sir, I have to move my amendment No. 1727 not because I want to move it but because on this hangs the amendment of another honourable Member. I move it to accommodate the honourable Member. I beg to move:

“That clause (4) of article 98 be omitted.”

Shri Jaspat Roy Kapoor (United Provinces: General): Before moving my amendment, I would like to thank my Honourable Friend, Mr. Naziruddin Ahmad, for having moved his amendment No. 1727, for that enables me to move my amendment to this amendment.

Sir, I am not moving amendment No. 14. I am moving amendment No. 15 only.

I move:

“That with reference to amendment No. 1727 of the List of Amendments, in clause (4) of article 98, after the word ‘absence’ the words ‘the Chairman of the Council of States, or in the absence of both’ be inserted.”

Thereafter clause (4) would read:

“At a sitting of two Houses the Speaker of the House of the People, or in his absence the Chairman of the Council of States or in the absence of both such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.”

The Drafting Committee has appended a note to this clause (4) at the bottom of page 44, saying that the committee is of opinion that the Speaker of Parliament, as the House of the People is the more numerous body. That of the House of the People should preside at a joint sitting of the two House is good far as goes but when the speaker of the house of the People is absent I think the appropriate procedure would be to permit the Chairman of the Council of State to preside. The Chairman of the Council of State is an elected person, elected by both House of Parliament, and I see no reason, Sir, when the Speaker of the House of the People is not present, why in his absence the Chairman of the Council of State should not be authorised to preside. Clause (4) as it stands says: That in the absence of the Speaker of the house of the People such other person shall preside as may be determined by rules of procedure made under clause (3) of this article.”

Now this practically shuts out the chairman of the Council of States from presiding, for I think it will not be seriously contended that the Chairman of the Council of State may be permitted to preside over the joint sitting in accordance with rules that may be framed under clause (3). The President, when framing such rule in consultation with the Chairman of the Council of States, I am sure, will not have before him the proposal emanating from the Chairman of the Council of States himself that he should be authorised to preside in the absence of the Speaker of the House of the People, because he must be a very presumptuous Chairman of the Council State, a person who has absolutely no delicacies, who would be so audacious as to put forward such a suggestion to the President that he should be authorised to preside in such a contingency. I think it is necessary, therefore, that we should provide in clause (4) that when the Speaker of the House of the People is absent, the Chairman of the Council of the State should preside.

Sir, I beg to move.

(Amendment nos. 1728 and 1729 were not moved.)

Mr. President : So all the amendments have been moved of which we have received notice. Does any one now like to speak?

Shri T. T. Krishnamachari: Sir, while I quite admit the logic of the amendment moved by Mr. Kapoor-I do not know what Dr. Ambedkar will do in the matter, but my own feeling is that the clause as it is had better stand rather than be amended by the suggestion of Mr. Jaspat Roy Kapoor for this reasons: The proper arrangement will be that either the Chairman of the Council of State should preside, and in his absence the Speaker should preside; or the arrangement should stand as it is, because the Chairman of the Council of States happens to be the Vice-President of India, and has a unique position, second only to that of the President, and perhaps the Premier or somebody like that. To put him in a position below the Speaker would mean a very invidious distinction-making a person who is likely to succeed the President or take over his duties under certain circumstances to be put below the Speaker of the House of the People.

Again there might be some objection to put the speaker below the Chairman of the council because that might involve a question of rivalry between the two House as to which House takes the first place. It is a very delicate and difficult position, and I think the Drafting Committee has solved the position by eliminating the Chairman of the Council of State who is the view-President from the picture altogether, and it is best from all points of view that once the two House sit together, the Vice-President who is Chairman of the Council goes out completely from the picture and the Speaker presides. The acceptance of the suggestion of Mr. Jaspat Roy Kapoor though

[Shri T. T. Krishnamachari]

is might look logical, is, I think, likely to create a delicate situation which had better be avoided by the article being allowed to remain as it is.

Shri K. M. Munshi (Bombay: General): Sir, I think it would be best to leave the article as it is, without incorporating the Chairman of the Upper House. The reason is very simple. The Chairman of the Upper House is also the Vice-President and if we put the Speaker in the first instance it would not be right to put the Chairman next after him; and it may be that it would not be advisable to have a person who would be acting as a President in some temporary capacity or the other as the Speaker or the Chairman of this Joint sitting. It is from that point of view that it would be very improper, and I think it must be left to the rules to decide whether he should preside or not: But putting him expressly in this manner would be stultifying his position as Vice-President of the Union and it is very advisable to keep it as it is.

The Honourable Dr. B. R. Ambedkar : All that I can say is that I cannot accept Mr. Jaspat Roy Kapoor's amendment. It is much better that the matter be left elastic to be provided for by rules. With regard to Mr. Kamath's amendment, I certainly feel drawn to it. But for the moment I cannot commit myself, but I can assure him that this matter will be considered by the Drafting Committee.

Mr. President : Then I do not put Mr. Kamath's amendment to the vote. I treat it as a drafting amendment which the Drafting Committee will consider.

With regard to Mr. Jaspat Roy Kapoor's amendment No. 15, I would like to draw Dr. Ambedkar's attention to one point. In clause (2) of article 98 we have the words:

"With respect to the Legislature of the Dominion of India."

In another place we have used the expression "Constituent Assembly of India". I suppose Dr. Ambedkar would like to have the same expression here also?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. President : I was just pointing out that here in this clause (2) the expression "Legislature of the Dominion of India" occurs. Perhaps, the expression 'Constituent Assembly of India' will be better?

The Honourable Dr. B. R. Ambedkar : We have now got two Assemblies so to say, the Constituent Assembly sitting as Constituent Assembly and the Constituent Assembly sitting as legislature. We have rules on both sides. I think therefore it would be desirable to retain the words 'Dominion of India', so that we could adopt the rules which are prevalent on the other side.

Shri Jaspat Roy Kapoor : My submission is that for the words 'Legislature of the Dominion of India' we may have the words 'Constituent Assembly of India' and the word 'Legislative' within brackets. That is how we have describing our Constituent Assembly when it functions as Legislature.

The Honourable Dr. B. R. Ambedkar : We have to use the language of the Indian Independence Act. We have to restrict ourselves to the terminology of that Act.

Mr. President : If it will not create any difficulty, I do not mind it.

I will put the amendment moved by Shri Jaspat Roy Kapoor to vote.

Shri Jaspat Roy Kapoor : Sir, I seek leave of the House to withdraw it. I do not want it to have the fate of a defeated amendment.

Mr. President : If the House grants him leave to withdraw his amendment, it may be withdrawn.

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

Mr. President : The question is:

“That article 98 stand part of the Constitution.”

The motion was adopted.

Article 98 was added to the Constitution.

New Article 98-A

Mr. President : We have notice of an amendment to insert a new article by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I moved:

“That after article 98, the following new article be inserted:—

<p>98-A. Parliament may, for the purpose of the timely completion of the financial business, regulate by law the procedure of and the conduct of business in, each house of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of India, and if and in so far as the provision of any law so made is inconsistent with any rule made by a House of Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.’ ”</p>	<p>Regulation by law of procedure in Parliament in relation to financial business.</p>
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Mr. President : As no Member desires to speak on this amendment, I shall put the motion to vote.

The question is:

“That after article 98, the following new article be inserted:

<p>98-A. Parliament may, for the purpose of the timely completion of the financial business, regulate by law the procedure of and the conduct of business in, each house of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of India, and if and in so far as the provision of any law so made is inconsistent with any rule made by a House of Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.’ ”</p>	<p>Regulation by law of procedure in Parliament in relation to financial business.</p>
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The motion was adopted.

Article 98-A was added to the Constitution.

Article 173

Shri T. T. Krishnamachari: May I suggest that, in continuation of these financial provisions relating to the Union which the House has considered, we

[Shri T. T. Krishnamachari]

may take up the consideration of the appropriate provision relating to the States? If that is done continuity can be maintained.

Mr. President : I was myself going to make that suggestion. We may not take up the Financial Article in the States Part of the Constitution.

The House will now take up article 173 for discussion.

Amendments Nos. 2461 and 2462 are not moved. Dr. Ambedkar may move the next amendment, No. 2464.

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

“That in clause (4) of article 173, after the words ‘deemed to have been passed’ the words ‘by both Houses in the form in which it was passed’ be inserted.”

Shri T. T. Krishnamachari: Sir, I formally move:

“That in clause (2) of article 173, for the word ‘thirty’ the word ‘twenty-one’ be substituted.”

Shri B. M. Gupte : I beg to moved:

“That with reference to amendment No. 2463 of the List of Amendments in article 173, for the words ‘thirty days’ wherever they occur, the words ‘fourteen days’ be substituted.”

This provision we have already adopted for the Central Legislature. In order to bring the States in line with that, this amendment may be accepted.

Mr. President : The question is:

“That with reference to amendment No. 2463 of the List of Amendments, in article 173, for the words ‘thirty days’ wherever they occur, the words ‘fourteen days’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (4) of article 173, after the words ‘deemed to have been passed’ the words ‘by both Houses in the form in which it was passed’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 173, as amended, stand part of the Constitution.”

The motion was adopted.

Article 173, as amended, was added to the Constitution.

Article 174

(Amendment No. 2465 was not moved.)

Mr. President : Dr. Ambedkar, there are two amendments in your name, Nos. 69 and 70 of List I. These are only to bring this article into line with the provision which we have already adopted.

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

“That for sub-clauses (c) and (d) of clause (1) of article 174, the following be substituted:

- ‘(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such fund;
- (d) the appropriation of moneys out of the Consolidated Fund of the State.’ ”

and also—

“That in sub-clauses (e) and (f) clause (1) of article 174, for the words Revenues of the State’ the words ‘Consolidated Fund of the State’ be substituted.”

H. V. Kamath : Mr. President, Sir, there are two amendments in my name, Nos. 2466 and 2467. As regards 2467 I only formally move it, as it is only of a drafting nature. As regards amendment No. 2466, I move:

“That in sub-clause (e) of clause (1) of article 174, for the words ‘the increasing of the amount of’ the words ‘varying amount of’ or abolishing’ be substituted.”

I raised a similar point when discussing the corresponding article for the Union Parliament, and I think, and I still hold the view that that point was not satisfactorily answered. The House will see that article 177 provides for various items that shall be charged upon the Consolidated Fund of the State, among these various items being the emoluments and allowances of the Speaker and the Deputy speaker of the Legislative Assembly and in the case of a State having a Council, of the Chairman and the Deputy Chairman of the Legislative Council. There is no provision at all in this Constitution to the effect that the emoluments and allowances of these would not be diminished during their terms of office, as we have got in the case of the Governor of the State. Therefore it is likely that the legislature may at any time by law diminish the emoluments of the Speaker, the deputy Speaker, Chairman and the Deputy Chairman.

Shri B. Das : But these are all charged expenditure under article 177.

Shri H. V. Kamath : But there is no provision that they shall not be diminished during their term of office, and if a proposal arises for the diminution of such allowances and emoluments, should we allow the Council to have power to move such a Bill? Mr. Ananthasayanam Ayyangar replying to this on the last occasion said that so far increasing the amount is concerned, that will come within the scope of a money Bill, and therefore such money Bills should be introduced only in the Lower House, but the point that I want to raise is this: Suppose the legislature wishes to diminish the emoluments and allowances of the Speaker, the Deputy Speaker, the Chairman and the Deputy Chairman, should we not regard that also as a Bill coming within the scope of money Bills for purposes of article 174? Should we allow the Upper House the power to move a motion with regard to that matter? Should we not consider that also as falling within the scope of this article 174 and allow the Lower House the exclusive power to make such a motion?

Then, Sir, as regards abolition. There is one omnibus clause, a comprehensive clause in article 177, clause (f) which lays down that any other expenditure declared by this Constitution or by the Legislature of the State to be so charged shall also be charged to the Consolidated Fund of the State. Here also I do not know whether any occasion will arise at any time during the tenure of the legislature when it might consider that an expenditure which was previously declared as an expenditure chargeable to the State. In that case also, the point is whether the Upper House should be given the power to make such a motion, or the Lower House alone should have that power. Sir, I move.

As regard 2467, I only formally move it but would leave the matter to the wisdom of the Drafting Committee.

Mr. President : There are no other amendments to this article. I shall now put it to vote.

Shri H. V. Kamath : Does not Dr. Ambedkar want to say anything in the matter?

The Honourable Dr. B. R. Ambedkar : All I can say is that I shall look into the matter when we take up the revision of the Constitution.

Mr. President : The question is:

“That for sub-clauses (c) and (d) of clause (1) of article 174, the following be substituted:

- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of money from any such fund;
- (d) the appropriation of moneys out of the Consolidated Fund of the State;”

The amendment was adopted.

Mr. President : The Question is:

“That in sub-clauses (e) and (f) of clause (1) of article 174, for the words ‘revenues of the State’ the words ‘Consolidated Fund of the State’ be substituted.”

The amendment was adopted.

Shri H. V. Kamath : As Dr. Ambedkar has promised to look into that matter, I will leave it to his wisdom. He might exercise it at a later stage.

Mr. President : Both the amendments?

The Honourable Dr. B. R. Ambedkar : There is only one amendment.

Shri H.V. Kamath : May I ask which one he promised to look into? Perhaps he will make it clear.

Honourable Dr. B. R. Ambedkar : Amendment No. 2466.

Mr. President : Very well, than, I will not put them to vote.

The question is:

“That article 174, as amended, stand part of the Constitution.”

The motion was adopted.

Article 174, as amended, was added to the Constitution

Shri Honourable Dr. B. R. Ambedkar : I want article 175 to be held over.

Shri T. T. Krishnamachari : I suggest articles 175 and 176 may be held over as they affect some problems which the Drafting Committee are still considering. Article 177 may be taken.

Mr. President : Then we shall take up article 177.

Article 177

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

“That in sub-clauses (a) and (b) of clause (2) of article 177, for the words ‘revenues of the State’, be substituted.”

I move:

“That in clause (3) of article 177, for the words ‘revenues of each State’, the words ‘Consolidated Fund of each State’ be substituted.”

Sir, I also move:

“That in sub-clause (b) of clause (3) of article 177, for the word ‘emoluments’ the word ‘salaries’ be substituted.”

(Amendments Nos. 2486, 2487 and 2489 were not moved.)

Mr. President : The question is:

“That in sub-clauses (a) and (b) of clause (2) of article 177, for the words ‘revenues of the State’ the words ‘Consolidated Fund of the State’, be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (3) of article 177, for the words ‘revenues of each state’ the words ‘Consolidated Fund of each State’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in sub-clause (b) of clause (3) of article 177, for the word ‘emoluments’ the word ‘salaries’ be substituted.”

The motion was adopted.

Mr. President : The question is:

“That article 177, as amended, stand part of the Constitution.”

The motion was adopted.

Article 177, as amended, was added to the Constitution.

Article 178

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

“That in clause (1) of article 178, for the words ‘revenues of a State’, the words ‘Consolidated Fund of a State’ be substituted.”

(Amendment No. 2490 was not moved.)

Mr. President : The question is:

“That in clause (1) of article 178, for the words ‘revenues of a State’, the words ‘Consolidated Fund of a State’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 178, as amended, stand part of the Constitution.” The motion was adopted.

Article 178, as amended, was added to the Constitution

Article 179

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

“That for article 179, the following be substituted:—

‘179. (1) As soon as may be after the grants under the last preceding article have been made by the Assembly there shall be introduced a Bill to provided for the appropriation out of the Consolidated Fund of the State all moneys required to meet—

- (a) the grants so made by the Assembly; and
- (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.
- (2) No amendment shall be proposed to any such bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consoli-

[The Honourable Dr. B. R. Ambedkar]

dated fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

- (3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.’ ”

Mr. President : There is no other amendment to this article.

The question is:

“That for article 179, the following be substituted:—

‘179. (1) As soon as may be after the grants under the last preceding article have been made by the Assembly there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State all moneys required to meet—

- Appropriation Bills.
- (a) the grant so made by the Assembly; and
 - (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.
- (2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.
- (3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 179, as amended, stand part of the Constitution.”

The motion was adopted.

Article 179, as amended, was added to the Constitution.

Article 180

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

“That for article 180, the following article be substituted :—

‘180. (1) The Governor shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 179 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
 - (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.
- (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation

of appropriation of moneys out of the Consolidated Fund of State to meet such expenditure or grant.’ ”

Mr. President : The question is:

“That article 18C, the following article be substituted :—

“180. (1) The Governor shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 179 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.
- (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 180, as amended, stand part of the Constitution.”

The motion was adopted.

Article 180, as amended, was added to the Constitution.

Article 181

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

“That for article 181, the following article be substituted :

- ‘181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative Votes on account, Votes on Assembly of a State shall have power. credit and exceptional grants.
- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with provisions of article 179 of this Constitution in relation to that expenditure;
- (b) to make a grant for a meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.
- (2) The provisions of articles 178 and 179 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.’ ”

Mr. President : The question is :

“That for article 181, the following article be substituted :

‘181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative Votes on account, votes on Assembly of a State shall have power—
Credit and exceptional grants.

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 179 of this Constitution in relation to that expenditure;
 - (b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
 - (c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature of the State shall have Power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.
- (2) The provisions of articles 178 and 179 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the state to meet such expenditure.’

The amendment was adopted.

Mr. President : The question is:

“That article 181, as amended, stand part of the Constitution.”

The motion was adopted.

Article 181, as amended, was added to the Constitution.

Article 182

Mr. President : The motion is:

“That article 182 form part of the Constitution.”

The Honourable Dr. B. R. Ambedkar : With your permission, Sir, I seek to move a small amendment.

“That in article 182, for the words ‘revenues of the State’, the words ‘Consolidated Fund of the State’ be substituted.”

Mr. President : There is no other amendment.

The question is:

“That in article 182, for the words ‘revenues of the State’, the words ‘Consolidated Fund of the State’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 182 as amended stand part of the Constitution.”

The motion was adopted.

Article 182, as amended, was added to the Constitution.

Article 183

Mr. President : The question is:

“That article 183 form part of the Constitution.”

There are some amendments to this article.

(Amendment No. 2496 was not moved.)

Shri R. K. Sidhwa : Sir, I move:

“That in clause (1) of article 183, the word ‘shall’ be substituted for the word ‘may and the following be added at the end :—

‘within 6 months from the date of the first session of the Assembly.’”

Sir, my amendment says that the legislature of the State shall make rules for regulating, subject to the provisions of this Constitution, its procedure and conduct of business within six months of the first session of the Assembly. In this article it is stated that until the rules are made—which is left to the choice of the Speaker of the House— the rules of procedure and standing orders in force immediately before the commencement of this Constitution shall prevail. I feel, Sir, that there should be a specific period fixed and the Speaker should be required to see that the rules are made within six months. Six months is a very long period. In view of the new set up and the new Constitution, it is just possible that the old rules may not properly fit in. We do not framed for an indefinite period. I have seen, Sir, that in some provinces, rules are not made for nearly eighteen months. I think this is a very reasonable amendment. Sir, I move.

(Amendments Nos. 2498 and 2499 were not moved.)

Mr. President : There is no other amendment.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment that has been brought before the House by my honourable Friend Mr. Sidhva.

It is very necessary, Sir, as Mr. Sidhva has stated, that the rules of procedure and conduct of business should be framed as expeditiously as possible. This House is aware that in this very House sitting as legislature we have not yet finally adopted even today the rules of procedure and conduct of business so far as that House is concerned. We have only tentatively adopted and I do not think it is desirable state of affairs that such an inordinate delay should occur for framing the rules of procedure. There should not be any difficulty whatsoever in having this specific time-limit of six months—it is a fairly generous time limit and any legislature which means business and which proceed to business in a really expeditious manner should be able to have the rules ready within six months. I would put it at even three months but as the amendment specifically mentions six months, I would support the amendment as it is and I hope it will commend itself to Dr. Ambedkar and the House.

There is one other observation which I would like to make and that is with regard to clause (1). I hope Dr. Ambedkar will bear in mind what he promised to do with regard to a similar amendment which I moved for the Union Parliament, and clause (1) as it appears here might be reconstructed in the light of the amendment I moved earlier.

Mr. President : Does anyone else wish to say anything?

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. President : The question is:

“That in clause (1) of article 183, the word ‘shall’ be substituted for the word ‘may’ and the following be added at the end :—

‘within 6 months from the date of the first session of the Assembly.’ ”

The amendment was negatived.

Mr. President : The question is:

“That article 183 stand part of the Constitution.”

The motion was adopted.

Article 183 was added to the Constitution.

New Article 183-A

Mr. President : There is a new article 183-A proposed by Dr. Ambedkar.

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

“That after article 183, the following new article be inserted :—

‘183-A. The Legislature of a State may, for the purpose of the timely completion of the financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if in so far as the provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under the last preceding article or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.’ ”

Regulation by law of procedure in the Legislature of the state in relation to financial business.

Mr. President : Does anyone wish to say anything? The question is:

“That new article 183-A be added to the Constitution.”

The motion was adopted.

Article 183-A was added to the Constitution.

Article 184

Mr. President : We go to article 184.

Shri T. T. Krishnamachari : Sir, we have not discussed article 99 which is analogous. This may be held over. Articles 185 and 186 have not got many amendments and they might be taken up.

Article 185

Mr. President : We pass over article 184. We go to article 185.

(Amendment Nos. 2518 and 2519 were not moved.)

Does anyone wish to speak?

Shri B. Das : Sir, I feel that the provincial Legislature should have the right to question the conduct of the High Court Judges. Regarding the Supreme Court, the Parliament is there which will be very alert and if they find the Supreme Court Judges are misbehaving, the Parliament will find its own way to correct them and to bring the Government, the President and the Cabinet under censure so that they control properly the Supreme Court Judges. I am not happy with 185 (1). I do not think and appeal to Dr. Ambedkar—the Drafting Committee has been very fair and if they have been fair, why do they want to stifle discussion about the High Court Judges in the provincial Legislatures? That is all I want to say.

Mr. President : A similar provision has been passed with regard to Supreme Court and High Court in article 100. Does anyone else wish to speak?

Shri T. T. Krishnamachari : Mr. President, if the Chair will permit me and the house agrees, I would like to move—

“That clause (2) of this article may be omitted.”

The reason is that right through in the States Chapter we have been omitting specific reference to States in Part III of the First Schedule and it would only be following the same practice which we have hitherto followed. I hope the House will agree to this and omit clause (2). Sir, I move.

Shri R. K. Sidhwa : Mr. President, I know, as you have rightly pointed out, that in the previous clauses as far as the Supreme Court is concerned, we have passed a similar article. But I do not understand why the Judge of a High Court should be above criticism as far as his conduct is concerned. Sometimes he misbehaves, he is not a super-man, his conduct also should be subject to question somewhere and if you do not allow the House to discuss his conduct, you know sometimes what happens. We know what happened in a recent case. While I say that his judgment should not be under discussion of the House, his conduct should be certainly subject to discussion. There is nothing wrong and it does not in any way derogate from his position. If you have some kind of restriction upon a judge, I think it will be a very healthy procedure.

Shri T. T. Krishnamachari : May I point out that we have accepted 101 which is practically the same so far as Parliament is concerned and we are applying the same provision with regard to Legislatures of the States?

Mr. President : The question is:

“That clause (2) of article 185 be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 185, as amended, stand part of the Constitution.”

The motion was adopted.

Article 185, as amended, was added to the Constitution.

Article 186

Mr. President : We go to No. 186.

(Amendment No. 2520 was not moved.)

Mr. President : The question is:

“That article 186 stand part of the Constitution.”

The motion was adopted.

Article 186, was added to the Constitution.

The Assembly then adjourned till Eight of the Clock on Monday, the 13th June, 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 13th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION —(*Contd.*)

Article 216

Mr. President : We finished article 186 the other day. I am told we should begin with article 216 today.

(Amendment Nos. 2739 and 2740 were not moved.)

The question is:

“That article 216 stand part of the Constitution.”

The motion was adopted.

Article 216 was added to the Constitution.

Article 217

(Amendment Nos. 2741 and 2742 were not moved.)

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

“That in clause (2) of article 217, for the words ‘next succeeding clause’, the words, figure and brackets ‘clause (3)’ and for the words ‘preceding clause’, the word, figure and brackets ‘clause (1)’ be substituted respectively.”

The only reason for moving this is that upon this a very important amendment depends. That is why I have given the initiative.

Shri T. T. Krishnamachari (Madras: General): May I move amendment Nos. 87-B and 87-C? They are only formal. I move:

“That in clause (2) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

and

“That in clause (3) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

Prof. Shibban Lal Saksena (United Provinces: General): I have also given notice of an amendment.

Mr. President : I have not seen any amendment.

Prof. Shibban Lal Saksena : I gave notice of it this morning. I beg to move.....

The Honourable Dr. B. R. Ambedkar : (Bombay: General): We have not got copies of his amendment.

Shri L. Krishnaswami Bharathi (Madras: General): We cannot follow what he is moving.

Mr. President : He gave notice of his amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

The Honourable Shri K. Santhanam (Madras: General): Sir, in a matter of importance like this I do not think anyone should be allowed to move amendments without proper notice. We do not propose to move amendment No. 2741 at all and I do not think any other Member has got the right to move our amendment.

Shri L. Krishnaswami Bharathi : If you give the right to Members to move amendments like this it will go on interminably and it will be sheer waste of time.

Shri K. M. Munshi (Bombay: General) : The amendment the Member wants to move is the same as the one which is not being moved by Members who have given notice of it. He wants to move what they have not moved.

Shri R. K. Sidhwa (C.P. & Berar: General): Sir, I do not object to what you may decide. But I want to draw attention to an amendment which I gave notice last week, but which you disallowed. I do not see why an exception should be made in this case.

Prof. Shibban Lal Saksena : Under the rules we are allowed to move amendments to amendments if we give notice before the session commences. This amendment only incorporates the idea contained in the note of dissent by Shri Alladi Krishnaswami Ayyar given at the end of the Draft Constitution. As this is an important matter I do think that if the Members who have given notice of similar amendments are not moving them, the article should not be allowed to be passed without discussion and without attempt at its amendment.

Mr. President : Why did you not give notice of it in time?

Prof. Shibban Lal Saksena : Sir, I gave notice in time, *i.e.*, “before the session commences”. Further, it is only a reproduction of amendment No. 2741, and is proposed to be moved as an amendment to 2743.

Mr. President : Yes. I got notice of this before the session commenced. It took the office a little time to get it copied. So I could not disallow it.

Prof. Shibban Lal Saksena : Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them.

The Honourable Dr. B. R. Ambedkar : I would like to raise one or two points about this. This seems to be a rather important matter. The first thing I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

Mr. President : It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The honourable Member in his notice says that his amendment is an amendment to Nos. 2741, 2742, 2743, 2744 or 2745.

The Honourable Dr. B. R. Ambedkar : If it is to be taken as an amendment to No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

Shri Jaspal Roy Kapoor (United Provinces : General): Sir, may I submit that Dr. Ambedkar is taking in this matter a very narrow view. The position is this article 217 is under discussion. One Member wants it to be amended in a particular manner. Mr. Naziruddin Ahmad wants the article to be amended in another manner and confines himself to clause (2) of it. All the same the amendment is to article 217. My Friend Prof. Shibban Lal would be

in order if he says that rather than amending it in the manner suggested by Mr. Naziruddin Ahmad it should be done in the way he wants. That is obviously an amendment to the amendment of Mr. Naziruddin Ahmad. If a too narrow view is taken off these things by Dr. Ambedkar, I am afraid he himself would find it very difficult to move many of his amendments. He has done so in the past and he will find it necessary to do so also hereafter.

Mr. President : I treat this as an amendment to amendment No. 2743. I rule that this is in order.

Shri B. Das (Orissa: General): I do not follow you, Sir.

Mr. President : If Mr. Das will turn to page 285 of the Printed List, he will find amendment No. 2741. This is more or less a word for word a copy of that. There is no difficulty, you can follow it.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That for article 217, the following be substituted :—

- ‘217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the States or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).
- (2) The Legislature of any State in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.
- (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, or order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have the exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
- (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.
- (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects:
- Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
- (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.
- (6) When a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.’ ”

Sir, I am very sorry that an attempt was made to get this amendment disallowed. I would like only to point out that this amendment is word for word what Shri Alladi Krishnaswami Ayyar has suggested in the Appendix to the Draft Constitution on pages 212-213.

In fact in the Appendix Shri Alladi has stated that he differed from the majority of the Drafting Committee and he has stated that in his opinion the new scheme of division of powers between Parliament and the Legislatures of

[Prof. Shibban Lal Saksena]

the states should be as is given in this amendment. The amendment of which notice was given by the Honourable Mr. K. Santhanam was on the lines of the suggestion made by Shri Alladi in the Appendix. I suggest that the matter is of vital importance, on which one of the most eminent jurists of the country has differed from the Drafting Committee, and the article should not be allowed to be passed by the House without due consideration. I therefore thought it my duty to move this amendment. I would have preferred if Mr. Santhanam had himself moved it. I do feel that the House is entitled to know why the suggestion made by Shri Alladi could not be followed. The suggestion made by Shri Alladi is a very important one. In fact the Draft Constitution only reproduces word for word Section 100 of the Government of India Act, 1935. In the Appendix, Shri Alladi has given arguments to show why the change he has suggested is necessary. He has stated that at the time the Government of India Act was passed, it was not decided as to where the residuary powers should vest, whether they should be with provinces or with the Centre. Therefore it was necessary to frame the Section in the form in which it was framed. He has also pointed out that much litigation has been carried on on the meaning of the word "Notwithstanding", in the Federal Court. He has also stated that as it has been decided finally that the residuary powers shall belong to the Centre, the article should be redrafted in a different manner, in the manner he has suggested and as is given in my amendment. Firstly, we should not copy word for word the Government of India Act, 1935, which was a deed of our slavery. Now that we are now framing a new Constitution, we should not merely incorporate everything word for word from the old Constitution. One advantage of this is that we will not be reminded of our past slavery as we would be by copying, word for word, Section 100 of the Government of India Act, 1935. Secondly, Sir, this is a more logical form to say that the various States shall have exclusive power to make laws in relation to matters falling within the classes of subjects specified in List I, and that List II shall contain subjects in which both the States and the Union shall have concurrent power to make laws, and then to say that whatever remains shall belong to the Union. List I at present gives the powers of the Union Parliament. Shri Alladi has suggested that whatever is contained in the Union List should be by way of illustration only and that whatever remains should belong to the Centre. The more logical form will be to say that such and such powers will belong to the States, such and such powers will belong both to the States and the Union and then to say that whatever remains shall belong to the Union. This kind of division given by Shri Alladi is a more logical division and a much better division in every way. The suggestion made by him is a very important one and the House should take note of the reasons why he prefers this arrangement to the Draft which only copies Section 100 of the Government of India Act. The Drafting Committee itself says on page 100 of the Draft Constitution—

"Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in Parliament begin with the legislative powers of the States, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement."

I cannot understand why the Drafting Committee does not feel this is a more logical form. The mere fact that the Government of India Act had it in that form is no arrangement to have it in that form. I therefore suggest that the form suggested by Shri Alladi is an improved form and is less open to litigation and far more clear.

Then, Sir clause (5) says :—

"The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature."

Shri Alladi has pointed out that this clause follows the Australian and American Constitutions. He has stated that in the Draft Constitution there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. This clause (5) gives that power. This makes the article complete and brings it in conformity with the provisions of the Australian and American Constitutions. The form suggested by Shri Alladi is superior in form as well as in content and also fills a lacuna in the draft article. Sir, I move my amendment and commend it for the acceptance of the House.

(Amendment Nos. 2744 and 2745 were not moved.)

Mr. President : Does anyone wish to say anything?

Shri L. Krishnaswami Bharathi : Nobody, Sir.

Shri M. Ananthasayanam Ayyangar (Madras: General): We do not want the amendment to be moved.

Mr. President : I will put the amendment of Prof. Shibban Lal Saksena to the vote. The question is:

“That for article 217, the following be substituted :—

- “217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).
- (2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.
- (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
- (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.
- (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects :—
- Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
- (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.
- (6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 217, for the words ‘next succeeding clause’, the word, figure and brackets ‘clause (3)’ and for the words ‘preceding clause’, the word, figure and brackets ‘clause (1)’ be substituted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (3) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 217, as amended, stand part of the Constitution.”

The motion was adopted.

Article 217, as amended, was added to the Constitution.

Article 218

Shri T. T. Krishnamachari : Sir, this article is not considered necessary in the light of subsequent revision by the Drafting Committee. Therefore, the article may be put to the House, so that it can be negatived, if the House desires.

Mr. President : The question is:

“That article 218 stand part of the Constitution.”

The motion was negatived.

Article 218 was deleted from the Constitution.

Article 219

Mr. President : We shall take up article 219.

(Amendment No. 2749 was not moved.)

The question is:

“That article 219 stand part of the Constitution.”

The motion was adopted.

Article 219 was added to the Constitution.

Article 220

Shri T. T. Krishnamachari : May I suggest that articles 220, 221 and 222 may be put together because the Drafting Committee does not consider these articles as necessary?

Mr. President : I will put them separately.

(Amendment Nos. 2751 and 2752 were not moved.)

The question is:

“That article 220 stand part of the Constitution.”

The motion was negatived.

Article 220 was deleted from the Constitution.

Article 221

Mr. President : There is no amendment to this article.

The question is:

“That article 221 stand part of the Constitution.”

The motion was negatived.

Article 221 was deleted from the Constitution.

Article 222

Mr. President : There is no amendment to this article also.

The question is:

“That article 222 stand part of the Constitution.”

The motion was negatived.

Article 222 was deleted from the Constitution.

Article 223

Mr. President : There are several amendments to this article.

(Amendment Nos. 2754 to 2759 were not moved.)

The question is:

“That article 223 stand part of the Constitution.”

The motion was adopted.

Article 223 was added to the Constitution.

Article 224

The Honourable Dr. B. R. Ambedkar : I wish that article 224 and 225 be held over.

Mr. President : Articles 224 and 225 are held over.

Article 226

The Honourable Dr. B. R. Ambedkar : I formally move amendment No. 2775.

Then I move an amendment to this.

Sir, I move:

“That for amendment No. 2775 of the List of Amendments, the following be substituted :—

“That article 226 be renumbered as clause (1) of article 226, and

- (a) at the end of the said clause as so renumbered the words ‘while the resolution remains in force’ be added; and

[The Honourable Dr. B. R. Ambedkar]

- (b) after clause (1) of article 226, as so renumbered, the following clauses be added :—
 (2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

- (3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.' "

(Amendment No. 2776 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, this is a very contentious article and Dr. Ambedkar has tried to carry away some portion of its sting by his amendment, but I only want to say, Sir, that the amendment has made the article almost useless for the purpose for which it is intended. It was intended by this article that if a large number of provinces desired that in some matter there should be co-ordination among them and because they have not got singly the power to frame any such law for co-ordinating the efforts of those provinces, they may ask their representatives in the Council of States to pass a resolution by two-thirds majority giving the power to the Parliament to legislate on that subject also. For instance let us suppose that there is an emergency about food in four or five provinces. Unless there is some law relating to the control and distribution of food in all these provinces, it will be of no use for a single province to pass any law to meet the emergency, for food as such may be a provincial subject, and the Centre will then have no right to frame any legislation about it. Therefore, this article only gives power to the Upper House to pass a resolution by two-thirds majority to ask the Parliament to pass some law which might tide over the emergency and help those four or five provinces.

Now, Sir, this article as originally intended was to give this power without any limit of time and that means that until the emergency lasted, it could remain. But some people have seen in this article a limitation of the powers of Provincial autonomy, and therefore they resented the old article and the amendment of Dr. Ambedkar is to meet that view-point. By reducing the period to one year, I do not see how any emergency can really be met. So every year there shall have to be a vote of the Council of States and only if the Council agrees to extend the period by another year, the legislation undertaken by the Parliament in the Preceding year will continue. On the off-chance of having that vote, I do not think any major schemes can be undertaken. I think therefore it is much better, instead of saying that every year a new resolution will have to be passed to state that at least in the first instance, the resolution of the Council of States will confer power for three years and after that, it could be extended year by year, until the emergency is over. Therefore, I think that if the purpose for which this article is put in is to be achieved, then, the period of one year should be changed to three years in the first instance and then one year afterwards. That would give Parliament power to make laws for three years in the first instance and their life may be extended year by year by two-thirds majority of the Upper House. There can be no comprehensive planning for one year. It is quite possible that in the next year there may be a new election of one-third of the members' and they may not pass that law, and it may so happen that the whole of the money spent in the first year may become a waste. This fixing of the period of one year may work as a serious handicap.

I would therefore request Dr. Ambedkar himself to amendment by saying three years in the first instance, which period will be extended from year to year if required. In fact in America where Parliament has got no power to legislate on subjects which are within the jurisdiction of the States, it has been felt that there is very great difficulty in meeting such an emergency and they are able to carry on their schemes which require the concurrence of the States by a sort of allurements to finance the schemes. This article was intended to overcome that difficulty. I therefore request the House that even at this late stage the period may be fixed as three years, as the article as it stands at present is meaningless.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, this is a very important article and I think it deserves more attention so far as the question of the powers of the States are concerned.

With reference to the provisions which we have already passed, we have three lists. (i) the Union List which contains the subjects which are entirely within the jurisdiction of Parliament to pass laws regulating them; (ii) the Concurrent List regarding which both the States as well as the Parliament can legislate, and in that connection, legislation of Parliament will certainly prevail as against the legislation passed by the States; (iii) the States List, that is, one regarding which the States alone will have jurisdiction to pass legislation. I would also like to draw the attention of the House to the fact that with respect to what remains outside the purview of any of these lists, these matters are being handed over to the Union Parliament, that is, all the residuary powers are with the Union Parliament. Therefore, the only power that will be left with the States will be those that will be included in what will be later on determined as the States list.

It would be open to the House looking to the condition in the country to reduce the number of subjects that will be included in the States List. This may have to be done for various reasons. There is the acute problem of food which is not only confronting us, but also many other countries of the world. It may become necessary that the matter should be taken over by the Union Parliament. Similarly, there may be other subjects, like those necessary for the peace and security of the country. It may become necessary that some of the subjects which were originally included in the States List will have to be included in the Union List. Under these circumstances it is a matter for serious consideration whether we should now enact this article 226.

It may be argued that there are cases in which the State can legislate only in respect of the area which is included in its jurisdiction and a problem may arise which requires that there should be legislation applicable to more than one State and in that case certainly it becomes necessary that the Union Parliament shall pass that legislation as the State will have no power to pass such legislation. But for that, we are making provision in article 229, that if the State Assembly and the Council, if one is there, together so decide, the Union Parliament will be given power to legislate even in respect of State subjects. That also, to my mind, is necessary. But it has to be considered seriously whether power under article 226 is necessary, and what is its implication. Article 226 says: "Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members, present and voting that it is necessary or expedient in the national interest that Parliament should make laws....." The main ground on which this power is proposed to be given is that in the national interests, the Parliament should make laws for the States. If it is really a matter of national interest I do not understand why the State itself will

[Shri H. V. Pataskar]

not either pass the legislation itself or be willing to consent to legislation by Parliament. Why should we presume that the State will assume such an anti-national attitude? There are other provisions in the Constitution under which on the ground of national interest, emergency, etc., Parliament can interfere. Particularly the wording in article 226, "in the national interest, Parliament should make laws" is something which implies that that the Centre requires legislation by Parliament in a matter of national importance, which the State is not prepared to pass. In respect of the meagre subjects which are left for legislation by the States, I think such cases are likely to be very rare. I do not think that article 226 is at all necessary. Of course, as I said, this deserves to be discussed before we come to a particular conclusion. I do not say that I am opposed to it; I would be prepared to accept it; for after all, one may come to a different conclusion. After considering the other side's views, I only wish to point out that to allow this article to be passed without considering all the aspects will not be happy from any point of view.

Shri O. V. Alagesan (Madras: General): Mr. President, Sir, I see great mischief in this article. It is contended on the other side that this is only an extended and indirect version of article 229 that is to follow. If it is so innocent as that, my feeling is that it is redundant. This article provides for interference in matters contained in the States List by the Central Government through the agency of the Council of States. The saving feature is, it is said, that in the Council of States the representatives of the various States are going to sit and they are not likely to overlook the interests of the States concerned and to reinforce this, matters like food are brought into the picture. In matters like food it will be in the interest of the States concerned if the Centre steps in and comes to their rescue. In such cases the States will certainly avail themselves of the provision made in article 229. They will have the good sense to request the Centre to step in and legislate in such matters which will be beyond their power or capacity to deal with. Now, I should like to put a pointed question to Dr. Ambedkar. For instance, now there is a situation prevailing in the State of Hyderabad and in Madras Presidency. In some of the border areas in these two States there is disturbance of public peace. Now I would like to ask whether it will be proper, under similar circumstances, for the Centre to intervene and take over the entire portfolio of law and order from the two States concerned and step in. Sir, I am sure that it will be a mockery of provincial autonomy if such a thing happens. So, my point is that this article, if it is only an extended version of article 229, is superfluous but if there is something behind it, if it is intended that the Centre should go beyond what is contained in article 229, then it is surely mischievous and need not find a place here. Dr. Ambedkar's original amendment has provided for three years. I should like to know from my friends who have contended that it is necessary that this provision of three years should be there, whether an emergency can be called an emergency if it is going to last for three years and more. Then it will cease to be an emergency and become a permanent feature. So the present amendment has tried to modify the vigour of this section which has great potentiality for mischief to interfere with provincial autonomy. I would request Dr. Ambedkar even at this late stage, if it would be possible for him, to withdraw this article and assure that there will be no interference with provincial autonomy.

Shri T. T. Krishnamachari : Mr. President, Sir, the amendment moved by Dr. Ambedkar to article 226 undoubtedly requires some explanation. I heard

with attention the remarks of my honourable Friend Mr. Pataskar and also of my Friend Mr. Alagesan. The House will realise that the article as amended by Dr. Ambedkar's amendment seems totally different to the article as it originally stood in the Draft, and the article as it originally stood in the Draft was intended to cover any lacuna that might exist in the distribution of powers wherein it is necessary that the Centre should co-ordinate the activities of the provinces quickly without going through the process indicated by Article 229 and also to cover cases where there is a certain amount of overlapping. The article as it stood originally had also this disadvantage *viz.*, that it sought to put the power over the particular subject which the Centre was attracting, to itself by means of a resolution passed by the Council of States and, so to say, placing it permanently, for ever, in the Concurrent List; that was its main defect. When a particular action was taken and the field of provincial autonomy was encroached upon; very necessarily perhaps there must be a time limit for the continuance in force of such action. It is no use putting that subject permanently in the Concurrent List. I have no doubt that it is this aspect of the matter that made Dr. Ambedkar give notice of a previous amendment *viz.*, limiting the scope of action that might be taken by Parliament by the authorisation provided in the manner indicated in 226 to a period of three years. There would according to that scheme be no objection to renewing it for a further period of three years and also to renew it thereafter provided a certain amount of time is allowed to lapse between lapsing of that particular resolution and a fresh resolution to be moved on the same lines. I do see the force of the arguments of my honourable Friend Mr. Pataskar and the previous speaker in the objections raised by them to the scheme of this article. I am one of those who believes and believes very firmly that wherever we assign to the provinces a certain field in which they could act, we must leave the provinces entirely in sole charge of that field, not because of any rigid adherence to theoretical reasons that the federalism adopted by us should be pure and we should not have a mixed kind of federalism such as exists in Canada, but merely because I feel that the responsibilities of Provincial Ministers must be laid squarely on them and there should be no opportunity provided for them to take shelter under the plea of divided responsibility between the Centre and the Provinces. Sir, on this particular point I hold strong views and I do feel that when we consider this whole chapter of distribution of powers we must have that particular fact in view all the time. It does not matter if the powers that are given to provinces do not cover a very wide range. It may be necessary for the Centre to have a larger amount of powers. That does not really interfere with the provinces working smoothly so long as within the scheme of powers allotted to provinces there is no interference from the Centre. Looked at from that point of view, 226 as it originally stood was undoubtedly objectionable that notwithstanding the fact that the Centre is empowered by the Council of States in which the component States are adequately represented and that act of empowering the Parliament is by a two-thirds majority which implied that the States agree to the Centre attracting to itself that provincial power. I do feel that it might conceivably be the thin end of the wedge of the encouragement of the Centre attracting to itself greater powers from the provinces, so that in this process of integration of powers at the Centre for the purpose of uniformity of action in avowedly important matters the general idea that the Centre must have larger powers would come to be accepted. Looked at from the other point of view *viz.*, from the economic objectives to which we are wedded, economic intervention of the Centre becomes more than a formal necessity—all these facts will undoubtedly work for larger aggregation of powers in the Centre at the expense of the States and it is also true that in the other Federations or quasi-Federations as they exist today like U. S. A., Australia and Canada, we find the process of the Centre attracting to itself powers to a greater degree as time goes on is going on rapidly whether constitutionally or by reason of Judicial pronouncements or by the exigencies of time, so much so that we have found a check to this movement of attracting powers to Centre by the adverse vote on the referendum passed by the people of Australia in respect of

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a demand made by the Federal Ministry for greater powers to Centre for the purpose of executing their post-war plans. There is a lesson to be learnt for us from what has happened in Australia even while the referendum has been backed not by one party but by both parties. Both parties wanted greater power to the Centre but the referendum has unfortunately been negatived. Therefore it seems to me that in this scheme of distribution of powers which will be supplemented by the financial powers following in a later Chapter, then ultimately by the scheme in the three parts of Schedule VII, we should be very careful to leave to the provinces or as it is now called to the States, certain amount of power intact. I would at the appropriate time suggest that where it is necessary for the Centre to have powers to co-ordinate action by the various units for vital reasons, it is better to put that subject in the Concurrent List rather than leave it in the States List and at the same time make in roads into this field by various other devices. Not merely by the device envisaged in this article but there are other devices as well and there will be time enough for me to deal with those devices at the appropriate time and suggest safeguards against these being used. Therefore while I do hold that article 226 as it originally stood was objectionable and—if I may borrow a word from the previous speaker—even mischievous, and one that sought to detract from the States the full quantum of responsibility that ought to be with them, I feel that the amendment takes away the substance of this objection against article 226. Again, I can see the argument of my Friend Mr. Pataskar who perhaps might appreciate the necessity for a provision like article 226 but fails to see the necessity for a provision similar to the one that the amendment envisages, particularly in view of there being a subsequent article 229. I am afraid, Sir, that Mr. Pataskar has not appreciated the scope of article 229 which, as will be realised, is a reproduction of a similar section, *i.e.*, section 103, of the Government of India Act. And it is worthwhile, even at this stage, as a comparison has been made between 226 and 229, to find out on how many occasions the provisions of a similar section of the Government of India Act have been used. I do recollect that some time in 1939 Resolutions were moved in the various provinces empowering the Centre to undertake legislation in respect of drug control. I also remember, two years back before the Centre embarked on this Damodar Valley Corporation enactment, two Governments—Bihar and Bengal—had to pass legislation under the powers vested in them under section 103. So article 229 provides for co-ordinate action in matters in which the provinces are primarily interested, and more often than not, it will happen that only two provinces are interested and an enabling provision is provided so that there may be co-ordinating legislation by the Centre. And it has to be remembered that this process also takes a lot of time. To get a province to move, you want the co-operation of the executive, you want the co-operation of the members of the legislature; and it takes a lot of time. And if it did happen that the Centre wanted some powers in respect of an urgent matter where the provisions of the emergency sections need not and could not be involved, naturally there should be some method by which the Centre could act. It may be that some lawyer here might say that since residuary powers are left to the Centre the precedent created by the judgment of the Canadian case—Attorney-General of Ontario *versus* Canada Temperance Association—might probably be utilised because of the fact that the residuary powers are left to the Centre in this Constitution like the Canadian constitution. But again there is this difficulty, as Prof. K. C. Wheare, an authority on federalism, has pointed out, the very idea of precisely delineating powers that has been undertaken in Schedule 7 of the Government of India Act which we have followed closely and further improved upon in Schedule 7 of the Draft Constitution would not permit room for taking advantage of an interpretation of the residuary powers as meaning that the Centre can interfere in a matter which is avowedly within the province of the State and where the Centre has really no business, except in the public interest, to interfere. So I do believe that there is

some utility in article 226 as amended by the amendment moved by Dr. Ambedkar which takes away all the sting that might have been attached to the original article or as the article would have been as altered by Dr. Ambedkar's original amendment. The position as it would be if the article is accepted in its present form is that the matter will have to be brought before the Council of States every year; by way of a resolution so as to keep the Parliamentary enactment made under the authority of the resolution alive. And we have not put a time limit. There is no question of the whole thing lapsing at the end of three years or six years. If the emergency continues one can take it that the Council of States will be responsive enough to realise the need for keeping alive legislation enacted under cover of this Resolution and go on extending the life of such enactment by a fresh Resolution year after year. We have had experience on the other side of the House of certain enactments which have economic implications being extended year after year by a resolution of the House; and I do not suppose that except for asking questions there has been any serious opposition to giving Government these powers, provided Government convinces the House of the necessity of retaining those powers. At the same time it preserves a certain amount of freedom of action on the part of the States. If after the first year perhaps a snatch vote or something like that enables the Centre to undertake legislation which infringes ostensibly and avowedly into the field of provincial autonomy, there is enough scope for the provinces or States to tell their representatives in the Council of the States that when it came up for renewal next year they should not renew it. And if at all there is any mischief, it would be only for one year. But it is very unlikely, when the powers are so restricted and are conceded for a year and are to be renewed year by year by a Resolution of the Council of States, that Parliament or the central executive will embark on any action under article 226 without fully satisfying themselves of the need for emergent action, and also at the same time providing against treading on the corns of the Members of the State Legislatures and the executive Government of the States. I feel, Sir, that the balance of advantage seems to be in retaining a provision of this nature as amended by Dr. Ambedkar's amendment No. 194. The mischief, if at all there is any, is restricted to a very limited period; and the very fact that it is limited to a very short period itself offers no temptation for the Centre using it as a means of augmenting its own power; and if it is used at all, it will be used for a valid and definitely useful purpose to which by and large the component States are not likely to object. I felt, Sir, that even though I was taking the time of the House in a matter which did not seem to provoke very much of a controversy at this moment, it is very necessary, in order to dispel mistaken ideas that might exist in the States, that this Draft Constitution has been so framed that it tends to help in attracting all the powers to the Centre, that the field of provincial autonomy left was very restricted. It is to counter this idea that this particular article has been carefully considered, the *pros and cons* have been fully canvassed and this amendment has been introduced as being such as provides for minimum interference with provincial autonomy and only in cases where the emergency is very great and the safeguards against any mischief are contained in the provisions of the amendment itself. I do hope that the House will accept Dr. Ambedkar's amendment and the people of this country at large, will be convinced of the *bonafides* of us in this House whose intentions are to preserve provincial autonomy as far as possible, and to

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the extent that we have conferred provincial autonomy on the States, to keep those powers intact without undue interference. Sir, I support the amendment.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to support the article as it stands for two or three reasons. I do not regard this article as designed to cover any period of emergency; there are other emergency provisions in the Constitution for that purpose. It is clear that when a subject has assumed the proportions of national importance the Central Government should interfere. A provincial subject can become a central subject if it has assumed the proportions of national importance. When our national economy is in the incipient stage of development, we cannot make a water-tight or rigid distinction between central and provincial subjects. There are no central and provincial subjects. All subjects must remain integrated. I think that, whatever the intentions of the members of the Drafting Committee may be, this article may be utilised for the purpose of constitutional amendment.

When the people at the Centre realize that it is no longer feasible and proper to keep a subject under the Provincial List they can make it a Central subject without undergoing the cumbersome procedure of a Constitutional amendment. The procedure laid down is that the Council of States by a two-thirds majority can recommend to the Government to take the administration of that subject into its own hands. I do not think that this procedure is proper. I feel that the duty of determining which subject has assumed the proportion of national importance should be left to the leaders at the Centre and not in the hands of the members of the Council of States. They are in far better position to take a detached view of things. There is a world of difference between a provincial capital and Delhi. The People at Delhi can know whether a subject has assumed the proportions of national importance or not. People living in the Provinces are engrossed with provincial problems; their outlook is narrow and circumscribed. Therefore, to leave it to the representatives of the Provincial Legislatures sitting in the Council of States to move such a resolution is really nullifying the good that can accrue to the Centre if the power to move such a resolution is vested in the House of the people.

I feel that the period which has been prescribed in the amendment, namely that such a step can be taken only for one year is not proper. How can a subject which has assumed the proportions of national importance become a provincial subject again after a period of one year? Today it is a subject of national importance, but tomorrow it becomes a subject of provincial importance I think people have no vision of what they are going to do. In a developing economy I am quite sure that most of the subjects that have been placed in the Provincial List will become Central subjects. It is no use frustrating and creating obstacles in the way of the Central Government. Let us not emphasize centrifugal tendencies.

Shri B. M. Gupte (Bombay: General): Sir, I am inclined to oppose both the original Draft and the amendment moved by Dr. Ambedkar. I certainly concede that the amendment moved by Dr. Ambedkar takes away some of the rigour of the original proposition. But in my opinion it yet remains objectionable.

My first objection is that it is not proper to allow only one House, namely the Upper House to amend the Constitution which has got a sanctity of its own. There is the article 304 which lays down particular provisions with some definite kind of majority, for amendment of the Constitution. Of course it is desirable to have some elasticity. Therefore, I would not have minded if the continuance of the resolution had been secured by a vote of the State

Legislatures concerned. As it is, borrowing the phraseology used in another context, I might say that if the resolution really reflects the opinion of the State legislatures it is useless. But if it does not reflect the opinion of the State legislatures it is mischievous. If it reflected the opinion of the State Legislature there was no difficulty at all in getting the item passed in the various State Legislatures. If, on the other hand, it did not reflect their opinion then of course we were going counter to the wishes of those who were responsible according to the Constitution for these subjects. I do admit that there might be a time when such a power to the Centre is required. Then, provided for a definite emergency like that. But in the absence of any emergency, to amend the Constitution by such a resolution is not proper. The Council of States' resolution stands for one year. Why not make it renewable on this definite condition that before the expiry of that period a majority of the State Legislature should pass resolutions asking for the continuance of that resolution say for two years or three years? Thereafter, if the amendment is to continue, then it should be done by the usual manner laid down by article 304. In view of these fundamental objections of allowing only the Upper House without Parliament having any say and without the Legislature of the State having any say in the matter, I suggest it is worthwhile considering whether the article should be maintained in this form.

Shri Mahavir Tyagi : (United Provinces: General): Sir, I think the original article was much better worded and was more useful than the amendment proposed. although the amendment does not substantially change the meaning or the motive, the original article was quite sufficient for the purposes for which we are providing. There is a tendency in the country as well as in this House and people still feel that the Provinces will enjoy autonomy, that the States will be autonomous States or something like that. They have enjoyed this feeling for sometime past. Although the whole country has now become independent and autonomous they do not yet feel the pleasure of enjoying this all-India autonomy and of merging their own entity into this all-India autonomy. So there is a sort of orthodox feeling of clinging to some powers as if the Provinces can do better.

The States are analogous to various parts of the human body. Each part cannot go absolutely separate and become autonomous; it is a connected whole. The manner in which we have been making our Constitution so far also proves that we agree to the idea of constituting our States as one whole and constituting these various Provinces and States as limbs of that one body. The very fact that Parliament will enact laws whenever and with regard to whichever province it is necessary to get laws enacted from the Centre shows that this exception to the routine shall be taken only when there is some necessity and that too when the Council of States themselves by two-thirds majority decide in its favour. Suppose there is some financial crisis of a very dangerous or severe type in one province. Suppose the resolution requested Parliament to enact a law in this respect for six months. According to the amendment of Dr. Ambedkar, after six months the law will lose its force. So after six months the Council of States has again to sit and extend the period so as to enable Parliament to extend the law. This is a cumbersome process.

What is the harm, why should we suspect the motive even if the period, six months or one year, is not mentioned at all? A body which can enact a law can also de-act it. Especially when particular care is taken to see that there is no encroachment on the rights of the subjects, there is no reason to think that there will be occasion for interference. If a neighbouring State feels that the situation in the adjoining State is adversely affecting its administration it should move the Centre to intervene, by such legislation as will improve the peace and prosperity of the whole of India. I submit that the original clause seems to be much better than the amendment moved by Dr. Ambedkar. The

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amendment of Dr. Ambedkar does not improve the meaning of the article or the intent of the Constituent Assembly. If the period is to be first six and then another six months it will needlessly lead to extra expenditure and delay matters.

Sir, there is a feeling in some big provinces which are financially well off that they must have full autonomy and that there should be no interference by the Centre. There are certain provinces in which a certain class of people are in a majority: they desire to be independent of the Centre. This is but the same old conception of the Muslim League days. A certain community which was in the majority in a certain province wanted to have full autonomy so that nobody could interfere with it, even though that interference might be in the interests of India as a whole. That was the old tendency. I do not want to criticise them. But it is a fact that some provinces, that have enough revenues at their disposal, recent interference by the Centre even though it is necessary in the interests of the whole of India. In Russia too the Centre has such powers of interference even though the villages there have autonomous powers even in matters judicial. But then all that power is dependent on the Central Government approving the exercise of those powers. The direction of the supreme policy is vested in the Centre. Our Union can be strong only when the Centre is fully empowered to make laws uniformly applicable to the whole of India. With these words I support the original article.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I think that the article as it stands encroached upon the powers of the Provinces. However, it would have been in the fitness of things if, in cases of emergency, the Centre has the power to legislate for the whole of India. But the wording, as it is used, seems to be much wider than is required for emergencies. It says: 'When it is necessary or expedient in the national interests.' The national interest give much wider scope than emergencies. As this is so, the arguments in favour of the Centre legislating for emergencies do not apply. It seems to me the power given here is wider than is necessary.

The Honourable Shri K. Santhanam: The 'emergency' is dealt with in the next article.

Shri V. S. Sarwate : If that is the case then this is unnecessary here. I would further submit that the idea behind empowering the Council of States to pass a resolution seems to be this. Supposing a case arises when it is necessary that the Centre should legislate. If this provision be not there, the alternative would be for all the Provinces and States to pass a resolution that the Centre should legislate in that particular emergency. To avoid that cumbrous process the Council of States which is mostly composed of representatives of the States has been empowered to pass a resolution. On the first occasion it may be proper for the Centre to take appropriate action, based on that resolution.

But on the second occasion, i.e. when an occasion arises for repeating the resolution, it could have been better left to the provinces to pass a resolution it should be left to the provinces to decide whether an emergency exists or not. If the provinces are satisfied that an emergency exists, they will pass a resolution that the Centre should legislate for the whole of India. So, in my judgment, it seems that to empower the Council of States to pass such a resolution again and again is unjustified. In the first instance, it may be justified. It may in such cases be proper. But if the same state of things continues, it should be left to the provinces to judge of the circumstances and to pass the necessary resolution. What I mean to say is this: The Council of States should have power to pass a resolution only once. It should not have the power to pass a resolution again. In that case it should be left to the provinces to pass a resolution. With this observation, I support the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I support article 226. Article 223 gives residuary powers to the Parliament. Article 227 gives powers to the Parliament in cases of national emergencies, when an Emergency Proclamation is in force, and article 229 gives powers to the provinces to pass a resolution in their legislature asking the Centre to take action. Article 226, when a question assumes national importance or becomes a matter of national interest gives a speedier procedure than what is contained in article 229. Much of the mischief that was originally contained in the original article has been taken away by the recent amendment moved by Dr. Ambedkar and Mr. T. T. Krishnamachari. If a resolution is passed year after year by Parliament, where is the harm? After all, who are the members of the Council of States? They are representatives elected by the Lower House of the provinces. If really such a resolution were to be against the interests of the States, the States legislatures can represent to the Centre that such a resolution is against the interest of the States. In fact, there is no question of encroachment of the provincial powers at all here. It is only in cases of real national emergency, when a question has assumed national importance, a speedier remedy is provided under 226. If a resolution passed by the Council of States is against the interests of any State, that State can be expected to pull up their members and to make sure that such a resolution is not passed at the next session after one year. A resolution passed under 226 normally continues only for one year and only when a national emergency continues to persist year after year, a further resolution for one year can be passed. Giving such power to the Council of States is very necessary under the circumstances and I heartily support this article, Sir.

Shri M. Ananthasayanam Ayyangar : The question may now be put.

Mr. President : The question is:

“That the question be now put.”

The motion was adopted.

Mr. President : Before I put the amendment to the vote, do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Much has already been said. Unless you desire me to speak, I would rather not say anything.

Mr. President : That is your choice.

The question is:

“That for amendment No. 2775 of the List of Amendments, the following be substituted :—

“That article 226 be re-numbered as clause (1) of article 226, and,

(a) at the end of the said clause as so re-numbered the words ‘while the resolution remains in force’ be added; and

(b) after clause (1) of article 226, as so re-numbered the following clauses be added :—

‘(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.”

The amendment was adopted.

Mr. President : There is no amendment to this article.

“That article 226, as amended, stand part of the Constitution.”

The motion was adopted.

Article 226, as amended, was added to the Constitution.

Article 227

Mr. President : There is no amendment to this article.

The question is:

“That article 227 stand part of the Constitution.”

The motion was adopted.

Article 227 was added to the Constitution.

Article 228

Mr. President : There is one amendment of which notice has been given by several Members, No. 2779.

Shri T. T. Krishnamachari : It is not necessary to move it, Sir.

Mr. President : The question is:

“That article 228 stand part of the Constitution.”

The motion was adopted.

Article 228 was added to the Constitution.

Article 229

(Amendments Nos. 2781 and 2782 were not moved.)

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, I move:

“That in clause (2) of article 229, for the words ‘but shall not’ the words ‘and may also’ be substituted.”

Article 229, clause (1), lays down that if it appears to any provincial legislature that any matter over which Parliament has power to make laws for that province should be regulated in that province by Parliament by law and a resolution to that effect is passed by the provincial legislature, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and that Act shall apply to the province concerned. Clause (2) of article 229 lays down that an Act passed by Parliament as mentioned in clause (1) can be amended or repealed by an Act of Parliament but shall not be amended or repealed by an Act of the provincial legislature. My amendment seeks that any Act so passed by Parliament may be amended or repealed by Parliament and may also be amended or repealed by the provincial legislature concerned. Section 103 of the Government of India Act of 1935 lays down that the Provincial legislature concerned can amend or repeal the Act made by Parliament concerning that province. My amendment is entirely based on section 103 of the Government of India Act. Previously what used to happen was that the provinces used to send a resolution to the Central Legislature and the Government of India accordingly made an Act concerning that province and that Act or law could be amended or repealed under section 103 of the Government of India Act by the province concerned. But now according to this article 229 (2), it cannot amend. I submit, Sir, it is a great hardship. I would submit in the alternative if this House is not prepared to agree with my amendment—although I believe my amendment is very reasonable—I would request this House to amend this article in such a way that in those provisions which were passed by the Central Legislature at the request of

the Provincial Legislature, the provinces should have power to amend that Act. I may be able to appreciate this point that in future this House wants that if any Act is passed concerning a province at the request of that province, that Act cannot be amended by that province and that it can only be amended by the Centre. I may appreciate, although I do not appreciate, but I would request Sir, that in regard to those Acts which were passed previously by the Central Assembly and the Council of State at the request of a particular province concerned, there should be some provision—I thought of it just now—that the provinces concerned may be allowed to amend or repeal that Act. I hope my honourable Friend, Dr. Ambedkar has listened to me and he will appreciate what I have said.

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

“That with reference to amendment Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted:—

- ‘(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislature of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.’ ”

I would like to explain this amendment in a few brief sentences. The original article as it stood said: “if it appears to the Legislature or Legislatures of one or more States to be desirable, etc.” The new amendment said “if it appears to the Legislatures of two or more States to be desirable etc.” Under the new amendment it would be open to invoke the aid of Parliament to make a law only if two or more States join, and send a resolution. The other changes in sub-clause (1) of article 229 are merely consequential to this principal amendment, namely, that the power can be invoked only if two or more States desire, but not by a single State.

Prof. Shibban Lal Saksena : I am very glad that this clause is put in the Constitution. I would give an example of sugar legislation in the two provinces of United Provinces and Bihar. These two provinces have got about 80 per cent. of the factories in the whole country and it was felt in 1937 when the industry was on the verge of collapse that unless the two provinces acted in co-ordination the industry might be ruined in both the places. What did they do? There was no such power in the Constitution by which the Centre could make laws for only two provinces and so what they did was that each province passed the same law and by mutual agreement and conventions they began to act together and they formed a joint Sugar Control Board and all that. But I think under this clause in the Constitution it is possible for several states to come together and act jointly. Similarly take another example, the Damodar Valley Authority. Parliament has made a law which is really applicable to the whole country but actually in this case the Provinces of Bihar and Bengal are concerned. There may be cases where three or four provinces are involved and if they pass resolutions, then the Parliament can pass that law. I think this article in the Constitution makes a very healthy provision by which several States can co-operate and carry out schemes which are for the benefit of all the provinces jointly and the Parliament is empowered to legislate according to the recommendations of the legislatures of those States. Sir, I support this wholeheartedly.

The Honourable Shri K. Santhanam : Sir, I merely wish to draw the attention of the House to clause (2) of this article. It makes an important variation from the original article in the Government of India Act. Section 103 in the Government of India Act, as adapted, in the later part, reads: "that the State Legislature or the Provincial Legislature shall be able to repeal or amend the Act passed according to clause (1)." Now the provision of clause (2) is: "any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adapted in like manner, but shall not as respects any State to which it applies be amended or repealed by an Act of the Legislature of the State." This variation has been adopted deliberately, because when the rights and responsibilities have been incurred by two or more States in pursuance of any law made by one, it should obviously not be possible on the part of a single State to withdraw from such obligations and responsibilities. At the same time, I am afraid that the existence of clause (2) may prevent or discourage all States from making use of this section. I wish it had been possible to put it that if all the States concerned wanted the law to be amended or repealed, Parliament should do so accordingly. As things stand, the whole clause may become inoperative because no State would like to get into a noose from which it cannot get out at all. As things stand, they can hand over the power to Parliament; but once the Act is passed, then the State becomes practically powerless even though the matter is one with respect to which it has power. This is rather unsatisfactory. I think some opportunity must be taken to reconsider the implications of clause (2) as it stands.

The Honourable Dr. B. R. Ambedkar : Sir, I quite appreciate the point raised by my honourable Friend, Mr. Santhanam; but I think he has not carefully read sub-clause (2). The important words are: 'in like manner', so that if the State legislatures in whose interests this legislation is passed in like manner, that is to say by resolution, agree that such legislation be amended or repealed, Parliament would be bound to do so.

The Honourable Shri K. Santhanam : "May be amended".

The Honourable Dr. B. R. Ambedkar : 'May' means shall. There is no difficulty at all.

Mr. President : The question is:

"That with reference to amendment Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted :—

- '(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislatures of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.' "

The amendment was adopted.

Mr. President : The question is:

"That article 229, as amended, stand part of the Constitution."

The motion was adopted.

Article 229, as amended, was added to the Constitution.

Article 230

Mr. President : The motion is:

“That article 230 form part of the Constitution.”

(Amendment No. 2784 was not moved.)

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

“That in article 230, for the words ‘for any State or part thereof’, the words ‘for the whole or any part of the territory of India’ be substituted.”

(Amendment Nos. 2786 and 2787 were not moved.)

Mr. President : The question is:

“That in article 230, for the words ‘for any State or part thereof’ the words ‘for the whole or any part of the territory of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 230, as amended, stand part of the Constitution.”

The motion was adopted.

Article 230, as amended, was added to the Constitution.

Article 234

Mr. President : The motion is:

“That article 231 form part of the Constitution.”

(Amendment Nos. 2789 and 2790 were not moved.)

Mr. President : There is another amendment No. 196.

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2788:

“That clause (2) of article 231 be deleted.”

Sir, this more or less on the lines of the amendment which we have already adopted.

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

“That with reference to amendment No. 2788 of the List of Amendments, in clause (2) of article 231, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, when the Draft was originally prepared, there was no intention of placing the States in Part III on the same footing as the States in Part I of the first Schedule. In fact, it is a quite recent idea that the States in Part III should be brought into line with the States in Part I in regard to the power of Parliament to legislate and necessary amendments are being incorporated in the various articles that we are dealing with. When we came to article 225, that article was held over. That relates to the general right of Parliament to legislate for the States in Part III and consideration is held over because evidently the relations between the Centre or Parliament and the States in Part III have not been fully settled. That is all right; but what I wish to point out is this. In regard to law making, till now, the right of the Central legislature did not extend to States in Part III. The laws in

[Shri A. Thanu Pillai]

States like Travancore and Mysore have all along been made by the local legislature. I wish to bring to the notice of this House the fact that there is a lot of difference between the laws in the States and in the rest of India. For instance, I may say that in Travancore, we have abolished the death penalty for murder. Now, that subject would come in the Concurrent List; so also various other matters. How are you going to reconcile that fact with the provisions in article 231, namely, that all existing laws, not only laws to be enacted by the Central legislature till now, will prevail whenever there is conflict between the laws of the States and the Central laws? It would be a tremendous task to bring into line these two sets of laws and to reconcile them. Until that is done, the enforcement of article 231 in respect of the States in Part III will be well nigh impossible. I do not find any provision regarding the way in which the difficulty is proposed to be met. I only wanted to bring this to the notice of the House so that this serious difficulty may be got over and suitable provisions made in the Constitution. A lot of work will have to be done in bringing about uniformity. Generally Indian laws will have to be adopted in the States. But in some cases, the law in the States will have to be introduced in the whole of the country. For instance in regard to the death penalty, Travancore cannot be asked to go back to the old order of things and re-impose death penalty for murder. Wherever we find more progressive legislation existing in the States than in the provinces, that legislation will have to be accepted by the Indian Parliament and uniformity will have to be brought about. I wish to know from Dr. Ambedkar how the difficulty is proposed to be got over. I hope that uniformity will be brought about and that those that are now striving for it will succeed in inducing those that are responsible for administration and legislation in the States to agree to have uniform legislation in regard to matters affecting the whole country. If we pass article 231 without realising the magnitude of the difficulties that face us in regard to this matter, it would be wrong step. I wish to bring this matter to the notice of the House and particularly of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I agree that Mr. Thanu Pillai's point requires explanation. Now the explanation is this. I am sure he will agree that the rule regarding repugnancy which is mentioned in article 231 must be observed so far as future laws made by Parliament are concerned. He will see that the wording in article 231 is 'whether passed before or after'. Surely with regard to laws made by Parliament after the commencement of this Constitution, the rule of repugnancy must have universal application with regard to laws made both by the States in Part I and by the States mentioned in Part III. With regard to the question of repugnancy as to the laws made before the passing of this Constitution, the position is this. As I have said so often in this House, it is our desire and I am sure the desire of the House that all articles in the Constitution should be made generally applicable to all States without making any specific differentiation between States in Part I and Part III. It is no good that whenever you pass an article you should have added to that article a proviso making some kind of saving in favour of States in Part III, although there is no doubt about it that some savings will have to be made with regard to laws made by States in Part III. That is proposed to be done, as I said, in a new Part or a new Schedule where the reservation in respect of States in Part III will be enacted, so that so far as laws made before the Constitution comes into existence are concerned, they would be saved by some provision enacted in that special form or special Schedule. I should like to add to that one more point *viz.*, that while it is proposed to make reservations in that special part in favour of Part III States, nonetheless that reservation could not be absolute because the reservations made therein, at any rate some provisions in that special part, will be

governed by article 307 which gives the President the power to make adaptations. Now that adaptation will apply both to States in Part I as well as to States in Part III. Therefore so far as regards laws made by Parliament or the Legislatures of States in Part III before the commencement, they will in the first instance be saved from the operation of article 231 but they will also be subject to the provisions of article 307 dealing with adaptation.

Mr. President : The question is:

“That with reference to amendment No. 2788 of the List of Amendments, in clause (2) of article 231, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 231, as amended, stand part of the Constitution.”

The motion was adopted.

Article 231, as amended, was added to the Constitution.

Article 232

Mr. President : We take up article 232.

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

“That the heading to article 232 ‘Restriction on Legislative Powers’ be omitted.”

With your permission I move my new amendment:

“(i) That after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :

‘(aa) where the recommendation required was that of the Ruler, either by the Ruler or by the President.’ ”

Now Sir, I have come to understand that there is some sentimental objection to the use of the word ‘ruler’. I am prepared to yield to that sentiment and what I therefore propose is that the House should accept this amendment for the moment and leave the matter to the Drafting Committee to find a better word to replace the word ‘ruler’. Otherwise the whole of the article would have to be unnecessarily held over for no other reason except that we cannot find at the moment a better word to substitute for the word ‘ruler’.

Mr. President : The question is:

“That the heading to article 232 ‘Restriction on Legislative Powers’ be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That in article 232—

(i) after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :

‘(aa) where the recommendation required was that of the ruler, either by the Ruler or by the President.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 232, as amended, stand part of the Constitution.”

The motion was adopted.

Article 232, as amended, was added to the Constitution.

Article 233

Mr. President : We take up No. 233.

(Amendment Nos. 2794, 2795 and 89 of List I of 5th Week were not moved.)

Mr. President : The question is:

“That article 233 stand part of the Constitution.”

The amendment was adopted.

Article 233 was added to the Constitution.

Article 234

Mr. President : We take up No. 234.

(Amendment Nos. 2796, 2797 and 2798 were not moved.)

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

“That the following new clause be added to article 234 :—

- ‘(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.’ ”

Mr. President : The question is:

“That the following new clause be added to article 234 :—

- ‘(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 234, as amended, stand part of the Constitution.”

The motion was adopted.

Article 234, as amended, was added to the Constitution.

Article 235

(Amendment Nos. 2800 and 2801 were not moved.)

Mr. President : The question is:

“That article 235 stand part of the Constitution.”

The motion was adopted.

Article 235 was added to the Constitution.

Mr. President : Articles 236 and 237 are held over.

Article 238

(Amendment Nos. 2805 and 2806 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I formally move No. 2807:

“That in the proviso to article 238, for the words ‘under the terms of any agreement entered into in that behalf by such State with the Union’ the words ‘under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of the Constitution’ be substituted.”

I move further:

“(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words ‘by law’ the words ‘made by Parliament’ be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted.”

Mr. President : The question is:

“(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words ‘by law’ the words ‘made by Parliament’ be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 238, as amended, stand part of the Constitution.”

The motion was adopted.

Article 238, as amended, was added to the Constitution.

Article 239

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

“That in article 239, before the word ‘State’ where it occurs for the second time in line 29, the word ‘other’ be inserted.”

(Amendment No. 2810 was not moved.)

Mr. President : The question is.

“That in article 239, before the word ‘State’ where it occurs for the second time in line 29, the word ‘other’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 239, as amended, stand part of the Constitution.”

The motion was adopted.

Article 239, as amended, was added to the Constitution.

Article 240

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

“That for clause (1) of article 240, the following new clauses be substituted :—

- ‘(1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.
- (1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation.’ ”

(Amendment Nos. 2812 to 2815 were not moved.)

Mr. President: The question is:

“That for clause (1) of article 240, the following new clauses be substituted:

- (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.
- (1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation.’ ”

The amendment was adopted.

Mr. President : The question is:

“That article 240, as amended, stand part of the Constitution.”

The motion was adopted.

Article 240, as amended, was added to the Constitution.

Article 241

The Honourable Shri K. Santhanam : I move:

“That in article 241, for the words “in any State” the words ‘in any other State’ be substituted.”

I think it is necessary for the same reason as the amendment which was moved by Dr. Ambedkar to the previous article. I want to give him an opportunity to consider whether it is not necessary. If it is not considered necessary I am not going to press the amendment.

(After some consultation) Sir, it does not seem to be necessary and I request permission to withdraw the amendment.

Mr. President : Has the honourable Member the leave of the House to withdraw his amendment?

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

Mr. President : The question is:

“That article 241 stand part of the Constitution.”

The motion was adopted.

Article 241 was added to the Constitution.

Article 242

Mr. President : The question is:

“That article 242 stand part of the Constitution.”

The motion was adopted.

Article 242 was added to the Constitution.

Articles 243 to 245

Mr. President : Then we come to article 243.

Shri T. T. Krishnamachari : In any event article 244 will have to be held over because we have not considered the chapter containing the provisions governing financial relations between the Centre and the States. I am told by Shri Alladi Krishnaswami Ayyar that the language of article 243 would also require some revision so we might hold over articles 243, 244 and 245.

Shri M. Ananthasayanam Ayyangar : Article 245 need not be held over.

Mr. President : It refers to articles 243 and 244.

Shri M. Ananthasayanam Ayyangar : In whatever manner the other two articles are amended, we might take up article 245.

Shri T. T. Krishnamachari : Perhaps we might even choose to drop article 245. When we have not decided on articles 243 and 244 this might also be held over.

Mr. President : I think it is better to hold it over.

There is notice of an amendment that a new article should be added after article 243. It is by Shri Prabhudayal Himatsingka. We shall hold that also over.

Article 246

(Amendment Nos. 2828, 2829 and 2830 were not moved.)

Mr. President : The question is:

“That article 246 stand part of the Constitution.”

The motion was adopted.

Article 246 was added to the Constitution.

Mr. President : Now we come to another Part. Shall we take it up?

Shri Mahavir Tyagi : We have gone at a fast pace—much faster than we expected. I do not think people have studied the provisions—I at least have not prepared myself for this.

Mr. President : Then let us go back and repeat some of the past lessons.

Shri T. T. Krishnamachari : We can take up the provisions which we have left over in the Chapter relating to High Courts.

Mr. President : Shall we take up the question of Appeals in criminal cases to the Supreme Court which we left over—112-B? There is a forest of amendments there. The other day we held it over in the hope that probably some agreed solution would be found and that there would be only one amendment. But I find that day to day the amendments are growing in number. Shall we take it up?

Pandit Thakur Das Bhargava (East Punjab: General): Provisions relating to High Courts—from article 207 may be taken.

Mr. President : My fear is that some more amendments will come in because I have been receiving amendments up to this moment.

New Article 111-A and 111-B

Mr. President : Mr. Bhargava may move amendment No. 12 of which notice has been given in the First List of the Fifth Week.

Pandit Thakur Das Bhargava : Sir, before moving this amendment I would make a brief reference to its past history. When I gave notice of amendment No. 1927 in the Printed List for the addition of a new clause after clause (2) of article 111, the position was different. Thereafter, when article 110 was under discussion

Shri Mahavir Tyagi : Please read out the amendment you are referring to.

Pandit Thakur Das Bhargava : The amendment which Mr. Tyagi wishes me to read runs thus:

“That after clause (2) of article 111, the following new clause be inserted :—

‘(3)An appeal shall lie to the Supreme Court against the judgments of the High Courts in the territory of India in the exercise of its criminal jurisdiction in the following cases :—

- (a) convicting accused persons as a result of acceptance of appeals against their acquittal.
- (b) sentencing to or confirming the sentence of death or transportation for life.
- (c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.’ ”

That was the original amendment on the basis of which there was prolonged discussion under article 110 when the question was whether the words “as to the interpretation of this Constitution” should be deleted or not. Then it was pointed out in this House that if this amendment was accepted and appeal in respect of sentence of death provided it would entail very large amount of work on the Supreme Court. Thereafter amendments began to pour in taking away the right of appeal as regards sentence of death and then the pendulum swung to the other side and the scope of the amendment was narrowed down considerably. Ultimately new amendments seeking to narrow down the scope to about 50 or 60 cases a year were sent in. Now the feeling in the House is that the appeals in such cases where the High Courts have passed sentence of death for the first time under their appellate or original jurisdiction should at least be provided in the Constitution.

Prof. Shibban Lal Saksena : Which is the amendment you are moving?

Pandit Thakur Das Bhargava : Amendment No. 15 in List I of Fifth week.

Mr. Naziruddin Ahmad : May I suggest that, as there are a large number of amendments relating to the same matter, all amendments may be first formally moved and then general discussion may begin. It would be more convenient to do so.

Pandit Thakur Das Bhargava : I would like that all the amendments before the House—14 to 41 were placed at once before the House.

Mr. President : The other day we postponed discussion of this to enable members to come to some understanding. But unfortunately that has not come about so far. Therefore the only course left is to take all the amendments together and take a vote on them. The result may well be that it will be something not wanted by anybody.

Shri L. Krishnaswami Bharathi : Sir, Dr. Ambedkar's amendment may be moved and then the other amendments may be moved. If that is done we may be able to concentrate on amendment No. 24 of Dr. Ambedkar.

Mr. President : The other amendments will have to be moved all the same unless the Members express their desire not to move them.

Shri L. Krishnaswami Bharathi : They may make speeches on Dr. Ambedkar's amendment, so that attention may be concentrated on that, instead of every Member speaking on his own amendment only. They need not be prevented from speaking. All the amendments may be moved and they may all speak.

Shri Alladi Krishnaswami Ayyar (Madras: General): May I say that if we adopt the suggestion made by Mr. Krishnaswami Bharathi it will be convenient? That will enable the general question of the criminal jurisdiction being discussed. At the same time, if in any particular case a Member wants that even now criminal jurisdiction may now be provided, that can be discussed later and that would not prejudice the amendment of Dr. Ambedkar that Parliament is to be entrusted with the power of conferring criminal jurisdiction to the Supreme Court. The question may be discussed in the abstract whether Parliament is to be entrusted with this power in future or not. If here and now we want certain specific powers, it may be dealt with later on as distinct from the general question of Dr. Ambedkar's amendment.

Mr. President : Then I will ask that all the amendments may be moved and then general discussion may follow. Pandit Bhargava may move formally all his amendments.

Pandit Thakur Das Bhargava : They are too many and they deal with different aspects of the question. Anyhow I move.

“That for amendment No. 1927 of the List of Amendments, the following be substituted:

‘That the following be inserted as new article 112-B :

112-B. An appeal shall lie in the following cases to the Supreme Court in the exercise of its criminal jurisdiction:

- (a) convicting accused persons as a result of acceptance of appeals against their acquittal.
- (b) sentencing to or confirming the sentence of death or transportation for life.
- (c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.’ ”

“That with reference to amendments Nos. 1927 and 1923, after article 111, the following new article be inserted :

‘111-A. An appeal shall lie to the Supreme Court from the judgment of a High Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

- (a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.

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- (b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentences him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower Court by more than five years' imprisonment or ten thousand rupees fine.
- (c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.' "

"That in amendment No. 16 above (Fourth Week), for the proposed new article 11-A, the following be substituted :

'111-A. (1) An appeal shall lie to the Supreme Court from the judgment of a High Court in the territory of India in the exercise of its criminal jurisdiction—

- (a) if the High Court certifies that the case is a fit one for appeal;
- (b) if the High Court sentences and person to death on appeal from an order of acquittal or in its revisional powers of enhancement or in the exercise of its original jurisdiction;
- (2) The Parliament may by law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "

"That in amendment No. 16 above, in clause (b) of the proposed new article 11-A, the words 'and sentences him to more than five years' imprisonment or ten thousand rupees fine' be deleted, and for the words 'by more than five years' imprisonment or ten thousand rupees fine' the words 'and sentences the person so convicted or whose sentence is so enhanced to death' be substituted."

"That with reference to amendments Nos. 1927 and 1923, after article 111, the following new article be inserted :

'111-A. An appeal shall lie to the Supreme Court from the judgment of a Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

- (a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.
- (b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentences him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower court by more than five years' imprisonment or ten thousand rupees fine.' "

"That in amendment No. 19 above, the following be inserted as clause (c):

'(c) When the High Court sentences to or confirms the sentence of death.' "

"That in amendment No. 20, above, the following be added at the end of the proposed clause (c):

'or transportation for life.' "

"That in amendment No. 23 above, in sub-clause (b) of clause (1) of the proposed new article 111-A—

- (i) after the word 'acquittal' the words 'or enhancement' ; and
- (ii) after the word 'original' the words 'appellate or revisional' be inserted."

"That in amendment, No. 23 above, after sub-clause (b) of clause (1) of the proposed new article 111-A, the following new sub-clause be inserted:

'(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

"That in amendment No. 24 above, for the proposed new article 112-B the following be substituted :

'112-B. (1) An appeal shall lie to the Supreme Court from the judgment

of a High Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

- (a) when the High Court certifies that the case is a fit one for appeal to the Supreme Court.
 - (b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal or when the High Court enhances the sentence awarded by the lower court.
 - (c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.
- (2) Parliament may by Law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' ”

“That in amendment No. 34 above, in sub-clause (b) of clause (1) of the proposed new article 112-B, after the word ‘acquittal’ the words ‘and sentences him to a period of more than 5 years’ imprisonment or to a fine of more than Rs. 10,000’ be inserted.”

“That in amendment No. 34 above at the end of sub-clause (b) of clause (1) of the proposed new article 112-B, the following words be added:

‘by more than 5 years’ imprisonment or Rs. 10,000 fine.’ ”

Then Sir, I have given notice of another amendment some fifteen minutes ago.

Mr. President : Which is that?

Pandit Thakur Das Bhargava : I move:

“That with reference to amendments Nos. 14 to 41 of List I (Fifth Week), the following be substituted as 111-A :

- ‘111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of High Court in the territory of India if the High Court certifies that the case is a fit one for appeal :
- (2) The Supreme Court shall have appellate criminal jurisdiction to hear appeals from any judgment, sentence or final order of a High Court or such other court as may be prescribed by law the Parliament subject to such condition and limitations as may be prescribed by such law.’ ”

Therefore, Sir, I would submit that these amendments range from providing appeals even in cases in which punishment was originally given for five years or more to the last amendment which I have just moved that only in cases where the High Court certifies that the case is a fit one for appeal, an appeal shall lie to the Supreme Court, in addition to other cases in which Parliament may by law confer jurisdiction to entertain or hear appeals on the Supreme Court. Now, Sir, I beg to submit that according to the theory of Law as I understand it, it could be argued that the entire scope of the Supreme Court’s jurisdiction was restricted. I maintain that so far as the High Courts are concerned, they are the final word so far as the properties and lives of the people of the particular States are concerned. I can understand that.

Mr. President : You can speak on the general discussion.

Shri Jaspat Roy Kapoor : Sir, I beg to move :

“That in amendments Nos. 16 and 19 above, for the proposed new article 111-A, the following be substituted :

- ‘111-A. An appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—
- (a) if by such final order any person has been sentenced to death for the first time in the case; or
 - (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

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

“That for amendment No. 23, the following amendment be substituted :—

‘That after the new article 112-A, the following article be inserted :—

112-B. Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any judgment, final order or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.’ ”

Mr. President : Is there any article 112-A?

Shri T. T. Krishnamachari : 112-A has already been passed by the House.

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

“That for amendment No. 23 above, the following amendment be substituted :

‘That after article 112-A; the following new article be inserted:

112-B. The Supreme Court shall with such exceptions and subject to such regulations as may be prescribed by law of the Parliament have appellate jurisdiction to hear appeals from any judgment, final order or sentence of a High Court or such other court as may be prescribed by law of the Parliament in the territory of India in the exercise of its criminal jurisdiction.’ ”

Dr. Bakshi Tek Chand (East Punjab: General): There are three amendments standing in my name. The first is No. 26, the second is No. 27 and the third is an amendment to amendment of which I gave notice to the Secretary only this morning. With your permission, I will move all the three.

Sir, I move:

“That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted:

‘(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India—

(a) if the High Court has, on appeal or revision, reversed the acquittal of an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involved a substantial question of law or is otherwise a fit one for appeal to the Supreme Court.’ ”

The next amendment is No. 27 of which notice has been given by Dr. P.K. Sen, Dr. P.S. Deshmukh, Mr. K.M. Munshi and myself, and is as follows :—

“That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted:

‘(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India :—

(a) if the High Court has, on appeal or revision reversed the Order of acquittal of an accused person and sentenced him to death, or has in any other case enhanced the sentence passed on an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court.’ ”

Then there is the third amendment of which I gave notice this morning. It is a more modest one.

Sir, I move :

“That in amendment No. 23 of List I (Fifth Week) for the proposed new article 111-A, the following be substituted :—

‘An appeal shall lie to the Supreme Court from a judgment or an order in a criminal proceeding of a High Court in the territory of India :

- (a) if the High Court has, on appeal, reversed the order of acquittal of an accused person and has sentenced him to death; or
- (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Sir, I do not think I need speak in support of the last amendment at this stage but will reserve my remarks to a later stage when the general discussion takes place.

Shri Jaspal Roy Kapoor : Sir, I move :

“That in amendment No. 23 above, for clause (j) of the proposed new article 111-A, the following be substituted :—

“(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

- (a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case of the High Court either in appeal or revision from any order passed by the High Court to any other Court; or
- (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Mr. President : You do not move the alternative?

Shri Jaspal Roy Kapoor : I move the alternative, Sir, but I need not read it. It may be taken as having been read.

“(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

- (a) if the High Court either on appeal reversing the order of acquittal or in revision enhancing the sentence, or in a trial by itself under Chapter 44 of Criminal procedure Code (Act V of 1898) has sentenced any person to death;
- (b) or if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Kazi Syed Karimuddin (C.P. & Berar : Muslim) : Is it necessary to read my amendment No. 29, as amendment Nos. 28 and 29 are the same?

Mr. President : It is not necessary.

Kazi Syed Karimuddin : I will formally move it. I move :

“That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted :—

“(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

- (a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case by the High Court either in appeal or revision from any order passed by the High Court to any other court; or
- (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

(Amendment No. 32 was not moved.)

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

“That with reference to amendment No. 23 above, after article 111, the following new article 111-A be inserted :

- ‘111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in any criminal proceeding in a High Court in the territory of India or in any criminal proceeding in any tribunal in the said territory from which no appeal, revision or other proceeding lies to the High Court—
- (a) against any sentence of death passed or confirmed by the High Court in appeal or revision, or passed by such tribunal; or
 - (b) if the High Court or the tribunal certifies that the case involves a substantial question of law or that it is otherwise a fit case for appeal to the Supreme Court.
- (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment or final order of a High Court or other tribunal in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such conditions and limitations as may be specified in such law.’ ”

Shri Jaspal Roy Kapoor : Sir, in place of amendment No. 37, I would like to move another amendment of which I have given notice this mornings. That seeks to substitute amendment No. 37 and it runs as follows :—

“That in amendment No. 24 above in the proposed new article 112-B, for the words ‘Parliament may’ the words ‘Parliament shall within a year of the commencement of this Constitution’ be substituted.”

Mr. President : Amendment No. 38 is also in your name.

Shri Jaspal Roy Kapoor : I am not moving it, Sir.

I beg to move :

“That in amendment No. 24. above in the proposed new article 112-B, the following new proviso be added :

- ‘Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction—
- (a) if *by such final order* any person has been sentenced to death for the *first time* in the case; or
 - (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Then, Sir, follow three alternatives :

“Provided, however, that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if *by such final order* any person has been sentenced to death for the *first time* in the case.”;

or, alternatively,

“Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if *by such final order* any person has been sentenced to death in reversal of the order of acquittal.”

or, alternatively,

“Provided, however, that an appeal shall lie to the Supreme Court for a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if the High Court certifies that the case is a fit one for appeal to the Supreme Court.”

Kazi Syed Karimuddin : Sir, I move :

“That in amendment No. 24 above, the following proviso be added to the proposed new article 112-B :

- ‘Provided however that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—
- (a) if by such final order any person has been sentenced to death for the first time in the case; or
 - (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Mr. Naziruddin Ahmed : With your permission, Sir, I would like to move amendment No. 41 in the First List introducing article No. 112-A as article No. 111-A. I think that instead of after article 112, it should be inserted after article 111. The change is only in a matter of detail. I beg to move :

“That with reference to amendment No. 1932 of the List of Amendments, after article 111, the following new article be instead :

‘111-A. Any person against whom any judgment, sentence or order has been passed by a High Court in the territory of India in any criminal proceeding or any proceeding relating to contempt of Court, or from any judgment, sentence or order of any other tribunal exercising criminal jurisdiction which judgment, sentence or order is not liable to be set aside or modified in appeal or revision by any such High Court, shall have a right of appeal in the following cases, namely;—

- (a) against any sentence of death;
- (b) against any other judgment, sentence or order of such High Court or tribunal as the case may be, where the judgment, sentence or order involves a substantial question of law; or
- (c) in any order case where the High Court or the tribunal as the case may be, certifies that it is a fit case for appeal.’ ”

Mr. President : There is an amendment of which I have received notice from Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Which, Sir?

Mr. President : You have given notice of this amendment :

“The following be substituted as 111-A :—

An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India if the High Court certifies that the case is a fit one for appeal....”

Prof. Shibban Lal Saksena : This is the one which with your permission, I have already moved.

Pandit Thakur Das Bhargava : It has been moved already.

Mr. President : Then, I think these are all the amendments. There are certain amendments to various articles and I suppose they are all covered by the amendments which have been moved and I do not take any of the amendments in the printed list. Now all the amendments have been moved and the whole question is open to discussion. I hope we shall be able to get something out of all this forest of amendments.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. President, the point before the House is rather an important one. It is necessary that the House should give very close consideration to the various amendments that have been moved. The question is whether there shall be a right of appeal to the Supreme Court in criminal cases, and if so, in what circumstances.

I think there is a consensus of opinion that the Supreme Court shall have the power of appeal in certain cases. Even Dr. Ambedkar has moved an amendment, No. 24, which says that Parliament may make provisions for appeals in criminal cases. The other amendments which have been moved go a little farther and say that in certain specified cases, even the Constitution should provide for appeals and that is the real question before us, whether the matter should be left entirely to Parliament or whether the Constitution itself should provide for appeals in certain cases. That is the first question before the House.

The second question is : if the House accepts the principle that even this Constitution should provide for appeal in criminal cases, what are those cases in which an appeal shall lie? If we analyse the various amendments, we find that all the amendments suggest, firstly, that in cases where the High Court itself feels satisfied that an appeal should lie, an appeal shall lie. When the provisions about the Civil cases were being discussed before this House, Dr. Ambedkar said, and very rightly, that it is an inherent right of the High Court to say whether

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a case is a fit one for appeal or not, and if there is a certificate to that effect, then, a civil appeal shall be allowed. My submission is that the same principle with equal force applies to criminal appeals. If there is an appeal decided by a High Court and the High Court itself considers that the case is a fit one for appeal, there is no reason why such an appeal should not be allowed. On that matter, I think there cannot be any two opinions that the Constitution itself should provide for appeals on such cases, namely, in cases where the High Court itself certifies that the case is a fit one for appeal. This is one of the provisions which is sought to be inserted by some of the amendments. I am personally of opinion that such a provision must exist.

The second suggestion is that an appeal shall lie as a matter of right if the case involves a substantial question of law. Prima facie, there is great force in this suggestion also. But, it may be said at this stage that we do now know what will be the effect of such a provision as to the number of appeals that are likely to come forward. Therefore, I think, personally, that we may leave this question to Parliament.

The third suggestion is that there should be a right of appeal as a matter of right where a sentence of death is passed by the High Court for the first time. I think this is a very reasonable suggestion. In civil cases we have provided for many appeals; it is but natural that there should be at least one appeal here. If one court acquits the accused and the High Court in appeal reverses the finding and sentences him to death, I think prudence requires that the accused should be given an opportunity to appeal to the Supreme Court. At least one court has found him not guilty. There is a possibility of error of judgment on the part of two Judges. I can give you many instances where a Government files an appeal and two Honourable Judges have come to the conclusion that really the man is guilty. In such cases, there is always a likelihood of error of judgment and this error of judgment can be remedied only if an appeal is allowed. This is a second case in which I think a provision for appeal should be made as a matter of right.

The amendment lastly that we should give the right of appeal even in those cases where the sentence imposed on the accused for the first time exceeds five years. Much can be said in favour of this amendment as well. But, I personally feel that if the other clause stands, namely, that Parliament can make provision for other appeals, this thing can wait.

Therefore, I feel that this Constitution should provide for three things : firstly, there must be an appeal as a matter of right in cases where the High Court deciding the case certifies that the case is a fit one for appeal; secondly, there must be a provision where in appeal or revision a sentence of death is passed by the High Court for the first time, there shall be a right of appeal as a matter of course; thirdly, Parliament shall have power to make provisions for appeal in other cases. If Dr. Ambedkar's amendment No. 24 along with the amendments moved by Mr. Jaspat Roy Kapoor, No. 39, and similar amendments moved by Mr. Karimuddin, amendment No. 40, and the last amendment moved by Dr. Bakhshi Tek Chand, are accepted, I think the public will be satisfied and the Constitution would have made enough provision for criminal appeals. I personally feel that in these two cases, namely, where a sentence of death is passed for the first time by the High Court, and where the High Court certifies that the case is a fit one for appeal, there cannot be any doubt that an appeal shall be allowed. The argument of those who want to leave it to Parliament to make provision for criminal appeals is this, that the matter requires to be discussed in detail and that this House is not in a position to enumerate exhaustively those cases in which an appeal may lie to the Supreme Court. There is

some substance in this, but not entire substance. Because, if there are cases wherein there cannot be any doubt as to the necessity or even the desirability for appeal, there is no reason why such cases should be left to Parliament to pass an enactment subsequently. My submission would be that in so far as these two cases are concerned, where a death sentence is passed for the first time by the High Court, and where a case is certified as a fit one by the High Court, there cannot be any doubt that an appeal shall be allowed in such cases, and there is no reason why in such cases the Constitution should remain silent while it has made provisions in regard to civil cases. My submission is that this House should accept amendment No. 24 and the three amendments moved by my honourable Friends Messrs. Karimuddin, Jaspal Roy Kapoor and Dr. Bakhshi Tek Chand.

Mr. Tajamul Husain : Mr. President, Sir, I feel that I must support the amendment moved by my honourable Friend, Bakhshi Tek Chand. He wants two things to be done. He says in the first place that if the High Court certifies that it is a fit case to be heard by the Supreme Court, the case must be sent there. I agree entirely. When the High Court itself passes an order and is of opinion that that order may be changed and there is a Supreme Court which can vary that order, that should go up to the Supreme Court. There cannot be two opinions on this. The next thing is if the High Court upsets an order, *viz.*, if acquittal has been passed by a Sessions Court and the High Court on appeal from Government has passed an order of death sentence or rather upsets the previous order of the Sessions Judge and finds the accused guilty, in that case an appeal should be allowed to go to the Supreme Court. I would go a step further. I say that in any case where there has been an order of acquittal by Lower Court and that order has been upset by the High Court then appeal can lie to the Supreme Court. My reason is that you have got two decisions before you, one of a Sessions Judge who is trying a case with the help of a Jury. The Jury is of opinion that it is a fit case for acquittal and if the Judge agrees with the Jury then the matter ends. There can be no appeal against acquittal. That is the general law but if there has to be an appeal it must be preferred by Government itself not by private individuals. It is only an Advocate General acting on behalf of Government who can do it. When that appeal goes up, surely one set of people—the Jury and the Judge have said in the one hand that this person is not guilty. The High Court says that that person is guilty. In my opinion when there are two opinions before you there must be a third and final opinion. Therefore all cases, where an acquittal has been upset must be allowed to go to Supreme Court. Now there is a principle of law that once a person has been acquitted, he should not be tried for the same charge. In England you will find very rarely there is an appeal against acquittal. Therefore I submit that I want in all murder cases where both points of law and fact are involved, appeals from the High Court should go to the Supreme Court. Murder cases are very important cases and these should finally be decided by the Supreme Court if there is an appeal.

My third point is that all cases, which involves important questions of law or the country needs a decision on an important question of law, must go to Supreme Court, and my last point is when a sentence has been passed by the Session Judge and it goes to High Court and the High Court enhances it, it must be allowed to go in appeal up to the Supreme Court. It has happened and my experience is in one case there were four accused who were sentenced to two years R. I. each. Three appealed and one did not appeal. The High Court asked them to show cause why the sentence should not be enhanced and actually it was enhanced. The High Court asked the one accused who did not appeal also to show cause why his sentence should not be enhanced and finally all the

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sentences were enhanced to transportation for life. A matter like this where a sentence has been passed by the Sessions Judge and it comes up to the High Court which increases the sentences, an appeal to the third court—the Supreme Court of India—should be allowed to the accused. With these words, I support the amendment and I want to add these things also and these may be taken into consideration by Dr. Ambedkar.

Shri Jaspal Roy Kapoor : Mr. President, Sir, I have moved several amendments but I would like to continue my remarks particularly to amendment No. 39 which runs thus :—

“That in amendments, No. 24 moved by Dr. Ambedkar, in the proposed new article 112-B, the following new proviso be added :—

‘Provided, however, that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of Indian made in the exercise of its criminal jurisdiction—

(a) if by such final order any person has been sentenced to death for the first time in the case; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.’ ”

Sir, the other day while dealing with article 110 there was a long and elaborate discussion on the subject as to whether the Supreme Court should have the right of hearing appeals in criminal cases or not. That discussion was not very relevant to the discussion of article 110, but no objection was raised to that and you also were pleased not to object to that discussion. The reason obviously was that everyone of us realised that a discussion on that question was very necessary and that we should have a preliminary discussion on that subject before article 112-B which has now been moved today by Dr. Ambedkar should come up for discussion so that a solution could be found which might cover the various view-points that were raised that day. That discussion served the useful purpose for which it has been initiated and we found that when we came up to 112-B on the following day, Dr. Ambedkar suggested that its consideration might be held over and on the following day we found to our satisfaction that Dr. Ambedkar had given notice of an amendment which now appears as amendment No. 23. Not only that, but on the following day we were still more happy to find that even Mr. Munshi had given notice of another amendment which now appears as No. 27 according to which the scope of amendment No. 23 standing in the name of Dr. Ambedkar was extended to some extent *viz.*, that while Dr. Ambedkar’s amendment No. 23 conceded the right of appeal only in such cases in which sentence of death had been passed by the High Court in appeal against acquittal, Mr. Munshi’s amendment further extended the scope to also those cases in which death sentence was passed by the High Court even in revision.

Secondly, Mr. Munshi’s amendment also laid down that if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court an appeal shall lie.

But all of a sudden we find that Dr. Ambedkar wants to give up the position he wanted to take up in amendment No. 23 and has now gone back to the original position he took that no appeal shall lie to the Supreme Court except in accordance with legislation that might be passed by Parliament. Sir, Dr. Ambedkar while replying to the debate the other day on article 110 said that he had an open but not a vacant mind. I am prepared to concede that he had not only an open but a receptive mind : I only wish his mind had been retentive also. For although he received various suggestions in the course of the debate and they remained in his mind for a day or two, which induced him to give

notice of amendment No. 23, all these suggestions vanished from his mind after the couple of days; so that his mind was not only open but too wide open and could certain things for any length of time.

Now it is suggested in the proposed amendment No. 24 that Parliament may by law confer criminal appellate powers on the Supreme Court. It is not conceded that Parliament must necessarily confer on the Supreme Court the right of hearing appeals in criminal cases, for the word used is “may” and not “shall”. It is, therefore, intended that it should be left open to Parliament to pass legislation or not conferring on the Supreme Court the right to hear criminal appeals. The implication of this amendment also is that once this right is conferred on the Supreme Court by legislation, the Parliament may on a subsequent date, if it so chooses, amend, annual or revoke such legislation. That means that so long as Parliament finds that the Supreme Court is passing judgments in appeal which find favour with Parliament, which means the party in power, which again means the Cabinet for the time being, the Supreme Court shall continue to exercise that right. But when the judgments of the Court are not liked by Parliament the right will be withdrawn. This is a dangerous proposition; it means that the Supreme Court in order to retain that right must act in a manner so as not to displease Parliament. We have been crying for the independence of the judiciary and Dr. Ambedkar has been a stout champion of this independence. But when we come to frame legislation relating to the powers of the Supreme Court which is the highest judiciary in the land we are trying to lay down provision which will virtually strike at the root of the independence not only of the judiciary but of the supreme judicial tribunal in the land. I submit we should not be a party to this. The independence of the Supreme Court in civil cases is not of much consequence; its independence in criminal matters is of vital importance. It matters little if a case involving a paltry sum of Rs. 20,000 is decided this way or that; but if in deciding a criminal case, which sometimes may be of an important political nature, the Supreme Court has to act in accordance with the linkings of Parliament in order to retain the power to hear appeals, that is a serious encroachment on the independence of the Supreme Court. In view of all this I submit that we should legislate here and now that the Supreme Court will have power to hear appeals; we should not leave it to the sweet will of Parliament to legislate or not to legislate to that effect. We are in this Constitution providing for a Supreme Court, for the seat of the Court and the salary of the judges and other things in detail. But on the important questions of the right to hear criminal appeals we are leaving it to Parliament to decide as it likes. And which Parliament is going to deal with this? It is the present Parliament or the one which will come hereafter after the new Constitution comes into force? If it is the latter it means another couple of years. If it is intended that the present Parliament should pass this provision, why should we not do it here and now? The present Parliament consists of members who are present here today. Or, I may say that by the convention we have established it consists not even of the members present here now and who are entitled to take part in these deliberations. Therefore, I think this Constituent Assembly, as the constitution making body, is more representative than the present day Parliament and such an important question should be decided by this body rather than be left to a body which functions as the Parliament. If one likes to be uncharitable an inference may be drawn—though I hope it is not a fact—that some members who are members of this body but under the convention do not attend the Parliament are thought to be so inconvenient that this legislation should be taken up in Parliament where they are not present. We have established a convention that members of the provincial legislatures will not attend this Parliament. Now we wish to tell them that they should agree not to have a say in this matter and should agree to let this matter be decided by Parliament in their absence.

[Shri Jaspat Roy Kapoor]

But if it is intended that not this Parliament but the Parliament which will come into being after the new elections should deal with the legislation, it means that the whole thing will be kept in abeyance for at least two years. Even when that Parliament comes into existence, it will have many legislations of immediate importance to deal with and its time will be occupied with enacting those more important pieces of legislation. That means that for three or four years to come this whole thing will remain in abeyance. The question arises as to what will be the fate of those unfortunate persons who are condemned to death for the first time by final order or the High Court. My honourable Friend Dr. Ambedkar and others of his way of thinking might perhaps say that we need not bother about the fate of those few unfortunate persons.

They might say so callously if they are so inclined. But I hope that Dr. Ambedkar and his other friends who are partners in this business of depriving the Supreme Court of its right of hearing criminal appeals—I mean Mr. T.T. Krishnamachari and Mr. Munshi—none of them would be so callously inclined as to suggest that. I know that Dr. Ambedkar, though he some times presents a rough exterior has a very soft and, if I may say so, a loving heart too. As for Mr. Krishnamachari he is all sweetness. And of course Mr. Munshi is all softness. I am sure, therefore, that not one of them would ask us to deal with human life and liberty in such a light-hearted manner. I, therefore, submit that we should make a definite provision here and now in the Constitution conferring on the Supreme Court the right to hear criminal appeals.

But then I must concede that there is considerable substance in the arguments of Dr. Ambedkar and Mr. Munshi as they put them forward on a previous occasion, namely, that if there is an unrestricted right of appeal vested in the Supreme Court the case work would be a very huge one. True. I do not wish to suggest, nor have I suggested in my amendment, nor perhaps has anybody else suggested in his amendment, that there should be an unrestricted right of appeal to the Supreme Court. all that we want is that it should be confined to a few specific cases the number of which would not be very large—perhaps the number would not go beyond sixty or seventy or at the outside hundred in the year in the whole country. Let the right of appeal be confined firstly to those cases in which the sentence of death has been passed by the High Court for the first time by its final order which only means this and nothing more that if a person has been condemned to death for the first time he should have one little right of appeal. That is what my amendment implies and nothing more. In such cases where the man has either been acquitted by the lower court, or by the first order of the High Court or Sessions Court he has been sentenced not to death but a lower sentence has been inflicted on him, the accused has the advantage of one judgment in his favour either of acquitted or of a sentence lower than death; and that judgment may have been passed in the first case by the Session Judge who may be duly qualified to be a Judge of the High Court and who, if luck favours him, may on the day following his pronouncing the judgment be promoted to the High Court. In the other case an order of acquittal may have been passed by a Judge of the High Court himself—a Judge very competent, learned, very reliable and trustworthy. The question is when an accused has a first judgment in his favour, should or should he not have even one right of appeal against the sentence of death passed in him for the first time by the High Court? I submit everybody will agree that an accused person must have much a right and the Supreme Court must have the right to hear an appeal from such an order.

The other part of my amendment is that if the High Court certifies that the case is a fit one for appeal it should to in appeal to the Supreme Court.

You may not trust anybody but at least do trust your High Court Judges and do not think that they will lightly grant such a certificate. If the Judges of the High Court are inclined to give such a certificate, then what reason on earth could you have for saying that even in such cases there shall be no right of appeal to the Supreme Court? I submit that in view of these considerations it is necessary and desirable that such a power should be conferred on the Supreme Court.

In none of these suggestions of mine are acceptable, at least one suggestion must be acceptable and that is the suggestion contained in my amendment No. 37 as amended by another amendment which says :

“That in amendment No. 24 above, in the proposed new article 112-B, for the words ‘Parliament may’ the words ‘Parliament shall’ within one year of the Commencement of this Constitution’ be substituted.”

Either it is our intention that Parliament shall enact such legislation or it is our intention that it may not enact such legislation. If we are in doubt about it today it is another matter. But if our solemn intention is not to shut out criminal appeals and the intention is merely that these things may be dealt with by Parliament then make it obligatory on Parliament to enact such legislation, that such legislation must be enacted at the outset, within a year of the enforcement of this Constitution. For, otherwise, as I have already submitted if you let the word “may” remain here, it will be open to Parliament to enact or not to enact such legislation and even after having enacted such legislation to repeal or amend it, with the result that this sword will always continue to be hanging on the Supreme Court, warning them that they must behave in a manner which may be to the liking of Parliament. Sanctity of life and liberty is of the essence of democracy and it should not be ignored by depriving it of the protection of Supreme Court.

Mr. Naziruddin Ahmad : Sir, all the amendments which have been moved centre round one important question, that is, whether or to what extent and appeal shall be allowed to the highest Court in the land in criminal cases. I submit that the matter is one of great constitutional importance. We are enacting a Constitution for a Sovereign Democratic Republic. We are erecting one of the finest democracies in the world. But the implication of democracy must be squarely faced. Democracy means a rule of law as opposed to a rule of force. In autocracies and in Totalitarian States the law is not supreme. But democracy means supremacy of the law where no one, be he the highest individual, is above the law. We should therefore all respect law and should be law-abiding citizens in order to inculcate that sense of law-abidingness wherein lies the safety of democracy. We should ourselves follow democratic principles, democratic methods and respect the law. The other day, when this matter was discussed in connection with article 110,111 and 112, I pointed out that there was a lacuna so far as criminals appeals to the Supreme Court were concerned. It was this disclosure that prompted the House to discuss the matter regarding the rights for criminal appeal to the Supreme Court. You were pleased to allow that discussion. It would therefore in my humble opinion be utterly wrong to characterise that discussion as irrelevant. In fact that discussion has brought to light some of the weaknesses of the Draft Constitution necessitating so many amendments.

Sir, in the welter of amendments moved in the House there are some common points which are of fundamental importance. We have allowed under article 111, appeals in civil cases where substantial question of law is involved, subject to a pecuniary limitation. The question is whether we would be right in putting any limitation on people’s life and liberty. Can we distinguish the life and liberty of the meanest individual in the State from those of a rich man? In criminal law in a civilised State no distinction can exist between the rich and the poor, between the great and the small. In civil cases there is not much harm

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done to society if wrong decisions are passed in individual cases. But if you have one innocent man robbed of his liberty, untold mischief will follow. In fact it is only by allowing recourse to the highest Court of law that the supremacy of law can be fully established. The safety of a State lies in the people's faith in the rule of law. The Court of the last resort should be the ultimate tribunal which would decide questions of legal rights in criminal cases. The points that arise in this connection are, (1) whether any right of appeal should be allowed and, (2) if so under what conditions and with that safeguards. The further question is whether the provision should be inserted in the Constitution itself. I submit that the matter is of great constitutional importance. If a man's life and liberty are not matters of concern for this Assembly I think nothing would be worth considering at all. As the question which have been raised by these amendments are of fundamental importance, I think, rights of final appeal, whatever they are, should be embodied in the Constitution itself. There will be no justification for this Honourable House for shirking its responsibility in defining rights of appeal in criminal cases when it has with such meticulous care defined rights of appeal in civil cases. I think that the matter should not be left to the Parliament. In fact that means the next Parliament, not this Assembly sitting in another place as Legislative Assembly, but the next Parliament after the next general elections or even a subsequent Parliament. There is no justification for this House suspending its activities and leave a void to be filled in by a future Parliament of unknown composition and disposition. We have no right to refuse to define the law and thereby to ensure substantial justice in criminal cases. We should therefore define the law in the Constitution itself. We have entered in the Constitution so many comparatively unimportant matters and we should not hesitate to include this important provision therein.

The first question is whether you would allow any right of appeal in criminal cases to the highest court. I would draw the attention of the House of the existing state of the law. In fact there is a right of appeal to His Majesty in Council in criminal cases on a substantial question of law or in cases where grave injustice has otherwise been shown to have been done. In these circumstances I submit that, if we do not grant any right of appeal under similar terms in criminal cases to our Supreme Court, we would be taking away a right which now exists in criminal cases. Sir, a study of the criminal appeals before the Privy Council for the last forty years will show that this right of appeal is a great necessity as many cases of undeniably wrong convictions have been set aside. Especially in murder cases it often happens that a man is convicted on account of local prejudices and suspicions as a substitute for evidence. In this way sometimes innocent men are even hanged. The decisions of our Courts are sometimes guided or clouded by extraneous considerations. If such decisions are taken in appeal to the highest Court they take a dispassionate view of things and decide them on their merits and on proper consideration of evidence. I submit therefore that the right of appeal should be given in criminal cases on suitable grounds. Now what are those suitable cases? I submit that the suitable cases would be cases involving substantial questions of law. In fact we are establishing a rule of law or democracy. Therefore if any man has been convicted on a substantial error of law, I think that should be a good ground for allowing an appeal. Substantial questions of law have always been held to be sufficient ground for interference by the Privy council and we should not at least take away or indefinitely suspend that right which has been so much valued and in existence for over a century. I submit, therefore, that substantial question of law should be a good ground. There is some fear in certain sections of the House that if we allow appeals on substantial question of law, the authority of the government, the

authority of the executive, will be weakened. In fact I have heard it whispered that there should be many convictions so that thereby the authority of the executive may be upheld, that if we allow too many appeals, the authority of the executive would be undermined and the safety of the State will be endangered. But I feel just the other way. If we allow the supremacy of the law to be maintained by an independent tribunal, that would be the basis of the safety of the State. The contentment of the people, their faith in the administration of justice, would be a paramount factor in making the State safe. If the ultimate jurisdiction of our highest Court in criminal cases is taken away, the dissatisfaction created thereby will go underground and will be a menace to the State. It is quite possible that sometimes the executive too would be disregarded by the Court of law, but that is why the Courts of law exist, *viz.*, to administer justice irrespective of political considerations. If the executive feels that in a particular class of cases, political or otherwise, there should be no appeal, or there should be some sort of curtailed procedure, or there should be special rules of evidence, the executive can always apply to the legislature. It is for the legislature to say what law should be passed. The independence of the legislature is also to be guaranteed and an independent legislature may prescribe the laws of evidence, laws of penalty and laws of procedure applicable to criminal cases in a particular manner. There should however be nothing to prevent appeal to the highest Court. If we allow right of appeal to the Supreme Court on substantial questions of law, that will be a guarantee of the independence of the legislature in framing any law it pleases. If the legislature passes any law which would practically prevent the right of appeal on grounds of law, it is for the legislature to do so. The executive, by virtue of having a majority, can always approach the legislature with their point of view, and in this way the supremacy or the independence of the executive can be maintained, but within the limited of law that the legislature lays down, the Supreme Court should always have the power to give substantial justice according to its best lights. It is for this reason that I say that the right of appeal should be allowed on substantial question of law. There can be no logical escape from this proposition. I submit, therefore, that we should not leave the matter to the next Parliament. Supposing a man is ordered to be hanged by the High Court for the first time and suppose that the decision of the High Court is wrong. It often happens that local prejudices have forced a verdict of death being passed on the unfortunate man. May I ask what should this man do? Should we ask him to wait in patience till a suitable law is passed by the next Parliament? Is he to hang in the meantime? Is he to hang in the expectation of a proper law being passed by the next Parliament? I think that the consequences would be too serious and too revolting to allow of this procrastination. I submit, therefore, that the right of appeal should there and now be given to an accused person in criminal cases to the Supreme Court on substantial questions of law. A case was recently taken to the Privy Council on a very small matter. A man was convicted by a Deputy Magistrate for a petty offence. He was acquitted in appeal by the Sessions Judge. The Government preferred an appeal to the High Court which convicted him. The accused appealed to the Privy Council. The Privy Council with rare clarity pointed out substantial infirmity in the evidence and acquitted him. It was argued that this was a petty case and so should not be worthy of interference by the Privy Council. Their Lordships, however pointed out that it was a case of improper conviction and he must be acquitted. So if we do not allow appeals on substantial questions of law the result will be shirking our responsibility. There will be no justification for allowing people to rot in jail or to hang pending legislation later on. Therefore we should here and now introduce an article which would prevent men being convicted wrongly.

Then, Sir, there is another kind of safety in allowing appeals in criminal cases on substantial questions of law to the Supreme Court. At present there are in the High Court differences of opinion of matters of law. That is inevi-

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table because legislation deals with general principles and its application to concrete cases leaves room for difference of opinion amongst the different High Court. My submission is that is different High Court are likely to hold conflicting views on points of law, that would be a ground for allowing appeals to go to the Supreme Court, for in that way alone the law can be made uniform and harmonious. It has many times happened that in the Privy Council accused persons have obtained special leave on the ground of conflicting opinions among the High Court which must be settled in the right way. Their Lordships have in such cases granted special leave, although they were not *prima facie* fully sure that on the facts of that particular case any prejudice had actually resulted, but they gave the benefit of the doubt and granted special leave pending a more detailed consideration. Ultimately the decisions of the Privy Council in those cases have thrown new light on important principles of law in criminal cases. A perusal of the Privy Council in those cases have thrown new light on important principles of law in criminal cases. A perusal of the Privy Council judgments in criminal cases during the last thirty or forty years will show many cases which have settled many difficult and complex questions of law and have made the law uniform. If the law is made uniform the result would be contraction in the number of criminal appeals in the Sessions Courts and the High Courts and there would be economy in the long run. In these circumstances, I submit that the question of law should be regarded with some amount of veneration, and at least on substantial question of law we ought to allow a man to invoke the intervention of the highest Court. What would be the Supreme Court worth, if it is not supreme in matters of criminal law? I think the supremacy of the law must be really guaranteed by making the Supreme Court really supreme in these matters. I submit, Sir, that we have already accepted article 112. That empowers the Supreme Court to grant special leave in all cases included.

An Honourable Member : The time is up.

Mr. President : Will you take long?

Mr. Naziruddin Ahmad : I shall take some more time.

Mr. President : Then the House adjourns till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Tuesday the 14th June 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 14th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 111-A—(*Contd.*)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, yesterday, I drew the attention of the House to article 112 which we have already accepted. I submit that the acceptance of that article has involved us into a commitment to a policy.

Article 112 enables the Supreme Court to permit an appeal in a criminal case by special leave. This involves the acceptance of the formula that appeals in criminal cases should also lie on a certificate given by the High Court. The House will be pleased to consider the situation. At present appeals to the Privy Council in criminal matters lie first of all on a certificate given by the High Court concerned. If that is refused, then, the Privy Council may allow an appeal by special leave. Special leave is a residuary provision to guard against the High Court improperly refusing to grant the requisite certificate. I submit that article 112 has committed us to the acceptance of the principle that appeals must lie also on a certificate by the High Court concerned in criminal cases. In fact, it is highly convenient as a preliminary step to allow the High Court to grant or refuse a certificate. The convenience is obvious. The High Court has, where it is asked to give a certificate, already considered the matter more or less fully in an appellate or revisional capacity, since it is against a judgment or order of the High Court that an appeal is sought to the Supreme Court. The High Court is thus already in possession of the facts relating or relevant to an appeal to the Supreme Court. There are many High Courts already in the provinces and there will be many more in the integrated States. There will be more than a dozen High Courts in the territory of India. It would be very convenient for these High Courts to be in a position to grant or refuse the certificate in the first instance. Therefore, this obvious and convenient course should be adopted. In case the certificate is refused, it can be taken for granted in most cases that it has been properly refused. If thereafter any application for special leave is made to the Supreme Court, in nine cases out of ten, that application will be refused because the question of law, or the suitability, otherwise, for purposes of appeal has already been fully considered by the High Court in refusing the certificate. In such a case, it will reduce the number of applications to the Supreme Court for special leave as it has already reduced the number of applications for special leave to the Privy Council. I therefore, submit that the provision for a certificate by the High Court is not only a very logical measure, but at the same time, a convenient one and it will prove in the long run to be economical. It sometimes happens, however, that the High Court refuses to grant the certificate even in a suitable case. In those limited cases, it should be the privilege of the highest Court to grant special leave. The question of possible congestion of work in the Supreme Court

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has induced many honourable Members to oppose the provisions of these amendments. It is said that we do not know how many appeals in criminal cases there would be in the Supreme Court. The fear of creating a serious congestion in that Court and also the fear that we will have to employ more Judges to deal with those cases is behind this opposition. I submit, however, that this fear is unjustified. So far as the question of law is concerned, it is only a 'substantial question of law' which will enable a party successfully to obtain a certificate or special leave. A substantial question of law must be clearly appreciated. In fact it is not any question of law but a substantial question of law and I submit that a substantial question of law is very restricted in its scope. It is a very high standard of error or irregularity in law and it is already well established that an error as to the procedural law such as, error in framing a charge or similar other matters prescribed by the Code of Criminal Procedure or other procedural law relating to criminal matters, and a violation of these laws does not as a matter of law create a sufficient grievance in law even in the High Court or other Appellate Courts and will not be ground for the Supreme Court, for under section 537 of Criminal Procedure Code, any error of procedure would not be a material ground for interference in a criminal case unless it has in fact also resulted in prejudice to the party. So a substantial question of law is reduced to a very short compass that if it is an error of procedural law, it must be sufficiently serious in its consequences upon the case which must have caused real and substantial prejudice to the party. Therefore the condition as to a "substantial question of law" will eliminate all questions of errors of procedure which do not go to the root of the matter, which really do not affect the merits of the case, and therefore, there is no fear of congestion of cases on this ground. Then there are other procedural errors, namely, in a Session trial there may be misdirections to the Jury. It has also been held that this is not a sufficient ground to interfere unless it has on facts led to failure of justice. Therefore the fear that there would be congestion of cases if we allow substantial question of law to justify appeals to the Supreme Court is unjustified. Then with regard to references by Session Judges under section 307 of the Code of Criminal Procedure against the verdict of a Jury, in the latest Privy Council case of Ram Anugrah Singh, it was held in 1946 that unless the verdict of the Jury is clearly unreasonable so that no reasonable body of men could come to that conclusion, unless this ground is made out, even serious misdirection of even mis-reception of material evidence, contrary to Evidence Act, will not be a sufficient ground even for High Court to interfere, and I submit, would also be no ground for interference before the Supreme Court. I therefore submit that the condition of substantial question of law is a sufficient safeguard against frivolous appeals being taken to Supreme Court. It is only when very substantial injustice has resulted from any errors of procedure or any mis-reception even of material evidence there would be an appeal and there would be a certificate or special leave. But any question relating to composition of the crime is really a serious matter. We have recently a case decided by the Privy Council in 1945 saying that under section 34 of the Penal Code which was supposed to be applicable to all cases where several persons acted or purported to have acted with similar intention does not constitute an offence. In fact a clarification of this matter in this case has ruled out a large number of offences centering round section 34 of the Penal Code. Another important principle has been decided by Privy Council in 1947 in Srinivas Mall's case, that criminal intention and knowledge is a necessary condition although it may not be mentioned in the penal law concerned. Unless criminal knowledge or criminal intention, commonly called *mens rea* is clearly or necessarily ruled out by the penal law, it is a necessary ingredient of the offence. It must be proved that the accused had

some criminal knowledge or intention. On these matters the Privy Council has laid stress on the real elements of crime and the materials that go to constitute the crime. This is highly important, and substantial grounds of law will mostly centre round errors as to the elements of a crime or serious errors as to the law of procedure or evidence. I therefore submit that there is no fear of any serious congestion of cases. The Privy Council has always summarily rejected applications for special leave which did not raise very substantial errors or actual prejudice. It is only two or three cases in the year—at any rate not more than half-a-dozen cases in a year, that they have interfered. I have no doubt that in granting a certificate the High Court will exercise the greatest caution and will confine itself to granting certificate in cases only where the penal laws have been misinterpreted or that there has been any gross violation of the rules of procedure or evidence to the prejudice of a party that a certificate will be given and I have no doubt whatsoever that under article 112 the Supreme Court will also exercise a restraining influence on indiscriminate appeals. Then there is a condition that Advocates appearing in the High Court and also before the Privy Council are required to certify that there are substantial grounds for the appeal and in case any frivolous application is made for a certificate or special leave, that is always a matter for serious comment and that will again act as a restraining influence on frivolous application. This wholesome practice will no doubt also be observed in the Supreme Court but these matters must be left to the Supreme Court to deal with. The Federal Court has already shown that they do not like appeals made without sufficient or without at least arguable grounds. Considering the matter from this point of view, the fear of congestion of criminal cases in Supreme Court is to my mind merely conjectural. I do not think more than a few dozens of cases will come to Supreme Court and that should not terrorise us into complete inactivity and taking no decision whatsoever on this matter. Considering the matter from every conceivable point of view, we must allow appeals in serious cases where injustice has as a matter of fact been done by the High Court and by other Courts, and appeals should only be allowed on substantial questions of law which is a very difficult condition—it is not a frivolous appeal that has any chance of success and we must allow appeals to the Supreme Court on substantial grounds of law. I have however in my amendment stressed two other matters which require consideration. I have said that appeals must also lie from the final decision of any tribunal other than High Court from which no appeals for revision lies to High Court. It is open to the Legislature to set up a special tribunal and it is quite competent to so provide that its decision will be inviolate and no appeal will lie to High Court or any other Court. In such cases, appeal should also lie on the certificate of the tribunal on the usual grounds. In such a case the High Court will have no power to grant certificate because we are ensuring a certificate from High Court from its own decision. It is therefore also necessary to provide for appeals from the decision of tribunals from which no appeal or motion lies to the High Court. In such cases a certificate for appeal from such tribunal would be needed; and the residuary article 112 is already there. So, such tribunals from which no appeal or motion lies to the High Court in criminal cases, may also be authorised. Otherwise there will be a lacuna.

Then there are matters which are neither civil nor criminal. Civil matters are provided for in article 111, and we want to provide for appeals in criminal cases in article 111-A. But there are anomalous cases which neither civil nor criminal, *e.g.*, contempt of court cases, when a party or witness or advocate or any one else brings the Court into contempt or disrepute. In such cases the High Court has summary power to deal with the recalcitrant party by fine or even imprisonment. In such cases there should be an appeal in important cases where a substantial question of law is

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involved. In two recent contempt of court cases that went up to the Privy Council—one from the colonies and one from the Allahabad High Court—it was found that parties had been wrongly punished on a misconception of law. And Lord Atkins delivering the judgment of the Privy Council pointed out gross inaccuracies in the conception of contempt of court. Important questions of law and principle arise in these cases and provision should be made for an appeal, provided a substantial question of law is involved or the matter is a fit one for appeal. So these two classes of cases—that is, appeals from tribunals from which no motion or appeal lies to the High Court, and contempt of Court cases—should be included to prevent any lacuna. We are framing the Constitution for a long time and should leave no loopholes which will call for early amendments. In civil cases we have limited the valuation to Rs. 20,000; but in criminal cases we cannot limit the value of a man's life and liberty. We cannot hang or imprison an innocent man without giving him a right of appeal. Even if one innocent man dies or is imprisoned, the sighs of his widow or orphan children will cry for justice. The House, I submit, should rise to the occasion and give justice to a poor man whose life may be considered by cynics to be below Rs. 20,000.

Mr. President : Dr. Ambedkar will now move his amendment.

The Honourable Dr. B. R. Ambedkar : (Bombay: General) : Sir, I move :

“That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A, the following be substituted :—

111-A. The Supreme Court shall have power to entertain and hear appeals from any judgment, final Appellate jurisdiction of order or sentence in a criminal proceeding of a High Court in the territory of Supreme Court with regard to India—
criminal matters.

- (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or
- (b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.”

I do not wish to say anything at this stage but I shall reserve my remarks towards the end after hearing the course of debate on my new amendment.

Pandit Thakur Das Bhargava (East Punjab : General) : Mr. President, Sir, the amendment which has been moved by Dr. Ambedkar just now is one which I hope will find acceptance from all Members of this House. This amendment is in effect the same of which I gave notice (No. 17) except in regard to revisional powers of enhancement. In regard to all other matters it is substantially the same and I have no hesitation in congratulating Dr. Ambedkar and those who have brought about this compromise on this issue.

Coming to the merits of the question I beg to submit this amendment, though satisfactory from the practical point of view, is certainly neither logical nor theoretically right. In the first instance, if it be accepted as an axiom in criminal jurisprudence that at least one appeal should be provided to every person who has been convicted in a court of law, this amendment fails to achieve the object. Under part (a) of this amendment the only occasion where an appeal is allowed in respect of an order against the order of acquittal is when a person has been sentenced to death. May I humbly ask if, for a person who after he has been acquitted and in the appeal against him has been sentenced to transportation for life, or even to five years or a single day or even fine, is there occasion for appeal for him in the High Court or any other Court? Are we to understand that persons who are sentenced to death are the only persons who are aggrieved and who require the right of appeal? In my humble judgment every person who after acquittal has been sentenced in appeal should possess the inherent right to appeal. I agree that if there are thousands of such appeals our Supreme Court will be flooded with cases and in practice there will be great difficulty. All the same, I must submit to this House that it must take care to see that some provision is made somewhere—either in the High Courts or in the Supreme Court—that every such convicted person has got a chance to appeal.

This new article 111-A here is practically on a par with article 111 on the civil side. I complained last time when I was speaking on article 110 that as a matter of fact the provisions of article 111 also are not satisfactory in so far that they proceed on a basis which is not acceptable to me or which should not be acceptable to the House. We passed the Objective Resolution. We passed the Fundamental Rights in article 8, and under article 15, that there shall be equality before law and equal opportunity for every person. Now, the provision contained in article 111 and those proposed in article 111-A go against the very grain of our Objectives Resolution as well as the Fundamental Rights, because in the matter of justice, in the matter of securing equality of treatment we cannot differentiate between a person who has been convicted to death and a person who has been fined or given one day's imprisonment—as we cannot distinguish between a person who is rich enough and can afford to have a dispute with regard to Rs. 20,000 and a person who is very poor and has a dispute only for Rs. 200. There is absolutely no difference in principle between the two. I must submit that that is not be right way of looking at things. In so far as equality of treatment and opportunities is concerned, our law must be based upon an ideal in which every person has got an equal right to go before the law and have his case decided. As I submitted, this is not logical and not theoretically right.

The proviso with regard to (c) is a thing which should not have been put in here. In regard to article 111 on the civil side the only requirement is that the High Court has to certify that the case is a fit one for appeal to the Supreme Court. But in regard to the criminal side these restrictions—unnecessary restrictions in my opinion—have been placed in regard to part (c) which say that the Supreme Court shall make certain rules and the High Court shall attach certain conditions. On the civil side there are no such restrictions and it passes my understanding why there should be these restrictions on the criminal side. When the High Court itself certifies that the case is a fit case for appeal, it is an absolute case for appeal. Who are we do say anything further? Can we not trust our own High Courts, instead of restricting it by certain rules made by the Supreme Court and certain conditions attached by the High Court itself? It is not a question of giving the right to the private citizen. I can understand the logic of those who say that a private person as such should not be given the right

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to go to the Supreme Court. I can understand that the High Court, so far as provincial autonomy is concerned, must be the last word in regard to the liberties as well as the properties of a citizen. And if a person wants to go to the Supreme Court, it must be in the fewest of cases. I can understand that ideal. All the same, when in regard to civil appeals we are giving certain rights it is but natural that in regard to criminal side also you must give equal rights, if not more. After all we are not interested in seeing that provision is made for a large number of appeals, but in seeing that justice is done and justice is rightly administered.

I have one word more to say and that is in regard to the powers of the Supreme Court. As we have seen, articles 109, 110, 111, 111-A and 112 are the five articles under which the machinery is provided by which appeals can go to the Supreme Court. We have seen under article 25 of the Constitution that every citizen has been guaranteed Fundamental Rights and the Supreme Court has been made the custodian of those rights. But I do not find any provision in our Constitution which lays down in what manner and under what method the Supreme Court shall exercise those powers and secure those rights to the citizens. Much has been said about article 112 and I will not dilate on it because we have already passed it. All the same I must submit one aspect of the case and that too very humbly and in my own way. If the Supreme Court has jurisdiction and if people can go to it and their rights are to be secured through it we have to arm the Supreme Court with full powers. I am not talking of powers to the citizen but of giving powers to the Supreme Court itself so that it may do justice. In article 118 we have stated that the Supreme Court shall be able to pass orders necessary for doing complete justice. But all the same I know that in regard to procedural matters even now the Supreme Court is not really supreme. It is true that the Supreme Court has been given jurisdiction over some cases where the supreme penalty of law is provided. But in many cases the procedure is so defective that a person sentenced to transportation for life *e.g.*, by conviction in High Court when appeal against acquittal has been accepted, has not got any right of appeal.

If you refer to article 15 which we have already passed you will see that so far as the question of procedure is concerned it is still within the purview of the Legislature to make this or that procedure and the Supreme Court has no hand whatsoever in checking that procedure. Unless and until we make it clear that so far as the ultimate destiny of a person is concerned, so far as the ultimate arbitrament of the rights of a citizen is concerned the Supreme Court has got powers even over the Legislature we will not secure the rights to the citizen. So far as the liberty of a citizen is concerned it should be secured even against the Legislature.

I have given notice of amendments to article 109-A, 113-A and 114-A also and they must also be considered in this connection because ultimately on the powers that we give to the Supreme Court depend the rights of the people. When the Privy Council has so far been enjoying these powers under section 112 under the principles of natural justice, the same powers may be given to our Supreme Court in regard to natural justice so that it can do complete justice, not according to a particular law or a particular provision or a particular regulation but according to those principles which are known, which are established and which are fundamental in their importance. We will be securing our full rights only if the House agrees to see that the powers of the Supreme Court are enlarged to the fullest possible extent. So far as the present amendment goes I have nothing more to submit except to say that I am very glad that the efforts of all of us have succeeded in producing a compromise acceptable to all.

Prof. Shibban Lal Saksena : (United Provinces : General) : Mr. President, the amendment moved by Dr. Ambedkar really makes criminal appeals to be on a par with civil appeals. I argue the other day that every man who is sentenced to death should have the right to have his case reviewed by the Supreme Court before the sentence is carried out. I remember the difficulties of the poor men under sentence of death. I have lived in cells with condemned men and I know their feelings. Hardly one among a score of such people could afford to take their appeal to the Privy Council. It is stated here that if the High Court certifies that the case is a fit one for appeal to the Supreme Court, the Supreme Court shall have power to hear it. It will not go to the Supreme Court automatically. I feel that a man who is condemned to death but who may not have the means to file an appeal or to get the necessary certificate should also have his appeal heard by the Supreme Court as of right. Nobody should be hanged unless his case is reviewed by the Supreme Court. According to the present amendment of Dr. Ambedkar, only about 100 out of 1000 murder appeals, *i.e.* about 10 per cent. will have the right to be heard by the Supreme Court if all the accused are able to bear the expenses thereof. So the richest men alone will get the right of appeal to the Supreme Court and poor men will be hanged without any hearing by the Supreme Court. Poor men cannot thus get justice even after this amendment is passed. I therefore think that although the amendment is a compromise, the poor condemned prisoners will not get justice even under it.

The second part of the amendment provides : "Parliament may by law confer on the Supreme Court any further powers," I hope the working of this article will soon convince the Parliament that everybody who is under sentence of death should have a right to go to the Supreme Court in appeal automatically without any expense. Unless the Supreme Court has finally rejected his appeal, he should not be hanged. I have nothing more to say on this question.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, at long last we now see the prospect of termination of the very long-drawn debate that has gone on the question of investing the Supreme Court with powers of appeal in criminal matters. You were pleased to point out that the matter had been debated at sufficient length and that no further time should be spent in repetition of the arguments already advanced. I will keep that observation in view in the few remarks that I oppose to make in connection with this amendment which has been moved by Dr. Ambedkar.

The House will realise that a considerable section of it is greatly exercised over the question as to whether or not the right of appeal in criminal cases should be embodied in the Constitution itself. There are two clear-cut sets of differences of opinion with regard to this. It has been held by one section that this right need not be conferred by the Constitution itself, but that Parliament should be left in future to legislate and confer such powers as it may think necessary in criminal matters. But Members like us are firmly of the view that, whereas provision was being made in the Constitution itself for appeals in civil matters, there was absolutely no justification for not embodying the same right of appeal in criminal matters. We feel that we should not give the country the impression that we allow to property more sanctity than to human life.

Now, after all these discussions, I think what has been crystallised it to be found in the amendment moved by Dr. Ambedkar. The main demand of a considerable section of the House was that in cases involving capital punishment there should be a right of appeal provided in the Constitution itself. I firmly held that view, but the objection was that there would be such a plethora of criminal cases involving death sentences that a very large number of judges would have to be appointed to decide them. I particularly drew attention to two categories of cases in which death sentence was imposed; a person is

[Pandit Lakshmi Kanta Maitra]

acquitted by the Sessions Court of a charge of murder, the Government prefers an appeal against the acquittal and the High Court reverses the judgment of the Lower Court and sentences the man of death. Such a man should have the right of appeal, where the judgment of the High Court reversing the judgment of the lower court may be contested.

I am very glad that in the amendment moved by Dr. Ambedkar to this article this has been specifically provided. I would particularly ask my friends to scan the expressions used in the connection which if properly understood will eliminate all chances of further debate on this article. New article 111-A proposed, says :

“(1) The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India—

- (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death....”

That covers the category of cases on which we laid great stress. Clause (1) (b) covers another class of cases where the High Court has got inherent power to withdraw to its own file and try any case pending in Lower Court. This is inherent in the High Court; the High Court, as a court of record, has got this power. In such a trial, if the accused is sentenced to death, that virtually becomes the first sentence and rightly therefore an appeal has been provided for such a contingency. The third paragraph deals with criminal matters provided that the cases which come up are amenable to the rules made by the Supreme Court or by the High Court. If these rules are complied with, then these will be fit cases for intervention by or for appeal to the Supreme Court. Now, this generally disposes of the matters which require to be embodied. Again, clause (2) provides for additional powers to the Supreme Court, that is to say, the future Parliament of this country may by law confer upon the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court, subject to such conditions and limitations as may be specified in such law. This is expected to cover cases for instance, of revisional jurisdiction just as is exercised by the High Courts now. I therefore am inclined to think that this is a comprehensive amendment, and I am satisfied that this brings about a compromise between the opposing views, and the legal profession to which I have the honour to belong will be grateful to Dr. Ambedkar for his spirit of accommodation shown in this respect. I think, Sir, that the form in which this amendment has ultimately emerged meets the requirements of our case and deserves the fullest support of this House.

Shri Krishna Chandra Sharma (United Provinces : General) : Mr. President, Sir, as I said the other day, in view of the provisions *viz.* articles 110 and 112 already passed by the House, I do not see the necessity for further provisions for appeals from the High Court to the Supreme Court. Sir, much has been said about the life and liberty of the person. I think there is a misunderstanding with regard to the procedure in criminal cases as against the procedure in civil cases. In a criminal case the serious cases come first before the committing Magistrate. The committing Magistrate takes evidence ; the defence can take the statements of the witnesses in the Police diaries and can get the witnesses confronted with the statements before the Police. That is one stage in which the prosecution witnesses are cross-examined, their veracity tested, their *bona fides* questioned, and there is a good chance for the defence to plead that the case is a bogus case, without any foundation, is based on something which is not truth and there being no *prima facie* case, plead for discharge. And then, Sir, from the committing Magistrate the case goes to the Sessions Judge. Again the defence has got the right to cross-examine

witnesses. The defence can again call for the witnesses' statement made before the Police and also the statements made before the committing Magistrate, and then confront the prosecution witnesses with those statements and produce defence. The fullest opportunity is given to the defence to place its case. The trial is by jury, or with the aid of assessors.

Mr. President : The honourable Member's argument comes to this that there should be no appeal. As there is no amendment that there should be no appeal, I do not think this argument will help the House at all.

Shri Krishna Chandra Sharma : My submission is that I do not support sub-clauses (a) and (b), though I support sub-clause(c) and clause (2) of the amendment. What I beg to submit is that there is enough chance, enough opportunity, for the accused to cross-examine and to test the evidence and then to put the whole case before the Sessions Court, and after the Sessions Court, he has got the right of appeal to the High Court. Sub clause (a) says that if the High Court has on appeal reversed the order of acquittal of an accused, the accused should have at least one right of appeal. My submission is that it is not the accused alone who is the aggrieved party. In the case of a child murdered in the street, the mother of the child is also an aggrieved party. If the accused has a right of appeal on conviction, the mother of the child murdered in the street has equal right to go before the Court and say, "the man has murdered my child. I have a grievance against the fellow. The stability of the State demands, the cause of prevention of crime demands that the man must be hanged." It is wrong to say that the accused alone is an aggrieved party and as such on conviction must have the right of appeal. With equal force, with equal reason it can be pleaded that the aggrieved party is the women whose child has been murdered and as such she has got as much right to go to the superior court and say that the accused must be changed.

Pandit Lakshmi Kanta Maitra : That right is exercised by the High Court when there is an acquittal.

Shri Krishna Chandra Sharma : The right of the deceased's mother to approach the State for appeal is equally sound as the right of appeal of the accused to the High Court against his conviction. So it is not right to hold that the accused must have at least one right of appeal on conviction, and if convicted for the first time for murder, under sub-clause (a) he must have the right of appeal to the Supreme Court. I see no soundness in this argument. Another thing I would submit and that is this : There is a lot of talk about the life and liberty of the person. When the question of the Parliament conferring jurisdiction on the Supreme Court was discussed, Mr. Lari said, "Parliament is a question of the party; it is a question of the Cabinet and it is a question of the Prime Minister." I beg to submit that it does not look very nice to talk of finer things in a country where women are raped on the road or a child is murdered for a two rupee worth necklace, or a *mochi* is killed in the street of a city because he refuses to accept six pies instead of his demand of one anna or murder is usual in a quarrel over water in the field. You have to take notice of facts as they are. After all justice is related to conditions of life. Justice is only the will of the people, and the will of the people is represented by the Parliament. I beg again to submit that the people who are too wise and the people who are actually too foolish would never make a stable society. It is the people who talk of these finer things who never care for the stability of the society, for the stability of the State. Take for instance the case of Austria. There are too many scientists; there have been too many lawyers, too many philosophers, too many men of letters, men of genius and they will all differ and would never agree. The net result was that Austria was one country in the whole history of human

[Shri Krishna Chandra Sharma]

organization which never got a stabilised State, which never got peace and order, despite the fact that some of the persons born in Austria were the greatest men in the world, in the field of science, in the field of philosophy; and there is the case of the other people who are too foolish to understand the urgency of the situation.

Mr. President : I am afraid the honourable Member is going much beyond his point.

Shri Krishna Chandra Sharma : So my submission is that the question of justice, the question of personal liberty, the question of life is a question related to facts, related to conditions and you cannot run away from the conditions as they prevail in the development of society.

As regards clause (b) in most of the cases a case is withdrawn from the subordinate court on the application of the accused. And in rare instances, it is withdrawn at the instance of the prosecution. It is always pleaded that there is a reasonable apprehension that justice would not be done in the case at the place where the case is being tried. The case is withdrawn from the subordinate court to the High Court; it is withdrawn with the conditions prevailing in that area or the conditions in the court are such that there is reasonable apprehension that justice would not be done there. So, Sir, for the better condition and the sense of confidence, the High Court takes up the case. I say that if the reason underlying is to create a sense of security, a sense of confidence and the High Court judge looks into every aspect of the question, discusses the fact—the evidence has already been discussed, cross-examined and tested I—do not see any reason that there is any cause to reopen the case again before the Supreme Court. For, after all, what would the Supreme Court do? The Supreme Court would discuss the abstract questions of justice. As I already said, life is too much a living thing and differs from the abstract principle and justice need not only be done to the accused, but justice must needs be done to the aggrieved party, to the State, because the State wants stability, the aggrieved party wants revenge and society wants the prevention of crime. All these factors are important and have to be considered and taking all these factors in conjunction with the state of society such as is in this country, I beg to submit that we need not go any further than the High Court and the High Court should be the final forum in criminal cases.

I would support sub-clause (c) and if in any case it is so important, there are any legal points and from the point of view of justice it covers so many other questions, so many other cases or it is a general question of law that there should be uniformity on the principle of law or interpretation thereof, I would submit that sub-clause (c) of the amendment has a case, and may be supported and so also clause (2). I am fortified by a provision in the American Constitution with regard to the Supreme Court. The provision runs :

“Sub-section (2) of article 3.—In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact with such exception under such application as the courts shall make.”

Sir, in the American Constitution, it is said that the judiciary is supreme and it dominates, as against the English Constitution where the Parliament is supreme or against the present Indian Constitution where the executive dominate. So if in America where the judiciary dominates, there is a provision that the power of the Supreme Court would be conditioned or subject

to the law of Parliament, I see no reason why we should go further than the American Constitution. As to what sort of appellate jurisdiction exists in America at present, I beg to read from a book on American Constitution by Prof. Zink :

“At different periods in the history of the United States the exact extent of appellate jurisdiction has varied, but there has been a general trend in the direction of cutting it down. When W.H. Taft became Chief Justice, he found that the Supreme Court was distinctly behind in its docket and devised means for a more prompt disposal of its work. Acting on such recommendations Congress further limited the cases that could be appealed to the court as a matter of right, much to the consternation of many lawyers who felt that almost every case of more than routine consequence ought to be permitted a hearing in the highest court of the land. At present only two varieties of cases may be carried as a matter of right beyond the highest state court or the circuit court of appeals in the federal system (1) where it is asserted that a right or provision of the national Constitution, treaties, or statutes has been denied or ignored, and (2) where a state law or a provision of a State Constitution is alleged to conflict with the national Constitution, treaties made under the authority thereof, or laws passed in pursuance thereof.”

This is the position of the American Supreme Court. As I submitted before, it is accepted that in the American Constitution the judiciary is supreme. Where the judiciary is supreme, the state of affairs are as I quoted from the book. So, Sir, in our country where conditions prevail which require speedy justice and prevention of crime, I do not see any reason for the power being given to the appellate court as in sub-clauses (a) and (b); I would, of course, gladly support the provision in sub-clause (c) and the provision in clause (2).

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, amongst the chorus of praise which this amendment has received from all sections of the House, I am extremely reluctant to make any observations which may sound a note of dissent. It must be taken on the whole that the speeches indicate that the amendment proposed by Dr. Ambedkar has the general support of the House, but at the same time I feel it my duty to refer to one or two points as it may serve to indicate what exactly is the scope of this article 111-A.

The latter part of it, the proviso, is a reproduction of section 411-A of the Criminal Procedure Code relating to appeal from the sentences of the High Court. Under this clause, an appeal shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require. Under clause (c) it is open to the Supreme Court to lay down any restrictions, any conditions as to the right of appeal. Similarly, the High Court may also lay down any conditions as it chooses in regard to the right of appeal. I feel some difficulty, Sir, in finding how this clause takes us further than article 112 of the constitution. Under article 112, the Supreme Court has an unfettered discretion to grant special leave in any criminal case. The terms of article 112 are in no way restricted or conditioned by any such clauses. Supposing for example, in the exercise of its power, the Supreme Court lays down certain conditions, and certain restrictions for the exercise of the power of certification by the High Court, is it intended so far as the High Court is concerned, it will be subject to such conditions as may be laid down by the Supreme Court? Though the conditions themselves will be laid down by the Supreme Court, it is the High Court that is invested with the power to grant a certificate. We will take it that the Supreme Court lays down a rule that a High Court can certify only cases where there is a particular kind of miscarriage of justice, misdirection to the jury or admission of inadmissible evidence or some other thing. Are we to take it that in the exercise of its jurisdiction under article 112. The Supreme Court is not fettered by these rules which are laid down for the benefit of the High Court under clause (c) ? That is a point on which I have no doubt Dr. Ambedkar will enlighten the House : that is, sub-clause (c) taken along with article 112 of the Constitution. If the distinction is

[Shri Alladi Krishnaswami Ayyar]

between certification by the High Court and grant of leave by the Supreme Court, I should think it is meaningless. It is inconceivable that the Supreme Court should say that so far as the High Court is concerned, it may not certify unless certain conditions are satisfied, but so far as the Supreme Court is concerned, it continues to have an unfettered discretion under article 112. That is the point on which I feel some difficulty.

Then, again, with regard to sub-clauses (a) and (b), the position is this. Sub-Clause (a) says : "if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death". That clause will apply to a case where a Full Bench of the High Court has reversed the judgment of the Session Court in a jury trial. An exactly similar case arose recently in Madras wherein a Full Bench of the Madras High Court refused to interfere, and the Privy Council reversed the decision, and the case came back to the High Court and ultimately, the party was acquitted. That is a case where conceivably there has already been an appeal provided within the precincts of the High Court. So far as sub-clause (b) is concerned, that is a case which the High Court has withdrawn for trial before itself from any court subordinate to itself. So far as cases covered by clause (b) are concerned, an appeal will lie directly to the Supreme Court from a decision of a single judge, whereas in the other case, presumably, an appeal will have to be tried in the High Court before an appeal is launched in the Supreme Court.

These are some of the considerations which have induced me in leaning more in favour of, and supporting the amendment which was tabled by Dr. Ambedkar yesterday. It is not that I am hard upon the criminals or that I do not sympathise with the lot of people who may be convicted for murder. Whereas all these considerations can be dealt with in a general revision of criminal law by Parliament they cannot be adequately dealt with in a single article of the Constitution. That is the only reason for which I contended some time ago in connection with the discussion under another article that the matter may conceivably be taken by Parliament. Anyhow, I do not want to sound a note of dissent from what is conceived to be in the larger interests of the criminals of this country. We have also no data exactly as to in how many cases the High Court has interfered with cases of acquittal by the court of first instance. These are the considerations which could be legitimately taken into account in Parliament in making a general legislation. I would have very much preferred Parliament legislating; anyhow, I wanted to place these observations before the House for what they are worth.

Shri Raj Bahadur (United State of Matsya) : Mr. President, I am afraid I may perhaps surprise and disappoint some of my Friends by giving expression to certain doubts and misgivings, about the desirability and wisdom of incorporating this provision in our Constitution at the present juncture and in the present state of our society.

I know that there is ample justification for the view that an accused person must be given the fullest opportunity for defence in a court of law. His right of appeal must not be impaired or restricted in any shape or form. I also recognise the soundness of the healthy principle that the innocence of an accused person must be taken for granted as a presumption unless it is rebutted by solid evidence. Nevertheless, there is another side of the case also. Viewed from the side of the complainant, from the side of the family which has been deprived of one of its near and dear ones by the foul hand of a murderer, is it not simply shocking that under the grab of an appeal, an accused person is provided with an opportunity to postpone or procrastinate the hand of justice? It is very well known what the feeling of the common man in the country is, about the delay in the trial of the Gandhi murder case. Without offering any

remarks on the merits of the case which is still *sub-judice*, I am simply voicing the feeling of the man in the street when I say that in a case where the murder took place in broad day light, in the presence of hundreds of persons, the trial has been hanging fire for over an year. We have got to see that justice is not only done, but it appeals also to be done, and done speedily.

I may submit that the object of criminal justice is three-fold : it is punitive, preventive, and reformative. I submit that so far as the right of appeal is concerned there is a viewpoint that this right of appeal also constitutes the right to delay justice. It is a sort of thing which is very much like the right of “filibustering” enjoyed by the Parliamentarians. I may point out that while this right of appeal may not detract ultimately from the punitive aspect of justice but it may, in a certain measure, detract from its preventive and reformative purposes. It is therefore proper that this aspect of the case must not be lost sight of by us. We know that the system of administration of justice that we have inherited was foisted on the country by the British, and although much can be said in favour or against it, it cannot be denied that it suffers essentially from three fundamental defects, namely, it is very expensive, it involves a lot of delay and at the same time it gives scope for perjury and fabrication of evidence. So the basic question, and the fundamental issue that is before us is not merely giving the right of appeal to a person convicted and sentenced to death here or there before the Supreme Court, but that at some stage—whether the stage has come now or will come in the future is itself another debatable question—we have to take in hand the question and grapple with the problem of the reform of our laws and the entire system of administration of justice. It is a crucial question. Now if we analyse the official amendment—as I would like to call it—we may see that clauses (a) and (b) of the new article give a very limited scope for appeals—we know that it is only once in a blue-moon that an order or acquittal is reversed by the High Court, and that it is also very rare that a High Court takes over a case and decides it itself. So the only right of appeal which may be granted in a substantial number of cases would be the one falling under the purview of sub-clause (c). The very application of this article would, thus, depend upon the rules which have to be made under the proviso attached to the said sub-clause. So everything depends upon the rules; but there is another point also. My honourable and learned Friend Pandit Thakur Das Bhargava happened to observe during the course of his speech to-day that there is justification not only for appeals in cases of sentences of death but in other cases also and that we should take that question also in hand. With all respect to the erudition and experience of my learned Friend Pandit Bhargava I submit that this is bound to involve the same problem, the problem of—to use the rather stale phrase—“Justice delayed is Justice denied”. Obviously also if every criminal case is allowed to go in appeal to the Supreme Court it is bound to result in a considerable amount of delay in the disposal of cases. This would not inspire much confidence in the system of administration of justice. Law’s delays have been proverbial ever since Shakespeare wrote Hamlet. We have to make some such provision in our laws that at least in our country we find out or evolve some method by which we may eliminate those delays. I submit that we should also not lose sight of the fact that recently there has been an appreciable rise in the incidence of crime in our country. Everybody we have reports from provinces and we read reports of crimes in the newspapers. We see that there is almost a sort of crime wave in some parts of the country at least—we cannot lose sight of the happenings that are taking place on our Eastern and Western borders. We cannot lose sight of these facts as also of the incidents that are taking place in Calcutta and around it. We have to take into account the fact that there is bloodshed and turmoil in our neighbouring countries. Only this morning papers showed that while there were wars and battles raging already in the countries on our eastern borders, there has been bombing in a neighbouring country on our western side also. At

[Shri Raj Bahadur]

such a critical juncture it is only proper that we must see that there are no inordinate delays in the disposal of cases and in the administration of justice in our country. I submit that, as the guardians of the freedom and liberty that we have won for the country, we must see that this is not lost in a chaos of crime and lawlessness. I would request that in my humble opinion the question of right of appeals in these cases may better be left over to the Parliament to deal with.

Dr. Bakshi Tek Chand (East Punjab : General) : Mr. President, Sir I have only a few words to say on article 111-A in the form in which it has now emerged in the last amendment which Dr. Ambedkar has moved this morning. This amendment, if I may say with respect, is substantially the same which I had moved yesterday in supersession of the other amendment Nos. 26 and 27 of which notice had been given by me earlier. The only difference between my amendment and the present amendment of Dr. Ambedkar is that clause (b) has been added to meet a certain type of cases—very rare, indeed—which was not covered by my amendment, *viz.*, when a High Court has withdrawn a case from a subordinate Court for trial by itself and at the conclusion of the trial has convicted the accused and sentenced him to death. I think cases of this kind will not be more than two or three in the whole of India in the course of a year. Still this was an omission in the amendment which I had moved and, I agree that the proposed clause (b) incorporated in the article.

On the amended article, different viewpoints have been presented to the House today by honourable Members who have taken part in the debate. On the one hand some Members have said that the right of appeal, given by this amendment, is very limited and it should be enlarged so as to include all cases in which the High Court has on reversal of the order of acquittal passed a sentence on the accused person whether of transportation for life or a lesser sentence. This is the view which Pandit Bhargava strongly urged the other day and has also repeated today. With great respect, I submit that this would be enlarging the scope of the article to unreasonable limits. It will be admitted that it is not desirable to convert the Supreme Court into a Court of criminal appeal for all cases. If that were so, then having regard to the volume of criminal litigation in this country, even in cases of murder or other serious crimes, the Supreme Court will be flooded with criminal appeals. It has been said that expense and enlargement of personnel of the Supreme Court should not stand in the way of giving relief to persons convicted in criminal matters, as life and liberty of human beings is more important than property, with regard to which Civil appeals have been provided for in article 111. But that is hardly a correct view of the case. Life and liberty is certainly more important than property but an unrestricted right of appeal either in civil or criminal matters will do incalculable harm to society. Take an ordinary murder case. In the Presidency towns the trial is held in the High Court sessions assisted by a jury, and in the mofussil and in provinces where the High Court has no original jurisdiction, the accused is tried by a Sessions Judge with the aid of a jury or assessors. In most cases the decision turns on a pure question of fact, and the Sessions Judge after hearing the evidence has convicted the accused and passed a sentence which may be one of death. An appeal is allowed to the High Court as of right; even if there is no appeal by the accused the sentence of death passed by the Sessions Judge has to be confirmed by the High Court. In either case the High Court goes through the whole evidence over again and if it finds that the man has been rightly convicted on the evidence, there are concurrent findings on facts. In such a case it will be undesirable to allow a second appeal to the Supreme

Court. It is not permitted in any country in the world. After all, there must be some limit to appeals and further appeals. It would be wrong in cases where the High Court has agreed with the trial court on questions of fact even if the case is of murder, and the sentence is of death, to allow a further appeal as of right to the Supreme Court. The number of such cases in India including the States under the jurisdiction of the Supreme Court will certainly exceed one thousand a year. And it would be dangerous to allow unrestricted appeals in every such case. It will be remembered that in civil cases the Privy Council has made it a rule of practice not to disturb concurrent findings on facts. If the same rule is applied to criminal cases, in most cases it will be sheer waste of time and money to allow further appeals. The Supreme Court is not likely to differ on pure questions of fact, where on an examination of the evidence, both the trial court and the High Court have concurred. Appeals should be allowed in exceptional cases only and that is what the amendment of Dr. Ambedkar contemplates. Sub-clause (a) confers an important right and remedies an existing lacuna in the law. This relates to cases where a man acquitted by the Sessions Court in the mofussil or at the High Court Sessions in the Presidency towns is, on appeal against such acquittal by the provincial Government, convicted by the Appellate Bench. Here in the first place there is the initial presumption of law that every person is presumed to be innocent until he is proved to be guilty. This presumption is further strengthened by the fact that the trial judge has found him innocent. If against this double presumption, the Appellate Bench finds him guilty and sentences him to death, it is certainly a matter which requires further investigation and the amendment seeks to give a right of appeal to the Supreme Court in such cases. It really is analogous to article 111 dealing with appeals in civil cases where the value of property is Rs. 20,000 or more and the judgment of the Appellate Court is one of reversal of that of the trial court.

Sub-clause (b) relates as I have said already, to a more limited class of cases and really is a corollary to sub-clause (a).

With regard to sub-clause (c) certain apprehensions have been expressed by honourable Members. Shri Alladi Krishnaswami Ayyar thinks that it will come in conflict with article 112, which gives the Supreme Court power to grant special leave to appeal in criminal cases. With great respect I fail to see any conflict between the two. The power of the Supreme Court to grant special leave to appeal is of a peculiar nature. This is at present done in exercise of the Royal prerogative which His Majesty the King exercises through the Judicial Committee of the Privy Council. In the Constitution, the Supreme Court will be invested with the same power by article 112. As I submitted the other day in regard to article 112, it is very much restricted in its scope. The Supreme Court has discretion, which it may exercise in any way it likes and in any kind of case civil, criminal or any other proceeding decided by any court subordinate to it. At present the Privy Council grants leave only in rare cases, where it is of opinion that some principles of natural justice have been departed from,—a phrase which is vague and undefined. It does not cover substantial and serious errors of law or even miscarriage of justice. It is, therefore necessary to provide for appeals in such cases in which the High Court certifies that the case is a fit one for appeal to the Supreme Court. This is sought to be done in clause (c) and its proviso which have been taken verbatim from sub-section (iv) of section 411-A, which was introduced in the Criminal Procedure Code by Act XXVI of 1943. That sub-section however, is limited to cases in which a person has been tried in the original side of a Presidency High Court and has been convicted. Before 1943 there was no right of appeal in such cases, unless the Advocate-General certified that it was a fit case for further appeal; and the matter ended there. It was felt in many cases that though there had been gross miscarriage of justice, yet there was not even one appeal. In 1943 by the amending Act

[Dr. Bakhshi Tek Chand]

an appeal was allowed to a convicted person on questions of law, or even on questions of fact if the trial judge certified that the case was a fit one for appeal or if the Appellate Bench found that the case was one requiring further consideration even on facts.

Then there is the further provision in sub-section (iv) that if the Appellate Bench is satisfied that the case is a fit one for further appeal to the Privy Council, it may give the certificate and the appeal will lie to the Privy Council. This provision, however, is limited only to those cases in which the trial has been on the original side of the High Court. Take for instance the province of Madras. If the crime has been committed within the limits of the presidency town of Madras then the section 411-A applies. But if the crime is committed, say, ten miles beyond or in another place like Trichinopoly or Tanjore, then there is no right of appeal at all to the Appellate Bench nor can the case go to the Privy Council even on certificate by the High Court. What clause (c) of the proposed article 111-A seeks to do is to extend the same provision and the same privilege to persons outside the Presidency towns, that is to say, to the mofussil, in the three Presidencies of Bengal, Bombay and Madras, as well as to other provinces. I submit that is a provision to which no reasonable objection can be taken.

My learned Friend Mr. Raj Bahadur thinks that this article will open the flood-gates of litigation and that every case, regardless of the nature of the crime or of the sentence passed, would be open to appeal to the Supreme Court. With great respect I submit that that is not so. It is only in a very limited class of cases that the High Court is likely to certify that the case is a fit one for appeal. Judges who have themselves decided a particular case are not likely to grant a certificate lightly. They will do in so very very rare cases only. So far as I am aware, after 1943 when section 411-A was enacted, there have not been more than three or four cases in which appeals have gone to the Privy Council. I do not think, that there will be more than eight or ten such cases throughout the year from the whole country. It will only be in a few cases, in which the question involved is of such great and general importance that the High Court will ask the Supreme Court to pronounce an authoritative judgment upon it. I submit, that these provisions are very very salutary and they should be incorporated in the Constitution.

I have only one word to say as regards what my Friend Mr. Naziruddin Ahmad said about contempt of court cases. He thought an appeal should be allowed in those cases as of right. Much as one would like cases in which a person has been convicted for contempt of court to be further reviewed, I am afraid, to allow an appeal to the Supreme Court in every such cases would be going too far. If there is an important question involved in a case, resort can be had to sub-clause (c) of article 111-A.

The provisions of the article in the form in which it has been moved by Dr. Ambedkar in amendment No. 198 meet all the requirements of the case and I would ask the honourable Members to accept it. The apprehensions of those who think that it will encourage crime, I submit, are wholly groundless. Equally groundless are the apprehensions of those who think that it is unduly limited in scope. It is a well-balanced and salutary provision which should find a place in the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question may now be put.

Mr. President : The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I rise to make just a few observations in order to give the House the correct idea of what is proposed to be done by the introduction of this new article 111-A. The first thing which I should make clear is that it is not the intention of article 111-A to confer general criminal appellate jurisdiction upon the Supreme Court. The jurisdiction sought to be conferred is of a very limited character.

In showing the necessity why it is desirable in my judgment to confer appellate criminal jurisdiction upon the Supreme Court as specified the sub-clauses of article 111-A. I proposed to separate sub-clauses (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death: in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that has to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where has been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

Mr. President : May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

The Honourable Dr. B. R. Ambedkar : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been condemned to death he should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case is the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused, person; the Government which has been invested with a right of appeal against the acquittal appeals to the High Court, and the High Court in its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a sessions court he acquits a criminal; then the Government takes an appeal to the High Court on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

Mr. Naziruddin Ahmad : There is a right of appeal in such cases.

The Honourable Dr. B. R. Ambedkar : No. No appeal from the High Court.

Mr. Naziruddin Ahmad : Under section 411-A of the Criminal Procedure Code.

The Honourable Dr. B. R. Ambedkar : Section 411-A applies only to the High Courts of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Courts have acted under section 506. Section 411-A is confined to appeals from the judgment of High Courts sitting on the original side, in sessions. Therefore, Sir...

Pandit Lakshmi Kanta Maitra : Section 526 generally refers to transfer of cases.

The Honourable Dr. B. R. Ambedkar : When a case is transferred and tried by the High Court, there is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principles that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clauses (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the High Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub-clauses (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411, so far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a fit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the provision contained in section 411 of the Criminal Procedure Code. There are two courses open to this House: either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding—to take away a judicial right which has already become, so to say, a vested right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apply to all the High Courts. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Courts. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Court have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty: in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely “Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.” Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

Pandit Lakshmi Kanta Maitra : Modified by the proviso.

The Honourable Dr. B. R. Ambedkar : Yes, as modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clause (a), (b) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this: It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this: should we make it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law, leave the time, the circumstances and the choice to the Parliament of the day?

The Honourable Shri K. Santhanam (Madras: General): May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

The Honourable Dr. B. R. Ambedkar : I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

The Honourable Shri K. Santhanam : It deals with the jurisdiction of the Supreme Court in relation to matters contained in the Union List.

The Honourable Dr. B. R. Ambedkar : Yes, but supposing they want to enlarge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my Friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (3). His first question was, what is the use of having sub-clause (3) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with if, *viz.*, rules to be made by the Supreme Court.

Pandit Lakshmi Kanta Maitra : It is sub-clause (c) and not sub-clause (3).

The Honourable Dr. B. R. Ambedkar : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) as it is by the provisions laid down in the proviso. The first thing I would like to remind my Friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My Friend, Mr. Alladi Krishnaswami Ayyar, will remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) or article 111, hedged as it is with all the limitations as to the rules to be made by the Supreme Court as a man of commonsense. I should think that there must be some residue of good left in sub-clause (c) here, notwithstanding the limitations contained in the provision. My Friend also stated that there is a

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provision contained in article 112 which confers upon the Supreme Court the right to admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or matter. His point was that if that is there, why have sub-clause (c)? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil matters, why have sub-clause (c) in clause (1) of Article 111-A. My answer to him is this: If we can have sub-clause (c) in civil matters, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c), though we have 112? The point to be borne in mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the matter.

Shri Alladi Krishnaswami Ayyar : There is a condition in the case of civil appeals.

The Honourable Dr. B. R. Ambedkar : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt about it that sub-clause (c) will have some value. I therefore submit, Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my Friend will now withdraw their amendments and accept mine.

Shri C. Subramaniam (Madras: General): On a point of clarification, as to the implication of the difference of language...

The Honourable Dr. B. R. Ambedkar : It is too late now.

Mr. President : The Honourable Doctor has not shown in his reply why he makes a distinction between cases in which sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgment of acquittal.

The Honourable Dr. B. R. Ambedkar : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an accused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of difference is that in the case of enhancement the proceedings are converted into regular appeal so that in the case of enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

Mr. President : Supposing in a case the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by

way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

The Honourable Dr. B. R. Ambedkar : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under clause (2).

Mr. President : It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

Shri H. V. Pataskar (Bombay: General): I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar. Now there is a new amendment which has come today, namely No. 198 and the wording there is: "Parliament may by law confer on the Supreme Court any further powers to entertain etc." My amendment was also on principle the same with respect to the Supreme Court being enabled to hear certain appeals, but with respect to the wording, it is liable to be interpreted differently and to my mind is in conflict with article 112 as it stands, because under article 112, there is already jurisdiction to the Supreme Court.

Mr. President : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those honourable Members who think that their amendments are covered by the new amendment of Dr. Ambedkar. I hope, would withdraw them.

The question is:

"That with reference to amendment Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A the following be substituted:—

111-A. (1) The Supreme Court shall have power to entertain and hear appeals from any judgment, Appellate jurisdiction of final order or sentence in a criminal proceeding of a High Court in the territory of India—
Supreme Court with regard of India—
to Criminal matters.

- (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or
- (b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

"(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

The amendment was adopted.

Mr. President : I shall take the other amendments, and I shall see how far the other amendments are covered by this. There are several amendments moved, and so I shall take each one of them and see how far that amendment is covered by the amendment which has been carried and to the extent it is not covered, I shall have to put that to vote.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments.

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

Mr. President : That simplifies the matter. There are so many of them.

Shri Jaspal Roy Kapoor (United Provinces: General): The whole of my amendment (No. 22) is not covered by Dr. Ambedkar's new amendment. It does not include the case to which you have drawn his attention, namely, the case of death penalty being imposed in revision. However, I withdraw my amendment.

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

Shri H. V. Pataskar : I would like to withdraw amendment No. 25 standing in my name.

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

Mr. Naziruddin Ahmad : Sir. I would ask leave to withdraw amendment No. 33.

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

Mr. Naziruddin Ahmad : I have amendment No. 41 which is not fully covered by Dr. Ambedkar's amendment. There are three points which are not covered.

Mr. President : Then you do not withdraw it?

Mr. Naziruddin Ahmad : I do not, Sir.

Mr. President : Then, I will put amendment No. 41 which is not covered by Dr. Ambedkar's amendment, to vote.

Mr. President : The question is:

"That with reference to amendment No. 1932 of the List of Amendments, after article 111. The following new article be inserted:—

'111-A. Any person against whom any judgment, sentence or order has been passed by a High Court in the territory of India except the States for the time being specified in Part III of the First Schedule, in any criminal proceeding or any proceeding relating to contempt of Court, or from any judgment, sentence or order of any other tribunal exercising criminal jurisdiction which judgment, sentence or order is not liable to be set aside or modified in appeal or revision by any such High Court, shall have a right of appeal in the following cases, namely:—

- (a) against any sentence of death:
- (b) against any other judgment, sentence or order of such High Court or tribunal, as the case may be, that the judgment, sentence or order involves a substantial question of law; or
- (c) in any other case where the High Court or the tribunal, as the case may be certifies that it is a fit case for appeal."

The amendment was negatived.

Mr. President : The question is:

"That article 111-A, as amended, stand part of the Constitution."

The amendment was adopted.

Article 111-A, as amended, was added to the Constitution.

New Article 103-A

Mr. President : This is a new article sought to be added by Dr. P. K. Sen by his amendment No. 1870 which is printed at page 190 of the first volume of amendments. The honourable Member though he is not here now had

moved this amendment and therefore, it has to be put to vote or discussed, if any one wishes to say anything. (No Member rose)

I shall put it to vote.

The question is:

“That after article 103, the following new article be inserted:—

‘103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other than that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India. Depute a judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a Proclamation of Emergency is in force, if such appointment is certified by the President to be necessary in the national interest.’ ”

The amendment was negatived.

Article 164

Shrimati Purnima Banerji (United Provinces: General): Mr. President, I have a suggestion to make with regard to this article. This article refers to the method of voting in the Houses of the Legislature Assembly of a State and the Legislative Council of States and its right to function notwithstanding vacancies in these Houses. In article 164 there is also a passing reference to a joint sitting of both the Houses. I suggest, Sir, that article 172 where the question of “joint sitting” is taken up in greater detail, and which involves certain principles in which we are all interested should be taken up first. I therefore suggest that article 172 should be taken before this article is taken because once we pass this article dealing with the question of joint sittings we shall be committed to the principle of joint sitting and all the aspects of the problem will not be placed before the House.

Mr. President : Therefore, you suggest that this should not be taken now?

Shrimati Purnima Banerji : Yes, Sir.

An Honourable member : It should be taken after article 172.

Shri T. T. Krishnamachari (Madras: General): While I appreciate Shrimati Purnima Banerji’s suggestion, the words relating to a “joint sitting” here come only by the way, and if we decide to alter the appropriate articles in a different way, the Drafting Committee might just delete the words occurring here that relate to a joint sitting. If there is no reference to a joint sitting in the appropriate article, this will automatically go. There is no substance attached so far as the reference to “joint sitting” is concerned in this particular article. It is left to the Chair. If you permit the Drafting Committee to make the changes at the appropriate time in the article this article might be discussed.

Mr. President : I think it does not really touch the question whether we should have a joint sitting or not. If the other parts of the Constitution do not provide for a joint Session, then, this article will not operate at all, so far as joint sitting are concerned, and the particular expression may even be dropped later on. There is no reason for holding it up. We may take it up and dispose of it.

Dr. Ambedkar, you may move amendment 2389, though it is a formal one.

Shri Mohan Lal Gautam (United Provinces: General): I take it, Sir, that your ruling is that even if we pass this article, it will have no prejudicial effect so far as article 172 is concerned.

Mr. President : Yes; That is what I have said.

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

“That in clause (1) of article 164 for the words ‘Save as provided’ the words ‘Save as otherwise provided’ be substituted”.

(Amendment Nos. 2390 to 2396 were not moved.)

Shri Jaspal Roy Kapoor : Sir, I beg to move:

“That with reference to amendment No. 2389 of the List of Amendments, in clause (1) of article 164, for the words ‘in a House’ the words ‘at any sitting of a House’ be substituted.”

To this there is another amendment;

Sir, I move:

“That with reference to amendment No. 61 above, in clause (1) of article 164 for the words ‘in a House or a’ the words ‘at any sitting of a House or’ be substituted.”

The object of this amendment is obviously to make a necessary improvement in the drafting of this article and I hope it will be appreciated by Dr. Ambedkar and that he will readily accept it.

Mr. President : The question is:

“That in clause (1) of article 164 for the words ‘Save as provided’ the words ‘Save as otherwise provided’ be substituted.”

The amendment was adopted.

Mr. President : Then, I shall put amendment 62 which will cover the other amendment also.

The question is:

“That in clause (1) of article 164, for the words ‘in a House or a’ the words ‘at any sitting of a House or’ be substituted”.

The amendment was adopted.

Mr. President : The question is:

“That article 164, as amended, stand part of the Constitution.”

The motion was adopted.

Article 164, as amended, was added to the Constitution.

New Article 167-A

Mr. President : We now take article 167-A, amendment No. 65. This arises out of amendment No. 2441 and this is for the addition of another article after article 167.

Shri B. A. Mandloi (C.P. & Berar: General): Mr. President, I beg to move amendment No. 2441 on page 247 of Volume I.—

“That after article 168, the following new article 168-A be inserted:—

‘168-A. On a question being raised or having arisen whether a member has incurred the penalty for the breach or breaches mentioned in article 168, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be, shall refer the matter to the Committee of Privileges or to a sub-committee appointed by him for its report. The Chairman or the Speaker shall give his decision after the report has been discussed in the House-Council and the decision of the Chairman or Speaker, shall be final.’”

Sir, the House has passed article 167 and 168 regarding the disqualification for membership, and the penalty for sitting and voting before making the declaration prescribed in article 165 or when not qualified, or when disqualified.

Having accepted these articles, naturally, the question arises as to who is the person to decide the question whether a particular member has incurred a disqualification or not. Therefore, the necessity to incorporate a new article to empower a particular person or authority to give decision on these questions arises.

Now, if we agree to this course, two important things have to be borne in mind: that the decision of the person or authority so empowered should be final, *viz.*, the decision of the person or authority duly empowered should not be challenged in a court of law, which would necessarily prolong the litigation and defeat the very object of the articles. Therefore, whatever authority is empowered to give a decision, its decision should be final. The other important thing to be borne in mind is that the matter should be decided as early as possible, because, under article 168, there is a penalty of Rs. 500 a day for a member who is under a disqualification and who sits or takes part in the proceedings, or votes on a particular motion. As soon as the question is raised that a particular member is under a disability, that particular member would naturally like the decision to be given as early as possible. Where he takes part in the proceedings and ultimately the decision goes against him, then, he would be liable to a penalty and if, as a prudent man, he does not take part in the proceedings and ultimately the decision goes in his favour, then, he loses his valuable right of participating in the deliberations. Therefore two important factors have to be borne in mind, *viz.*, that the decision should be final and that it should be given as early as possible. My submission is that the Speaker or the Chairman of the Assembly or the Legislative Council are quite competent persons who should be empowered to give decisions on such questions. We know, Sir, that the Chairman and the Speaker are required to give important rulings on questions raised in the House on the spur of the moment, and they are very competent persons to give the decision whether a particular person has incurred the disability or not. I have in my amendment suggested that the matter should be referred to a Sub-Committee or to a Committee of Privileges and as soon as the matter is shifted by that Committee, the report would be placed before the House when it will be discussed and ultimately the Speaker or Chairman would be in a position to give its decision on such matters and therefore I submit that this amendment of mine should be accepted by the House.

Mr. President : You may move your amendment No. 65 also.

Shri B. A. Mandloi : I have moved my original amendment No. 2441. Amendment No. 65 is an amendment to my amendment. I am not moving amendment No. 65. My honourable Friend Shri T.T. Krishnamachari may move amendment No. 65.

Shri T. T. Krishnamachari : If he is not moving, I shall move No. 65. Sir, I beg to move:

“That in place of No. 2441, the following new article be inserted:—

‘167-A. (2) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualification mentioned in clause (1) of the last preceding article the question shall be referred for the decision of the Governor and his decision shall be final.

Decisions on questions as to disqualification of members.	
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(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.’”

Sir, I would ask the House to accept this amended version of the amendment moved by the Honourable Mr. Mandloi for this reason, that there are certain difficulties in the matter of practical application if amendment No. 2441 is accepted, *viz.*, that there will undoubtedly be a time, even if we are

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to endow the Speaker of a House with all the powers to put into operation the disqualifications under 167, when the Speaker will not have been elected and for another even the member who is elected as Speaker might be subject to some of the disqualifications and, as the scheme now stands, the permanent Head of the State will be the person who can take action. The doubt can be raised that once the Speaker is elected, his powers should not be infringed upon. I do believe on a previous occasion also in connection with the articles relating to Parliament this difficulty was felt but we got over it by the provision that in regard to all that has to be done in a House, if the President has powers, they will be delegated to the appropriate authority who might happen to be the Speaker. It is not likely that in this instance the Governor will act in this entirely unilaterally; he will act on the advice of his Ministers and naturally they will not do anything without consulting the Speaker. The second clause presupposes the bringing into being of an Election Commission which finds mention here for the first time and it relates to the Chapter on Elections articles 289 onwards, and the Drafting Committee have proposed by appropriate amendments to bring into being an Election Commission which will have the final say in all election matters. Therefore in order to prevent the Governor from acting himself or even acting on the advice of his Ministers from motives which might not be proper, the second clause lays the responsibility on the Governor and his advisers to obtain the opinion of the Election Commissioner or whoever decides the matter on behalf on the Election Commissioner. I believe this amendment covers the lacuna which my honourable Friend Mr. Mandloi wanted to fill in by his amendment No. 2441. The prestige of the Speaker is not involved in this because we are not taking away any power from the Speaker but we are only contemplating what is to happen when the Speaker may not have come into being. I do hope the House will accept this amended version of Mr. Mandloi's amendment No. 2441.

Kazi Syed Karimuddin (C.P. & Berar. Muslim): Sir, I would like to move No. 66 which stands also in my name. Mr. President, I beg to move:

“That in amendment No. 65 above, in the proposed new article 167-A—

- (i) in clause (1), for the words ‘Governor and his’ the words ‘Election Commission and its’ be substituted; and
- (ii) clause (2) and the figure ‘(1)’ occurring at the beginning of clause (1) be deleted.”

Sir, I have heard Mr. Mandloi. According to him the Speaker will be the proper authority and on the report of the Committee to be appointed by him this decision should be finally made by the Speaker. I have two objections to his amendment, first that the point about the disqualifications of a member is very important and it has to be enquired into in great detail. Of course the members of the Committee that would be appointed must belong to a political party and the decision in regard to disqualification of members should not be entrusted to members of a political party. Therefore, it is better that this matter is entrusted to the Election Commission. But in the amendment moved by Mr. T. T. Krishnamachari it is said in clause (2) that before giving any decision on any such question the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion. According to this sub-clause (2) the Governor becomes only the Post Office, because when once it is said that the opinion of the Governor shall be final and the same breath it is stated that he will be bound by the opinion of the Election Commissioner, then why not accept the decision of the Election Commission and say its decision will be final and it will be pronounced by the Election Commissioner? Therefore I have moved this amendment and I commend it to the House.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, I find Mr. Mandloi's amendment quite specific and distinct from the one moved by Mr. Krishnamachari. Mr. Mandloi's amendment relates only to article 168, and he wants the subject matter of breaches of the article to be decided by the Chairman or the Speaker, whereas Mr. Krishnamachari's amendment is a general one relating to disqualifications. Election malpractices or corruption should certainly go to an Election Commission. Article 168 reads:

"If a person sits or votes.....before he has complied with the requirements of article 165 etc."

Article 165 relates to oath of a member, and if he refuses to take the oath it would not be proper to send it to an Election Commission. In the past the Speaker has refused to allow such a member to speak and Mr. Mandloi wants to give the Speaker this right, while Mr. Krishnamachari's amendment is a general one relating to disqualification.

Mr. President : It does not relate to article 165 only; in the subsequent portion it relates to other things also.

Shri R. K. Sidhva : My point is about refusal to take oath. Then there are also matters like insanity. If a member is insane it is for the Speaker to decide.

Mr. President : What is he take an office of profit after election or becomes insolvent? These are covered by article 167.

Shri R. K. Sidhva : These cases should go for inquiry. But if he does not take the oath would you allow him to sit in the Assembly? I submit the thing is confused and should be made clear.

Prof. Shibban Lal Saksena : Sir, I agree with Mr. Sidhva that there is some confusion in the amendment moved by my Friend Mr. Krishnamachari. Mr. Mandloi pointed out a lacuna in article 168 he said the Speaker should decide whether a person has incurred the prescribed penalty or not. There are two things involved in this matter; (i) whether the person is disqualified to sit in the chamber or not, (ii) whether he has incurred a penalty or not. The conditions of becoming disqualified are contained in article 167, on the basis of which it should be decided whether a disqualification has been incurred or not. This obviously the Election Commission alone can decide properly. As regards not taking the oath, etc., the Speaker should be the person to decide straightaway. So there should be two new clauses, 167-A and 168-A. It should be mentioned in 167-A that question whether a member has become subject to any of the disqualifications should go to the Election Commission; and in 168-A it should be mentioned that the Speaker should decide whether a member has incurred the penalty or not. Bringing in the Governor will nor improve matters and he should have nothing to do with it. The Election Commission will say whether there is a disqualification or not and the Speaker will decide whether the penalty has been incurred or note. There is some inconsistency and it should therefore be divided into two parts as I have suggested, *viz.*, 167-A and 168-A, relating to disqualification, to be decided by the Election Commission, and penalty, to be decided by the Speaker.

The Honourable Shri K. Santhanam : Sir, I think the objection to asking the Governor to decide is mistaken because the whole new clause refers to disqualifications mentioned in 167(1). Not taking the oath of office is not a disqualification. Until the person takes the oath he is not entitled to act and after some time his seat will become vacant automatically. It is no disqualification and my honourable Friend Mr. Sidhva may be assured that in this matter the Election Commissioner or the Governor does not come into the picture. But many of the disqualifications will require detailed investigations,

[The Honourable Shri K. Santhanam]

e.g., whether a person owns allegiance to a foreign power, etc. Here records and evidence will have to be called for and surely the Speaker should not be made a judicial officer for this purpose and correspond with officials, etc. Another fundamental principle is that the Speaker should not come into a position of conflict with a member. No one knows what the result of the investigation is going to be, but during the process of investigation, if the Speaker conducts it, the relations between him and the member are bound to be strained. It is not therefore right to invest the Speaker with any such functions. In some Parliaments the Parliament itself sets up a Credential Committee or some such machinery to investigate such matters and pronounce judgment. We can certainly adopt such a procedure, but having set up an Election Commission which will be competent to deal with such matters it is not necessary to devise such a procedure. So far as the Governor is concerned, he is brought in merely because he is the executive head and the convenient instrumentality by which the thing can be done. He himself has no discretion in the matter and his decision will be bound by the opinion of the Election Commission. One amendment suggests: why not bring in the Election Commission direct? It is simply because the matter has to go through the executive head of the State. It is only on an understanding of the correct procedure that it has been put in. As a matter of fact it is the Election Commission which will be invested with jurisdiction to go into all these matters and pronounce whether a Member is qualified or disqualified.

Another point has been raised that under article 168 when a decision on disqualification of membership is pending for a long time a member who attends the House may be put to very heavy penalties. It is quite true. But there is nothing which compels a Member who is charged with disqualification to attend the House. He attends at his own risk. If he is absolutely certain that he is not disqualified he is certainly entitled to take the risk and attend. But if he does attend while a charge of disqualification is pending and if finally it is proved that he is actually disqualified, then he has taken a deliberate and calculated risk and he must pay the penalty. I do not think he deserves so much sympathy. I think the clause as it has been moved by my honourable Friend Mr. T.T. Krishnamachari ought to be supported.

Mr. Tajamul Husain (Bihar: Muslim): Sir, a person cannot be a member of a provincial legislature if he is a government servant or is of unsound mind or is an undischarged insolvent or is a foreigner or is disqualified by law. This is a very sound principle. The question now before us is who is to declare the members disqualified. We have got amendments here. One amendment says that the Speaker should refer the matter to the Committee of Privileges—the Speaker of the Legislative Assembly or the Chairman of the Legislative Council—the matter will be discussed by the Committee and then the Speaker or Chairman will decide it. The other amendment suggests that the Governor should decide it after consulting the Election Commission.

There is one flaw as regards the former amendment and it is this. Suppose there is no Committee of Privileges. So far we have not got any Committee of Privileges in the Draft Constitution. Then what are we to do? Another point is that the House may not be sitting. When the House is called and the matter is discussed it will mean considerable delay. There should be a quick decision and for this the Governor is the best person. The only objection in leaving it to the Governor is that he will be guided by the Cabinet by the Prime Minister. But in this matter the Prime Minister will have nothing to do and the Governor will not consult the Prime Minister. He will consult

the Election Commission which is the sole authority. And whatever the Election Commission report, that will be final and binding on the Governor. Therefore, out of these two amendments I think the second amendment seems more reasonable and it should be accepted.

Pandit Thakur Das Bhargava : Sir, a perusal of amendment Nos. 65 and 2441 leaves no doubt in my mind that they envisage different sets of facts. Amendment No. 65 is clear that so far as the question relates to part (1) of article 167 it is a matter within the jurisdiction of the Election Commission and on the advice of the Election Commission the Governor shall decide the question. In regard to article 168, an amendment has been moved that the Speaker should be given power. May I humbly submit that so far as article 168 is concerned it describes the offence, which will be governed by the law of the land. Let us examine what the offence is. The offence lies in this, that a member who is fully cognizant of the fact that he is committing a crime yet persists in attending the House. A member who has not taken the oath has no right to attend the House. He knows he has not taken the oath, yet he persists in sitting in the House. Similarly when he knows that he is not qualified or disqualified.....

Mr. President : Can he sit in the House at all if he has not taken the oath?

Shri R. K. Sidhwa : He can sit in the House but cannot participate in the debate unless he takes the oath. He cannot vote.

Mr. President : But does he become a member before he takes the oath?

Shri R. K. Sidhwa : Yes, that has been held by previous Speakers.

Mr. President : I find article 165 is clear. It says:

“Every member shall, before taking this seat, make and subscribe before the Governor.....a declaration according to the form set out for the purpose in the Third Schedule.”

So he has to take the oath before he sits.

Pandit Thakur Das Bhargava : So a person who has not taken the oath fully knows that he is committing a crime and therefore he is a person who should be dealt with under the ordinary law of the land and the Speaker does not come in at all. We are here considering the case of a person who is to his own knowledge committing an offence. He should be dealt with under the ordinary law of the land and he will be fined and the fine will be recovered as a debt due to the State. I do not therefore think that the House should accept the amendment moved by Mr. Mandloi. I support the amendment moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Sir, various points have been raised in the course of this debate and I should like to deal with them only one by one. If I heard my Friend Mr. Sidhwa correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhwa : Why should it go to the Election Commission?

The Honourable Dr. B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused: there is only disability of taking part in the proceedings of the House.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the main amendment moved by my honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not expressly stated it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned. I find no difficulty in accepting it.

Now I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If Members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgement or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e) I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167. I would therefore with your permission propose to amend clause (2) thus: "Before giving any decision on any question relating to disqualifications arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar: What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the Course of the election, after the election has taken place and the member has taken his seat.

Mr. President : Is not the election Commission entitled to deal with such cases?

The Honourable Dr. B. R. Ambedkar: Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of court that he has committed offences under the Election Act. That would also come under (e) After a man has taken his seat.....

Mr. President : It seems to me that there are two kinds of disqualifications. A Member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar: That would depend upon what sort of procedure we lay down at a later stage.

Mr. President : But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar: That is what (e) provides for.

Mr. President : Then other disqualifications may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

The Honourable Dr. B.R. Ambedkar: Those are dealt with Here. They are all about sitting members.

Shri L. Krishnaswami Bharathi : Please read the amendment.

The Honourable Dr. B. R. Ambedkar: There are two sorts of disqualifications: disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are chosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam : Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar: That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provisions permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things jumped together.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, there are now different disqualifications set out against becoming a member and against continuing to a member. Both are covered by article 167 (1). To make it clearer it is necessary to say that a person shall be disqualified for being chosen as, or for continuing to be a member of the legislature. If it is necessary to make it clearer we may do so.

Pandit Hirday Nath Kunzru (United Provinces: General): A closure motion was moved and you accepted it. I should have thought therefore that Dr. Ambedkar's reply to the debate would put an end to the discussion on the subject.

Mr. President : I am sorry I missed the point.

Shri M. Ananthasayanam Ayyangar : May I make one submission to you. I am not going to speak. I bow to your ruling. Dr. Ambedkar has tried to move an amendment in his final reply. Otherwise if the motion moved by Mr. T.T. Krishnamachari is put to the vote, I have no objection. I have come here to suggest that Dr. Ambedkar should withdraw his amendment which he tried to move in his reply.

Mr. President : You have now done that. I am sorry I had forgotten that closure has been adopted.

Shri R. K. Sidhva : What about Dr. Ambedkar's amendment? We cannot accept it as an amendment at this stage.

Mr. President : If it had been accepted by the mover, it could have been a different matter. The question is:

"That in amendment No. 65 of List I in the proposed new article 167-A

- (i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its' be substituted; and
- (ii) clause (2) and the brackets and figure '(1)' occurring at the beginning of the article be deleted."

The amendment was negatived.

Mr. President : Then Mr. T.T. Krishnamachari's amendment.

Some Honourable Members: With or without Dr. Ambedkar's amendment?

Mr. President : Without. The question is:

"That for amendment No. 2441 of the List of Amendments, the following be substituted:—

"That after article 167, the following new article be inserted:—

167-A. (1) If any question arises as to whether a member of a house of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of last preceding article, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.' "

The amendment was adopted.

Mr. President : Since this amendment is passed, Mr. Mandloi's amendment falls through. The question is:

"That new article 167-A stand part of the Constitution."

The motion was adopted.

New article 167-A was added to the Constitution.

Article 171

Mr. President : There is only one amendment to this article, No. 67.

Shri Satish Chandra (United Provinces: General): I do not wish to move the amendment, but I would like to have clarification that the ruling you have given just now in respect of article 164 will also apply to this article, and if the principle of joint sittings of the two Houses of the state legislature is not accepted later on, all the consequential amendments to this article will be made by the Drafting Committee.

Mr. President : Yes, I think it will apply to this also.

The question is:

“That article 171 stand part of the Constitution.”

The motion was adopted.

Article 171 was added to the Constitution.

Article 175

Mr. President : There are certain amendments to this.

There is one by Sardar Bhopinder Singh Man.

Shri T.T. Krishnamachari : Articles 175 and 176 may be held over.

Shri M. Ananthasayanam Ayyangar : What about 172?

Mr. President : It is being held over. It is not being taken up today.

Article 187

(Amendment Nos. 2524 to 2529 were not moved)

Pandit Hirday Nath Kunzru : Mr. President, Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 187, for the words ‘six weeks from the reassembly of the Legislature’ the words ‘two weeks from the promulgation of any Ordinance’ be substituted.”

With your permission, Sir, I should like to move another amendment which is consequential to the amendment that I have moved. I moved:

“That the Explanation to clause (2) of article 187 be deleted.”

Sir, a similar question came up for discussion the other day with regard to the duration of the Ordinances issued by the Governor-General. My position today on this question is generally what it was the other day, but I feel that where the members of the Legislature live in a compact area, an area which is much smaller than that from which the members of the Central Legislature are drawn, it should be comparatively speaking much easier for them to meet. The period of fourteen days during which I should like an ordinance issued by the Governor to be placed before the Legislature should therefore be employed for the purpose.

The article as it is, Sir, provides an Ordinance issued by the Governor shall remain in force as long as the Legislature of his province does not meet. Even when the legislature meets it will remain in force for six weeks from the re-assembly of the Legislature “unless before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or as the case may be on the resolution being agreed to by the Council.” This means that as there may be an interval of more than five months between two sessions of the legislatures, it is obvious that an Ordinance issued by a Governor may remain in force for as long as five months or any period less than six month and six weeks more.

The explanation to clause (2) says that when there are two Houses of the Legislature to a State and they re-assemble on different dates the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause. Suppose that the Second House meets a month later than the Assembly. This will mean that the Ordinance will remain in force for some period less than six months *plus* the period of one month during which the Second House does not meet *plus* six weeks, unless before the expiry of six weeks a resolution disapproving of it is passed by the Legislative Assembly and is agreed

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to by the Legislative Council. Now it seems to me to be wholly unnecessary that an Ordinance which is an executive act should remain in force for so long a period. If an emergency arises requiring the promulgation of an Ordinance, requiring the executive to act without securing the permission of the Legislature, it is necessary that the Legislature should be summoned without unnecessary delay. I think therefore that the period during which it may remain in force should be reduced considerably.

The question then arises what should be the period that might be allowed to elapse before the Legislature meets to consider the Ordinance? I think that even in the biggest province two weeks will be ample for the meeting of the Legislature. It is clear, Sir, that if the Legislature were sitting when the emergency arose, then, however great and serious the emergency might be and however necessary it might be in the opinion of the executive to take immediate action, the executive would not be able to act without having a law passed by the Legislature. When the Legislature is not sitting, it is reasonable that the executive should be allowed to promulgate a measure that would have the same effect as an Act of the Legislature, but whatever the nature of the emergency may be, it can not justify the continuance of the Ordinance even for a day longer than is necessary to summon the Legislature and place the whole matter before it. The existence of a crisis, Sir, does not justify the executive in proceeding in such a way that an Ordinance passed by it may remain in force for as long as possible under the provisions of this article. The point of view of the executive should be not to delay the meeting of the legislature so that the Ordinance may remain in force as long as is possible legally, but to summon the legislature and place the matter before it as early as possible. It is only if it acts in this manner that its action will be in consonance with the spirit of the Constitution and the powers of the legislature in regard to all matters needing legislative sanction. I think, therefore, Sir, that my amendment is thoroughly reasonable. It will give the executive the power to act in at emergency and it will also enable the representative of the people to see that the ordinance does not remain in force unnecessarily, or, if it goes beyond the needs of the case, is modified in accordance with the judgment of the legislature.

As I pointed out the other day, the objection to a procedure of the kind laid down in this article is not merely that it unnecessarily prolongs the duration of an Ordinance, but that it prevents the legislature from considering whether the terms of the Ordinance are justified by the emergency. The legislature when it meets, may either disapprove of the Ordinance or if it agrees with the executive in thinking that a special situation calling for special action exists, may feel that the Ordinance confers excessive powers on the executive and may modify it in such a way as to safeguard the liberties of the ordinary man in so far as this is consistent with the existence of an emergency. When a crisis occurs, it does not mean that the rights of the people are to be suspended altogether. A situation may arise where this has to be done; but such a situation will obviously be of an exceptional character. In other situations requiring special action to be taken, the ordinary rights of the citizen should be protected as far as possible. It is necessary, therefore, that any Ordinance that is passed by the executive should be submitted to the scrutiny of the representatives of the people as early as possible.

(Amendment Nos. 2531, 2533 and 2534 were not moved.)

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That for amendment Nos. 2523, 2525, 2526, 2527, 1529, 2530 or 2532 to 2534 of the List of Amendments, the following be substituted:—

- (i) That in clause (1) of article 187, for the words ‘for him to take immediate action, he may promulgate such Ordinances as the circumstances

appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted, and the proviso to the clause be deleted.

- (ii) That in clause (2) of article 137, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' be substituted.
- (iii) That in sub-clause (b) of clause (2) of article 187 for the word 'Governor' the word 'President' be substituted.
- (iv) That in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

Sir, after these amendments, the article will read as follows:

"187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary that immediate action be taken, he shall report the matter to the President who may then promulgate such ordinances as the circumstance appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him, but every such Ordinance—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution, or, as the case may be, on the resolution being agreed to by the Council; and
- (b) may be withdrawn at any time by the President.

Explanation.—Where the House of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor or by the President, it shall be void."

Sir, I did not wish that our Constitution should be disfigured by any power of making Ordinances by the President or by anybody else. But, now the House has already accepted that the President shall have the power of making Ordinances on certain occasions. I only want that if Ordinance making power is to be provided for, then this power should be confined only to the President and should not be conferred on each and every Governor. There may be about thirty Governors in the Country. I want that this power, which is an extraordinary one, should be confined only to the President of the Union. Therefore, I say if an emergency arises instead of the Governor himself passing an Ordinance, he must report the matter to the President who may then promulgate such Ordinances as may appear to him to be necessary. Of course, the Governor will have to justify to the President that it is necessary that such an extraordinary measure should be taken. The President and the Prime Minister will consider and take proper steps. An Ordinance in effect means the taking away of the entire power of the legislature and therefore, it should not be freely resorted to. In the Constitution for Free India which we are framing, we are still thinking in terms of the period of slavery through which we have just passed. I hope very soon the times will change and people will insist that no Ordinance should be passed and that everything should be done by the legislature by the peoples' representatives, and then, we shall resent any Governor issuing any Ordinance. I therefore think that this power of making Ordinances should not be conferred on every Governor, but should be conferred on the President only, if at all. When any

[Prof. Shibban Lal Saksena]

particular province wants an Ordinance, that Governor should report the matter to the President and shall then consider whether an Ordinance should be promulgated or not. That would also keep the Center informed of the situation in the provinces and would ensure that the Ordinances that are passed are passed after careful consideration.

The rest of my amendments are only consequential so that the main amendment is that the power of making Ordinances should be reserved to the President and should not be given to anybody else. I hope this amendment will commend itself to the House and will be accepted.

Shri Jaspal Roy Kapoor : Sir, my amendment No. 74 being more in the nature of a drafting amendment, I will simply wish that the Drafting Committee may take it into consideration while giving final touches to the Draft.

Pandit Thakur Das Bhargava : I submit the same thing with regard to amendment no. 75, Sir.

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

(No Member rose)

The question is:

“That for amendment Nos. 2523, 2525, 2526, 2527, 2529, 2530, or 2532 to 2534 of the List of Amendments, the following be substituted:—

- (i) That in clause (1) of article 187, for the words ‘for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require’ the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require’ be substituted.
- (ii) That in clause (2) of article 187, for the words ‘assented to by the Governor’ the words ‘which has been reserved for the consideration of the President and assented to by him’ be substituted.
- (iii) That in sub-clause (b) of clause (2) of article 187 for the words ‘Governor’ the word ‘President’ be substituted.
- (iv) That in clause (3) of article 187, after the words ‘assented to by the Governor’ the words ‘or by the President’ be inserted and the proviso to the clause be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 187 for the words ‘six weeks from the re-assembly of the Legislature’ the words ‘two weeks from the promulgation of any Ordinance’ be substituted.” and

“That the Explanation to clause (2) of article 187 be deleted.”

The amendments were negatived.

Mr. President : The question is:

“That article 187 stand part of the Constitution.”

The motion was adopted.

Article 187 was added to the Constitution.

New Article 196-A

Mr. President : We take 196-A. This is an amendment No. 2639, of which Dr. P.K. Sen has given notice. A similar amendment relating to Supreme Court was moved by Dr. Sen, but was negatived today.

(Amendment No. 2639 was not moved.)

So it is dropped.

Article 203

Mr. President : We take up 203.

The Honourable Dr. B. R. Ambedkar: It is to be held over.

Shri T. T. Krishnamachari : 203 (2) (b)—there is the question of whether the particular sub-clause should be retained or modified. We require some time and might be ready with it tomorrow.

Article 208

Mr. President : We take up 208. There is no amendment to that.

That question is:

“That article 208 stand part of the Constitution.”

The motion was adopted.

Article 208 was added to the Constitution.

Article 209

Mr. President : Article 209. There is no amendment to this either.

The question is:

“That article 209 stand part of the Constitution.”

The motion was adopted.

Article 209 was added to the Constitution.

New Article 209-A

Mr. President : There are certain new articles proposed No. 209-A.

The Honourable Dr. B. R. Ambedkar: 209-A is to be held over.

Mr. President : Mr. Shibban Lal Saksena has given notice of one.

Prof. Shibban Lal Saksena : That also may be held over.

Pandit Hirday Nath Kunzru : Sir, I suggest in view of the Kangaroo procedure that is being adopted in regard to the discussion of the Constitution that all the articles should be postponed today and that we should be told definitely which articles will be discussed tomorrow. The procedure that is being adopted—for no fault of yours—is very inconvenient.

Mr. President : So far as today's Order Paper is concerned, that particular article which have been taken up are mentioned in it.

Pandit Hirday Nath Kunzru : What you have said is perfectly true but suppose it is put down on the Order Paper that the Constitution will be discussed this does not mean that any Member of the House can come prepared to deal with all the articles in the Draft Constitution on one and the same day.

Mr. President : So, far as today's Order Paper is concerned, the particular article which have been taken up are mentioned and I have taken them up in the order in which they are mentioned on the Order Paper. There was a complaint made the other day and so I suggested that the particular article should be mentioned.

I think we had better adjourn till 8 A.M. tomorrow.

The Assembly then adjourned till Eight of the Clock on Wednesday the 15th June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 15th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Article 203

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. President, Sir, I move:

“That in article 203, for the marginal heading, the following be substituted :—

‘Power of superintendence over all courts by the High Court.’”

I also move:

“That in clause (2) of article 203, before the words ‘The High Court may’, the words ‘without prejudice to the generality of the foregoing provisions’, be inserted.”

I further move:

“That with reference to amendment No. 2664 of the List of Amendments—

- (i) in clause (1) of article 203, after the words ‘all courts’ the words ‘and tribunals’ be inserted;
- (ii) in clause (2) of article 203, sub-clause (b) be omitted.”

(Amendment No. 2665 was not moved.)

Shri H. V. Kamath (C.P. & Berar & General) : Mr. President, I move:

“That in clause (2) of article 203, before the words ‘Every High Court’ the words ‘In particular’ be inserted.”

If the House reads the article with all the clausers together it will see that clause (1) specifies certain general powers with which every High Court is sought to be invested under this article. To my mind therefore it appears that so far as clause (2) of this article is concerned, which provides for certain specific powers or invests the High Court with powers in certain cases, it is necessary that this clause should particularise these specific provisions. Clause (1) has certain general provisions. Clause (2) which follows clause (1) and which specifies certain particular things must provide that the High Court may in particular do this and do that.

As regards amendment No. 2664 moved by Dr. Ambedkar which relates to the marginal heading of this article, a point was raised in this very House the other day with regard to marginal headings and Dr. Ambedkar himself told the House that marginal headings are by some deemed part and by others not deemed part of the Constitution. I do not know therefore whether a formal amendment in this connection is necessary. Apart from that, I am not quite sure whether the amendment moved by him in this regard in quite happily worded. The amendment reads “Power of superintendence over all courts by the High Court”. What the article provides is certain powers of superintendence and cognate matters”. I do not think it is quite necessary to insert the words “over all courts”. The article provides for powers of superintendence. Even if the phrase “over all courts” is not included in the marginal

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heading it will be quite clear what powers of superintendence are meant to be included in this article. It is enough to say "Powers of superintendence by the High Court" and the article will mention "over all courts" and such other matters. What is intended by the article is to provide the High Court with powers of superintendence. As to over what courts, can follow in the article itself. The marginal heading originally read, "Administrative functions of High Courts". Following the spirit of that marginal heading I think the words "Powers of superintendence by the High Court" are enough and we may leave out the words "over all courts". Sir I move.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, with respect to the amendment moved by my honourable Friend Mr. Kamath think it has now become superfluous after amendment No. 2666 which says "Without prejudice to the generality of the foregoing provisions the High Court may." This is better than the wording contained in Mr. Kamath's amendment, namely "In particular etc." Therefore I think Mr. Kamath will not press his amendment.

I am very happy at the amendment moved by Dr. Ambedkar—No. 209—by which he has stated that "every High Court shall have superintendence over all courts and tribunals". I wanted to draw the attention of the Honourable Doctor to labour tribunals. Every day labour tribunals are getting more and more important. Our experience of these tribunals is very bad. They yet have to copy the traditions of the judicial courts. I hope now, when the High Court has powers over them, they will also be brought under its supervision and control so that we can have better justice in labour tribunals and also the right procedure.

I am also glad that sub-clause (b) of clause (2) has been omitted. In this way its power has been widened. Originally it had power only to withdraw suits and appeals confined to civil cases. Now it can call any cases that it may like. I therefore support the amendment strongly.

Mr. President : The question is:

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words 'The High Court may' the words 'Without prejudice to the generality of the foregoing provision' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2664 of the List of Amendments—

- (i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;
- (ii) in clause (2) of article 203, sub-clause (b) be omitted."

The amendment was adopted.

Mr. President : The question is:

“That article 203, as amended, stand part of the Constitution.”

The motion was adopted.

Article 203, as amended, was added to the Constitution.

Shri T. T. Krishnamachari (Madras : General): Sir, articles 209-A, 209-B, 209-C, 210 and 211 may be held over. We are still not ready with our alternative drafts.

Honourable Members : Yes, they may be held over.

Article 270

Mr. President : Then we go to article 270.

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

“That in article 270, the words ‘the Dominion of’ be deleted.”

The word ‘Dominion’ is applicable to India as it is constituted today. In the new set-up of things which is being drawn by this Constitution the word ‘Dominion’ or the idea of any Dominion would be repugnant to our Constitution. That is why I have sought the deletion of this. If the deletion is accepted the passage will run thus namely “the Government of India” and not “the Government of the Dominion of India”.

(Amendment No. 2976 was not moved.)

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

“That with reference to amendment Nos. 2975 and 2976 of the List of Amendments, in article 270, for the words ‘assets and liabilities’ the words ‘assets, liabilities and obligations’ be substituted.”

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words “Government of India” to indicate the Government that will come into existence under the new Constitution, while the “Government of the Dominion of India” is a term which is being used to indicate the Government at the present moment? Consequently, if his amendment is accepted it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of India. It would make absurd reading. Therefore the words as they are there are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras: General): I am afraid we are passing this article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B. R. Ambedkar : What is your amendment?

The Honourable Shri K. Santhanam : I am not moving any amendment. I am only commenting on the article as it is. I think that both the articles 270 and 271 are subject to the same disabilities as the other articles which are concerned only with the Provinces and not with the States and therefore probably it will be better for the future Constitution if these two are brought in line and the article made more comprehensive so as to include the States also. Wherever the States are continued as States they should be deemed to be the successors of the old States and where they have been amalgamated or merged into the provinces they should also be mentioned appropriately. For instance, Baroda has been merged with Bombay. If you pass article 270 as if

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is, it will mean that the old Bombay province, without Baroda, will be a State as given in the Schedule. I think proper provision should be made. Now it simply says: "...shall respectively be the successors of the Government of India or the provinces." Under the Government of India Act, Bombay was a province without the Baroda State. Today it is a province with the Baroda State included. So I would like to know what is the implication of passing article 270, as it is. Also, in the future Bombay may be construed not to include Baroda or Kolhapur. All these things have to be considered. I think it is desirable that consideration of article 270 also may be postponed so that it may be brought into line with the other provisions which may be made.

Shri H. V. Kamath : This article raises a number of issues. My Friend Mr. Santhanam has just observed that this article ought not to be passed in a hurry. I agree with him for the following reasons: Firstly, as Mr. Santhanam said, the provinces specified in Part I of the First Schedule have undergone vast changes and are perhaps still undergoing considerable changes. We cannot at the present stage say what exactly the position will be when the Constitution commences. The example of the Bombay province has been cited. This article itself mentions at the tail-end of it West Bengal and East Punjab. It takes cognizance of the creation of these new provinces. Does it not stand to reason therefore that we should take notice of the various States that have merged into what were known as Governors' Provinces? Not merely Bombay, but Madras, Central Provinces and I believe Bihar have all undergone changes. There have been tacked on to these provinces several States. Because of these mergers, etc. there have been substantial changes made requiring changes to be made in Part I of Schedule I and in Part III of the First Schedule. Several States mentioned in Part III have disappeared from the Indian scene. For instance if you take Part III of the First Schedule you will find that Baroda is not in the picture. It has merged with Bombay. Kolhapur too has gone out of the picture and joined Bombay. So, unless the Schedule itself is recast and Parts I and III re-adjusted, I do not think it will be wise on our part to mention here the assets, liabilities and obligations obtaining at the time of the commencement of the Constitution. We must be clear in our own minds what the provinces specified in Part I and the States specified in Part III of the First Schedule were and what they are today.

Mr. President : Has the Schedule been adopted?

Shri H. V. Kamath : Not yet. That is why I say that this article may be held over till we adopt the Schedule.

Secondly, I am not quite sure in my own mind whether it would be adequate to say "the Government of India" in line 2 of this article, because further on in the same article we say "the Government of the Dominion of India". In order to draw a clear distinction between this and that, I suggest that we might as well as say, "the Government of the Indian Republic" in line 2 of this article or "the Government of the Union of India." As the House will recollect, article 1 of the Constitution is to the effect that India shall be a Union of States.

To make a distinction between the Dominion of India and the future Government of India, we must either say the Government of the Republic of India or the Government of the Union of India. Merely to say "Government of India" will not do.

As regards the use of the phrase "the Dominion of India", I am not quite sure in my own mind what exactly the constitutional position is. If I remember aright, at the opening of this session, the Honourable Shri Jawaharlal Nehru moved a resolution before this House on our future relations with the Commonwealth. The resolution as drafted originally said the Dominion Prime Ministers' Conference in London, etc. etc. but later the Honourable Shri Jawaharlal

Nehru himself changed it to “the Commonwealth Prime Ministers’ Conference.” Press reports which emanated at that time said that the Conference had decided to drop the word “Dominion”. I do not know when exactly this change will take effect. This will perhaps continue till we proclaim ourselves a Republic. Then the question does not arise. But after what transpired at the Commonwealth Prime Ministers’ Conference in London last April, we can even today, if we will, drop the word ‘Dominion’. As regards the title of the Commonwealth, there are different opinions. Mr. Attlee said, “you can call it what you will,” and Mr. Chiefley, the Prime Minister of Australia, the other day speaking in the House of the Representatives in Australia said that he would continue to call it the British Commonwealth, would prefer the prefix “British”. It is up to us in India to call ourselves what we like, and if the British Government and the Commonwealth do not insist on calling ourselves the Dominion of India, certainly I do not see any reason why we should not drop the word ‘Dominion’ at once. Mr. Attlee said at the Conference that the Commonwealth countries can call themselves what they like. I therefore think that it is left to us to call our country what we will. I think that even today we can stop calling ourselves a Dominion and call ourselves the Union of India or whatever we may decide about it. After all there is no constitutional obligation to call ourselves a Dominion if I have understood correctly the proceedings of the Commonwealth Prime Ministers’ Conference and also what was told by our own Prime Minister in this House. I therefore think, Sir, that this article could be amended very usefully, very wisely, with a view to precision, constitutional or otherwise. It should be amended in the light of the proceedings of the Commonwealth Conference. We can even today call ourselves either India or some other term that the House may decide. Therefore considering all the various aspects of the matter, I feel that this article bristles with difficulties and I think it will be wise for this House to hold it over for a more suitable day when we can deliberate over this in greater detail. I therefore move, Sir, that the amendment as well as the article may be held over for a later date.

Prof. Shibban Lal Saksena : Mr. President, Sir, I am unable to understand whether this article is essential for our Constitution. It says that the new Government of India and the Governments of the States shall be the successors of the Government of the Dominion of India. Sir, in the Preamble we say that we, the people of India, are giving ourselves this Constitution. That being the case, I do not see why it is necessary to say that we are the successors of the Government of the Dominion of India. I do not think that this article is necessary in the Constitution. Besides this, as my Friends pointed out, the wording of the article needs to be changed and the article needs to be reconsidered. As Mr. Santhanam has pointed out, the provinces have changed a lot and there must be some provision to take into account the changes that have taken place. I am also not able to understand the purpose of the last five lines of this article “subject to any adjustment made or to be made, etc.” I do not know whether this confers any extra legal right. I want Dr. Ambedkar to tell us what will happen if this clause is deleted. Will that mean that the new Government under this Constitution will have no property and will not be the successor of the present Government of the Dominion of India? I want that the purpose of this article should be properly explained. I feel personally that it is not necessary and need not be incorporated.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, Sir, I would like to understand the objections raised to this article by my Friends Mr. Kamath and Professor Shibban Lal Saksena, but I cannot follow exactly what they meant, when they objected to the enactment of this article. The article is very clear, that is to say, it says that the coming Government of India will be the successor of the present Government of the Dominion of India. My Friend, Mr. Kamath, does not want the word “Dominion” to be used and instead the word “Commonwealth” to be introduced.

Shri H. V. Kamath : I wanted to say “ the Government of the Republic or Union of India.” My Friend, Mr. Sidhva, has not heard me correctly.

Shri R. K. Sidhwa : But you were talking of the Commonwealth all along and of what Pandit Jawaharlal Nehru said in his speech on the Commonwealth resolution. Whatever may happen later on, today we are the Dominion of India. That cannot be denied. Therefore the article says that whatever property is there of the present Government will automatically go to the new Government. It is necessary that that should be mentioned; otherwise technical objections may arise. Similarly with regard to the last few lines. The matter has been made very clear. Whether it is necessary to have such an article or not is a different matter. I personally feel that to strengthen our hands it is necessary that such an article should be embodied. I therefore support this article.

Shri Mahavir Tyagi (United Provinces: General) : Sir, we have agreed to remain in the Commonwealth and I do not see there should be any reason to object to the word “Dominion”. My honourable Friend, Mr. Kamath, wants to behave like a woman who has married a man and still insists on calling herself a maiden. Once you are in the Commonwealth, what is the good of your getting away from the name “Dominion” I think, I would under these circumstances prefer to be a Dominion in right earnest. That would have been a better decision. Anyway now, whatever decision we have adopted, once we are in the Commonwealth, we should not fight shy of calling ourselves a Dominion. It would be much better for us to call ourselves a Dominion than neither to remain a Dominion nor to remain independent. So, I think the wording should not be objected to.

Shri Alladi Krishnaswami Ayyar (Madras: General) : Mr. President, in principle there can be no objection either to article 270 or to the amendment that has been proposed. All the liabilities of the previous Government will have to be taken over by the successor Government but I just want to point out that it may be when what are referred to as the merged States are incorporated with each province or unit-state, then certain modifications may be necessary in regard to article 270 in the mutual adjustments of rights and obligations, because in the case of a unit the successor Government will not be merely the old province *plus* the merged State. Therefore, in regard to previous obligations, necessary adjustments may have to be made later on. There can be no exception to the general principle enunciated in article 270 though article 270 may require certain modifications when that scheme materialises or when we are able to come to a definite conclusion as to the position of the merged States *vis-a-vis* the units. With these words, I support the article 270 with the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I see, no reason to hold up this article on the ground that the position of the States is not yet clarified. In fact the provision is “for the time being specified in Part I of the First Schedule and the House has not accepted the First Schedule and at the time of accepting the First Schedule, it could be clarified as to what each particular State means and as Shri Alladi Krishnaswami Ayyar put it, there is no justification for holding up this article on that one ground and therefore, I support this article.

Shri T. T. Krishnamachari : Mr. President, Sir, I have listened with attention to the objections raised to passing this article at this stage and in the manner it has emerged, by honourable Friends in this House. I am afraid, Sir, though their objections were logical. I feel we cannot give in to those objections and postpone the consideration of this article for the reason that the provisions which

they want to bring into this article, namely, that the succession with regard to assets, debts, rights and liabilities of what are now called Indian States which have already merged or which are likely to be merged hereafter in the provinces and States which are likely to accede or come into the scheme of Federation in the same manner as the provinces, as the whole position is so nebulous at the moment. It may be that on examination it would not be worthwhile undertaking the assets and liabilities of some States that are coming in as units of the Federation. It also may be that the position of Governments of the States which have got merged into the provinces are such that we would not like to take over their liabilities, because we do not know what they are; we cannot take over the assets and liabilities of an administration, which is not carried on approved lines, in which we do not know exactly where we stand. So the whole position will have to be reviewed at the time when we bring in the Indian States into the picture. Also, Sir, it is possible that between now and the time when this constitution is to be promulgated, there might be more States merging into what are now called provinces. In the present state of thing as they are in India, there is no point in saying that we shall not proceed to act in matters where we have definite information, where we can prescribe certain methods by which we can complete this taking over of the administration of the past along with the assets and liabilities, merely because in the case of certain other States, we have not got full information. I would at the same time like to tell honourable Member of this House that the problem of the States is one of the headaches that we have to face today as constitution-makers. It may be that we will have to leave a chapter relating to States in Part III of the First Schedule without being filled in until the last week or last fortnight before finalising the constitution when we will incorporate in that chapter the state of things as they are at that time, make regulations for States which have come into the federation on the same line as the provinces make arrangements for States which have merged in the provinces and all the incidental and consequential provision that have to be found in a Constitution of this nature, and even then it may be that some States might have to be left out. There is no point in my trying to explain at length the difficulties that we have to face, because the difficulties will be apparent to anybody who looks into the various covenants and the exact position of the States from the documents issued from time to time by the State Ministry ; but I do not think that it is any justification for postponing indefinitely consideration of articles which are in themselves complete in so far as the territories they deal with. Any further changes—changes are occurring day after day and there may be quite a lot of changes before the Constitution is complete—can only be brought in by special provisions and in a special chapter . I have no doubt that Dr. Ambedkar is very grateful to the honourable Members who have just now pointed out to him the lacuna in this article which I have no doubt he has also got in mind. The position will be adequately met before the Constitution is finalised and I think, Sir, in the meantime, the article may be passed as it is.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim) : Mr. President, the central question is whether this article will entitle the future Government of India and the provinces to the assets and liabilities not only of British India under the old Constitution, that is the 1935 Constitution, but also to become successors of the States, the Native States as they were called.

Sir, the wording here is that the future Government of India and the Government of the States shall be the successors of the Dominion of India and of the Governors' provinces as mentioned in the Government of India Act of 1935. Under the Government of India Act, 1935, the States were kept apart and the Dominion of India or the Governors Provinces did not include the Native States at all. Therefore, if you are confining this article 270 and say that the future Government of India and of the States shall be the successors of the Dominion

[Mr. Mahboob Ali Baig Sahib]

of India and of the Governors' provinces, clearly, the future Government of India and of the States will not at all be the successors of the States that have merged or that are going to be merged. That is the clear interpretation that could be put upon this article 270. Therefore, you must introduce in this article 270 some other sentences or phrases in order to enable the future Government of India and of the States to be the successors not only of British India of the past, under the 1935 Act, but also of the State or States that may be merged. Otherwise, the Government of India and the future provinces will not be the successors of the States. Therefore, a suitable amendment is necessary and unless that is made, I think it would be a great defect.

Shri B. Das (Orissa: General) : Sir, we are dealing with the chapter which deals with property, contracts, liabilities and suits of the former Government of India, the present Government of India and the future Government of India that this Constitution is creating. Therefore I felt a little nettled when my honourable Friend Mr. Kamath brought in the word 'Commonwealth'. As far as I am concerned, Sir, I do not like the Commonwealth. But, as far as I understood the interpretation of the Commonwealth, it does not exist, it does not own any property, it has no secretariat; it has an imaginary, vague head, the King of the United Kingdom. Therefore, the question of the Commonwealth does not arise.

Under the Independence Act, the present Government is the Dominion Government of India and naturally it has inherited all the properties from the old British Government and the Governor-General has been given certain discretionary powers over the properties and assets. But, one thing I do not find here mentioned, that is our relations with the United Kingdom Government. The United Kingdom Government has not yet fully handed over the properties to the Dominion Government of India. It may be said that a Committee is sitting and trying to separate the assets belonging to the old India Office; but the financial aspect of the contract is not there. Will India Office building be handed over to India? The United Kingdom through the Bank of England owes 600 millions sterling to India. It may be said that we may get it any day. But, I am not so sure. If we want to get the full value of the 600 million sterling that England owes us, I do not see why this Constitution does not make any mention of it. There are strong views expressed in the United States of America and even in England that sterling will be devalued. If the sterling gets devalued, we will lose part of our money. Why should we not introduce an article in the Constitution regarding the assets that England owes to India? Is there any contract between the United Kingdom and India over these moneys which England has almost forcibly taken and which the United Kingdom wants to misappropriate by some means? Somehow, the world situation does not permit the United Kingdom to declare a moratorium. This is a lacuna which the Drafting Committee should examine. I do not see why they should fight shy of the United Kingdom because the so-called His Majesty's Government ruled over India some time in the past and because accidentally we happen to be a Dominion till the next January. I think somehow that aspect of the question regarding the 600 million sterling that the United Kingdom owes us, should be defined in Rupees and should be introduced in the Constitution. If the sterling is devalued by 20 per cent., we will lose 120 million sterling. Therefore, I say whatever England owes to us should be mentioned somewhere in this Constitution, not necessarily in articles 270 to 274. We need not fight shy, nor need we fear the United Kingdom because of its aggressiveness in the past and in future.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, it seems to me that the difficulty regarding the States which have merged in the Provinces does not exist. The wording in this: "As from the commencement of this Constitution." Suppose for instance, the Constitution comes into existence on the 26th January,

1950, then, the provinces will be constituted on that date as the Governors' provinces *plus* the Indian States which have merged. The succeeding provinces would be the successors of the provinces as they stood on 26th January, 1950: in the case of Bombay, it would be Bombay *plus* Baroda. Therefore, there would be no difficulty as regards the States which have merged before the date of the commencement of the Constitution.

To my mind, there seems to be another difficulty. This article gives legalistic expression to a *de facto* thing. As soon as India was declared independent, it did succeed to the properties, assets and liabilities of the previous Government. That was a fact. My question is whether it is necessary to give legalistic expression to that fact? Why I raise this question is because the wording is, it would succeed to all liabilities and also assets. Supposing the previous Government has given some pension or some reward in the form of grant of land to a person who served them in the disturbances of 1942, and the succeeding Government thinks that that grant was not proper or was against the national interests and therefore does not want to continue that grant, would the succeeding Government be bound to continue the grant by virtue of this section? I want to know whether the succeeding Governments would be bound by having this clause to continue all those things which were against our national interests. That is the difficulty which I would like the Mover of this clause to explain to the House. There may be many things which on a closer scrutiny would not deserve to be continued because they would be found to be against the national interests. So I would like to know whether this specific enumeration of this liability will bind the succeeding Government in a more particular manner. Supposing this article is omitted, what would be the effect? I think there would be no detraction from the present position of the Government except in the minds of legal persons; otherwise the fact is there that the present government has succeeded the previous government. The other sections stand in a different position. Supposing a property becomes an Estate. It is not necessary that the *de facto* circumstance that the Government has succeeded the previous Government must be stated in the Constitution itself.

The other point of view which I wish to bring before the House is that the Constitution is to include all the principles underlying the Constitution. This is something which is more in the form of a legal technicality. Is it necessary to include it in the Constitution itself? By a separate law which Parliament may pass, it may say that it takes upon itself the liabilities of the previous Government. I wish further to be made clear on this point—what is the difference between liability and obligations? to a layman it appears that liabilities do include obligations also. So where is the propriety of having the word 'obligation' therein? These are some of the points which I wish to bring to the notice of the House for clarification.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution? The reply to that is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the provinces. They were all held

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by that single Corporation which was called the Secretary of State-in-Council which was liable to be sued and had the right to sue. The Government of India Act, 1935 made a very significant change, *viz.*, it divided the assets and liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Majesty for the Government of India and they shall also be held by His Majesty for the different provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned. Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says in that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act, 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First, we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as integral State without perhaps and kind of modifications. The other case relates to State which have been merged together with neighbouring Indian Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring province as to how the assets and liabilities of that merged State are to be carried over—whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says is that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III. Therefore so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know if the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also?

The Honourable Dr. B. R. Ambedkar : It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word “rights” mentioned in the marginal sub-head is omitted in the article?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U.K. may I know why those are not included among properties in article 270?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.* the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances?

The Honourable Dr. B. R. Ambedkar : My honourable Friend knows more about it than I do.

Mr. President : The question is:

“That with reference to amendment Nos. 2975 and 2976 of the List of Amendments in article 270, for the words ‘assets and liabilities’ the words ‘assets, liabilities and obligations’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 270, as amended, stand part of the Constitution.”

The motion was adopted.

Article 270, as amended, was added to the Constitution.

Article 271

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

“That in article 271—

- (i) the words ‘for the purposes of the Government of that State’, in the two places where they occur, be omitted;
- (ii) the words ‘for the purposes of the Government of India’, in the two places where they occur, be omitted.”

Shri H. V. Kamath : Sir, I wish to raise what may be thought a minor point but I hope Dr. Ambedkar and his team of wise men will give some consideration to it when it comes to final drafting. The article with the present amendment refers to properties in the territory of India except the States for the time being specified in Part III of the First Schedule. The point I raised earlier applies to this article as well; that is why I suggest that they may be held over till we have debated the First Schedule. It is no use adopting these articles and then making changes in the Schedule later on. In the First Schedule we see what States are comprised in Part III of that Schedule. Many of the States, as I said before, have disappeared from the Indian horizon and are no longer integral entities within the territory of India. Baroda, Kolhapur and Mayurbhanj are no longer comprised in Part II of the First Schedule. Now if we pass the article today, as it is, about the various States mentioned in the Schedule without saying “subject to any modifications in the Schedule”, etc. What will happen to property that belongs to States like Baroda, Kolhapur and Mayurbhanj which are merged in the provinces? I therefore suggest that the article should be held over until the First Schedule together with the various amendments comes before us for consideration.

Prof. Shibban Lal Saksena : Sir, I do not agree with the point of view put forward by Mr. Kamath. We are passing these articles in the hope that in the Schedules we shall put only those things to which we want these articles to apply. These Schedules can be framed according to our choice and they will contain only those matters which we want to be subject to these articles we are passing. I therefore think that after we have accepted article 270 as an essential part of the Constitution, this article is also important. Formerly the country was divided into a number of States and now in this Constitution every portion will come into the new Government. Therefore I do not think this article should be held over merely because there is to be a change in the Schedule.

Mr. President : The question is:

“That in article 271—

- (i) the words ‘for the purposes of the Government of that State’, in the two places where they occur, be omitted;
- (ii) the words ‘for the purposes of the Government of India’, in the two places where they occur, be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That article 271, as amended, stand part of the Constitution.”

The motion was adopted.

Article 271, as amended, was added to the Constitution.

New Article 271-A

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

“That the following new article be added after article 271—

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.”

This is very important article. We are going to have integrated into the territory of India several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negativate any such contention being raised hereafter it is necessary to incorporate this article.

Shri H. V. Kamath : Sir, I wish my honourable Friend had clarified this article a little further and explained its significance and import. The construction of the article, to my untrained mind at least is not very clear. It speaks of “lands, minerals, and other things of value”, etc. The point is whether besides minerals, what are referred to as things of value underlying the ocean are all things within Indian territorial waters included?

Mr. President : This has reference only to whatever is found on land within territorial waters.

Shri H. V. Kamath : The reference is to lands, minerals and other things of value. The point arises, what these ‘other things of value’ are ? What these ‘things of value are’ has to be defined. Was this expression borrowed from some other Constitution or has it been newly incorporated in our Constitution without bestowing much thought on it? If it is left vague, the matter would have to be decided by the Supreme Court. What one considers as a thing of value, another may not consider as of value. Does the expression mean precious stones or minerals or whatever is found under the surface such as fish, etc.? Some may consider even fish as of value, whereas vegetarians may not consider fish as a thing of value. The article may be re-drafted clearly indicating what the ‘things of value’ are, which, when found in the Indian territorial waters, shall vest in the Union. If you leave the article as it is at present worded, you will be providing a happy hunting ground for lawyers again.

Then again, the article says “All lands, minerals and other things of value underlying the ocean within the territorial waters of India”. In Schedule I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the ‘Indian territorial waters’ are. The Constitution is silent on this point.

Mr. President : It is a well-understood expression in International Law.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to define it separately.

Shri H. V. Kamath : When you think it necessary to define in the Schedule the territories of India, why should you not define in the Constitution what our territorial waters are? Under International Law, some three miles of sea from a nation’s coastline is considered to be territorial waters. As stated in the four parts of the Schedule our territory comprises certain areas. There

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will be a demarcation of the territorial waters on the east coast and again a limit of the waters on the west. Some three miles beyond our coast will not be territorial waters. If you take the Andamans and Nicobars as the territories of India, the waters to a distance of 3 to 5 miles from those islands will be our territorial waters. It will be wise on our part to specifically define in the Constitution what our territorial waters will be. In these days new lands are being discovered in different parts of the globe. As such discoveries might lead to complications we must define our territorial waters.

As I stated earlier, nobody knows what "other things of value are". It is better now to put down clearly what they are. Otherwise everything underlying the ocean will be claimed as vested in the Union. It will be wiser and straighter and more honest to say 'everything that is found in the bed of the ocean'.

Pandit Thakur Das Bhargava (East Punjab : General) : All other things are there.

Shri H. V. Kamath : What is of value to one may not be of value to another. I do not attach any value even to precious stones. I submit that this thing may be clarified.

Lastly, I would ask Dr. Ambedkar and his wise men whether the phrase 'underlying the ocean' connotes whatever underlies the surface of the ocean or ocean-bed or whatever is discovered beneath the bed of the ocean. Probably the existing expression is clear to lawyers. As I am not a lawyer I plead guilty to ignorance of what 'underlying the ocean' means. I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

Shri A. Thanu Pillai (Travancore States) : Mr. President, Sir, I wish to say a word about this article. It says : "All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." I can understand that a certain amount of control in respect of territorial waters should vest in the Union, but beyond that why should all property and things of value within the territorial waters vest in the Union? Why should the respective States be divested of the right to minerals etc. in territorial waters I fail to see. The States now enjoy rights over these waters and derive some revenue. For instance my State of Travancore collects Shank (shank) from the sea. There are minerals there to which the State is entitled. Why should that right be taken away, I cannot understand. This matter requires fuller consideration and I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

Then again there are the words 'other things of value'.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain?

Shri A. Thanu Pillai : Fish is a thing of value. 'All lands, minerals and other things of value' is the expression used in the article. Travancore as a maritime State gets good catches of fish. If fish is a thing of value underlying the ocean within the territorial waters of India, this article will deprive the State of the right to catch fish. On the whole this requires better consideration. I hope that the States will in no way be deprived of their existing rights except to the extent necessary for the safety of the Union so far as territorial waters are concerned.

Prof. Shibban Lal Saksena : Mr. President, Sir, when we were discussing article 31 clause (ii) reads as follows :—

"(iii) that the ownership and control of the material resources of the community are so distributed as to best subserve the common good,"

My Friend, Professor K. T. Shah, had then moved an amendment saying that the control and ownership of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested and belong to the country collectively etc. At that time it was not accepted. I am glad therefore that Dr. Ambedkar has thought fit to provide in the Constitution that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purpose of the Union. But I would like to know from Dr. Ambedkar whether it is not necessary to mention about the skies. Now in international communications the sky also is important, *e.g.*, who shall fly over our skies, etc. I would like to know from Dr. Ambedkar whether it is not also necessary to mention about the skies in the Constitution.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I think that article 271-A is a very important article and Dr. Ambedkar deserves our congratulations for putting in this article. There are two points to be noticed : One is the criticism that there is no definition as to the extent of territorial waters. In fact, that is the merit, I should think, of the article, because it is one of the moot points of international law what exactly is the extent of territorial waters. The extent will depend not merely on the assertion of a particular State but upon the principle being accepted by the comity of nations. Even today, while England and America take one view, the other nations of the world take a different view as to the extent of territorial waters. Therefore it is a good thing that the extent of the territorial waters is not mentioned in article 271-A.

The second point is whether in general terms it is right to vest territorial waters in the Union. Even in America, the Supreme Court of the United States, when the question came up with regard to the State of California, held that even though the State originally exercised rights in the territorial waters, the correct view is that the territorial waters vested in the Federal Government. Therefore this article, in so far as it provides for the territorial waters vesting in the Union, is in consonance with advanced thought in the most federal of Constitutions, namely the American Constitution. The question as to the extent of jurisdiction by the States and the courts in the States may have to be separately dealt with.

The next point to be considered is the expression "shall be held for the purposes of the Union". The apprehension has been expressed that it might mean that every kind of advantage that will accrue from it will go to the Union and therefore the coastal States might suffer. I should think that the expression "be held for the purposes of the Union" is more elastic than the first part which says "shall vest in the Union". The expression "shall be held for the purposes of the Union" does not necessarily mean the Union Government as such. "For purposes of the Union" is a wider term than the expression "shall vest in the Union". Recently in Australia the question arose and it has been held that the expression "for purposes of the commonwealth" is a wider expression than the expression "Commonwealth" itself. Therefore I should think that the expression "for purposes of the Union" does not militate against some of the benefits being allotted to coastal States and should allay their apprehension that their present existing rights might be invaded.

Lastly, the words "all lands, mineral and other things of value underlying the ocean" are very important. One of the moot points in international law is as to whether there is any difference between what may be called surface rights and mineral rights and soil rights, and I am glad that this assertion is made here that all lands, minerals and other things of value underlying the ocean shall vest in the Union.

[Shri Alladi Krishnaswami Ayyar]

On all these grounds I support the amendment incorporating article 271-A.

Shri V. S. Sarwate : Mr. President, Sir, as the previous Speaker has expressed, this new article raises a very fundamental question. It raises the question of the relation of the Union Government and the States which have acceded and which are coastal. Before the House accepts this article, the Covenants which these States have entered into with the Government of India will have to be examined. It will entirely depend upon the rights which have been given by virtue of the Covenant with the Government of India. I do not know whether these Covenants have been examined and then as a result of that scrutiny this article has been added. A curious position will arise if, by virtue of the Covenant, these rights have not been given to the Government of India. Assuming for the moment that such a right is not given by the Covenant, the question is whether by virtue of this article in the Constitution, that right, would be created. I am afraid that the mere incorporation of this article would not create that right if that right does not already exist. To my mind it appears that the inclusion of this clause would only have this effect that if the right is already there, it has been expressed and specifically mentioned in this Constitution. If the right is not there, it would not be so vested or created in favour of the Government of India. So I submit that unless and until the Covenants have been closely examined and it had been found that the right has been vested in the Government of India, this article should not be accepted.

Shri A. Karunakara Menon (Madras: General) : Mr. President, Sir, my object in speaking on this new article 271-A is just to point out the difference that exists between the wording that is found in the marginal note and the wording that is found in the article itself. The wording in the marginal note is: "all lands, minerals and other things of value lying within territorial waters vest in the Union". This implies that all things of value lying within territorial waters belong to the Union. So, every thing of value, suspended even if it were within the territorial waters, are properties of the Union according to the marginal note; but what do we find in the article? There the wording is different. It says: "all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." My understanding of the words "underlying the ocean within the territorial waters" connotes altogether a different meaning from "things of value lying within territorial waters". Things of value underlying the ocean mean things left underneath the earth of the ocean and so the meaning is restricted. The things of value are restricted by the use of the words "underlying the ocean" whereas it is more wide when we say "things of value lying within territorial waters". I want to bring the words of the marginal note quite in agreement with the words that are found in the article; otherwise it might lead to complication in the future.

Shri M. Ananthasayanam Ayyanagar (Madras: General) : Sir, I desire only to make a small suggestion. What about the territorial waters themselves? Under this new article 271-A all lands, minerals and other things underlying the ocean within the territorial waters belong to the Union. All territorial waters shall belong to the Union. You say "all lands, minerals and other things". So far as territorial waters are concerned, apart from the question as to whether any particular country has got only jurisdiction over the territorial waters or the territorial waters belong to that particular country by way of ownership, and apart from the internal question whether it belongs to a province which abuts the territorial waters or to the Union, we must make it clear. Therefore, I think it is necessary to add that the territorial waters themselves belong or shall vest in the Union and be held for the purposes of

the Union. I think other things of value underlying the ocean will cover fish and other things. If they do not, it must also be made clear by saying "all the produce inside the ocean, apart from minerals and the land underlying the ocean besides these two other things also vest in the Union". This must be made clear to avoid a conflict between the provincial claim for territorial waters and the Union, and also to make sure that we lay a claim for territorial waters in our own country, whatever the International Law may be. There is a difference of opinion in the International Law regarding that matter. To give a quietus to such doubts, we must lay down a definite article that the territorial waters including all the produce available in any shape or form which might be there shall vest in the Union and be held for the purposes of the Union.

Shri A. Thanu Pillai : What about the water itself?

Shri M. Ananthasayanam Ayyangar : The territorial waters themselves must belong to the Union. We must have the waters, the right to water itself, ownership of the water itself and also the fish and other things.

Shri A. Thanu Pillai : What has my honourable Friend to say about the manufacture of salt by the States?

Shri M. Ananthasayanam Ayyangar : The water itself must belong to the Union. The ownership of territorial waters must be claimed by us.

Shri Mahavir Tyagi : Why not make the "water" also a part of this article?

Shri M. Ananthasayanam Ayyangar : I would say "all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

An Honourable Member : What about the air?

Another Honourable Member : What about the heavens?

The Honourable Dr. B. R. Ambedkar : Sir, I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included List II—entry No. 29.

Shri A. Thanu Pillai : My objection related to other matters as well.

The Honourable Dr. B. R. Ambedkar : I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction of the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it either to speculation or to future

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litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extend beyond that for three miles in the sea. That is a general proposition which has been accepted by international law. Now the fear is—I do not want to hide this fact—that if certain maritime State such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say: “Our accession gives jurisdiction to the Central Government over the physical territory of the original States; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us.” We therefore want to state expressly in the Constitution that when Maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

Shri M. Ananthasayanam Ayyangar : What about the ownership of the waters themselves?

The Honourable Dr. B. R. Ambedkar : What do you want to own water for? You may then want to own the sky above.

Shri M. Ananthasayanam Ayyangar : For the manufacture of salt, etc.

The Honourable Dr. B. R. Ambedkar : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory. That is what is wanted and that you get by this.

Shri Mahavir Tyagi : Waters have not been included.

The Honourable Dr. B. R. Ambedkar : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

Shri Mahavir Tyagi : What about the rest of the waters?

The Honourable Dr. B. R. Ambedkar : Anything below the air you get.

Shri Mahavir Tyagi : What about waters beyond three miles?

Shri M. Ananthasayanam Ayyangar : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property, and disputes over water have arisen in plenty? To avoid dispute between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union?

Mr. President : He has answered that; he thinks it is not necessary to say that.

The Honourable Dr. B. R. Ambedkar : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land.

An honourable Member : Sir.

Mr. President : I think we have sufficiently discussed and Dr. Ambedkar has

replied to the debate. We need have no further discussion. I will put the article to vote.

Shri K. Hanumanthaiya (Mysore State): I want one clarification, Sir. As Dr. Ambedkar says if territorial waters' that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all ?

Mr. President : That is the question which he has answered.

Shri K. Hanumanthaiya : If the interpretation of Dr. Ambedkar holds good.....

Mr. President : No more discussion about it. Dr. Ambedkar has said what he has to say. Members have to take it.

I shall now put the article to vote.

The question is:

“That the following new article be added, after article 271 :—

<p>All lands, minerals and other things of value lying within territorial waters vest in the Union.</p>	<p>271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.”</p>
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The motion was adopted.

Article 271-A was added to the Constitution.

Article 272

Mr. President : The motion is:

“That article 272 form part of the Constitution.”

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

“That in article 272, after the word and figure ‘Part I’ in the two places where they occur, the words and figures ‘or Part III’ be inserted.”

Shri H. V. Kamath : Mr. President, there is only one point that I want to raise in connection with this article which is before this House. The article seeks to extend the executive power of the Union and of each State for the time being specified in Part I or Part III of the First Schedule, not merely to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, but also to the making of contracts. I wonder whether it is wise on our part to invest the executive with power to make contracts without any reference to or subsequent confirmation by the sovereign Parliament at the Centre. On a reference to articles 2 and 3, the House will see that Parliament has been invested with very wide powers of a fundamental character. This article, if adopted as it is, without any sort of clarification or without any authoritative exposition of the same—this has been moved before us without any speech by Dr. Ambedkar or any of his wise colleagues—seeks to invest the executive with the power or privilege of making contracts.

Mr. President : “Subject to any Act of the appropriate legislature.”

Shri H. V. Kamath : Yes Sir. The first part says, “subject to any Act of the appropriate Legislature.” But, the second part says, “as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.” We should lay down specifically in the article that the right to make contracts should be subject to the right of Parliament or the appropriate Legislature to rescind it. Otherwise, I am afraid that

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some Ministry, either in the State or at the Centre may enter into some undesirable contract; and Parliament or the Legislature therefore should be invested with the power to rescind it. The article only says, 'subject to any Act'. I do not know whether Act means any Act already on the Statute Book or any subsequent right of the Legislature to rescind. I want this right to be conferred on Parliament and the Legislature specifically that both of them have got the power to rescind any contract that may be entered into by the executive at the Centre or in the States with regard to any property. If that safeguard were not provided for in this article, I fear we might land ourselves in trouble. I therefore think that clarification is necessary on this point to the effect that Parliament or the Legislature in the State has not merely the right to lay down the provisions with regard to disposition of property in various ways, and making of contracts but also has got the right to rescind any such contract made by a State or the Union.

Prof. Shibban Lal Saksena : Sir, I do not think the observations of the Mr. Kamath and his apprehensions have any foundation because the article clearly says:

“(1) The executive power of the Union and of each State for the time being specified in Part I of the First Schedule shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be.”

So it means that this article applies to all contracts as well. There is no apprehension that contracts shall be made without reference to acts of legislature but I was wondering whether this article was necessary at all and whether this power does not vest in the Parliament without this article being in the Constitution. The Parliament can always pass laws for disposing of properties of the Union or purchasing of properties or mortgaging them. Why should there be an article of this sort in the Constitution itself? Parliament is all powerful and it can pass laws for purchase and disposal of properties of the Union. I do not see the necessity of this article at all in the Constitution.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, if my honourable Friend Mr. Kamath had considered the article fully, he would have found that the rights of the Parliament are fully protected. All the transactions which are mentioned there, grant, sale, disposal or mortgage are not legislative acts but executive acts and therefore appropriately vested in the Executive; they are subject to any Act of the appropriate legislature. Therefore the Parliament or the legislature of the State will pass laws and thereby the manner in which these transactions are to be entered into, the authority which is vested with the power to enter into these transactions, will be properly defined. It would bring down the whole Government if Parliament or Legislature is invested with executive power mentioned here. For instance, take the question of sale of a property. A screw in a distant military Cantonment belongs to the Government and some official wants to dispose it off; should the matter go to Parliament for this purpose? The whole idea of having two organs of State Executive and Legislature is that all executive action has to be done by the executive but under the qualifications, the authority and the manner prescribed by Legislature. So Parliament cannot have any executive power over these transactions and I think the clause as it is which has been really reproduced from the Government of India Act is a well-advised article and should be maintained.

Mr. President : Would you like to speak, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it.

Mr. President : The question is:

“That in article 272, after the words and figure ‘Part I’ in the two places where they occur, the words and figures ‘or Part III’, be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 272, as amended, stand part of the Constitution.”

The motion was adopted.

Article 272, as amended, was added to the Constitution.

Article 273

Mr. President : We take up 273. Dr. Ambedkar.

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

“That in clause (1) of article 273, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word ‘Governor’ in the two places where it occurs, the words ‘or the Ruler’ be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word ‘the Governor of a State’ the words ‘the Governor nor the Ruler’ be substituted.”

Shri Mahavir Tyagi : Sir, reading the whole article as it is, one is at a loss to understand as to who will ultimately be responsible for the wrong transactions if there are any. The article reads:

“All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.”

From the words “shall be executed on behalf etc.” I understand that the emphasis is not on the word ‘executed’ but on the use of the name of the Governor-General. I want to make it sure that in future it may not be construed that the meaning of the article is that whatever has been once agreed upon by the Governor or the persons above shall essentially be executed. I can understand that it shall be executed in the name of the Governor but the question is; is it also the meaning that whatever has been agreed upon by the Governor or those who do it in the name of the Governor, whether it is in our interest or not, shall at all costs be executed? For instance there may be occasions just as only lately the Ministers of the Dominion of India or Cabinet just issued a statement and announced that with regard to Kashmir they will have a referendum and that referendum will decide.

Mr. President : This is the case of the contract and it has nothing to do with a political act like that.

Shri Mahavir Tyagi : Yes in contracts also, suppose the assets of the Government are contracted away by the men at the helm of affairs, will there be

[Shri Mahavir Tyagi]

no check? Will the Parliament's ratification be necessary or they will be executed only because the commitments have been made by a person at the helm? Will the Parliament have a hand in confirming it or not? Political commitments also have their repercussions financially. I do not want to mention Kashmir but then there are so many other transactions—I do not want to quote instances of the previous or present Government—I am just inventing instances. There may be occasions when some big financial deals are made which go against the interests of the country but this article says:

“All contracts and assurances of property made in the exercise of that power shall be executed on behalf of the President.”

If the meaning is only this that the execution will always be on behalf of the President, I do not mind. But if it means that it shall have to be executed at all costs I object to that.

Shri T. T. Krishnamachari : The liability is there.

Shri Mahavir Tyagi : Are you going to have the liability without defining the nature of the liability? If it were only a case of your defining that the liability shall always be executed in the name of the Governor or such other persons I can understand, because he is the head of the State and all executive action has to be taken in his name. But in clause (2) you say “Neither the President nor the Governor of a State—nor the Ruler now—shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution. This also I can understand in the case of the Governor whose name has been used only formally but I cannot pardon the officers or the Ministers who do wrong things in his name. Such an officer shall be personally and even morally responsible for his wrong action. A carte-blanche is sought to be given here that whatever is done, no personal liability will rest either on the man in whose name it is done, or on the person who does it. Unless a liability has been ratified by Parliament, somebody must be responsible for it. So I want a clarification of this issue, for, there may be big commitments made of a nature with which the nation might not agree. The commitments are to be executed and then nobody is to be liable for it. I think in matters of State everybody who works must be liable and responsible—even personally for all what he does. I deprecate the notion given to us by foreign rule here that a man who in the exercise of his official duties does wrong will not be responsible for that personally—as if an officer can do no wrong just as the king can do no wrong. This is a notion to which I do not agree. I feel that if a man commits an error or plays wrong with the finances of the State or does anything which injures the cause of the nation he must always know that the liability lies on his head and that he will be responsible to answer for it and also have to pay the liability. After all the liability must be located somewhere. Otherwise the officers will be free from all liabilities, and contracts and agreements and commitments will be made generally freely without having any regard to their propriety. If the Governors are not responsible, those who have committed themselves on his behalf or committed the nation must be responsible. It is only a question I have put to Dr. Ambedkar and I hope he will clarify the position.

Shri H. V. Kamath : Mr. President, I do not think that my Friend Mr. Tyagi's objection is valid. If he would take the trouble of turning to article 64(1) and also the corresponding article for the Governors in the relevant part he will find that all executive action of the Government of India or of a State shall be expressed to be taken in the name of the President or of the Governor. Here also this article follows article 64 very closely. This article

lays down that all contracts made in the exercise of the executive powers of the Union shall be expressed to be made—the words used are “expressed to be made”—by the President etc. Neither the President nor the Governor nor, in the light of the new amendment, the Ruler of the State actually makes the contract. Whatever contract is entered into or made by the Union or the State is expressed as having been made in the name of the President or the Governor or the Ruler.

Shri Mahavir Tyagi : Who actually does it?

Shri H. V. Kamath : The Union or the State does it.

Shri Mahavir Tyagi : It is the people.

Shri H. V. Kamath : If my Friend thinks the sovereign authority is vested in the people then the people are responsible for everything that happens in the Union or the State. That depends upon the connotation that my Friend wants to give to the vesting of the authority of the Union or the State. If it vests in the people then the people are responsible. Everything is done in the name of the people because it is a democratic Constitution, and everything done in the Union or the State is done for the people or by the people. But certainly whatever is done is expressed as having been done by the President or the Governor or the Ruler, whatever the case may be. It is only a constitutional or a legal formula for enabling certain contracts to be made effective or to be given effect to. Otherwise, if every contract is signed by the people of the Union or the people of the State then I suppose in constitutional law, before the High Court or the Supreme Court it will make no meaning whatsoever. Somebody will have to sign it. For instance, treaties are signed by the Foreign Minister or the Prime Minister here.

Shri Mahavir Tyagi : I do not object to the name of the Governor being used but to the immunity given to those persons who execute those undertakings and commit the country.

Shri H. V. Kamath : I am coming to that. Clause (2) lays down that “neither the President nor the Governor etc. shall be *personally* liables.” Certainly it stands to reason, to logic and to the sense of law which I am sure the House possesses in abundant measure, that for anything that the President or the Governor or the Ruler does not actually do but that is expressed to be done in his name—the Cabinet at the Centre or the State will make the contract and the titular head of the Union or the State will sign the contract—he cannot be made personally liable. That is all that is meant by the article.

There is, however, another point which I would like Dr. Ambedkar to clarify in his reply, if at all he replies. That relates to the language of this article. I suppose this has been lifted bodily from the Government of India Act, as has been done in the case of various other articles. The article begins with “all contracts made in the exercise of the executive power of the Union or the State”, but proceeding further the article refers to “all such contracts and all assurances of property”. Suddenly these words “assurances of property” are pitchforked into the article. What exactly in constitutional terminology or legal parlance it means I do not know, because I am not a lawyer. “Contracts” I know; I am fairly well aware of its connotation. But what exactly is meant by “assurances of property” I do not know. What are the assurances, verbal or written, and what sort of assurances will be given with regard to property I do not know. Since the article starts with “contracts” is it not enough to say “contracts” later on too? I think it will be wiser to stick to that. I think this will create confusion and will not lead to any clear understanding of this article. Then the amendment of Dr. Ambedkar refers to the word “ruler”. I do not know whether we are in future going to be saddled

[Shri H. V. Kamath]

or burdened with a distinction between Governors and rulers. Today we have this distinction of course and that is why I suggested postponement of the consideration of these articles. We have been assured by Sardar Patel and the Prime Minister that they are trying—and I dare say they will succeed—to bring the States into line with the States mentioned in Part I of the First Schedule that is to say, Governors' provinces. I do not think that when this Constitution comes into force there will still be this distinction between Parts I and III; I think there will be only one category, and the distinction between ruler and Governor will vanish. With regard to terminology I think the ruler is not referred to as ruler but as Raja, Rajpramukh etc.

Mr. President : The question was raised yesterday and Dr. Ambedkar said that he would consider any other expression which might be more suitable.

Shri H. V. Kamath : I am sorry; I was not here yesterday. It therefore struck me that the expression “ruler of a State” would not be quite appropriate for the executive head of the State. I hope they will all be called Governor and the word “ruler” will not be used any longer. I hope these points will be clarified by Dr. Ambedkar.

Prof. Shibban Lal Saksena : Sir, I think the point raised by my honourable Friend Shri Mahavir Tyagi is due to his not having read article 272 carefully. The power to make contracts has been given there and it will be subject to Acts of the legislatures. He cited the case of Pakistan and contracts with them about property, etc. I am sure whatever has been done was done with the consent of Parliament. So all contracts made under this article will be in accordance with the laws of the legislature, and no one can make any contract in contravention of those laws.

I however do not see the necessity of the second clause of article 273. It is well known that the President or Governor acts in the name of Government and is not personally liable. So why make this provision specifically?

Shri Mahavir Tyagi : I would point out that in article 272 the “grant, sale, disposition or mortgage of any property” is mentioned; article 273 is different and refers to “contracts and assurances” etc.

Prof. Shibban Lal Saksena : The article says that contracts can only be made subject to laws made by the legislature. But I do not see the purpose of the exemption made in article 273(2). If the President or Governor contravenes the laws he may be impeached and any other officer doing so will be punished. I should like to know the reason for the special exemption made in this sub-section.

The Honourable Dr. B. R. Ambedkar : Sir, my honourable Friend Mr. Kamath had something to say about the use of the word “assurances”, and I think his argument was that we were using the word “contracts” in one place and “assurances” in another. “Assurance” is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word “assurance” includes the word “contract”. So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with “all contracts” and then we have “all such contracts and all assurances of property”, etc.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee; I was explaining the technical difference between assurance and contract.

Then, Mr. Tyagi asked why a person should be freed of liability if he signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet; I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a man who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my Friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

The question is:

“That in clause (1) of article 273, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 201 above, in clause (1) of article 273, after the word ‘Governor’ in the two places where it occurs, the words ‘or the Ruler’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 201 above in clause (2) of article 273, for the words ‘the Governor of a State’ the words ‘the Governor nor the Ruler’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 273, as amended, stand part of the Constitution.”

The amendment was adopted.

Article 237, as amended, was added to the Constitution.

Article 274

Mr. President : Article 274 is now for discussion.

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

“That in clause (1) of article 274, for the words ‘Government of India’, in the second place where they occur, the words ‘Union of India’ be substituted.”

Sir, with your permission I will also move my other amendments to this article now.

I move:

“That in sub-clause (a) of clause (2) of article 274, for the words ‘Government of India’ the words ‘Union of India’ be substituted.”

I move:

“That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

I move:

“That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words ‘by the Legislature’ the words ‘of the Legislature’ be substituted.”

I move:

“That with reference to amendment No. 204 above, in clause (1) of article 274, after the words ‘corresponding Provinces’ the words ‘or the corresponding Indian States’ be inserted.”

I move:

“That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

- (i) after the words ‘a Province’, the words ‘or an Indian State’ be inserted; and
- (ii) after the words ‘the Province’ the words ‘or the Indian State’ be inserted.”

Shri Jaspal Roy Kapoor (United Provinces : General) : I am not moving my amendment Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

(Amendment No. 2982 was not moved.)

Mr. President : Does any one wish to speak on this article?

Shri H. V. Kamath : Mr. President, amendment No. 2980 seeks to substitute the words ‘Union of India’ for the words “Government of India” so far as suing or being sued is concerned. I do not know exactly what is the change that is sought to be effected by the substitution. Article 270 refers to the Government of India as being the successor Government to the Dominion of India. When I suggested that this might be changed to either “Union of India” or “Republic of India”, that was not accepted by the House. So under article 270 we recognise the Government of India as succeeding the Dominion of India so far as assets, liabilities and obligations are concerned. But when we come to article 274 we are told that for the purpose of suing or being sued it will not be the Government of India but the Union of India. So long as the Government of India Act was in force, whenever the Indian Government was sued or had to sue it was the Secretary of State for India that came into the picture. I do not know exactly why a suit may be filed against the Union and not against the Government of India. After all, what is the Union of India? Article 2 tells us that India shall be a Union of States. In law what is sued or may be sued is the whole body, the whole corporate body of the Union Government. The Union as such in law is not a corporation which may sue or

be sued. It is only the Union Government that may sue or be sued. In the light of article 1, if we want to be precise and exact so far as law is concerned, we should state in this article “the Government of the Indian Union”. As it is, however the sense is quite clear and therefore it will be wise to retain the phrase “the Government of India” instead of “the Union of India” as suggested in amendment No. 2980.

As regards the other amendments moved by Dr. Ambedkar, there are certain points which are obscure. If Dr. Ambedkar will turn to article 270 he will see that it refers to Governors’ provinces. In this article we refer to provinces. I think this is rather incorrect. So far as legal terminology is concerned, I think the provinces must be referred to as Governors’ provinces, not merely as provinces. If we turn to the First Schedule, Part I, the provinces are referred to as Governors’ provinces.

Then, Sir, about clause (2) of this article. The amendment in relation to this clause is No. 207. We do not know exactly what picture will emerge before us at the time of the commencement of this Constitution. Sub-clause (b) of clause (2) refers to Governors’ provinces and, by reason of this amendment of Dr. Ambedkar, to Indian States as well. It is purely a hypothetical case, but if for instance as regards an Indian State which is an integral part of the Indian Union at the time this Constitution comes into being, some legal proceedings are pending to which this Indian State is a party. Suppose subsequently Parliament by law, under article 3 or by some other means, provides for the merger of this State with some province. According to sub-clause (b) the effect will be that the corresponding Indian State shall be substituted, but what will happen if that State disappears, if it is merged into an adjoining province? There is no such corresponding State at all left.

All these things are obscure at this stage and that why I feel that the consideration of this Chapter, when there are so many obscure points of which we have not got a clear picture, may very wisely be held over till the entire picture comes before our eyes and the relationship between the various States and the Union is clarified. But some articles have already been moved and adopted by this House. I submit that this article has got some obscure points and I hope Dr. Ambedkar or any of his colleagues will come before the House to clarify these points before we adopt this article.

The Honourable Shri K. Santhanam : Sir, I have just a single point to make. In 274 (1) the words “enacted by virtue of the powers conferred by this Constitution” are wholly superfluous and meaningless because neither the Parliament nor the Legislature of any State can act except by virtue of the powers conferred by this Constitution. Therefore I suggest that these words may be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus:

“The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—”

[The Honourable Dr. B. R. Ambedkar]

that is the new thing—

“shall be deemed to be substituted for the Dominion in those Proceedings; and

- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings.”

Now, this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be started. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the Government may be fleeting.

The Honourable Dr. B. R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity; the Union of India is a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term “corresponding States” some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g) , which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an Old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which particular Old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that Sub-clause (2) suggests is this: that when any proceedings are pending, where the entities to sue or to be sued are different from what we are providing in sub-clause (1) , the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1) . With regard to the objection taken by my honourable Friend, Mr. Santhanam that the words “enacted by virtue of powers conferred by this Constitution” as being superfluous, all I can say is I disagree with him and I think these are very necessary.

Mr. President : The question is:

“That in clause (1) of article 274, for the words ‘Government of India’, in the second place where they occur, the words ‘Union of India’ be substituted. “

The amendment was adopted.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 274, for the words ‘Government of India’ the words ‘Union of India’ be substituted. ”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure ‘Part I’, the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words ‘by the Legislature’ the words ‘of the Legislature’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 204 above, in clause (1) of article 274, after the words ‘corresponding provinces’ the words ‘or the corresponding Indian States’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 206 above, in sub-clause (b) of clause (2) of article 274—

- (i) after the words ‘a Province’ the words ‘or an Indian State’ be inserted; and
- (ii) after the words ‘the Province’ the words ‘or the Indian State’ be inserted.”

The amendment was adopted.

Mr. President : the question is:

“That article 274, as amended, stand part of the Constitution.”

The motion was adopted.

Article 274, as amended, was added to the Constitution.

New Article 274-A

The Honourable Dr. B. R. Ambedkar : Sir, I would like this article to be held over.

Mr. President : Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII—the election chapter, article 289 and onwards as put in the Order Paper?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

Shri R. K. Sidhva : Therefore, Sir, with your permission, I shall move it when that article comes in.

Article 289

Mr. President : We shall now take up Part XIII—article 289.

Shri T. T. Krishnamachari : May I suggest that amendment No. 99 may be taken up as it substantially replaces the whole article? All the other amendments may be discussed thereafter.

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

“That for article 289, the following article be substituted :—

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in his Constitution as the Election Commission) to be appointed by the President.

The superintendence, directions and control of elections to be vested in an Election Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from the office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article.”

Mr. President : I have notice of a number of amendments, some in substitution of the articles 289, 290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General) : May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1) .

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have *ad hoc* body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the Drafting Committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner, so that the skeleton machinery would always be available. Election no doubt will generally take place at the end of five years; but there is this question, namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralize the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change

[The Honourable Dr. B. R. Ambedkar]

has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them, there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental things in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the every root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, of I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commission, shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matter relating to Elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judge of the Supreme Court. We, of course, do not propose to give the same status to the other members of the Election Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commissioner, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow

from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission no doubt administratively it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original article of the Draft Constitution.

Mr. President : Pandit Thakur Das Bhargava—do you wish to move your three amendments?

Pandit Thakur Das Bhargava : No, Sir.

Mr. President : Mr. Kapoor is not moving his amendment. The article is open for discussion.

Prof. Shibban Lal Saksena : Sir, I have given notice of an amendment to an amendment to article 289.

Sir, I beg to move:

“That in Amendment No. 99 of List I (Fifth Week) , the following amendments be incorporated:—

(1) At the end of Clause (1) add the following words:—

‘Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.’

(2) After the word appoint in clause (2) , the following words be inserted:-

‘Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.’

(3) In clause (3) , for the words ‘after consultation with’ the words ‘in concurrence with’ be substituted.

(4) In clause (4) for the words ‘President may by rule determine’ the words ‘Parliament may by law determine’ be substituted.

(5) In proviso (1) to clause (4) substitute ‘Election Commissioners’ for the words ‘Chief Election Commissioner’ in both places.

(6) In proviso (2) to clause (4) omit ‘any other Election Commissioner or.’ ”

Mr. President, Sir, I must congratulate Dr. Ambedkar on moving his amendment. As he has said, his amendment really carries out the recommendations of the Fundamental Rights Committee and in fact the matter was so important that it was thought at one time that it should be included in the Fundamental Rights. The real purpose is that the fundamental right of adult franchise should not only be guaranteed in practice. He has explained to us that he was tried to make the Election Commission wholly independent of the Executive and he therefore hopes that by this method the fundamental right to franchise of all the individuals shall not only be guaranteed but that it shall also be exercised in a proper manner so that the elected People will represent the true will of the people of the country. After a careful study of his amendment I have suggested my above amendments to carry out the real purpose of Dr. Ambedkar’s amendment in full.

What is desired by my amendment is that the Election Commission shall be completely independent of the Executive. Of course it shall be completely independent of the provincial Executive but if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence. Of course once

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he is appointed, he shall not be removable except by 2/3rd majority of both the Houses. That is certainly something which can instil independence in him, but it is quite possible that some party in power who wants to win the next election may appoint a staunch party-man as the Chief Election Commissioner. He is removable only by 2/3rd majority of both Houses on grave charges, which means that he is almost irremovable. So what I want is this that even the person who is appointed originally should be such that he should be enjoying the confidence of all parties—his appointment should be confirmed not only by majority but by two-thirds majority of both the Houses. If it is only a bare majority then the party in power could vote confidence in him but when I want 2/3rd majority then it means that the other parties must also concur in the appointment so that in order that real independence of the Commission may be guaranteed, in order that everyone even in opposition may not have anything to say against the Commission, the appointments of the Commissioners and the Chief Election Commissioner must be by the President but the names proposed by him should be such as command the confidence of two-thirds majority of both the Houses of Legislatures. Then no person can come in who is a staunch party-man. He will necessarily have to be a man who will enjoy the confidence of not only one party but also of the majority of the members of the Legislature. Then alone he can get a 2/3rd majority in support of his appointments. I therefore, think that if the real purpose of the recommendations of the Fundamental Rights Committee is to be carried out, as Dr. Ambedkar proposes to do this by amendment, then he must provide that the appointment shall not be by the President subject to confirmation by a two-thirds majority of both the Houses of Parliament sitting and voting in a joint session.

Shri Mahavir Tyagi : Don't you think that the party will issue whips to elect a certain man ? He will be a party -man.

Prof. Shibban Lal Saksena : What I have said is this. He will not be a Member of Parliament. He can be anybody else, but whosoever is chosen must be a person who enjoy the confidence of at least two-thirds majority of both the Houses of Parliament so that one single party in power cannot impose its own man on the country.

Shri Mahavir Tyagi : The majority party will put up its own candidate for the job and issue whips that all should vote for that candidate. Whether he is a Member or outsider he will be a party nominee.

Prof. Shibban Lal Saksena : Majority means only 51 per cent., but I want a two-thirds majority.

Shri Mahavir Tyagi : You are having more than two-thirds majority already.

Prof. Shibban Lal Saksena : At this time nothing will help in this matter. Whosoever you put forward will be elected. But we are making a Constitution for ever and not only for today. Today of course whosoever is appointed by the President on the recommendation of the Cabinet will be approved. We are lucky in having as our Prime Minister a man of independence and impartiality and he will see that a proper person is appointed. But we can not be sure that the Prime Minister will always be such a personality. I want that in future, no Prime Minister may abuse this right, and for this I want to provide that there should be two-thirds majority which should approve the nomination by the President. Of course there is danger where one party is in huge majority. As I said just now it is quite possible that if our Prime

Minister wants, he can have a man of his own party, but I am sure he will not do it. Still if he does appoint a party-man and the appointment comes up for confirmation in a joint session, even a small opposition or even a few independent members can down the Prime Minister before the bar of public opinion in the world. Because we are in a majority we can have anything passed only theoretically. So the need for confirmation will invariably ensure a proper choice. Therefore, I hope this majority will not be used in a manner which is against the interests of the nation or which goes against the impartiality and independence of the Election Commission. I want that there should be provision in the constitution so that even in the future if some Prime Minister tends to partial, he should not be able to be so. Therefore, I want to provide that whenever such appointment is made, the person appointed should not be a nominee of the President but should enjoy the confidence of two-thirds majority of both the Houses of Parliament.

The second point made by Dr. Ambedkar was that this commission may not have permanent work and therefore only the Chief Election Commissioner should be appointed permanently and the others should be appointed when necessary on his recommendations. Our Constitution does not provide for a fixed four years cycle like the one in the United States of America. The elections will probably be almost always going on in some province or the other. We shall have about thirty provinces after the states have been integrated. Our Constitution provides for the dissolution of the Legislature when a non confidence is passed. So it is quite possible that the elections to, the various legislatures in the provinces and the Centre will not be all concurrent. Every time some election or other will be taking place somewhere. It may not be so in the very beginning or in very first five or ten years. But after ten or twelve years, at every moment some elections in some province will be going on. Therefore, it will be far more economical and useful if a permanent Election Commission is appointed—not only the Chief Election Commissioner but three or five members of the Commission who should be permanent and who should conduct the elections. I do not think that there will be lack of work because as I said in our constitution all the elections will not synchronize but they will be at varying times in accordance with the vote of no-confidence passed in various legislatures and the consequent dissolution of the legislatures. Therefore, I think that there will be no dearth of work. This Commission should be a permanent Commission and all the Commissioners should be appointed in the same manner as the Chief Election Commissioner. They should all be appointed by a two-thirds majority of Legislatures and be removable in the same manner.

In clause (3) it has been said that the President may appoint regional Commissioners after consultation with the Election Commission, that means the Chief Election Commissioner. Mere consultation means the President can have his way even disregarding the views of the Chief Election Commissioner. Therefore, I want “in concurrence with” so that if anyone disagrees,—if the Election Commission or the President disagree about a person—then he cannot be appointed.

Clause (4) says “the conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine”. This I think is not proper. The conditions of service and tenure of office etc., of the Election Commissioners should not be in the power of the President to determine. Otherwise he can use his influence in a manner prejudicial to their independence. Therefore I want that these things should be determined by Parliament by law and they should be permanent so that nobody will be

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able to change them and no Election Commissioner will then look to the President for favours.

These are my suggestions so that the Election Commission may be really an independent Commission and the real fundamental right, the right of adult franchise, may be exercised in a proper manner. I agree with all that Dr. Ambedkar has said I only want to suggest that what he has suggested will not be sufficient to carry and what he wishes.

Shri H. V. Pataskar (Bombay: General) : Mr. President, Sir, I have carefully gone through the new amendment No. 99 moved by my respected Friend Dr. Ambedkar and I have also very carefully listened to the arguments that he advanced. While I agree with him entirely, that the election in any democratic form of Government must be free from any sort of executive interference I still do not understand and realise the necessity of making it wholly centralised always. That is the only point. I am going to discuss the difference between the original article 289 as it stood in the Draft Constitution and the new Article which has been suggested in its place by amendment No. 99, and particularly clause (3) of the same. I would now like to give a brief history of this article. There was first the report of the Union Constitution Committee dated the 4th July 1947 and so on page 55 there was this paragraph:

“The superintendence, direction and control of all elections, whether federal or provincial held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

This clause (24) therefore laid it down that whether it is federal or provincial, the superintendence, direction and control of elections should vest in one single Commission. Then the matter came before this House on 29th June 1947 and I brought forward an amendment confining it to federal elections only. The idea was that there should be similarly constituted independent tribunals for provinces also. The underlying reason even then was that elections should be free; the only question was that there should be separate independent Commissions for the provinces or States. The idea was that it would be difficult for one Commission sitting here in Delhi or somewhere else to supervise election all over India. That amendment was accepted by the then mover of the clause, Honourable Mr. Gopaldaswamy Ayyangar. The idea of every one, including Dr. Ambedkar, then was that elections should be kept free from executive interference. The only point was that there should be different Commissions as one Commission could not carry out the functions entrusted to it. Then on 29th August the Drafting Committee was appointed which considered the decision of the House in framing article 289 (1) and (2) . The Draft Report says:

“The Committee has not thought it necessary to incorporate in the Constitution electoral details including delimitation of constituencies, etc.”

They left it to be provided by auxiliary legislation. So they considered the decision of this House of the 29th July and the original article 289 is in conformity with that. And the House will consider whether clauses (1) and (2) of article 289 are not enough for the purpose. Granting that elections are the basis of democracy and should be free from executive interference, let us see whether article 289 (1) and (2) are or are not enough. So far as federal elections are concerned the provisions of the present amended or substituted article and clause (1) of article 289 are the same. Supposing we have to provide for the appointment of a federal Commission, it cannot be done by the Central Government which is an Executive Authority. It has

to be done by the President. Then with regard to clause (2) the Drafting Committee thought that with respect to appointment of a Commission for the province it will be equally independent if that appointment was made not by the Government of the day but by the Governor of the State. At the time of the Draft the idea was that there should be an elected Governor. Now at present we have no elected Governor but now we have provided for a Governor who will be nominated by the President. So virtually the appointment of the Commission to be made by the nominated Governor will be in the hands of the President himself. The Commission appointed by the President for the purpose of elections to the federal legislature can be independent. But I do not see why in the provinces the Commission appointed by the Governor should not be equally independent. His official existence depends entirely on the President. In that respect, if it was thought necessary, the power could be given to the President himself to make the appointment of a Provincial Commissioner. But is it necessary that we should go back and have one Central Commission only with all the inconveniences that it is likely to cause? Then clause (3) removes the regional Commission altogether. There is only one Central Commission and the regional Commissioners are to assist that Election Commission. Is it desirable that one Commission sitting in one corner of India should be entrusted to do this work, and the regional Commissioners are merely to assist? I see absolutely no reason why this should be done. Then I find that after the Constitution was presented to us, a note was given to us towards the middle of May 1949 which indicates to us the reasons for changing what we decided on 29th July 1947. Let us analyse the reasons given. The first reason is that this is a matter which requires careful consideration and that it has been hinted in a section of the press that in some provinces the Governments are helping the registration of their own supporters. This is a point which was adverted to by Dr. Ambedkar also. Sir, there will be no one in this House who will not condemn such practices aimed at the denying the people the franchise which this Constitution gives them. But then what is the remedy for it? The proper remedy would be to take action against people who resort to such practices. The Central Government has full power and authority to see that nothing of the kind is done. This is in the interests of democracy. Then we are told that it is hinted in a certain section of the press that certain provincial Governments are taking certain irregular actions. Sir, if it is merely a hint why should we be upset? Perhaps Dr. Ambedkar knows better how things are happening in the provinces. He may have information in the Cabinet. If this is so, it is better to take action against people who trifle with democracy on linguistic, racial or other considerations.

Another reason given is that in the bye-elections to the provincial assemblies it has been alleged by members of the losing party that provincial Governments take undue advantage of their position. That is bad. But I fail to understand how a change in the procedure as contemplated is going to bring about better state of affairs. If there are such people in Government they are unfit to be there in any democratic Government. If one or two instances of this kind have come to the notice the remedy is not to put down something in the Constitution which is not found anywhere else. These two reasons given in the report do not appeal to me.

Then it is said that the idea occurred of the Drafting Committee to change their draft of article 289 by a reference to what has been done in the Canadian Election Act of 1920. Sir, I find that Act refers only to the appointment of a Chief Commissioner for the purpose of election to the Dominion Parliament. At page 380 of his latest book on the Canadian Government, Dr. Dawson says that the appointment of a Chief Commissioner or Chief Electoral

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Officer was made to provide for an independent official to supervise the Dominion Elections. It is only for the Federal election that the Chief Officer functions. For that there is no objection here also. There is already article 289 (a) . It is rather strange that even for provincial elections such an appointment should be considered necessary by the Central Authority.

To my mind the reason for all these changes is to be found in the fact that we are now trying gradually to move away from the idea of federation. On account of certain happenings in the provinces, on account of certain internal situations and external factors which are threatening us we are trying more and more to reverse the process of having a federation with which we started our business here. The first resolution of this Assembly knows as the famous Objectives Resolution which we passed was to form a Union of autonomous units together with residuary powers. We are moving away from that position. We started with the idea of a Union or Federation of autonomous units. It may or may not be necessary now, to have such autonomous units. We have changed the name of a provinces into States. Then came the great tragedy of partition which gave a swing in favour of the unitary type of Government. It is due to this sort of thing that we are now trying to make everything, as we think safe. We are clinging to the form of federation but we are changing it from within in substance. It is this process which has resulted in the amendment now under consideration. The land-marks in this process are that we changed from the elected Governors into nominated Governors and we are wanting to have for the Centre power to legislate in respect of subjects given to the provinces. Now we have this proposal that in matters of election, even to provincial legislatures, the Centre alone should have power. In fact, this amendment No. 99 means that we are abolishing all provincial commissioners for elections, for what reason I do not know. If a Commission is appointed by the President for the Centre, why should not the same President appoint also election commissioners for the different provinces? Always why should we interfere with the provincial elections and thwart the process of democracy? I submit that this means that we are creating more and more points of difference between the Provinces and the Centre. After all, is this necessary? If you do not trust your Governor as he likely to be influenced by the provincial Government, let the President appoint provincial commissioners or regional commissioners for elections. Why do you suppose that in the provinces there will be no purity of administration and that democratic practices will not be followed? It is not proper. I think a provision like this will only mean that we are getting away from the principles of federation and our distrust of even the nominated Governors is there. We are going to have adult franchise and for the transition period certain exceptional provisions may be necessary. But that need not lead us into framing a provision of this nature. After all in elections on the basis of adult franchise, whether for the Centre or for the province, the same type of people are likely to be returned and so I do not understand why there should be this distinction between the two. This can only result in creating a spirit of hostility which cannot and should not exist. Sir, I admit that the present conditions justify that there shall be a strong Central Government, but what is the idea of the Central Government being strong? Is it the idea that the Central Government should be so strong that the provinces will be deprived of their legitimate powers? It has become the fashion these days to say that if anybody talks of the provinces, it is something anti-national. This is entirely wrong.

Mr. President : Are you likely to take much time?

Shri H. V. Pataskar : Yes, Sir.

Mr. President : Then you can continue tomorrow.

Mr. Tajamul Husain (Bihar: Muslim) : Before you adjourn the Assembly, since we have been reading in the papers that the Assembly.

Mr. President : If the honourable Members had waited, I was myself going to make a statement before adjourning.

We shall continue the discussion of this article tomorrow. Before we adjourn today, I desire to make one statement with regard to the programme of work. We have already dealt with nearly three-fourth of the Constitution. These are certain articles and certain Parts which have not yet been dealt with, but with regard to which we are not in a position today to take up the discussion. For example, the position of the Indian State in some cases is not quite clear yet. Then, there is the question of the distribution of revenues between the Union and the Units. This requires consultation between the Central Government and the provincial Governments. We are not in a position to have that Conference immediately for various reasons, one of which is that the Finance Minister has to be away from India for some time in connection with urgent national work. It has therefore become necessary to adjourn discussion of the remaining articles of the Constitution for some time so that within the time available these consultations may be held and the articles may be taken up for consideration at a time when everybody is ready to deal with them finally. It has therefore been proposed that we adjourn discussion of the other articles of the Constitution after tomorrow and we meet again, say, about five weeks later, and then we pass the remaining articles of the Constitution in the second reading. When that will be finished, some time will be taken up in putting the various articles in their proper places, looking into the various articles from the drafting point of view and also considering whether any lacuna has been left or whether any changes are required when the whole picture is before the Drafting Committee. That will take some time and when that has been done, we shall meet for the third reading which, I hope, will be a short session because the whole thing will have been thrashed out in the second reading state and we shall be able to get through the third reading pretty rapidly. That is the programme as I envisage it, and therefore I desire Members to note that we shall be adjourning after tomorrow for about five weeks. I shall announce the exact date of the meeting later on.

Shri R. K. Sidhwa : Any idea of the date?

Mr. President : As I said, I shall announce the exact date later on.

Mr. Tajamul Husain : Under the rules, the President has no power to adjourn the House for more than three days.

Shri L. Krishnaswami Bharathi (Madras: General) : A formal resolution can be moved tomorrow before we adjourn.

Mr. President : When we adjourn, we shall adjourn in accordance with the rules.

We adjourn now till Eight O'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Thursday, the 16th June 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 16th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register:—

- | | | |
|----------------------------------|---|-----------|
| (1) Sheikh Mohd. Abdullah. | } | [Kashmir] |
| (2) Mirza Mohd. Afzal Beg. | | |
| (3) Maulana Mohd. Syeed Masoodi. | | |
| (4) Shri Moti Ram Bagda. | | |

Mr. President : I am sure the House will join me in extending a cordial welcome to Sheikh Mohd. Abdullah and the three other Members, who have joined the Assembly today and are going to take their seats for the first time. This brings to the Assembly now the full complement of representatives from all States that have acceded to India.

Shri H. V. Kamath (C. P. & Berar: General) : Bhopal and Hyderabad?

Mr. President : Their presence, I am sure is going to be of great help in framing the Constitution which is intended to cover the whole country and which, I am sure, will receive full support from all its constituent members. They have been somewhat late in coming, but it is not their fault, nor do I think it is our fault. Circumstances have been such that they have been delayed, but I am sure they have come in time to make very useful contributions to our Constitution.

DRAFT CONSTITUTION—*Contd.*

Article 289

Mr. President : We shall now proceed with the discussion of article 289. Mr. Pataskar.

Shri H. V. Pataskar (Bombay: General) : Sir, I am now going to look at this question from a constitutional point of view. So far as I am aware there is no other Constitution where such elaborate provisions with respect to the elections and its details are made. Even the Canadian Election Act on the basis of which the present amendment and the subsequent amendments which are to follow are drafted, is an Act of the Canadian Legislature, and that too, as I said yesterday, as far as I can find out from the records available to me, applicable only to the Dominion Parliament in Canada. In spite of all efforts, I could not get a copy of it either in the Legislative Library or this library. All the same, from the documents available, I am convinced. My point is whether really it is necessary or desirable that all these elaborate details about the method of election, about the Election Commission, etc., are necessary to be included in the Constitution. While, as we could find, there is some justification probably from what must have come to the notice of the Drafting

[Shri H. V. Pataskar]

Committee and in view of the work which is now proceeding for the preparation for the elections, that they want some provision of this kind to be made, the best remedy would be not to include them in the Constitution here, but to get an Act passed by the legislative section of the Constituent Assembly. I am told it is likely to meet in September next and it would not have mattered if an Act on the lines of the Canadian Election Act was passed by the Central Legislature. It is not desirable that it should be provided for in the Constitution which is for all time to come. We do not know what conditions may prevail after ten or twenty years. From what is happening in some parts of the country, it is not desirable that our constitution should be burdened with all these details. I would therefore still appeal—probably it may be without much effect—that all these things and the subsequent provisions which are to follow could have more appropriately found a place in the Act to be passed by the Central Legislature. We have our own legislature even now and that could have been used.

Sir, I do not think it is desirable in matters of such consequence we should try to depart from time to time from what we decided earlier, unless there were some very cogent reasons as to why that decision should be reversed after a few months' time. As I said, so far as I can see, article 289 (2) is quite enough for the purpose. Even under article 289 (2) we can appoint not merely some officials of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as independent as we are trying to make them in the case of the Central Commission. Even under the Government of India Act, 1935, which certainly did not contemplate so much of a Federal Government as a type of Government which was to some extent more unitary than otherwise, provision for election was contained in section 291. It says: "In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them.....the conduct of elections under this Act and the methods of voting thereat etc." Even then, practically it was left to the provincial Governments. I do not see any reason why we should make provision for all these things in the Constitution itself and as far as I have been able to ascertain, no other constitution contains a provision of this nature.

I have therefore to make one or two concrete suggestions. We may keep article 289 as it is. We may supplement it by an Act of the Central Legislature for making provision with respect to all other matters which are now tried to put in this Constitution, as to what should be the status of these Regional and other Commissioners when they are appointed, whether they should be independent men of the position of High Court Judges, how they should be removed and all these things. I agree that they should be free from influence of the executive. All that we can easily entrust at least to the present Central Legislature.

Finally, I have to make an appeal that it is not yet too late in the day when we should really seriously consider whether article 289 (2) is not enough. As I have already stated, the amendment takes away to my mind not only the last vestige of provincial autonomy, but actually displays a distrust of our people of the provinces, down from the Governor nominated by the President to the smallest local authority. I do not think there is any justification for an attitude of this type. Therefore, I suggest that we should not try to incorporate all these things in the Constitution itself.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I consider this article in the Constitution as one of the important articles as far as

elections are concerned. I do not think that there are two opinions either in this House or outside the House that elections should be fair, pure, honest and impartial. If that is the view, I am sure it could be achieved only by an impartial agency as has been contemplated in this article. We want the elections to above-board. Any machinery that is to be set up should be quite independent, free from any influence from any agency, executive or anybody. Therefore, Sir, I whole-heartedly welcome the article that has been proposed by my honourable Friend Dr. Ambedkar.

Sir, I do feel that even this article does not go as far as is necessary in the matter of perfection of elections is concerned. I will show you presently that there is some defect in this article also. With all that, I feel that every effort has been made in this article to achieve the object which we all are anxious to achieve.

It has been stated, why do you encroach upon the rights of the provinces by entrusting this work to a Special Commission? Now, Sir, I fail to understand how the question of encroaching upon the right of the provinces arises at all. This Commission will not run the elections for the provincial legislatures only, but it will run the elections for the Central Legislature also. If, it encroaches on the rights of the provinces, it encroaches on the rights of the centre also, and therefore it is unfair to say that it encroaches upon the rights of the provinces.

Under this article, a machinery has been set up for the election purposes. While it has been made independent of the executive for purposes of administration, clause (5) says that the staff required for election work may be borrowed from provinces. Herein lies the defect, which I said makes the scheme imperfect. If you want to make the scheme perfect, you should not borrow any staff from the provinces. Though during the period of election, the staff would be under the control of the Commission. It will be only for a temporary period. They will be permanent people responsible to the executive and if the executive wants to play mischief, it can issue secret instructions to that staff to act according to their behests. The staff may feel that their permanent duty lay with the executive, that the work with the Commission was for a short period and they would thus carry out the fiat or behest of the permanent officials. Therefore, Sir, I would have preferred all the staff to be also recruited from outside but I considered myself as to what will be the effect of it. It will require an army of men. Those persons who have seen the elections being run and those who are interested in it know that to run the elections of the whole country they will have to recruit a number of men, a large army of men. It will be very expensive; therefore, although to that extent it is imperfect, I accept it for the reason that it is nearer to perfection. If we have to recruit a new staff it will be prohibitive as far as expenditure is concerned and it will be a new untrained staff and probably it will not be administratively as effective as we would expect it to be. Another provision is as regards the permanency of the Commission. It has been suggested why you incur so much expenditure in providing for a permanent Commission. I have some experience of election of the Karachi Municipal Corporation both as the Mayor and Chairman of the Standing Committee. There is a provision in Karachi Municipal Act that there shall be a permanent election staff and in accordance with that since ten years we have introduced this permanently and the elections have been fair and perfect although compared with Karachi the number of voters there being negligible but the impersonation and the false votes have been completely removed by that method which we have introduced. I am positive that with the permanent Commission that we are going to establish, we are going to remove all these

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defects and it is incorrect to state that this Commission will not have any work after the general election is over. We shall have now about 4,000 members in all the provinces and there will be bye-elections. Surely every month there will be two or three elections—some will die, some will be promoted to high offices—some will go here and there. In this Constituent Assembly during the short period we have had a number of bye-elections although we had nothing to do with them, but in the places from which they have come there have been a number of elections. Therefore, apart from the necessity and fairness, this Commission will have ample work. Apart from that if the Commission is permanent, what will it do? Periodically it will examine the electoral rolls and from the statistics of those provinces those who are dead they will remove those names and will bring the electoral rolls up to date as far as possible. An electoral roll is to provide pure election and I know at present as the electoral rolls are prepared, 50 per cent. of them are defective. Some are dead and their names are intentionally put in by a particular party who wants to run the election and wants to put in names of their own choice; I have heard people living in the cities trying to influence by mixing up with the executive. I can tell you that from my own personal experience and I feel that if we were to have a perfect electoral roll—and electoral roll is the principal thing in an election—I am sure we must have an independent Commission and if we establish a Permanent Commission we shall certainly have a permanent roll and a very good electoral roll. I have no doubt in my mind about that and therefore though you say that it will be an expensive thing and it is not a necessity, I strongly say from my experience that this Commission is very necessary under the circumstances that I have mentioned.

Now coming to the tribunal, it will be necessary for the election petitions or those who have to make any application for the election, to have a Tribunal. I have also certain experience of tribunals. Tribunals have been appointed by the Governors in the past and they have appointed tribunals, at the instance of the Executive, of the favourites and they have never acted impartially. I therefore suggest that the tribunal should consist of judges of superior courts to whom the election petitions of the election should go. I am opposed to such cases being entrusted to any kind of tribunals. It will mar the very purpose and the very object for which we are striving—to have our elections pure and fair—it will frustrate that very object, if in the tribunal that will be appointed, some kind of mischief is made. In England also—I might state—the Constitutional law of the British Commonwealth provides for entrusting this work to superior courts. I therefore suggest that although nothing could be provided in this Constitution, I do not desire that the Constitution should be burdened with all this—but in the Act that will be made—the Election Act—wherein many things are required to be put in, *e.g.*, the secret ballot boxes etc.—I suggest to Dr. Ambedkar to bear that in mind that when the Parliament Act is made it must be made clear that the tribunal's appointment should not be left to the President or anybody—I do not want hereafter any kind of trickery that was played in the past should be played hereafter. With all that, I feel that the permanent superior judiciary alone can fairly and impartially adjudicate in such disputes and they will command the confidence of the public. Those who will be appointed from public men or some lawyers may be best lawyers but they will be temporary men and would be liable to influence. If the tribunal does not consist of responsible permanent men I am sure these tribunals will be of no effect. My Friend Mr. Pataskar desired that why burden the Constitution with scheme, the rules may be made; but I can surely and safely tell him that if we have not such an article in

our Constitution our very purpose of making our elections pure will be frustrated; it is, therefore, necessary that it should be provided here. I do not want this to go into the Election Act. I really wish even some of the other provisions *e.g.* the secret ballot-box could also be provided in the Constitution which is very essential for an election. The whole thing depends upon the election for the future constituencies and if we do not make this provision in the Constitution and leave it to Parliament to be made, it will be running a great risk. Under these circumstances I whole-heartedly welcome this article and strongly support it.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, I have heard with great attention the arguments advanced by Dr. Ambedkar who is the Constitutional manoeuvrer and whose industry and diligence is a wonder to all of us. Yet, his arguments have not brought that conviction which ordinarily they bring. His main objection is—he first argued that he wanted it to be inserted in the Fundamental Rights but as it was said that he wanted a separate provision for this, so this article has been added in order to safeguard the interest of the electorate—he thought that a body outside the Executive should be there to conduct the elections; but what is that body outside the Executive? It is the President who will select the Chief Election Commissioner and he is a party-man whatever it may be and will have the same prejudices and same bias towards his own party-man as anyone else and therefore that argument does not hold very good. Secondly, he says and he admits that it is a radical change and I do not see any reason why this radical change is brought forward. Has he been able to give us examples of corruption and nepotism in case of election tribunals in the provinces? No instance has been given of abuse of power by the election tribunals appointed by the Governors in the provinces. In spite of that he wants a radical change. Of course radical illness requires a radical remedy, but Dr. Ambedkar has not been able to give one single instance of corruption or abuse of powers by these election tribunals. On the contrary we know that, as a result of the findings of an election tribunal in Sind, Pir Ilahi Bux was removed by his own party men, which shows that our people have the capacity to be impartial. I see no reason why this radical change should be necessary.

Then it is said that there are minorities in the provinces who require protection. But should we keep them in haughty isolation and not pave the way for harmonious relations with the general population? By doing this you will be creating big problems for these provinces. It is said that they are racially and linguistically different. But will you perpetuate these differences or should you try to remove them? I submit that no justification has been offered for this radical change. Dr. Ambedkar has brought this forward on the analogy of the Canadian Act of 1920. But there they have a small population as against our 340 millions, and one Election Commission would hardly do for this country. In spite of there being Regional Commissioners this Election Commission would not be able to realise the feelings of the people of different parts of the country. They would not know what a man in Madras would do and what a man in Assam would do. I submit that this thing should not be taken out of the provinces. If you suspect the provinces and take greater powers for the Centre it will only lead to undesirable results. If you cannot trust men like Messrs. Pant, Kher and Shukla and the men working under them you will hardly make a success of democracy. You are doing something which will have a disintegrating effect and will accentuate differences instead of solving them. If you take too much power for the Centre the provinces will try to break away from you. How can a man in Madras understand the feelings and sentiments of a man in Assam or Bengal? You seem to think that all the best qualities are possessed by people here in the Centre. But the provinces charge you with taking too much power and reducing them to a municipal body without any initiative left in them. You

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think you possess better qualities than the men in the provinces, but I know there are people there who are much better than you are. If you cannot trust the honesty of your own individuals you can never make a success of democracy. You are always suspicious and think that the province will be unjust to the minorities. But if they are kept aloof and always under the protection of the President or the central executive, they will never be able to develop their own virtues, and you will only be encouraging disturbances and rebellions. It has been suggested that the Scheduled class people are suspicious about the impartiality of the provinces. But they are our own people and they can be just as fair and impartial as men in the Centre. Why should you think that you have developed the virtue of impartiality which no one else possesses? Sir, I fail to see why this provision should be sought to be embodied in the Constitution.

Sir, the Governor is appointed by the Centre and he will form election tribunals, as has been done in the past. In spite of Mr. Sidhva's assertion I must say that no case of partiality has been proved against any of these tribunals. In a case in which I was interested I know that even when the Congress was in the bad books of Government, the tribunal decided in favour of the Congress, although the candidate was opposed by Rai Bahadurs and other big men. That shows that they can be impartial. Why should you condemn your own men as partial, unjust and incapable of being honest? If we cannot trust our own people we are not worthy of our independence, Sir, an injustice is sought to be done to the provinces and they are needlessly suspected, and I therefore oppose this proposal.

Pandit Hirday Nath Kunzru (United Provinces: General) : Sir, my honourable Friend Dr. Ambedkar moved a new article yesterday in place of article 289 as contained in the Draft Constitution. The article deals with a very important matter and departs radically from the corresponding article in the Draft Constitution. Nevertheless he contented himself with moving this amendment without explaining in the smallest measure the reasons why the new Draft had been proposed. When I pointed out that it was not fair to the House that an article dealing with a very important matter should be placed before the House without a full explanation of its provisions he felt the need for defending himself. But finding that he was in a very difficult position he became reckless and said I had asked for an explanation only because I had not read the amendment. It was obvious that this irresponsible statement of his did not satisfy the House and he was therefore compelled to explain the differences between the new Draft and the old Draft.

Sir, several points arise in connection with this question. The most important question is one of principle. Is it right that in a matter of this kind the provincial Governments which are being given full responsible Government should be deprived of all power? I shall not dilate on this subject because it has been dealt with very ably and fully by our honourable Friend Mr. Pataskar. Dr. Ambedkar defended the new procedure which makes the Central Government responsible for superintendence, control and guidance in all matters relating to the preparation of the electoral rolls and the conduct of the elections on the ground that complaints had been received from some provinces that members belonging to racial, linguistic, or cultural minorities were being excluded, under ministerial instructions from the lists of voters. I do not know to what extent the complaints received by him or by the Government of India have been investigated and found to be correct. Supposing that they have been found to be correct, one has to ask oneself why this elaborate Constitution is being framed. If we cannot expect common honesty from persons occupying the highest positions in the discharge of their duties, the foundation for responsible government is wanting, and the outlook for the future is

indeed gloomy. I do not know of any federal Constitution in which the Centre is charged with the duty of getting the electoral rolls prepared and the elections held fairly and without prejudice to any minority—there may be some constitution in which such a provision exists, but I am not aware of it. In all probability ours will be the only federal or quasi-federal constitution in which the Provinces will be excluded from all share in the preparation of the electoral rolls and other ancillary matters except in so far as their help is needed by the Election Commissioners appointed by the President.

Even granting however, Sir, that there is need for taking the control of elections out of the hands of the provincial Governments we have to see whether the new Draft contains the necessary safeguards. It may be right to curtail the political power of the Provinces; but is there no danger, if the article is left as it is, that the political prejudices of the Central Government may prevail where otherwise the political prejudices of the provincial Governments might have prevailed? Everything in the new Draft is left to the President; the appointment of the Election Commission will be made by the President; he will appoint the Chief Election Commissioner and decide how many Election Commissioners should be appointed; he will decide the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners that might have to be appointed. Again, while it is provided that the Chief Election Commissioner should not be removed except in the same manner as a Judge of the Supreme Court, the removal of the other Election Commissioners is left in the hands of the President. He can remove any Commissioner he likes in consultation with the Chief Election Commissioner. Clause (4) of the article which deals with this matter is so important that I think it is desirable that I should read it out to the House. It says :

“The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment;

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.”

I find, Sir, that I made a mistake when I said that the other Election Commissioners and the Regional Commissioners could be removed in consultation with the Chief Election Commissioner. They can be removed only on the recommendation of the Chief Election Commissioner. Here two things are noticeable: the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy positions as responsible as those of judges of the Supreme Court should depend on the opinion of one man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartially can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioner will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man the President

[Pandit Hirday Nath Kunzru]

will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (*Interruption*) . Somebody asked me why it should be so. As full responsible Government will prevail at the Centre, the President cannot be expected to act in any matter at his discretion. He can only act on the advice of the Ministry and, when, in matters of patronage, he receives the recommendations of the Prime Minister, he cannot, if he wants to act as a constitutional Head of the Republic, refuse to accept them. I think, Sir, therefore, that the Draft placed before us by Dr. Ambedkar has to be modified in several respects, so that the Election Commission may in reality, consist of impartial persons and the Election Commissioners may be able to discharge their responsible duties fearlessly.

My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner. I feel, Sir, that the opinion that I have placed before the House, was at one time or other the opinion of Dr. Ambedkar too. We have in the List of Amendments, amendment No. 103 which has not been moved by Dr. Ambedkar, but has been given notice of by him. Honourable Members who have read this amendment will have noticed that clause (2) provides that a 'member of the Commission shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court, and the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment'. It will be clear therefore that the suggestion that I have made is in accord with the better judgment of Dr. Ambedkar which, unfortunately, has not been allowed to prevail.

I know, Sir, that Dr. Ambedkar told us yesterday that it might be unnecessary to have permanent Election Commissioners and that all that might be required might be to appoint Election Commissioners when there is work enough for them to do. In such case obviously the procedure relating to the removal of judges of the Supreme Court cannot be applied in the case of Election Commissioners. This is true, but then there is no reason why the whole matter should be left in the hands of the President, and why the conditions and tenure of service of the Election Commissioners should be determined by rule by him. These, too, should be determined by law made by Parliament.

Again, Sir, we have to consider the position of Regional Commissioners who may have to be appointed in the provinces in order to help the Election Commission in carrying out its duties honestly and efficiently. It is obvious that so long as these officers are holding their offices they will be carrying out highly responsible duties. It will depend on them primarily whether the preparation of the electoral rolls and all matters connected with the conduct of the elections gives satisfaction to the public or not. Now, in the Draft which was not placed by him before the House Dr. Ambedkar provided with regard to the Regional Commissioners and the Returning Officers, etc., that no such authority or officer would be removed except by order of the President. As I have already pointed out a change has been made now and their removal has been made to depend on the recommendation of the Chief Election Commissioner. This has been done presumably because the Election Commissioners would be permanent officers and if there is only one permanent officer, the law cannot obviously require that the removal of the Regional Commissioners and the Returning Officers should depend on the decision of the Commissioners, as a whole. But for this very reason, Sir, the matter ought not to be left to the sweet will of the President, in reality the Prime Minister of the day, but should be determined by law.

My honourable Friend, Professor Shibban Lal Saksena, moved a number of amendments yesterday, Sir, with regard to the new Draft placed before the House by Dr. Ambedkar. It may not be practicable to accept some of them, but I think that he has done a public service by drawing the attention of the House to the glaring defects in the Draft that we are considering. I think it is the duty of my honourable friend, Dr. Ambedkar, to consider the matter carefully and to provide such safeguards as will give general satisfaction by ensuring that our electoral machinery will be free not merely from provincial political influences but also from Central political influences. We are going in for democracy based on adult franchise. It is necessary therefore that every possible step should be taken to ensure the fair working of the electoral machinery. If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source; nay, people, instead of learning from elections how they should exercise their vote, how by a judicious use of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.

Mr. President : I think that Members understand that we will have to finish the agenda today. Otherwise we may have to sit tomorrow.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I have come here to support this article. At the beginning when I came to this Assembly for the first time, I thought that the Provinces should be made strong and the Centre to that extent must yield. But after a considerable amount of experience and on prolonged consideration of what is happening in the Provinces and in the States, I am now of the opinion that for many years to come the Centre must take charge of all important matters affecting the general well-being of the country and encroach on the Provincial field. Election is a most important item in a democratic set up and it is very necessary that it should be controlled and supervised by a very competent, independent and impartial body. The way in which some of the Provinces are proceeding shows that the Provinces are rent by party factions and it will always be the desire of the party, or the faction in power for the time being, to appoint election tribunals and officers of their own choice with a view to control or manipulate the elections. The result will be that election tribunals and officers will not be free from corruption and partiality. It is for this reason that I welcome the move by the Centre to control elections, so that thereby the impartiality and efficiency of the election machine could be ensured. We have had the experience of West Bengal and other Provinces. West Bengal is rent by party factions. Even in the Congress ranks in Calcutta and in the districts there are several groups and factions accusing one another of habitual corruption and the like. They are fighting against one another in a most unseemly fashion to the detriment of the general well-being of the country. This is also happening in some of the States. We have the unseemly quarrel in the Greater Rajasthan State and also in some other States. If we do not want the Provinces and the States to descend into chaos and disorder, the first thing that we should do is to control the elections, not to interfere with the policies and activities of the different parties, but just to ensure impartiality and efficiency in the conduct of elections. The most important duty of the Commission would be to appoint Election officers upon whose efficiency, integrity and independence much will depend, and I believe that the Central control of these elections will be welcome in serious quarters. The secrecy of the ballot box, as has been pointed out by one of the speakers and as is well known, is a very important matter in an election as fostering freedom of the vote, and this secrecy must be thoroughly and effectively guarded. We hear allegations and counter allegations that in the recent South-Calcutta election, the secrecy of the ballot

[Mr. Naziruddin Ahmad]

box and the integrity of the ballot papers were violated. I do not know what truth there may be in these allegations, but they have a bad odour in themselves. I believe that if these matters are controlled by the Centre, these tendencies to make allegations and counter-allegations of this type would be removed. The officers who are to be appointed to conduct these elections should be above all suspicion and should be selected just to avoid provincial cliques and parties. Sir, I do not wish to take up further time of the House. I accord my humble and whole-hearted support to this article.

Shri K. M. Munshi (Bombay: General) : Mr. President, Sir, I rise to support the amendment No. 99 moved by my honourable Friend, Dr. Ambedkar. This amendment has been subjected to two files, one by my honourable Friend, Pandit Kunzru, on the ground that the amendment does not go far enough, that it does not make the Election Commission sufficiently independent, that the Central Government could influence it in a manner prejudicial to fair elections. That is one ground. The other ground, of which the exponents have been my honourable Friends, Mr. Pataskar and Kuladhar Chaliha from Assam, put forward, is that this is a trespass on provincial autonomy, to put it shortly. I will deal with these two points separately.

Sir, the amendment which has finally emerged from the Drafting Committee makes it clear that neither the Central Government nor the provincial Governments will have anything to do with the election. The Chief Election Commissioner, as the House will find, is practically independent. No doubt he is appointed by the President, that is, the Central Government. There can be no other authority, no higher authority in India than the President for appointing this Tribunal. You cannot omit this important thing.

The next argument against the amendment is that this amendment departs from the old amendment No. 103 which was to be moved on behalf of the Drafting Committee, under which the Commissioners other than the Chief Election Commissioners were not removable except in the manner in which a High Court Judge can be removed. Perfectly right. But the change has been made for a very good reason. Between two elections, normally there would be a period of five years. We cannot have an Election Commission sitting all the time during those five years doing nothing. The Chief Election Commissioner will continue to be a whole-time officer performing the duties of his office and looking after the work from day to day, but when major elections take place in the country, either Provincial or Central, the Commission must be enlarged to cope with the work. More members therefore have to be added to the Commission. They are no doubt to be appointed by the President, but as the House will find, they are to be appointed from time to time. Once they are appointed for a particular period they are not removable at the will of the President. Therefore, to that extent their independence is ensured. So there is no reason to believe that these temporary Election Commissioners will not have the necessary measure of independence. Any way the Chief Election Commissioner an independent officer, will be the Chairman and being a permanent officer will have naturally directing and supervising power over the whole Commission. Therefore, it is not correct to say that independence of the Commission is taken away to any extent.

We must remember one thing, that after all an election department is not like a judiciary, a quasi-independent organ of Government. It is the duty and the function of the Government of the day to hold the elections. The huge electorates which we are putting up now, the voting list which will run into several crores—all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest

of them. Now all this army cannot be set up as a machinery independent of Government. It can only be provided by the Central Government, by the Provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that the election matters could be left to an entirely independent organ of the Government. A machinery, so independent, cannot be allowed to sit as a kind of Super-Government to decide which Government shall come into power. There will be great political danger if the Election Tribunal becomes such a political power in the country. Not only it should preserve its independence, but it must retain impartiality. Therefore, the Election Commission must remain to a large extent an ally of the Government; not only that, but it must, a considerable extent, be subsidiary to Government except in regard to the discharge of the functions allotted to it by law.

Some reference has been made that the powers of the Parliament have not been preserved. I may point out that amendment no. 123 which is also going to be moved by Dr. Ambedkar gives to the Parliament power to make provisions with respect to elections to legislatures, subject, of course to the Provisions of this Constitution. Similarly Sir, you find amendment No. 128 which gives to a State Legislature the power to make provisions with respect to elections to such Legislatures. Therefore, the Parliament as well as the State Legislatures are free to make all provisions with regard to elections, subject, of course, to this particular amendment, namely, the superintendence, direction and control of the Election Tribunal. Today, for instance, the elections are controlled by officers appointed either by the Centre or the Provinces as the case may be. What is now intended is that they should not be subjected to the day-to-day influence of the Government nor should they be completely independent of Government, and therefore a sort of compromise has been made between the two positions; but I agree with my honourable Friend, Pandit Kunzru that for the sake of clarity, at any rate, to allay and doubts clause (2) requires a little amendment. At the beginning of clause (2) the following words may be added; "subject to the provisions of law made in this behalf by Parliament." Similarly in clause (4) also where the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners are prescribed, it will be proper to have words to this effect: "subject to the provisions made by Parliament in that behalf." That, of course, would follow from amendment No. 123, but we do not want any doubt to be on this point, and therefore, it would be better if these words are added to give Parliamentary control over the terms of service and the tenure.

Shri H. V. Kamath : How will you insert those words in the amendment?

Shri K. M. Munshi : I have no doubt in my mind that Dr. Ambedkar will accept my suggestion and move these amendments.

The question was raised with regard to the qualification of the Regional Commissioners. The same could easily be provided by parliamentary legislation either under article 123 or under the new phrase which I submit should be added to clauses (2) and (4) . So in this way the Parliament's power over these details would be secured. This amendment, therefore, maintains impartiality and independence of the Election Commission so far as it is necessary in the circumstances and also supremacy of the Parliament over the details.

Now I come to the other part of criticism. And, that is the argument that this provision whittles down or takes away what is called provincial autonomy. This argument has the knack of appearing again and again in respect of almost every article, and I think it is high time that those honourable Members of the House who put it forward reconcile themselves to the position that the House has taken the line more suited to the country rather than the doctrinaire views of theoretical writers on federalism. Dr. Ambedkar in the opening speech has made

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it clear that the idea of an Election Commission was accepted as far back as January or February 1947, when even the question of the partition of the country had not become a settled fact. The Fundamental Rights Committee put forward this suggestion. It was unanimously accepted by the Advisory Committee and again it was accepted unanimously by the House. Therefore, it must be treated as the opinion of the House, and the country as a whole that matters of election must be taken out of the purview of the Centre and the provinces with a view to meet the realities of the situation. That being so, the only other question is as to how this should be done.

With regard to the precedent, reference has already been made to section 19 of the Dominion Elections Act of Canada. This Act lays down that for the whole of Canada, a Chief Electoral Officer, not a Commission as we have envisaged, will superintend, control and direct all elections. His tenure of office is exactly the same as we have adopted here for the Chief Election Commissioner.

Another argument put forward in the course of this debate was that this is undemocratic. I fail to understand how democracy is affected by this provision. Let us analyse the position. This Constituent Assembly, if it lays down a Constitution for the country, is nothing else but an instrument of the sovereign people of India, not the different people of the provinces meeting together in a confederation for the purpose of evolving Constitution. Let us not forget this main fact. It is open to the House to look at the conditions in the country, to look at the realities of the situation and to give some power to the Centre, to give other power to the provinces, to transfer power from one to the other. That does not take away from either the representative character of the Constituent Assembly or the democratic power of the sovereign Indian people. The House cannot be tied down by any theoretical considerations in this matter. In the debate on article 226 also, I found the same kind of argument advanced. But we must realise once for all that it is the Constituent Assembly as the instrument of the sovereign people of India which is one unit that is going to decide what are going to be the functions of the Centre and the provisions in view of the actual condition that exist in this country. Now, Sir, if that is so, the sovereign people, and the Constituent Assembly as their agent, is bound to maintain the purity of elections in a practical manner. That can only be done by the establishment of the machinery envisaged in this amendment. To say that it is undemocratic is entirely baseless. If there is going to be democracy, the sovereign people of India must be in a position to elect their own representatives in a manner which is above suspicion, above partiality. Corrupt practices do not necessarily apply to the candidates. Therefore, it is necessary that we should not consider this question from the point of view of any theoretical provincial autonomy, a point which is being trotted out again and again in this House.

My Honourable Friend, Mr. Kuladhar Chaliha coming from Assam said that this affects the power of the provincial Governments. He further put forward the point of view that in point of efficiency and integrity the Centre is no better than the provinces. He said if I heard aright that the provinces were better in this respect than the Centre. If that be so, I wish the sooner we wound up our democratic business the better. My friend coming from Assam ought to know that complaints after complaints have been received from Assam that ingenious devices are found to shut out people who have settled in Assam from the electoral rolls. The complaints may be wrong; I am not here judging them. But the complaints are there.....

Shri Kuladhar Chaliha: I question that.

Shri K. M. Munshi : The complaints are known to every department that is concerned with them. The fact that such complaints come is the reason why

provincial Governments cannot be trusted, in the condition in which we are, to be as impartial in the elections as they should be.

Shri Kuladhar Chaliha : I seriously protest against this remark.

Mr. President : There is no need to introduce heat in the discussion. We are only discussing a purely constitutional question.

Shri K. M. Munshi : I am not introducing heat. My honourable Friend said that the provinces are such superior to the Centre or this Constituent Assembly. I reminded him that coming as a leader from Assam, it was a surprising remark. It may come from some other province; that is a different matter.

As my honourable Friend, Mr. Sidhva said, in the past several Election Tribunals were appointed by Governments of the provinces. They were not Congress Governments; they were appointed by other Governments. They were appointed to secure a particular object. As honourable Members know, one leading Member of this House, who was the head of the Congress organisation of his province, was victimised in the past regime and debarred from being a Member of the legislatures. It is very easy for a Premier to manipulate an Election Tribunal and thus remove a strong rival for five or seven years from the scene. It is therefore necessary that these matters should be placed beyond the reach of temporary passions in the provinces.

Sir, one thing more. We must realise—and this is the general answer that I propose to give to my honourable Friends, Mr. Pataskar and Mr. Chaliha—we can only consider the problems before us from the conditions as they exist today. We cannot forget the fact that some ten or eleven of the Indian States which are not accustomed even to the little measure of democratic life which is enjoyed by the provinces are coming into the Union on equal terms. We cannot ignore the fact that there are corners in India where provincial autonomy requires to be placed on a better footing. In these conditions, it is but natural, apart from world conditions, that the Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is water-tight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is a small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the Provinces, is illusory. Charles Merriam one of the leading political thinkers in America to his book called "*The Need for Constitutional Reform*", with reference to the States of U.S.A., says, "Most States do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged." In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members who are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but only subject to national

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power. When national danger comes, we must realise that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no *a priori* theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial to secure maximum national efficiency. From that point of view I submit the amendment moved by my Friend Dr. Ambedkar is a good one, a very good one and a very wholesome one for the whole country.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Mr. President : There is a closure motion. I would like to take the sense of the House.

The question is :

“That the question may now be put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other constitution which is better than the one we have provided for in the proviso to clause (4).

With regard to the other Commissioners the Provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.*, that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my Friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My Provision—I must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this house a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the

Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also be realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therefore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this question because as I said it is going, to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happen. Therefore in order to meet the criticism of my honourable Friend Professor Saksena, supported by the criticism of my honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is:

“That the words ‘to be appointed by the President’ at the end of clause (1) be deleted.”

“In clause (2) in line 4, for the word ‘appoint’ substitute the word ‘fix’ after which insert the following:—

“The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the Provisions of any law made in this behalf by Parliament, be made by the President.”

“The rest of the clause from the words ‘when any other Election Commissioner is so appointed’ etc., should be numbered clause (2a).”

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other Members to offer their views.

Mr. President : In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras: General): I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras: General): I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultation with the Drafting Committee.

Shri T. T. Krishnamachari : The amendments merely say that the President's powers are subject to parliamentary legislation. They do not detract from the contents of the article and we need not be too finicky about the procedure at this stage.

Pandit Hirday Nath Kunzru : Even if there is to be further discussion, I think we should know how Dr. Ambedkar proposes to meet the difficulties that have been pointed out. He should therefore be allowed to put forward his suggestions.

Mr. President : That is why I allowed him to move these amendments. After they are moved we shall decide whether to discuss them now or at a later date.

Shri K. M. Munshi : The amendments only say that acts, done should be subject to the laws of Parliament. That is already covered by amendment 123.

Mr. President : Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is:

“That in the beginning of clause (4) the following words should be inserted:—
‘subject to the provisions of any law made in this behalf by Parliament’.”

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President : I do not think any further discussion is necessary; let these be moved.

The Honourable Dr. B. R. Ambedkar : You cannot deal with a constitution on technical points. To many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President : If these are considered to be substantial amendments they will be held over. As there seems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

New Article 289-A

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

“That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted:—

289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion race, caste, sex or any of them.”

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it. That is the reason why I have brought forward this amendment.

Mr. President : Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed?

The Honourable Dr. B. R. Ambedkar : No, Sir, not like that. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B. I move:

“That for amendment No. 3087 of the List of Amendments, the following be substituted:—

‘That after article 289-A, the following new article be inserted:—

<p>289-B. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that it to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election’.”</p>	<p>Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.</p>
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Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I rise to oppose article 289-B. I am opposed to adult franchise on grounds both theoretical and practical. I am opposed to adult franchise because it is a gross violation of the tenets of democracy. Adult franchise presupposes that the electorate is enlightened. Where the electorate is not enlightened there cannot be parliamentary democracy.

Mr. President : Is that open to objection now? We have already passed article 149 in which it is expressly stated that the election shall be on the basis of adult suffrage. It was passed in the winter session.

Shri Brajeshwar Prasad: Sir, I will submit to your ruling. I was not present when that article was passed.

Mr. President : Then you cannot oppose it at this stage.

Shri T. T. Krishnamachari : This new article is actually redundant. It may be that the Drafting Committee will subsequently have to take it away.

Mr. President : That is what he has also said. When the time comes for rearranging the sections it may not be necessary to have this section in this form. But it has been moved.

Shri T. T. Krishnamachari : The principle is one which has been accepted by the House.

Mr. President : That is what I say. The principle has already been accepted.

The question is:

“That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted:—

<p>289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only on religion, race, caste, sex or any of them’.”</p>	<p>No person to be ineligible for inclusion in, so to claim to be excluded from, the electoral roll on grounds of religion, race, caste or sex.</p>
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The amendment was adopted.

Mr. President : The question is:

“That article 289-A, as amended, stand part of the Constitution.”

The motion was adopted.

Article 289-A, as amended was added to the Constitution.

Mr. President : The question is:

“That for amendment No. 3087 of the List of Amendments, the following be substituted:—

“That after article 289-A, the following new article be inserted:—

289-B. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.’”

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

on the basis of adult suffrage; that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.’”

The amendment was adopted.

Mr. President : The question is:

“That article 289-B stand part of the Constitution.”

The motion was adopted.

Article 289-B, was added to the Constitution.

(New article 289-C was not moved.)

Article 290

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

“That for article 290, the following article be substituted:—

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies.”

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provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies.”

Sir, with your permission I would also like to move the other amendment which amends this. I move:

“That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word ‘including’ the words ‘the preparation of electoral rolls and all other’ be inserted.”

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I gave notice of amendment No. 100 and amendment No. 127 and 129 with the idea that the entire responsibility and jurisdiction for making laws in regard to elections should be left to the Central Legislature and that the Central Legislature alone should have been given this power to enact laws in regard to matters pertaining to elections. Even now when amendment No. 99 was being discussed I

felt that it would not be necessary to have these new amendments if my amendment Nos. 100, 127 and 129 were accepted, because, according to me, it is not fair to give the power to the executive to appoint such highly placed officers in whom all the rights and powers in regard to elections are concentrated. Parliament should have the ultimate power. Similarly with regard to my amendment No. 127 which I did not move when I found that the wording of amendment No. 123 was "Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections....." When Parliament has been given this power, I do not know what power is left to be exercised under this article by the provinces. If we want uniformity in the conduct of elections we should see that Parliament alone has this power.

Under article 289 many arguments were advanced for giving these powers to the Central Government instead of to the provinces. If those arguments are valid, it does not behave us to say that any power which is left may be exercised by the provincial legislatures. Amendment No. 123 is all embracing and therefore there is no need for amendment No. 128.

Shri M. Ananthasayanam Ayyangar : Sir, I support the retention of amendment No. 128 moved to article 291. I do not agree with my Friend Mr. Bhargava. We have taken away the elections from the provincial legislatures and the Governors. Practically we have centralised the appointment of the Election Commission. This is a deviation with respect to which there have been complaints that the provincial governments have been made ciphers, To avoid corrupt practices we wanted the entire power to be vested in Parliament. Amendment 128 only says that for matters for which the Parliament does not make a provision the provincial legislatures shall have power. My Friend Mr. Bhargava does not want even this. According to him, either Parliament makes the law or there should be no authority to make law. There may be certain matters where for the sake of uniformity Parliament may make law and the State legislatures may make the rest of the laws. That is what is provided in amendment No. 128. I do not know why even to this limited extent power should not be give to the State legislatures. Why are we so suspicious of the State legislatures that we want to take away everything from them? I support amendment No. 128.

Mr. President : I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

The Honourable Dr. B. R. Ambedkar : I have nothing to say, Sir.

Mr. President : The question is:

"That for article 290, the following article be substituted:—

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament, or to the House or either House of the Legislature of a State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

Power of Parliament to make provisions with respect to elections to Legislatures.

provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament, or to the House or either House of the Legislature of a State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

The amendment was adopted.

Mr. President : The question is:

“That article 290, as amended, stand part of the Constitution.”

The motion was adopted.

Article 290, as amended, was added to the Constitution.

Article 291

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

“That for article 291, the following article be substituted:—

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made	by Parliament, the Legislature of a State may from time to time by law make
Power of Legislature of a State to make provisions with respect to election to such Legislature.	provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due constitution of such House or Houses.”

Sir, with your permission I move also amendment No. 211 of List VI. Fifth week.

The amendment runs thus:

“That with reference to amendment No. 128 of List I (Fifth Week), in the new article 291, after the word ‘including’ the words ‘the preparation of electoral rolls and all other’ be inserted.”

Mr. President : There are also other amendments. Amendment No. 129 is a negative one and so cannot be moved. Amendments Nos. 130 and 131 are not moved.

Does any Member wish to say anything on the amendment or the article?

Shri H. V. Kamath : Mr. President, this article 291, following as it does article 290 already adopted, is a corollary to it. Article 291 follows very closely article 290 except with regard to the last matter contained in article 290 relating to the delimitation of constituencies. The question here arises as to the powers which will be vested in Parliament and in the State Legislature. In article 290 it is stated that Parliament may from time to time by law make provisions with respect to all matters—the phrase used is “with respect to all matters”—relating to or in connection with elections, etc. Here again the same words are used, that is to say, article 291 lays down that the State Legislature may from time to time by law make provisions with respect to all matters relating to or in connection with elections, etc. That is to say, all matters relating to elections to either House of the State Legislature come within the purview of Parliament as well as the State Legislature. Are we going to define the limits of or demarcate the powers to be conferred on the Parliament and on the State Legislature? Are we going to have another Schedule? That is my question. Are we going to have a new Schedule to this Draft Constitution wherein we will define the powers of Parliament and the powers of the State Legislature to legislate with regard to matters relating to elections in the States? If we do not define, definitely allocate the functions, I am afraid it might lead to some sort of friction or tension between the Parliament and the State Legislature at some time or other. No doubt the saving clause is there in 291 “in so far as provision in

that behalf is not made by Parliament". Sir, if the Parliament exhausts all matters relating to elections in the States—the power to do is there under 290; the Central Parliament has full power to make laws with respect to all matters relating to elections in the States including delimitation of constituencies which is taken away from the State—I do not quarrel with that—what will be left for the States? In regard to various other matters relating to elections, I do not think it wise to deprive the State Legislature of any jurisdiction in this regard. To my mind, it will be better and wiser to leave them some powers so as to promote greater harmony. We are here, I am afraid, aiming at over-centralisation of functions. Over-centralisation to my mind is not conducive to harmony between the Union and the Units. We certainly want strength, but strength along with harmony. Strength without harmony, without good-will between the Union and the Units, is no strength at all. It is mere rigidity. Therefore, Sir, I would personally prefer that certain matters relating to election in the States must be allowed to be dealt with by the State Legislature itself and Parliament should not be given entire authority to make, laws with respect to all matters relating to elections to either House of the State Legislature. Some definite powers to my mind should be given to the Legislature of the State also.

The Honourable Dr. B. R. Ambedkar : I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

Shri A. Thanu Pillai (Travancore State): When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does?

The Honourable Dr. B. R. Ambedkar : Primarily it shall be duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290. In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall not be excluded from making any provision which Parliament has failed to make with regard to any matter included in 290.

Shri A. Thanu Pillai : May I know from Dr. Ambedkar whether it would not be better for either the Central Legislature or the Local Legislature to be charged with full responsibility in this matter so that elections may go on according to the time schedule?

The Honourable Dr. B. R. Ambedkar : I do not agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

Mr. President : The question is:

“That with reference to amendment No. 128 of List I, (Fifth Week), in the new article 291, after the word ‘including’ the words ‘the preparation of electoral rolls and all other’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That for article 291, the following article be substituted:—

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.”

The motion was adopted.

Mr. President : The question is:

“That article 291, as amended, stand part of the Constitution.”

The motion was adopted.

Article 291, as amended, was added to the Constitution.”

Article 291-A

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

“That after article 291, the following new article be inserted:—

Bar to jurisdiction of courts in 291-A. Notwithstanding anything contained in the Constitution—
electoral matters.

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;
- (c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceedings relating to or in connection with any such election at any stage of such election.”

Sir, I also move:

“That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted.”

Mr. President : The question is :

“That with reference to amendment No. 132 of list I (Fifth Week) in the new article 291-A, clause (c) omitted.”

The amendment was adopted.

Mr. President : The question is:

“That after article 291, the following new article be inserted:—

Bar to jurisdiction of courts in 291-A. Notwithstanding anything contained in this Constitution—
electoral matters.

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;”

The amendment was adopted.

Mr. President : The question is:

“That article 291-A, as amended, stand part of the Constitution.”

The motion was adopted.

Article 291-A, as amended, was added to the Constitution.

Mr. President : Then we go to the other article 296.

Shri T. T. Krishnamachari : As articles 292 to 295 form part of a whole scheme and article 296 also goes along with them, we might take up article 297 and leave 296 over for the present.

Mr. President : Is that the idea that we should postpone discussion of article 296 also? Then we shall take up article 297.

Article 297

(Amendment No. 3169 was not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move:

“That in clause (2) of article 297, for the words ‘if such members are found qualified for appointment on merit as compared with the members of other communities’, the words ‘provided that such appointment is made on ground only of merit as compared with the members of other communities’ be substituted.”

I think, Sir, that this is an amendment more or less a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

The Honourable Dr. B. R. Ambedkar : I do not see that it is of a drafting nature. However, we shall consider it later on.

Mr. President : The question is:

“That article 297 stand part of the Constitution.”

The motion was adopted.

Article 297 was added to the Constitution.

Article 298

(Amendment No. 3172 was not moved.)

Mr. President : There is no amendment to this article No. 298 also.

Mr. Frank Anthony (C.P. & Berar: General) : Sir, I do not intend to make a speech. I had given notice of an amendment to article 298 seeking to make it applicable to the Mysore State, but after I had discussed my amendment with Dr. Ambedkar and Mr. Munshi, it was pointed out to me that even if they were prepared to accept my amendment, they were unable to do it at this stage because it has not yet been decided as to whether this Constituent Assembly is going to legislate for the Mysore State and because of that, Sir, I do not propose to ask for admission of this amendment at this stage. If and when the Assembly does legislate with regard to Mysore, then I feel that I may be given permission at that stage to reiterate this amendment. In this connection, I only wish to say a few words and to thank all those Members, who in spite of the fact that they have given notice of several amendments, have once more shown their generosity by withdrawing those amendments *en masse*.

Pandit Thakur Das Bhargava : Sir, when I gave notice of certain amendments to articles 297 and 298, I did not do so in any spirit of niggardliness

[Pandit Thakur Das Bhargava]

or disregard for honouring the words of our leaders who had given some sort of assurance to the Anglo-Indian community, but I must state in fairness to myself that, as a matter of fact, it was a different standpoint from which I gave these notices of amendments. When these concessions were given to the Anglo-Indian community, it was in 1947 and ten years' time was regarded as sufficient. Ordinarily these ten years would have been finished by 1957. Now the Constitution will commence in 1950. So I thought that the concessions should have been given only for ten years. I do not grudge any sort of concessions to this community or that community but we must realise that the basis of concessions given to the suppressed classes and depressed classes is of a different nature. We want that these concessions may be implemented. Apart from reservation of seats which is only for ten years, other concessions like educational facilities etc., to be provided under article 301 may have to be given for more than ten years. But here in this case this community is not a suppressed community. This community has to a certain extent been given this concession because its standard of life was different from the rest of the Indian community and it was higher. So I gave amendments in the view that when Mr. Anthony said on the last occasion when he spoke on the question of minorities that the Committee had shown unique generosity I thought that his community would respond by showing unique fairness in saying that they would only want these concessions for ten years because I know that for every boy of the Anglo-Indian community to whom this concession is granted, we have to grant these very concessions to the upper classes also because in these schools to which these grants are made, 40 per cent or so are Anglo-Indian boys and the remaining 60 per cent. belong to the upper classes. So if we grant these concessions, we should grant them not only to the Anglo-Indians but also to the upper classes. After all our means are limited, and we cannot make one rupee into seventeen annas and if you grant these concessions for very long periods to people whose standard of life is better and who are more affluent, you would have to deny even ordinary rights to the rest of the people. So that, for educating these persons, you starve the boys of other communities. I think my honourable Friend Mr. Anthony will not misunderstand me for giving notice of this amendment. I gave notice of these amendments in the hope that in his patriotism, in his recognition of the principle of fair treatment to all, he will agree that only ten years will be available of and not more.

Prof. Shibban Lal Saksena : Mr. President, Sir, these two articles 297 and 298, one of which we have already passed, give certain concessions to the Anglo-Indian community. I may say at the very outset that I am not opposed to any concession which these people may want. I may also say that I would wish them to make the best use of the concessions. But, I would like to utter a word or warning. I feel that these concessions are based on a principle which has not been followed anywhere else in the constitutions. We have given separate representation to people who are backward. But, in this case the position is different. The Anglo-Indian community has up till now lived a different kind of life from the rest of the people. They probably feel some difficulty in accommodating themselves to the new change and therefore they want these concessions. I only want the representatives of the community who are present here who are very distinguished members and who are my very good friends, to consider coolly whether these concessions will really benefit the community. My feeling is that during the last so many years, this community has been kept aloof from the rest of the population and the British people who kept us under subjection tried to make them also completely isolated. They gave them a different kind of education, different habits etc. I am only surprised that they still want to keep to their old methods of education. I only hope that although these concessions are given, the boys of that community will try to

take advantage of the common education given to all Indian boys, and that they shall not continue any further their separation which was imposed by the British people for their own purposes. I have known these friends through my contacts with labour on railways and in the posts and telegraphs and in other places. They are very active people; they form a virile element in the nation and I know they do not need any crutches. Like the Parsis, they will get more than their due even in the general electorate and in the normal course of general competition. I therefore think that these two articles are based on the apprehension that they may not get their legitimate share in the circumstances. I wish to give this friendly advice, if it is of any worth. I do wish this community to become one with the rest of the people and to remove all those barriers of separation which the British Rulers had raised between this community and the rest of the people, so that when the time comes, at least after ten years, there is no need for them to demand all these concessions, I hope they will realise that it is better that they merge themselves in the general population. We all wish to feel that they are one with us. I also know that they realise that the British had made up pawns in their game. I hope that they will very soon give up those old habits and traditions. I hope that these articles which we all approve unanimously will not be supposed to be something intended to perpetuate the old separation, but intended to help them to assimilate themselves with the rest of the population.

Shri Mahavir Tyagi : (United Provinces: General) : Mr. President, Sir, I rise to oppose the article as it is. I know I will incur the displeasure of my very great Friend Mr. Anthony. He is so charming that nobody in the House would like to annoy him: but then, I want to give him an advice.

He has seen many minorities claiming special rights in India; he has also seen their fate. Suppose we agree to this article. I do not know whether Mr. Anthony agrees to it. If he is a party to this article, I am afraid he is doing a disservice to his community. As it is mentioned in this article, we cannot give more grants than we are giving them today. I do not know how we can agree to this. After all, it is a progressive community; it is a privileged community. It has the affection of both India and England. They are a bright community; wherever they are, they fare very well; they are the least communal. They are a very intelligent and bright people. In India they need have no fear; they have to thrive. I ask why should they not deserve more grants or more help from the State if they really deserve it. The article says during the first three years after the commencement of this Constitution, the same grants if any, shall be made by the Union and by each State. I ask, why not more grants? If their students deserve more grants, why should we make the same grants? I do not know whether you call it sympathy; it is a wrong-placed sympathy. I do not know now my honourable and intelligent Friend Mr. Anthony would agree to the same grants. The prices may go on rising, but the boys in the school will get the same grants. Why not more? This is neither help nor any protection. I do not want to waste the time of the House by reading the article further which says that every third year there will be a reduction of ten per cent. Why should we envisage a reduction at all? My view is this. Such a small community if you go on identifying it as a community, as a minority, I assure you that that community will ultimately lose. Let them merge their identity into the whole nation and belong to the nation without any distinction whatsoever. Their distinction of beauty and colour is enough to distinguish them from us; that is a good distinction. Let them stand on their own colour and on their beauty and on their intelligence. Why should they take to the adjective 'minorities' and all that. That is a slur on that community. That is a community which can stand on its own legs and stand boldly. From the friendly manner in which the members of this community are behaving, I think it is an insult to their attitude to say that these people at all need any protection.

[Shri Mahavir Tyagi]

They need nothing. Their attitude is their own protection. I think it is better we leave them to their natural protection God has given them. Then again when we have one decided that we do not encourage any minorities or communities, then, in the face of that, should only one small community be recognised? Well, they will become the target of jealousy from all the rest of the communities. It is only a little money that is being guaranteed, but for this little privilege why should they become the target of hatred, jealousy and envy of all other small communities? I think they will not fare well if they get this too small a privilege, the losses entailed with it being much greater. And if communities are to be considered I would suggest consideration of that community which is only newly created—it is the community of displaced persons. Why do you not protect these refugees who are homeless? Let us guarantee that for 10 years they will get such and such privileges and they are the real minority community deserving the help. In the provinces today nobody has ever thought of giving them special privileges or help because they are Hindus but in spite of their being Hindus or belonging to a religious majority community, they are a deplorable small minority today in India. It is pity that it is now a year gone and little has been done for them; and now the time has come when their protection should have been our first thought and we should have protected their rights of education, their accommodation and other things. If communities are to be considered here in this Constitution, the most miserable community that should be considered first is that of the refugees, but the refugees are not considered even as a community. And why should we always take communities be religious distinctions or by distinctions of their blood? Communities are a group of people being affected in one common manner either adversely or in better circumstances. Whatever the conditions, those who are affected together similarly in similar circumstance become a community; and as such, if there is any community which requires safeguards and protection, it is that of the refugees. But they have never come forward for any special grant before us. I would suggest that we do not allow this article to remain in this Constitution. It will contain the germs of communalism. Why not purge the whole Constitution of this disease altogether and why keep germs? They might develop and again we might have to face another big problem of communalism and the same old history of the Muslim League days might repeat itself. I would suggest with emphasis that either the consideration of this article be also postponed or, if the House or you are not pleased to postpone it for further consideration, I would appeal to the House to reject the article here and now, and not care for your private decisions of groups. Let us take liberty of our groups and say that it being a dangerous article, if we allow it to remain, we shall allow this body politic to remain diseased for ever. With these words I oppose the article.

Shri K. M. Munshi : Mr. President, Sir, I am sure that on a matter of this importance we should appreciate all that happened in the past and not reopen the discussion which has passed through several stages. The two sections which are under discussion are the result of very long discussions and suggested by a Special Committee appointed for this purpose, accepted by the Advisory Committee and ultimately accepted by the House. Now after all that has been said and done, it serves no useful purpose to repeat the arguments that were advanced by certain sections of the House at different stages. The House has always accepted that the Minorities Commissions decisions as more or less conclusive. We must realise the importance of the two points dealt with by my Friend Mr. Tyagi. When this decision was arrived at by the House, the one point which it had to consider was that this small community had been under the protecting wings of the old Government in such a manner that it was impossible for it to stand on its legs unless it were spoon-fed by some kind of concession for a small period of time. Over 60 per cent. of its adults

are in certain services. We need not go into the various causes of this situation, but a sudden change would throw this community immediately on the streets. The second point was that certain special grants were given to their educational institutions. Those educational institutions as now being attested to by our own educational authorities in various provinces have attained a high standard of educational school and now that the schools take students from other communities the policy of some provincial Governments is that that standard should be maintained for all schools. In Bombay, for instance in the Anglo-Indian schools, 70 per cent. of the students are not Anglo-Indians but members belonging to other communities. Therefore these articles have been considered from every point of view. They are only for a limited period of time. My appeal therefore to the House is that a decision which has been come to after considerable deliberation should not be disturbed, apart from a vote, even by a discussion, which may not create a right impression in the country. I hope Members will realise that any discussion or criticism would perhaps take away from the generous gesture which the majority community made to this small minority community.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. President, I very much appreciate the spirit of compromise and reconciliation and would not grudge any help to any section of the people whatsoever, but my only trouble is that article 9 in the Fundamental Rights says that the States shall not discriminate against any citizen on grounds only of religion, race, caste or sex, etc. Now the State Funds are meant for education for all citizens. Because A belongs to Muslim Community, B belongs to Hindu community and C belongs to Parsee or Anglo-Indian community, therefore *per capita* they will have different sums of money for their education and training, one differing from the other simply because their religion or community differs, I beg to submit, is against the spirit of this article. My second point is that the grant is meant to be given to the institution. This money can be given on the ground that the institution has a better standard of education, it is more expensive or situated at a place where ordinary grants would not suffice, etc. That may be the basis for greater grants to an institution like the Muslim University at Aligarh or an Anglo-Indian institution at Naini Tal. I do not grudge the grant but there should be a rational basis.

A further objection is that these are minute details which should be left to the Education Department and the University, and not laid down by Parliament in the Constitution. I do not find this in any other constitution in the world and I do not think it would be advisable to do it here.

Honourable Members : The question may now be put.

Mr. President : I may point out that these articles have been brought in pursuance of decisions arrived at by the Advisory Committee on Minorities and by some sort of agreement between the parties. So I do not think there is any occasion to reopen what was then decided. It was also placed before a previous session of the Assembly and accepted. So I do not think the question need be reopened.

The question is:

“That the question be now put.”

The motion was adopted.

Mr. President : The question is:

“That article 298 stand part of the Constitution.”

The motion was adopted.

Article 298 was added to the Constitution.

Mr. President : Article 299 is held over.

Article 300

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

“That with reference to amendment No. 3186 of the List of Amendments in clause (1) of article 300 after the word figure ‘Part I’ the words and figures ‘and Part III’ be inserted.”

Shri A. V. Thakkar (Saurashtra) : Sir, I am very glad that this amendment extends the benefits of welfare work for the tribal people of all the States where they live at present. These tribal people come into the picture for the first time now in this Constitution. It would have been a half measure if it had been confined to tribal people in provinces only but not extended to those in Indian States. But as now amended it is in the interest of all backward tribal people. The same benefit to all backward people applies to article 301 and therefore there is greater reason that the same extension is given in article 300.

Prof. Shibban Lal Saksena : Sir, I support this article whole-heartedly. I shall draw attention to the problem confronting us in the tribal areas. They are some of the most backward people in the country. The British Government tried to keep them secluded and attempts were sometimes made by missionaries to convert them. I have visited many of these people and can say that they live a kind of sub-human and miserable existence. This article is intended to devise ways and means for bringing them to the normal level. But we should not rest on our oars by merely passing this provision but should do our utmost to bring them up to the normal level. The consciousness about them came first in 1931 when the British Government tried to give them separate representation. Reforming bodies and people like our revered Shri Thakkar Bapa have worked among them but much still remains to be done and we should see that these people are made to take their rightful place in society.

Shri Mahavir Tyagi : Sir, this article is very halting from the point of view of helping the scheduled areas. It only says that a Commission may be appointed from time to time or whenever the President so likes to enquire into and report on the conditions of these areas, and “the executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State”. I wonder whether there is anything constitutional about it. Why should we encumber a Constitution with the mention of scheduled areas? They are backward and not much of improvement has been effected in those areas. Half of my constituency is partially excluded area, known as the Jaunsar Bawer. I know the conditions that obtain in that area. Years ago when Committees had been appointed they looked into the conditions. But looking into the conditions is not much of a job. Real job is to improve the conditions. This article does not go far in improving their conditions. It does not even give a ray of hope as to what will be done. To know what the conditions are a Commission will be appointed. That is not enough. It would be better if the article had been taken away from the Constitution because it does not help the scheduled areas at all. There is nothing positive about the article. Commissions can be appointed even without the Union being authorised to appoint the Commissions. What is there to prevent it from appointing Commissions or Committees or from making enquiries? So I think the article is not at all positive. If there be anything important or if any hope is hidden within these words or lines, I would like the Chairman of the Drafting Committee to expose it to air so that the people residing in those areas might also know what good future lies for them in

between these lines. I do not see any hope for them. It is with this view, just to provoke Dr. Ambedkar or anyone on his behalf to give us an idea as to what is the meaning of bringing in the scheduled areas here and what hope it offers, that I have raised this point. If there is nothing and if only their mention is meant, then I would rather prefer that the article is taken away.

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

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. President : The question is:

“That with reference to amendment No. 3186 of the List of Amendments, in clause (1) of article 300, after the word and figure ‘Part I’ the words and figures ‘and Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That article 300, as amended, stand part of the Constitution.”

The motion was adopted.

Article 300, as amended, was added to the Constitution.

Article 301

(Amendment Nos. 3189 and 3190 were not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move amendment Nos. 3191, 3195, 3196, 3197, 3198 and 3200 standing in my name.

I move:

“That in clause (1) of article 301, the words ‘consisting of such persons as he thinks fit be deleted.’”

In my judgment these words are wholly superfluous. I may even go to the length of saying that they cast a reflection upon the wisdom of the President. The President when he appoints certain persons, certainly appoints such persons as he thinks fit for the job with the commission of which those persons are charged. It is absolutely pointless and purposeless to say here that he may “appoint a Commission consisting of such persons as he thinks fit.” It may stop after “appoint a Commission”. This adequately and sufficiently conveys the meaning intended in this portion of the article.

Then I move:

“That in clause (1) of article 301, for the word ‘difficulties’ the word ‘disabilities’ be substituted.”

Bearing in mind what we have already adopted in this House I think the word “disabilities” conveys the idea far better than the word “difficulties”. If we turn to the Chapter on Fundamental Rights we find that the second part of article 9 refers to “any disability, liability, restriction, condition” etc. The word “difficulty” nowhere occurs in that very important article which seeks to abolish discrimination on grounds of religion, race, caste or sex. We have passed that article. The word “difficulty” is to my mind hardly a constitutional term. I have read several constitutions of the world, but I find that it finds no place in constitutional terminology or parlance. The word ‘disability’ is a far more appropriate word than the word “difficulty”. I am sure Dr. Ambedkar, steeped as he is in constitutional lore and constitutional learning will have no difficulty in accepting this amendment.

[Shri H. V. Kamath]

I move my next amendment.

“That in clause (1) of article 301, for the words ‘grants should be given’ the words ‘grants should be made’ be substituted.”

This is purely verbal amendment. I do not wish to press it home, but I leave it to the collective wisdom of the Drafting Committee which I am sure will come into play at the appropriate time.

Then I move:

“That in clause (1) of article 301, for the word ‘and’ (in line 10) the words ‘as well as’ be substituted.”

That portion of the article reads thus as it has been moved before the House:

“The President may by order appoint a Commission to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given...”

I think the meaning would be more exactly expressed by the phrase “as well as” than by the single word ‘and’ here. That also I leave to the wisdom of the team of wisemen which this House has appointed to draft the Constitution.

I next move amendment No. 3198—

“That in clause (2) of article 301, for the words ‘a report setting out the facts as found by them and’ the words ‘a report thereon’ be substituted.”

The clause as it stands reads thus :

“A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.”

If my amendment is accepted by the House the clause will read as follows :

“A Commission so appointed shall investigate the matters referred to them and present to the President a report thereon making such recommendations as they think proper.”

This is only with a view to avoid cumbersome language and style and secure brevity and precision, but not at the sacrifice of any substantial meaning.

Lastly, I move my amendment No. 3200 which runs thus :

“That in clause (3) of article 301, the words ‘together with a memorandum explaining the action taken thereon’ be deleted and the following words be added at the end:—

‘for such further action as may be necessary.’

“This clause of the article as it now stands runs thus:

“The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before Parliament.”

My amendment seeks to modify it in this regard and if it is accepted by the House, the clause will read as follows:

“The President shall cause a copy of the report so presented to be laid before Parliament for such further action as may be necessary.”

This is a drafting amendment, plus an amendment of substance. There are two parts to it. The first relates to the manner in which the President shall cause a copy of this report to be laid before both the Houses of Parliament. The clause, as it is now, makes it incumbent upon the President to affix a memorandum to the copy of the report to be laid before Parliament. It does not seem to be wise to lay down the manner in which the report should be presented to Parliament by the President. If the President deems it necessary to submit a memorandum along with the report he will certainly do so. The President will be a wise man. I am sure we will not have as President a man who is not wise or who is incompetent to do this duties in the interests of the nation. If the President thinks it necessary to affix a memorandum to the report he will do so. Why should we lay down in the Constitution things in such minute detail? It is just a tremendous trifle to say that he must add a memorandum to the report. That is the first aspect of my amendment.

The second part of my amendment relates to the sequel to the submission to Parliament by the President of this report by the Commission. I think, Sir, that the House is agreed on this point that Parliament, our sovereign Parliament of Free India, shall have a definite say, a substantial voice in whatever policy is going to be adopted or action taken with regard to the welfare of the socially and educationally backward classes in our country. This article has relation to the conditions of socially and educationally backward classes in the Indian Union. Parliament, I am sure, will be entitled to ask that any action taken with regard to the welfare of its backward people must be in conformity with the policy that will be formulated by it. Therefore I am anxious that with a view to having this implemented, when the report comes before Parliament, further action should be taken by Parliament and not by the President. The President will if need be, communicate to Parliament his own reactions to the report, but should not be the final authority to take action thereon. Parliament must have the last word on the action to be taken on that report. Therefore, this last amendment of mine seeks to make that quite clear, absolutely fool-proof and knave-proof, as Dr. Ambedkar might say, and make it impossible for the President to divest Parliament of this inherent right to take action on the report of the Commission submitted by the President to Parliament. Therefore I have suggested the addition of the words "for such further action as may be necessary". It may be that within the next ten years there may be no socially or educationally backward classes in our country. I look forward to that day even before the expiry of ten years. We have the example of Soviet Russia before us. Russia abolished illiteracy and brought even the lowest state of the population to a fairly decent level in ten or fifteen years. Can we not, with our ancient heritage and our background of cultural and spiritual genius aspire to something better and to bring all these backward classes within less than ten years to a socially and educationally higher level? I hope, Sir, that within ten years we will have advanced a good deal towards redeeming these fallen and so-called backward people and we shall have no occasion to appoint a Commission for the submission of a report. I shall be very happy if that day comes in less than ten years. But, as it is, the Constitution provides for the appointment of a Commission. Then let Parliament consider and deliberate on the report submitted by the Commission to the President and let Parliament take such action as it deems fit or necessary in this matter, so that within the ten-year period, when a Commission has been appointed and its report comes before Parliament, Parliament may chalk but a programme for the uplift and redemption of these educationally backward classes, and carry it out. I trust that after the first ten-year period has expired, there will be no need for the President again to appoint a Commission of this nature to enquire into the conditions of the backward classes in our country. Sir, I move these various amendments and commend them for the acceptance of the House.

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

"That in clause (3) of article 301, for the word 'Parliament' the words 'each House of Parliament' be substituted."

Mr. President : There are two amendments of which notice has been given by Pandit Thakur Das Bhargava, Nos. 180 and 181 of the First List.

Pandit Thakur Das Bhargava : I do not wish to move the amendments but I wish to speak on the article.

(Amendment Nos. 3192, 3193, 3194, 3199 and No. 181 of the First List were not moved.)

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

Pandit Thakur Das Bhargava : Sir, I consider that article 301 is one of the most important articles of this Constitution. Left to myself, I would call it the soul of the Constitution. So far as the Depressed Classes are concerned, we have only reserved some seats for them. The rest we have not done, and this article 301 seeks to complete the process of bringing them up to normal standards. This article places upon the entire nation the obligation of seeing that all the disabilities and difficulties of the Depressed Classes are removed and therefore it is really a charter of the liberties of the backward classes and in a sense this is an oath taken by the House, an oath to see that within the coming years we will provide all the facilities which can be provided by the nation for expiating our past sins. Now, Sir, in this country there are backward classes some of whom have had reservation given to them so far as representation is concerned, but the other classes have not been given such reservations but they are equally backward. I would therefore have liked a register to be made of all the backward classes including the present Depressed Classes, and after the Commission had found out what their difficulties and disabilities were and a programme chalked providing facilities to every member of these backward classes. If a particular class was economically very backward, provision could be made that with regard to their houses in the villages, they were given not only the residential rights but rights of disposal of their properties. If we chalk out a programme after the Commission has investigated their disabilities, we will be taking a great step towards the removal of those disabilities. There are many disabilities pertaining to them which the House fully knows and I need not go into them at this stage. What I want to say is that so far as these classes are concerned, we should see to it that these classes do not continue in the category of backward classes after they have come up to normal standards so that their backwardness is not crystallized or perpetuated. After they have reached normal standards, they should be taken away from this category. If any community continues in backwardness, socially, culturally or educationally, then it should not be a question of ten years or fifteen years but up to the time they are brought up to normal standards, facilities should be given and continued for them.

My next submission is that the article says "The President may by order appoint, etc." I have given notice of an amendment in this regard for substituting the word 'shall' for 'may' and even if the word 'may' is used in the article, I think it should be the obligation of the President to appoint such a Commission. Even though the word 'may' has been used, it must be construed as 'shall'. Therefore I have no doubt that the President shall appoint such a Commission and the Commission after making investigation into the conditions of these classes, shall have to suggest in what particular manner the steps suggested should be implemented. The article here simply says that he shall cause a copy of the Report to be placed before Parliament. The obligations of the Parliament are not given in article 301. I understand there is provision for them in 299 which has been held over. I do not want to speak now on that article, but what I want to submit is this: Now the safeguards for minorities have been taken away, for instance for the Muslims and the Sikhs. The only responsibility of the Parliament are the Scheduled Castes and the backward classes. In regard to these classes, special officers are to be appointed to see whether the fundamental rights which have been given to them under this Constitution and the special facilities which are sought to be provided for them after the investigation of the Commission are enjoyed by these people or not. These classes are not only the responsibility of the Central Parliament but of the State Legislature as well. But I submit they are the special obligation of the Central Legislature. This article 301 is only the material form of the Objectives Resolution. This article only gives the mechanism by which the Objectives Resolution is carried out. We should provide in this article that it

shall apply not only to the communities for whom reservation has been made but also to those for whom no reservation has been made but who are all the same backward.

Sir, I feel great happiness in supporting article 301.

Prof. Shibban Lal Saksena : Mr. President, Sir, I whole-heartedly support this article. I only wish to point out two things in this regard. The first thing is according to the scheme of the Constitution, this Commission will be appointed at the very outset of the commencement of the Constitution. That means that as soon as our Constitution comes into existence, the President shall appoint the Commission to investigate into the conditions of the socially, educationally and culturally backward classes and then make its report on how to remove their backwardness. We are using the expression 'the backward classes' in several places in the Constitution, but we have not defined them anywhere in the whole Constitution. I hope this Commission which will specially investigate the conditions of the backward classes all over the country will be able to tell us what is meant by the term "backward classes". When the Commission reports to the Parliament, I hope they will define the terms "backward classes" and "depressed classes" in their report.

I also support the amendment of Mr. Kamath for the addition of the words "for such further action as may be necessary". That means that when the report is made, the House must consider the ways and means of removing the backwardness of these people. I think therefore that this amendment is necessary.

The Honourable Shri Satyanarayan Sinha : Sir, the question be now put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : I have to put the various amendments to vote now.

The Honourable Shri Satyanarayan Sinha : If there is no other work then the House should be adjourned.

Mr. President : The question is:

"That in clause (1) of article 301, the words 'consisting of such persons as he thinks fit be deleted.'"

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 301, for the word 'difficulties' the word 'disabilities' be substituted."

The amendment was negatived.

Mr. President : Amendment Nos. 3196 and 3197, I think, are of a drafting nature. We had better leave them. The question is:

"That in clause (2) of article 301, for the words 'a report setting out the facts as found by them and' the words 'a report thereon' be substituted."

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 301, the words ‘together with a memorandum explaining the action taken thereon’ be deleted and the following words be added at the end:—

‘for such further action as may be necessary.’”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 301, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 301, as amended, stand part of the Constitution.”

The motion was adopted.

Article 301, as amended, was added to the Constitution.

Mr. President : This brings us to the end of these articles which we have set down for consideration today. One article which we passed over, article 289, remains to be considered. There were certain amendments and certain Members said that they were taken by surprise and that they would like to have time to consider it. If the House so desires, we might have an afternoon session, so that we may not have to sit tomorrow.

An Honourable Member : We are prepared to discuss it now.

Mr. President : At 6 o'clock.

Shri K. M. Munshi : The sittings should not be fixed for tomorrows as many Members, I know, have booked their accommodation.

Mr. President : It is therefore why I am suggesting six o'clock.

The Honourable Shri Satyanarayan Sinha : Either we can hold it over or you have a meeting in the evening and finish it.

Mr. President : I think some Members feel that they would like to have time to consider the amendments and therefore it is much better to give them time, and if you all agree, I would like to have an afternoon session in the evening, say at six o'clock.

Honourable Members : 6 p.m.

Mr. President : So the House stands adjourned till six o'clock this evening.

The Assembly then adjourned till Six of the Clock in the afternoon.

The Constituent Assembly re-assembled at Six of the Clock in the afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 289—(Contd.)

Mr. President : We shall take up the amendment moved by Dr. Ambedkar in the morning. I think that is the only amendment now to the original article which was moved by Dr. Ambedkar.

I have just received notice of amendments from two Members, Shri Mahavir Tyagi and Mr. Jaspat Roy Kapoor. I do not know how these amendments come in at this stage. They cannot be amendments to amendments; they can only be amendments to amendments to amendment. I am not inclined to allow any amendments to amendments to amendments.

Shri Jaspat Roy Kapoor (United Provinces: General) : May I then be permitted, Sir, to put forth my view-point as contained in this amendment, of course during general discussion?

Mr. President : The article and the amendment will be open to discussion. Any Member may say whatever he likes. It is for him to vote according to what he says or otherwise.

Shri Mahavir Tyagi : May I submit, Sir, if at any stage some serious discrepancy is found and it is pointed out, I hope it must be taken notice of.

Mr. President : I do not think your amendment comes under that. In your case, the amendment of which you have given notice does not deal with the matter which has just been discovered.

Shri Mahavir Tyagi : I could not follow, Sir.

Mr. President : Your amendment is this: that in clause (1) of the proposed article 289, the words "and Vice-President" be deleted. That is to say, you want to keep the election of the Vice-President out of the purview of the Election Commission.

Shri Mahavir Tyagi : Yes, Sir.

Mr. President : It is not a case in which something has been discovered as a result of discussion which creates difficulty and this amendment becomes necessary. This should have been foreseen and if you wanted to give notice of an amendment, you should have given it before. I cannot allow this now.

Shri H. V. Kamath : May I request, Sir.....

Mr. President : I have given a ruling on Mr. Tyagi's amendment. I am now dealing with the other amendment.

Shri H. V. Kamath : For the future at least, may I know Sir, what is the position with regard to amendment to amendments to amendments?

Mr. President : I am not going to make any promise about the future. I will deal with every case as it comes up.

Shri H. V. Kamath : I want to know what is the rule, Sir.

Mr. President : The Member may rest assured, I will follow the rules.

Shri H. V. Kamath : I am not questioning that. As the rules are silent on the point, I want to know what the position is with regard to amendments to amendments to amendments.

Mr. President : As I have said, I shall decide each case as it comes up.

As regards the amendment of Mr. Jaspat Roy Kapoor, he may speak on it. The article and the amendment are open to discussion.

Shri R. K. Sidhva (C.P. & Berar: General): May I know, Sir, whether the discussion will be only on the amendment or on the article also?

Mr. President : The whole thing.

Shri Jaspat Roy Kapoor : Mr. President, Sir, if I rise to speak on amendment No. 99 relating to article 289, it is not because I am fond of speaking too often. While coming to the rostrum, Sir, it was suggested to me by my honourable

[Shri Jaspat Roy Kapoor]

Friend Dr. Ambedkar that the galleries today were empty and that I need not be very particular about speaking on this article. I may assure my honourable Friend Dr. Ambedkar that I never speak to the galleries or with the object of finding any prominent place in the Press. I speak only when I feel it is absolutely necessary to speak and on this occasion, Sir, such is my feeling and hence I have come before you to address on article 289.

I must confess, Sir, that on the last day of this session, article 289 has proved to be rather an inconvenient one. It has been debated at length yesterday and today and I find that the more it is being debated the more defective it appears to be and I find that the more we scrutinise it the more defects of it come to light. On a closer scrutiny of this article I find that it is necessary to recast it altogether. A few amendments here and there, a few alterations or changes here and there in this article would not do: it needs being recast altogether. I do not suggest that it needs being recast in order to meet the viewpoint of those who question the propriety of the Centre being invested with the authority to conduct all elections. I take it that everyone of us, or at least the overwhelming majority of us, is inclined to the view, is definitely of the view that elections must be run under the control, direction and supervision of an authority appointed by the Central Government, the President I mean of course, subject to any law which may be enacted by the Parliament. But, Sir, I think it is necessary to recast this in order to make the procedure laid down in this article 289 as a really effective and workable one so that there may be no conflict between the authority which is to be appointed by the President—I mean the Election Commission—and the other bodies in the Centre or in the provinces. As it is, however, I think that article 289 if allowed to remain in its present form would lead to conflict between the Election Commission and the presiding officers of the various legislatures. Let us see how it stands.

“The superintendence direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature etc. by the President.”

Now these are the various functions that are going to be entrusted to this Election Commission. Superintendence, direction and control of what things, firstly, of the preparation of the electoral rolls for all elections to Parliament to State Legislatures and for all elections to the offices of President and the Vice-President. The electoral rolls for these elections are to be under the supervision, direction and control of this Election Commission. Secondly, its function is the conduct of all these elections. These are the two functions that are going to be entrusted to the Election Commission. Now let us see how the election of the President is going to be, how the election of the Vice-President is going to be, how the election of members of the Council of States is going to be and lastly how the election of members to the Legislative Councils of the States is going to be. Under article 43 which we have already passed the President will be elected by the elected members of both Houses of Parliament and by the elected members of the Legislative Assemblies of the various States. Now the question is what will be the electoral roll of all these members? Is it the intention of Dr. Ambedkar that the question as to who are to be the electors who will form these electoral colleges is to be decided by this Commission? Now the electors will be members who will have been already duly elected to the House of the People, Council of States and the various Legislative Assemblies. They will be already duly elected members. So the question of preparing an electoral roll of these members simply does not arise at all. It should not be open—I think it will be readily admitted—to the Election Commission to decide as to which of those particular members are unqualified. A person once having been duly elected can of course become disqualified from remaining as a member; and so far as the Legislative Assembly of the various States are concerned, we have only the other day enacted article 167-A which lays down

that if any such question arises, it will be decided by the Governor and the order or decision of the Governor shall be final. Now that decision and order of the Governor being final what function remains for the Election Commission to perform in the matter of determining the question as to which particular members are entitled or not entitled to participate in the election of the President? So far as the preparation of electoral roll is concerned, the Election Commission has no function to perform. The second is the stage of conducting the election itself. Now the question arises that the members of the House of the People will be called upon to elect by President and also members of the Council of States, and so also elected members of the Legislative Assemblies of the various States. These persons will cast their votes as members of the various Legislatures and as such they must perform that function of casting their votes under the supervision, direction and control of the presiding officers of the respective legislatures. Is it the intention to divest the presiding officers of these various legislatures of their ordinary and inherent right of conducting these elections? I suppose not. So that so far as the election of the President is concerned, both in the matter of the preparation of the electoral roll as also in the matter of the conduct of election, the Election Commission shall have absolutely no function to perform or it has, obviously it will come in conflict with the presiding officers of these various legislative bodies. Now let us come to the question of the election of the Vice-President. There the matter is more complicated still. The election of a Vice-President it was pointed out to us—the credit of which must go to my honourable Friend Mr. Tyagi—it was pointed out by him outside the House that under article 55 we have it “That the Vice-President shall be elected by members of both Houses of Parliament assembled at a joint *meeting* in accordance with the system etc.” Here also we find that the question as to who shall vote for the election of Vice-President is already definitely determined by article 55, and the Election Commission will have nothing to do about this. The manner of conducting the election is also laid down in article 55. All the members will sit together in a joint *meeting* which will be presided over, as has been provided, by the Speaker of the House of the People. Where does the Election Commission come in as regards the election of Vice-President? Thirdly comes the question of election of members of the Council of States. Under article 67 they are to be elected by the elected members of the legislative assemblies of the various States. There too the members who will participate in the election are well-known; there is no question of preparation of electoral roll there. Then as to the conduct of elections and casting of votes, that will be done, as in the past, under the direction and control of the Speakers of the various legislatures; and interference by the Election Commission will lead to conflict with the Speakers. The same objection will apply in the case of elections of these members to the legislative Councils of the States who are to be elected by the members of the legislative assemblies in the various States. Therefore, while the underlying intention of article 289 is a laudable one and while we must provide for elections to be conducted under the supervision and control of a central authority appointed by the Central Government, we must so frame the article as to obviate any chances of conflict between the Election Commissions and the presiding officers of the various States, by taking away those things which may give rise to such conflicts. We should also take note of article 55 in which we have provided for the election of Vice-President. Therefore I submit that it is necessary to recast this article so as to make it applicable to direct elections only to House of People and legislative assemblies. Today we can commit ourselves definitely to the principle that all elections shall be conducted under the supervision, direction and control of a central authority, subject of course to such variations as appear obviously necessary in the light of article 55 and in the light of what I have already submitted. That is what I have to submit and the amendment of which I had given notice was only in regard to these points that I have raised. If the difficulties and

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apprehensions that I have raised are in any way removable by some interpretation of article 289 that Dr. Ambedkar may give, that is another thing.

Mr. President : I may point out that no explanation need be given. You are assuming that in all these elections members will give votes while sitting in Parliament. But they will not be sitting in Parliament; they will vote as voters of that particular constituency.

Shri Mahavir Tyagi : What will happen as regards disputes, and the filing of nomination papers before the Speaker?

Mr. President : It will be for the Election Commission to decide who the returning officer for this election will be. The whole argument is based on the assumption that when members of the legislatures who are entitled to vote for the election of the President sit, they sit in a session of the Assembly. They are not going to do that. They will be members of an electoral college and they will vote in that capacity.

Shri Mahavir Tyagi : In the case of the election of Vice-President, the names are to be proposed in the House by honourable Members, then it will be seconded and nomination papers are to be filed, etc.

Mr. President : You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor : My submissions were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a meeting.

The Honourable Dr. B. R. Ambedkar : The wording is “at a joint meeting” and not “sitting”.

Shri Jaspat Roy Kapoor : It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently, for in articles 80(3) and 164(3) the word ‘meeting’ has obviously been used in the sense of a sitting of the legislature and not in the sense of merely a congregation of the members. The same word cannot be interpreted differently in different article unless definitely specified therein. There is all I have to submit.

Sardar Hukam Singh (East Punjab: Sikh): Sir, article 289 as has been lately amended is surely a very important provision for the safeguarding of—as the Mover said, cultural, racial or linguistic minorities. It is conceived with the very laudable idea that it will give protection to them against any provincial prejudices or whims of officials. But there is one thing that I am afraid of. Whereas sufficient protection has been given against injustice to racial, cultural or linguistic minorities so far as provincial prejudices are concerned, it has been assumed that the Centre will not be liable to corruption at any time. We are perhaps obsessed with the feeling that our present leaders, who are noble and responsible people and are at the helm of affairs now, will continue for ever or that their successors will be as responsible as they are. My fear is that in future that may not be so and with a little prejudice or unsympathetic attitude at that time the minorities may be in great danger. I am certainly against centralisation of powers and I feel that in this Constitution we are reducing the provincial Governments to the position of District Boards by centralising all power here. But I am not opposing the present amendment because we have been assured that it is to safeguard the interest of these minorities. I rather wel-

come it. But I want to make one observation about that and that is that this Commission will have very important functions to perform and one of them would be delimitation of constituencies. Of course this business would be the soul of all elections. If delimitation of constituencies is made with full sympathy to the minorities it might restore their confidence and they might never feel sorry for what they have done—I mean this voluntary giving up of all safeguards of reservation of seats. So far as the majority is concerned it has nothing to fear. So far as the Scheduled Castes are concerned they are quite safe because they have got that reservation of seats. So far as the Anglo-Indians are concerned they will be nominated if they are not adequately represented. But for other minorities such as Muslims and Sikhs I feel that if they are not properly represented they might lose confidence in that majority. This Commission shall have a very responsible task to perform in that respect when it is carving out those constituencies. If the Commission, as our object is, feels that responsibility and does its job with full responsibility then I am sure the minorities shall have nothing to fear. But with a little apathy and some ill-adjustment in the delimitation this Commission can certainly work much havoc and those minorities may not even get what they ordinarily would have got according to their population. So my object in making this observation is that in the beginning at least the Government should take care that this Commission is so constituted that every interest is represented on that Commission, and this the Government can do very easily. By this they would restore all confidence in the minorities. This would go a long way in achieving the object which we have in view, namely, that we should have one nation, all people welded together. If the Government were simply to give an assurance that it would give sympathetic consideration to this request of mine, that for the beginning at least this Commission shall be representing all interests, my object would be achieved and the minorities also would not feel apprehensive of their future fate. With these remarks I welcome this article as now proposed in this House.

Shrimati Annie Mascarene (Travancore State): Mr. President, Sir, after hearing Dr. Ambedkar's explanation two days back I thought I would abide by this article. But after listening to Mr. Munshi's speech this morning I am provoked to speak again on the subject and resume my old position. Sir, I am a believer in the right of the people of the province to elect their representatives independent of any control, supervision and direction of any power on earth. I believe that to be democracy. If the Centre is to think that expediency demands that they should supervise and control the election, as one sitting in the Provincial Legislature I can see in the Centre as many delinquencies as they see in us. From this article it looks as if the Centre is assuming to be the custodian of justice. Well, justice is not in the custody of anybody but of those who are lovers of truth. Mr. Munshi this morning spoke that article 289 is calculated to defend the rights of the people in the provinces in view of expediency and reality. May I remind him of the expediency and reality of nations in days long gone by—of the Parliament of Rome, of the Long Parliament of England? Cromwell thought that it was expedient to run the administration by a unicameral legislature. The Napoleonic heroes thought that it was expedient to run the administration by a unicameral legislature. But time has proved the effect of those expediencies. What is reality and expediency today is not reality and expediency tomorrow. We are here laying down principles—rudimentary principles—of democracy, not for the coming election but for days to come, for generations, for the nation. Therefore principles of ethics are more suitable to be considered now than principles of expediency. I am a believer in politics as nothing but ethics writ large. I am not a believer in politics as a computative principle of addition, subtraction and multiplication. If this section is to be accepted we are to believe that thereafter the provincial election will be under the perpetual tutelage

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of the Centre. That means, Sir, that the integrity of the provincial people is questioned. I wish to turn the tables on the Centre itself. Sir, should we, at this psychological moment when the people of India are demanding their rudimentary right of electing their representatives without being interfered with by any authority on earth, impose any restriction? If democratic principles are to be accepted, this article should be deleted from the Constitution.

Then I come to the latest amendment, giving the legality of Parliament to a section which was hitherto blooming as autocratic. Well, Sir, whatever may be the amendment added on to it, it cannot lose its old shade or colour and it stands there as the ancient Roman tutelage under the patriarchal system. If the provincial or the States people are to be guided, let them be guided by experience. If we have erred, we will err only for a time or a period. They say that this is a deviation from the democratic principle. Well, I ask where is the necessity to deviate from the experience of nations and ages? Have you any *prima facie* case to show that we have erred in our democratic principles? In that case I am willing to accept this clause. But, as it is, we have not tried the experiment. We are only in the making of it. If in the experimental stage we fail, well, there is provision in the Constitution to amend it when time and circumstances demand. But let us not sully the fair name of the nation by believing in the first instance that the provincial people will not be guided by principles of truth and justice and will not keep up the democratic principles of fairness by electing by fair means. Centralisation of power is good enough for stable administration, but centralisation of power should be a development at later stages and not from the very inception of democracy. At the very inception of democracy, centralisation would look more autocratic than democratic. We are living in an age when democratic experiments are being tried by many a nation. Dr. Ambedkar quoted from the Canadian Act of 1920. How is it that he did not travel down to the United States from Canada? Why would he not look at the Australian Commonwealth? If Canada has adopted a measure, is it necessary that India, with twenty-five times the population of Canada and half the size of Europe, should adopt those very principles in her Constitution and take it as a salutary example for experiment in democracy? If democracy could succeed in the United States, if it can succeed in England, why should it not succeed in India without this clause? Well, Sir, I hope this House will give consideration to this article and be guided by principles of democracy rather than by principles of expediency.

Shri H. V. Kamath : Mr. President, article 289 of our Draft Constitution dealing as it does with elections and electoral matters has naturally evoked intense interest in this House and I am sure it has evoked or is bound to evoke equally keen interest outside the House as well. If we compare article 289 as it was originally drafted by the Drafting Committee and the article as it has come before the House today, we cannot fail to notice some salient differences, the main difference being that the superintendence, direction and control of all elections to State legislatures have been radically modified in the draft article as it was moved by Dr. Ambedkar yesterday and amended by him today. The footnote to this article on page 138 of the Draft Constitution reads thus:

“The Committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State.”

This was apparently the Drafting Committee's original view. But later on the view underwent some transformation and, in so far as the Election Commission for a State is concerned, the Governor has disappeared from the picture. I fail to see why the Governor, now that he is going to be nominated by the

President, should not have any voice in the matter of the Election Commission to superintend, direct and control the elections to the State legislature. If honourable Members will turn to article 193(1) they will find that even where appointments of High Court Judges in a State are concerned, the Governor of that particular State has been invested with some authority in the matter. That relevant clause reads as follows:

“Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State...”

I cannot understand why the Governor of the State should have no voice whatsoever in the appointment of the Regional Election Commissioner or the Election Commissioners of that State. The article as it has been modified by Dr. Ambedkar confers power on the Governor of the State in so far as supplies are concerned, such as staff, furniture and I do not know what else. As far as these are concerned, the Ruler of the State or the Governor of the State shall, when requested, by the Election Commissioner, make available to the Election Commissioners or the Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. In my humble judgment there is no valid reason whatsoever why the Governor should be deprived of the right of even exercising his voice or giving the benefit of his opinion in so far as the appointment of Election Commissioners for the State is concerned. The executive head of the Union is the President and the executive head of the State is the Governor. May I ask the House why, if we seek to invest the President who is the constitutional head of the Union with such vast powers in the appointment of Election Commissioners for the whole of India, we should not give the Governor the right to give his opinion, his judgment in the appointment of Election Commissioners for his State? I fail to see any reason whatsoever for not giving the Governors any powers except in so far as providing the staff is concerned, how many clerks, how many superintendents and how many assistants are required for the Election Commissioners. A sort of *Bada Babu* the Governor has become so far as the Election Commission is concerned. You are making him nothing more. I submit that this is utterly derogatory to the dignity of the Governor of a State. I cannot understand why the Governor is being asked to supply the staff when he has no voice in the appointment of the Election Commissioners. I strongly object to this denudation of the Governor's authority, so far as the office of the Election Commission is concerned. Again, I personally feel that clause (5) is absolutely unnecessary. We are burdening the Constitution with redundant details, with purposeless and meaningless details. Certainly every office will have to have necessary staff. But why put it down in the Constitution? The President of the Indian Union and the Governors of the States will certainly require staff for their offices, but we have not mentioned that in the Constitution. Why mention then that the Election Commissioners at the Centre of the Regional Commissioners in the provinces shall be provided with necessary staff. What I ask is this. Is it conducive to the dignity of our Constitution if we burden it with such unnecessary details, such minutiae?

Next I pass on to the amendment which has been moved by Dr. Ambedkar today after listening to the debate in the House yesterday and today. I feel that the amendment which has been placed before the House today is a sort of half-hearted concession to the viewpoints that have been put forward in this House. We are dealing with elections and electoral matters. Parliament is the supreme elected body in the Indian Union and so Parliament must have greater voice in the matter of superintendence, direction and control of elections. With a view to serving this purpose, my Friend Prof. Shibban Lal Saksena moved certain amendments yesterday. The amendment that has been moved by Dr. Ambedkar

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today meets of those amendments, some of those viewpoints half way. I personally think—I may be wrong in the assertion—but I believe that Dr. Ambedkar individually is inclined to go the whole hog. I shall not venture to make a statement on that point, and I have to take the amendment as it has been placed before the House. Clause (4) of the article moved by Dr. Ambedkar yesterday says that the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. Today the amendment placed before the House says, “subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.” There are two things, the Parliament’s law and the President’s rule. Why, may I ask, in fairness to this House and the future Parliament of the Indian Union, should we not say that the conditions of service and tenure of office shall be such as Parliament may by law determine? Why also say “as the President may by rule determine”? The President in the executive head of the Union, while Parliament is the supreme elected body. Why then leave it to the President to frame rules in this regard?

The next point is, why the Chief Election Commissioner’s conditions of service and tenure of office are made so very secure he is almost irremovable—except on a vote of two-thirds majority of both the House of Parliament. Why has he been made almost irremovable, while his colleagues at Election Commissioners are, according to this article, removable at the sweet will and pleasure of the Chief Election Commissioner? Is this the way that this House is going to treat the colleagues of the Chief Election Commissioner? Even a clerk in a District office or in the Secretariat has got far better conditions of service and security of tenure that what is envisaged for the Election Commissioner in this article. I feel, Sir, that with the article left as it is, most of the time of the Election Commissioners will be utilised in doing what I may call *khushamat*, to keep the Chief Election Commissioner in good humour, because it will be only natural, human nature being what it is, lest the Chief Election Commissioner should give a bad chit. So this is what we are trying to provide by means of this article. I personally know that a superior officer often gives a bad chit, not because his subordinate is bad at his work but because he is of independent views, if of strong mind or does not humour his boss. This sort of thing should not be encouraged, but I am afraid that is what this article might do.

Pandit Lakshmi Kanta Maitra (West Bengal: General): How can Members be sacked by the Election Commissioner, I cannot understand.

Shri H. V. Kamath : Not members but Election Commissioners. You are not listening properly. I think your honourable Friend is in a hurry to go home.

Pandit Lakshmi Kanta Maitra : I am listening to you, but I am getting more and more confused as you proceed.

Shri H. V. Kamath: The second proviso to clause (4) to this article moved yesterday by Dr. Ambedkar is to the effect that “provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.” Is it clear now? I want the Election Commissioners to be placed on a par with the Chief Election Commissioner. We have adopted the article with regard to the removal of Supreme Court Judges and High Court Judges, placing them on a par with one another. There is no distinction between the Chief Justice and his colleagues. I ask, therefore, Sir, why this distinction between the Chief Election Commissioner and the Election Commissioners?

Pandit Lakshmi Kanta Maitra : That has been provided in the case of the Chief Commissioner. They would be done on the recommendation of the Chief Commissioner.

Shri H. V. Kamath : Perhaps the language of the article is not clear. If of course, the article means that the Chief Commissioner and his colleagues the Election Commissioners and the Regional Commissioners, all these can be removed only in a like manner and on like grounds as a Judge of the Supreme Court, then it is all right. The removal, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners have been made so tenuous that with these conditions before them, men of real merit, men of ability and competence may not like to serve on the Election Commission (Interruption). There is the President to pull me up if necessary. I hope there is only one President in the House. I will bow to his ruling and to none other's. The President's command I will obey.

Then, Sir, there are one or two more points which I would like to stress before the House. I feel that so far as the Regional Commissioners are concerned, that is, the Commissioners for a particular State are concerned, I have already stated that the Governor of the State should be consulted by the President before he appoints Election Commissioners for that State. As it is, we are watering down provincial autonomy to a considerable extent in this Constitution, but certainly there is no harm if in appointing the Election Commissioners for the particular State the Governor of the State is consulted. After all the Governor is not going to be elected now. He is going to be nominated by the President; he is the President's nominee and more or less a creature of the President. The President will have full confidence in the Governor of the State; he is not going to be an elected Governor at all but a nominated Governor. If the President cannot trust even his own nominee. I do not know whom else he can trust. So, I suppose some sort of a suitable alteration will be made in this regard providing for consultation with the Governor by the President, especially in view of the fact that even as regards the appointment of a High Court Judge in a State, we have provided that the President shall consult the Governor of the State. I fail to see why the Governor should not be invested with a similar power in regard to the appointment of Regional Commissioner.

Next, so far as the removal of Regional Commissioners is concerned, it should not be left so very delightfully easy as it is now in this article. I feel that there must be more secure conditions of tenure and of service. If Parliament can have no voice—Parliament at the Centre and the Legislature in the State can have no voice—in the removal of Regional Commissioners I at least feel that they should be removed only by the whole Election Commission and not simply by the Chief Election Commissioner and the entire commission will consist of the Chief Election Commissioner and his colleagues. The one-man show must cease. It is all a one-man show at present. Now, of course we are going to adopt an amendment to the effect that “subject to any law made by Parliament”, but so far as the removal is concerned, according to the article it is a one-man show, the removal of the Election Commissioners or Regional Commissioners. This should not be. The removal must be made more difficult; otherwise, I warn the House that no men of proved merit, ability or competence will come to serve on the Election Commission when the conditions of service are so very insecure.

Then, Sir, there is one point made by my honourable Friend, Prof. Shibban Lal Saksena and that the Regional Commissioners must be appointed by the President not merely in consultation with, but in concurrence with the Election Commission. I think that is a safe rule to adopt, that the President

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should not have the only word, but he must be guided by the opinion of the Chief Commissioner with whom he must concur in the matter of appointment of his colleagues. After all when the President has appointed the Chief Commissioner, I see no reason why the President cannot get suitable men about whom both are in agreement. Certainly India is a vast country, and she can produce men for every place and for every office that the future may have in store; and I am sure for this job of Election Commissioner there will certainly be men available about whom the President and the Election Commission can agree, and both in agreement with each other can appoint the Regional Commissioners. These are the lacunae and pitfalls in the article and the amendments that have been moved by the Honourable Dr. Ambedkar before the House. I have serious misgivings about the working of this article. I have doubts about the way in which it will work, unless it is further amended suitably. Unless it is so amended, I am sure the Election Commission at the Centre and in the States will not function as well as we all want it should, and it is, I dare say, the unanimous desire of the whole House that with elections looming on the horizon, the first general elections should be conducted in an able, impartial, efficient manner. There can be no two opinions on that point. I, however, fear that that object may not be achieved by this article. That is a possibility which I for one do not like to envisage. I desire that a suitable method should be devised to have more competent, more impartial and more efficient Election Commissions in the States as well as at the Centre to conduct elections. What I fear is that this article moved by Dr. Ambedkar may not serve that purpose. I hope that Dr. Ambedkar and his wise men of the Drafting Committee will take into consideration this matter, if not now, at a later stage perhaps, and try to make further suitable amendments in this article. The House, I am sure, will consider this matter more carefully because it is not a matter to be lightly treated, for members to laugh at and smile. They might live to weep another day. If we are in a hurry to go home, I wish that this article may be held over. It is not a laughable matter at all and if Members are tempted to laugh, I wish them joy of it. Sir, I trust that the article will be suitably modified in the light of my observations.

Some Honourable Members : The question be now put.

Mr. President : Closure has been moved. The question is:

“That the question be now put.”

The motion was adopted.

Mr. President : I will first put the amendment which Ambedkar has moved last.

The question is:

“That in amendment No. 99 of List I in the proposed article 289—

- (i) in clause (1) the words ‘to be appointed by the President’ occurring at the end be deleted.
- (ii) for the clause (2), the following clauses be substituted:—
 - ‘(2) The Election Commission shall consist to the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.’
 - ‘(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.’
- (iii) in clause (4), before the words ‘The conditions of service’ the words ‘subject to the provisions of any law made by Parliament’ be inserted.”

The amendment was adopted.

Mr. President : I will put Prof. Shibban Lal Saksena's amendment. I think there will be a little change because of the new arrangement.

Mr. President : The question is:

"That at the end of clause (1) the following words be added:—

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament.'

The amendment was negatived.

Mr. President : The question is:

"That after the word 'appoint' in clause (2) the following be inserted:

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament.'

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) for the words 'after consultation with', the words 'in concurrence with' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (4) for the words 'President may by rule determine', the words 'Parliament may by law determine' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (1) to clause (4) for the words 'Chief Election Commissioner' the words 'Election Commissioners' be substituted, in both places."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (2) to clause (4), the words 'any other Election Commissioner or' be omitted."

The amendment was negatived.

Mr. President : The question is:

"That for article 289, the following article be substituted:—

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with election of Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.

(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

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(4) Subject to the provisions of any law made by Parliament the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

The amendment was adopted.

Mr. President : The question is:

"That article 289, as amended stand part of the Constitution."

The motion was adopted.

Article 289, as amended, was added to the Constitution.

ADJOURNMENT OF THE HOUSE

The Honourable Shri Satyanarayan Sinha : Mr. President, Sir, in the rules of procedure of this House, rule 19, there is a proviso that the House cannot be adjourned for more than three days by the President unless the House authorises him to do so. Therefore I move this formal motion:

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

No date is specified; the President will fix the date.

An Honourable Member : Why put down the month?

The Honourable Shri Satyanarayan Sinha : The month is fixed; the President shall fix the date.

The Honourable Shri Ghanshyam Singh Gupta : (C.P. & Berar: General): That means that the President shall have no choice in regard to the month.

The Honourable Shri Satyanarayan Sinha : The motion is simply that the House to adjourn until such date in July 1949 as the President may fix. He cannot alter the month; he can fix a date.

Mr. President : Before I put this motion to the House, I desire to explain the situation and the programme as I envisage it. My own idea is that we should be able to finish the second reading by the 15th of August. Thereafter, we shall have to adjourn for some time to enable the Drafting Committee to prepare the Constitution in its final form for the third reading. That might take some weeks. Therefore, we shall have to meet some time in September. That should also be subject to this that we are able to pass the third reading by the second of October. That is my wish. If the House generally agrees to this tentative programme, I shall fix the dates in consultation with the Drafting Committee and perhaps with the members of Government who are principally concerned in this.

Shri Mahavir Tyagi : Could you also give an idea as to how long you may require us to sit in the month of July?

Mr. President : I could give you an idea. The Assembly cannot meet before the 15th of July, because, as I said the other day, this adjournment has been necessitated by the fact that there are certain provisions which have to be considered in consultation with the Provincial Ministers and the

Finance Minister has also to be present at these consultations. The Finance Minister is going to England in connection with the Sterling Balance negotiations, and he will be coming back some time early in July. We cannot expect that this Conference of Provincial Ministers may take place before the 15th of July. Therefore, the House cannot meet before the 15th of July. The question is as to on what exact date after the 15th of July we should be able to meet. I shall try to adjust that in consultation, as I have said, with the Drafting Committee and with the Government.

Shri Mahavir Tyagi : I want to know the length of period for which we will have to sit.

Mr. President : As I have said, from the day we begin up to the 15th of August; that is as I envisage.

Shri Mahavir Tyagi : Fifteenth is the probable date on which you might summon the session. What I want to know is how long will that session last.

Mr. President : I have answered that question. I have said, the session will last from the day it commences up to the 15th of August, if my provisional programme stands.

The Honourable Shri Ghanshyam Singh Gupta : May I also remind you, Sir, that it will be difficult for us to say on what particular date we will finish. That will depend on the work and how much time we take.

Mr. President : As I have said, this is a provisional suggestion of mine. That is a good date and therefore I want to have it finish by the date. If the Members want to prolong it, they can do it, of course.

Shri R. K. Sidhva : My point is, we have held over a number of clauses and unless we meet a little earlier, *viz.*, by the 20th, we will not be able to finish the subject-matters held over as contentious by the 15th August 1949.

Mr. President : I shall bear that in mind.

The Honourable Shri Satyanarayan Sinha : Sir, let us adjourn now.

Mr. President : Do I take it that the House accepts the motion moved by Mr. Sinha?

Honourable Members : Yes.

Mr. President : The question is:

“Resolved that the House do adjourn until such date in July 1949 as the President may fix.”

The motion was adopted.

The Assembly then adjourned until a Date in July 1949 to be fixed by the President.
