Volume XI

14-11-1949
to
26-11-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed at JAINCO ART INDIA, New Delhi.

THE CONSTITUENT ASSEMBLY OF INDIA

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MR. S.N. MUKHERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 15*th November* 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :

Thakur Lal Singh (Bhopal State).

Mr. President : We shall now continue the discussion we were having yesterday.

Shri H. V. Kamath (C.P. & Berar: General): Sir, before we proceed to the business of the day, may I request you to be so good as to tell the House what progress has been made with regard to the election of representatives from Vindhya Pradesh and Hyderabad to the Constituent Assembly?

Mr. President : As regards Hyderabad, I am not in a position to give any information. But as regards Vindhya Pradesh, an attempt was made to form an electoral college which could elect the representatives to this House. But unfortunately, that has not found favour with the political parties there and therefore ultimately I have been compelled to agree to Members being nominated from there. They will be nominated and will be coming.

Shri H. V. Kamath : Will they take their seats here during this final session ?

Mr. President : I hope so. I have asked them to send them before the 20th.

Shri H. V. Kamath : What about Hyderabad?

Mr. President : As I said before, I am not in a position to say anything about Hyderabad.

We shall now continue the discussion.

Amendments to articles—(*Contd*.)

Shri T. T. Krishnamachari (Madras: General): May I mention, Sir, that the Drafting Committee met some of the Members who had tabled the amendments to article 320 yesterday and also others who were interested in it and a new amendment has been tabled to article 320 which finds a place in today's list? Its number is 559. If the House will defer discussion on this particular article and take it up when that amendment is moved, perhaps it might be more beneficial and will save time.

Mr. President : Do I understand that this form was acceptable to other Members?

Shri T. T. Krishnamachari : It was acceptable to the Members who moved be amendments and spoke yesterday. In any case, this article can be discussed when we take up that particular amendment.

Mr. President : Then we shall take it up later. We pass on to the other amendments, to article 325. Mr. Kamath may move amendment No. 397.

Shri H. V. Kamath : Mr. President, I move:

"That in article 325, for the words shall be ineligible for inclusion in any such roll or claim to be included in the words shall be excluded from or claim to be included in be substituted."

This is moved partly with a view to simplification of language of the article and partly to amend the substance of the clause as well. The amendment suggested by the Drafting Committee refers to a special electoral roll for the territorial constituency. The article as it stood in the Draft is accepted by the Assembly at the consideration stage had no reference to any special roll in any particular territorial constituency. But in this amendment this reference has been inserted. It says that no person shall be ineligible for inclusion in any general roll or claim to be included in any special electoral roll on the ground of caste, etc. The first part of it refers to inclusion in any general electoral roll for the territorial constituency and the second part refers to any special electoral roll on grounds only of religion. etc. My amendment No. 397 tries to comprise both, the ineligibility for inclusion and the claim for inclusion in simplified phraseology. The other aspect of the matter in this: We have brought in here reference to a special electoral roll which was not there in the draft of the article. In the light of this I have given notice of amendment No. 399 which with your permission, Sir, I shall move now It runs:

"That in article 325, after the words 'caste', the word 'class' be inserted."

This is necessary because there is reference in the article to a special electoral roll. Now, the special roll can include people belonging to different religions or races or castes or sex and may also include people belonging to different classes. Today, our society consists of some classes, though we are trying to create a classless society. So long as these classes are there, we have to recognise realities and made reference to classes as well. We have for instance the Zamindar class which fortunately is fast disappearing, and we have other classes also which are well known to the House. Therefore when we refer to special rolls, we should make the provision comprehensive and make reference to classes as well, so as to obviate any loopholes of whatever kind. I commend my amendments for the earnest consideration of the House.

(Pandit Thakur Das Bhargava did not move amendment No. 398).

Mr. President : Mr. Kamath may move this amendment No. 400 to article 333.

Shri H. V. Kamath : My amendment No. 400 is a verbal amendment. I leave it to the consideration of the Drafting Committee.

Mr. President : The next amendment No. 401 of Mr. Kamath to article 344.

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

"That in clause (3) of article 344, for the words ' persons belonging to the non-Hindi speaking areas' the words 'that non-Hindi speaking sections of the population' be substituted."

The House will see that this article 344 deals with the Commission and Committee of Parliament on official language which the President shall at the expiration of five years from the commencement of this Constitution and there after at the expiration of ten years from the commencement of this Constitution constitute. The Commission will be asked to report on various matters connected with the progress of the development of the official language in the Union and in the States as well. Clause (3) as it was accepted by the House at the consideration

stage says: "In making their recommendation under clause (2) of' this, article, Commission shall have due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of the non-Hindi speaking areas in regard to public services." The amendment that has been moved by the Drafting Committee substitutes the words "non-Hindi speaking areas" by the words "Persons belonging to the non Hindi speaking areas". But, Sir, a new article 347 has been inserted by the Drafting Committee, and that refers to a special provision relating to the language spoken by sections of the population of a State. Now, this clause (3) of article 344 relates to the interests of persons belonging to the non-Hindi speaking areas in regard to public services. Now, Sir, it is easy to say which is a Hindi speaking area and which is a non-Hindi speaking area. For instance, Bihar, the United Provinces, Delhi are definitely Hindi speaking areas, also the northern part of C. P., *i.e.*, Mahakoshal. If we leave this article as it is, that is to say, make reference only to persons belonging to those areas, I think the interests of the non-Hindi speaking sections of the population will not be adequately safeguarded, because within the Hindi speaking areas there may be people who do not speak the Hindi language, whose mother-tongue is not Hindi,—may be a linguistic minority. Everywhere, all over India, we have linguistic minorities in every province and this, as the House is very well aware, is given as an argument against the creation of linguistic provinces, because even after the creation of linguistic provinces, there will be linguistic minorities in every province. Therefore my point is that it is not adequate to say that this article should safeguard the interests of the persons belonging to non-Hindi speaking areas. What is intended is to safeguard the interests of the non-Hindi speaking sections of the population as a whole, wherever they may be found. There are a number of Madrasis in Delhi today in some of them did voice their apprehensions that if Hindi was adopted as the official language within five years or even earlier, their interests with regard to the services might be affected. Though they live in Delhi, though they live in a Hindi speaking area, they are non-Hindi speaking sections of the population. That is the distinction I want to make. Therefore if we want to say what we mean, we must make it clear, that what is sought to be safeguarded in this clause is not the interests of persons belonging to non- Hindi speaking areas but the interests of the non-Hindi speaking sections of the people. Therefore I move amendment No. 401 and command it to the House for its consideration.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not want to take much time of the House on this issue but I want only to remind the House that this language question was one of the most controversial ones and that every time it came before the House, it entailed prolonged discussions and controversies and it was at the long end that we arrived at a compromise and unanimously passed these articles about language. Now, Sir, it is highly objectionable in my opinion to add a word to or take a word from what was agreed upon by the whole House unanimously. I can understand if there were any consequential amendments introduced by the Drafting Committee but to put a new idea altogether and change the meaning of what was agreed upon is something which I would request you kindly to look into and rule out of order. This amendment of the Drafting Committee is not in consonance with the unanimous decision of the House. Previously this was 301-E. Now, according to 301-E the President was authorised only to direct that the language spoken in certain parts of a State by. . . . . .

Mr. President : Mr. Tyagi, there is an amendment to restore the original so far as 301-E is concerned.

Shri Mahavir Tyagi : An official amendment?

Mr. President : Yes.

Shri Mahavir Tyagi : I need not say anything then. I thank the Drafting Committee for this. It is very good, Sir.

(Amendments Nos. 402, 403, 404, 405 were not moved.)

Mr. President : Article 365. Amendment No. 408 by Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General): On a point of order, Sir, Article 365 has been justified by the Drafting Committee in the report appended to the Draft Constitution as revised by it on certain grounds. It is stated there that certain articles taken together justify the language of article 365. The articles that have been referred to are 256, 257, 353, 360 and 371. I should like to refer first to articles 256 and 257.

Shri L. Krishnaswami Bharathi (Madras: General): What is the point of order?

Pandit Hirday Nath Kunzru : The point of order is that there is nothing in these articles that is as wide as article 365. Article 365, as Honourable Members will see, enables the President to declare that a situation has arisen in which the Government of the State cannot be carried on, in accordance with the provisions of this Constitution, if the Government of a State does not give effect to any directions given by the Central Executive in the exercise of any of the powers conferred on it by this Constitution. This is, Sir, a question of policy. The Drafting Committee treats it as if it were a question of fact. But a reference to articles 256 and 257 will show that while the Central Executive has been empowered to issue instructions to the Provincial Executive in certain cases, yet if there is any failure on the part of the Provincial Executive to carry out the directions of the Central Executive, that will not amount to a failure to carry on the Government of a State in accordance with the provisions of this Constitution. These questions were thoroughly considered when the various provisions of the Draft Constitution were discussed. Articles 353, 360 and 371 relate to the powers that might be exercised by the Central Executive or by Parliament in certain emergencies. They do not, therefore, bear on the question that I have raised. We are principally concerned here with articles 256 and 257 and what we have to see is whether the scope of articles 256 and 257 is the same as the scope of article 365. Is there anything in articles 256 and 257 that can enable the President to declare that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, if a State Executive fails to carry out the instructions of the Central Executive? Difference of opinion may arise from time to time between the Central Government and the Provincial Governments and the Central Government may lawfully issue instructions to the Provincial Governments to act in a certain manner. It will be the duty then of the Provincial Governments to carry out those instructions, but it is going too far to say that if the Provincial Executive fails to carry out in every respect the instructions of the Central Executive or if the Central Executive feels that its instructions have not been fully carried out, then the President may declare that the Government of the State cannot be carried on in accordance with the provisions of this Constitution and may then assume to himself all the powers of Government or take such other measures as he can under this Constitution. Some honourable Members may be of opinion that this should be done but the time for making such a change has gone. The Drafting Committee has been authorised by Rule 38-R of the Rules of this Assembly. . . . . .

Shri Brajeshwar Prasad (Bihar: General): Is the honourable Member raising a point of order or delivering a speech?

Mr. President : It is a point of order. I have followed the point of order.

Pandit Hirday Nath Kunzru : To make such changes as are complementary or consequential or necessary and what we have to discuss is what the word, 'necessary' means. Does it mean that if the Drafting Committee feels that the House gave a wrong decision on a question of policy then it should substitute its own judgment for that of the House or does it mean that the Drafting Committee should make such changes as are implied in certain decisions arrived at by the House but not actually provided for? I think that in this particular case, Sir, the draft of article 365 can be approved only on the supposition that the Drafting Committee can override the judgment of this House and substitute its own judgment for it. We are not concerned with seeing whether it is desirable as a question of policy or not that the Central Executive should enjoy certain powers that have not been given to it by this Constitution. All that we are concerned With at the present time is that the decision arrived at by the House on this point is carried out in a proper way.

Mr. President : As I understand the point of order which you are raising Pandit Kunzru, it is this, that this article as it is now proposed goes beyond the decisions of this House and it is not a necessary consequence of any decision which has been taken.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The only question on this point of order that could arise is whether the change proposed by the Drafting Committee in article 365 is a consequential change. It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry out those directions is practically negativing the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance. That is the reason why the Drafting Committee regarded that such an article was necessary on the ground that it was a consequential article.

But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Friend Pandit Kunzru to refer to article 280-A, clause (5), and article 306-B. Article 280-A, clause (5), and the provisions contained in the concluding portion of the main part of 306-B are now embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting Committee. If my honourable Friend.....

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend? Article 306-B relates only to the power of the Central Executive over the Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed it the second reading. These are financial provisions. Clause (5) of article 280-A says: "Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore, article 365 merely seeks to incorporate this clause (5) of article 280-A. My honourable Friend, if he refers again to article 306-B . . . . . .

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-D which deals again with the power to issue instruction and directions to States in Part III which are now States in Part B of the First Schedule, he will see that the last portion says: "any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." There fore my contention is that article 365 does not introduce any new principle at all. It merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only article in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely that the Centre had the power to give directions. Therefore, if there is it all any extension of the principle embodied in articles 280-A, (5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the President shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the, purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which bad taken place with regard to some of the articles which are, I submit, on the same footing as articles 280-A clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out that the reference by Dr. Ambedkar to articles 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the President to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of States mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in reference to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and, in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the First Schedule. I submit, therefore, that the language of article 365 goes beyond the express decisions of the Constituent

Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and Part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces: General): May I offer some remarks?

Mr. President : On the point of order?

Pandit Balkrishana Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126 which empowers the Governor-General to give directions to the provinces and if it appears to Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carry in go out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know—those of us who were Ministers during the time of the war—how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

Pandit Hirday Nath Kunzru : The provisions of the Government of India Act, 1935, were before us when the Constitution was drafted and was considered by this Assembly. We have copied certain provisions from that Act, but we have deliberately omitted certain other provisions. We have for instance included in the Draft Constitution a provision relating to the breakdown of the Government of a State. We have copied that provision from the Government of India, Act, 1935. We have done so deliberately and after a great deal of discussion. Yet we have omitted to enact certain other provisions of the Government of India Act, 1935, in the Draft Constitution and article 126 is one of those articles in that Act that has not been copied in the Draft Constitution. The reference therefore to section 126 of the Government of India Act, 1935 does not in any way justify the language of article 365 which is now before us.

Mr. President : The limited question which I have to decide at the present moment is whether this new article 365 goes beyond the decisions which were taken and whether it is not necessary in view of all the other articles which we have adopted. Now it seems to me that if we turn to article 280-A and also to article 257, the wording is exactly the same so far as it refers to the power of the Union. In article 257 we find—

"The executive power of the Union shall also extend to the giving of directions to a State as to such and such matters."

and in article 280-A, clause (2)—

"The executive authority of the Union shall extend to giving of directions to any State such and such matters.

So in both the cases the power of the Union is exactly the same and expressed in exactly the same words. Therefore the necessary consequence which is given in clause (5) of article 280-A is attracted to article 257 also, and from that point of view I think it is not a question of order. Of course it is a matter on which the House may hold a different view and it may throw it out on merits

[Mr. President]

but I think this proposal is in order and you may discuss it. Pandit Bhargava has really given notice for deleting this clause. Now it is for the House whether to accept it or not.

Prof. N. G. Ranga (Madras: General): Has it been moved?

Pandit Thakur Das Bhargava (East Punjab : General): Sir, I beg to move:

"That article 365 be deleted."

In making this motion I do really think that as a matter of fact the Drafting Committee has rather "tended the scope of its jurisdiction by enacting this provision which is one of the most important sections in this Constitution and bringing it at this last stage. Since you have been pleased to give your ruling on the point of order, I will not advert' to this aspect of the case and will confine myself to the question whether in the circumstances, this article 365 should be allowed to stand in the Constitution. Now as you have been pleased to observe, articles 256, 257 as also 280-A and 306-B have great relevancy when we are considering this question. In regard to article 280-A, there is no doubt that we have passed that if a situation should arise in which certain directions of the Government of India are not obeyed in regard to financial matters, the Government can hold that there is a failure to carry on the Government in accordance with the provisions of this Constitution. If you will kindly refer to article 356, you will observe that the basic provision says—

"If the President on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation....."

So the ultimate situation in which these powers should be exercised by the President is described in these words:—

"if a situation has arisen in which the Government of the State cannot be carried on accordance with the provisions of this Constitution."

If on account of the failure to comply with any directions given in 256 or 257 or 280-A or 306-B such a situation arises, then the President has got absolute power, even if there is no report from Governor, to make an order or declare an emergency or issue a proclamation. This is a question of fact. Without such a situation arising in fact a fictitious situation can be conjured up under articles 280-A and 306-B from which this provision has now been omitted. We are now out for allowing such fiction to be raised under article 365 by virtue of which the President will be able to hold without its being actually a fact that the Government cannot be carried on in accordance with the provisions of the Constitution. On any disobedience to a particular direction, however insignificant, a situation can be held to have arisen in the words of article 365. The question now is whether we are justified in arming the Government of India with these powers, that however insignificant the direction may be, however innocent the situation may be, yet it may be authorised to hold that such a situation has arisen which can attract the provision of 365. This is the real question. To me it appears that the question resolves itself into this, whether on account of the failure to comply with any direction, such a penalty can be imposed upon a Provincial Government, because it may be that so far as the provisions of the Constitution are concerned, so far as the orderly government of the State is concerned, it may be carried on with as much smoothness as before; but there may be a failure in respect of an insignificant direction.

We have also to consider the effect of articles 250 and 257. In my humble opinion, Sir, article 256 is clothed in Such general words that we cannot say that a particular dereliction of duty alone can attract this drastic provision. Article 256 runs as follows:

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

We will come to the same situation in the case of article 257 also, because these words occur there in article 257 also, and they are very extensive, very vague, and very general, Sir, I do not visualise that our Central Government as at present constituted will ever exercise such absolute or arbitrary powers. But I should think that no Government of the day should exercise powers in an arbitrary manner. I know that the present Ministers of the Government of India are persons in whom people have confidence, and they will not abuse their powers. But we have to think of all future governments. We have to see if any Government of India manned by persons in some of whom the people may not have confidence, will not be able to abuse such provisions. That is the question at issue. My humble submission is that any Government of India consisting of twenty ministers exercising jurisdiction over various matters can give directions to a Provincial Government under the Factories Act, or under the Child Marriage Act, or under the Rehabilitation Act, or any other executive matter, and even a lawful or reasonable non-compliance can be taken advantage of capriciously to declare that a situation has arisen which has not really arisen.

Mr. President : But Mr. Bhargava, is not that an argument which cuts both ways? Suppose a Provincial Government were to ride rough-shod on a very important provision of the Constitution, or of law, and the Government of India were to issue instructions to carry on the Government in accordance with that provision, and the Provincial Government refuses, then how would the Government of India be able to enforce its orders?

Pandit Thakur Das Bhargava : I will just explain, Sir.

I am one of those who want that the Centre should be strong, quite strong and absolutely strong to control every provincial government. And I also can see that a situation can arise when very important directions of the Government of India may not be complied with. And therefore, I submit whenever such a situation arises, article 356 is there and the words used there are, I say, such as will certainly meet the needs of any case. The point is not that the Government cannot be carried on. The only question is if the President is satisfied that a situation has arisen when such a step is necessary, then the President can declare in any given set of circumstances, such a situation has actually arisen.. My humble submission is that even if there is only the fear of such a situation arising, even then it may be said that such a situation has arisen. Sir, there are two aspects of the case, as you have been pleased to point out. Such a situation need not have actually arisen, but even then, the President may say that a situation has arisen when action under article 256 or 356 should be taken, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Mr. President : The point is that a situation has arisen in which the government cannot be carried on, as distinct from the fact that the government is not being carried on. Supposing the Government of the State is not carrying on the administration in accordance with the Constitution, is that covered by that?

Pandit Thakur Das Bhargava : It is more than covered. It envisages a situation in which the government is not carried on. If it is not carried on

[Pandit Thakur Das Bhargava]

then the question does not arise. There are the powers conferred under article 352 dealing with the security of India, when there is external or internal disturbance.

Mr. President : There is no question of external or internal disturbance but it is simply a case of government not being carried on. Government can be carried on, but it is not being carried on. Is that covered by article 356?

Pandit Thakur Das Bhargava : I think the Government of India must be alive to the situation every moment, and if the government cannot be carried on, the Government of India has got the power to act. The provision envisages even the prospect of danger, not to speak of existing danger. In article 280-A more than necessary power has been vouchsafed to the Central Government as financial matters are emergent matters and call for peremptory action. To article 306-B we agreed, because we know that certain States are not fully developed and therefore their general control is to be tightened for ten years at least. It may be that the financial position in a State may not be so bad, yet because it is an emergent matter, more than necessary power has been given. The provinces of A class are not under the general control. Under 306-B which deals with B class provinces the Honourable Sardar Patel has been good enough to point out why this drastic power has been given in the hands of the Government. Now this 365 has broken down the difference between A and B States. The provisions of article 256 deal with executive power and laws made by Parliament which are very fluid in nature. Thus, practically speaking, A class provinces have been brought to the level of B class States. Article 365 viewed as a penal provision creates a psychological difficulty also. Now, if we were to hold that with regard to every offence of the Indian Penal Code, from every crime omitted, the accused could be hanged, or sentenced to prison for twenty years, or to one year or only fined or even admonished, then the result will be that people will be encouraged to commit graver offences. This is the second law of Bentham's theory about punishments. I am sure that these powers under 365 are not going to be used in the smaller or lesser cases. I also know that with regard to food and rehabilitation, the provincial governments are not fully complying with the orders of the Central Government, and very grave difficulties have arisen in the country because of this. These powers under section 365 are not going to be used in the ordinary cases, and therefore there will be the tendency of the Provincial Government to defy the Government on more important matters or commit much worse offences as the consequences of big or small failures can be the same. Therefore it is necessary to apportion consequences in a proportionate measure to failures, assigning ordinary consequences to ordinary failures and serious consequencs to serious failures. My submission is that the existence of this power is likely to conduce to greater difficulties.

Pandit Balkrishna Sharma : May I interrupt the honourable speaker for a minute? Provision 365 says that the President may hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is not incumbent on him that on every trifling transgression by the Provincial Government he should . . . . .

Pandit Thakur Das Bhargava : I know that, if he were to do so in every case then the carrying on of the Government of India would be impossible. But what does it mean? It means that every provincial government shall be constantly trembling before the Prime Minister. The Prime Minister of India will become not only the Grand Moghul, but he will be like a lion and the Provincial Governments will be like lambs. The Provincial Government will be in constant fear and will constantly tremble before him. Such a provision

invests the Central Government with absolutely arbitrary power and I maintain that arbitrary powers should not be given to any person. Ministries and Provincial Governments will have no security or stability and will change at the whim or caprice of the Prime Minister.

In practice such a power will not be used and its non-user will encourage bigger defaults and the tendency for disintegration will increase. This drastic power is not necessary and whatever is necessary is already there in 356.

Mr. President : You have not taken note of the distinction between an actual disobedience of the order of the Government of India—which order is justified under some provision or other of the Constitution—and a state of things arising which makes it impossible for the provincial government to be carried on. There is that distinction—a case of physical impossibility of the Government being carried on and a case of actual disobedience on the part of a provincial government to carry out the orders of the Government of India. This article is based upon that distinction.

Pandit Thakur Das Bhargava : Supposing there is a failure of the provincial government to comply with any of the directions given by the Government of India, will it not be declared that the future Government of the State cannot be carried on in accordance with the provisions of the Constitution, if the failure is such as really brings about the situation envisaged ? In case you postulate that the Government of a State cannot be carried on according to the provisions of the clause, the Government of India can take action under article 356. If the article is to be construed that only in case of prospective failure, when the situation is likely to arise, this 356 can be applied, then certainly your objection is perfectly valid. But, Sir, if you hold that in a given set of circumstances, when the government is not being carried on in accordance with the provisions of article 356, then article 356 applies to both the contingencies then there is no occasion for enacting a measure like this, which is very arbitrary and despotic in character.

The Honourable Shri K. Santhanam (Madras: General): Sir, I want to point out that this amendment is not quite appropriate. We cannot delete article 365 without leaving articles 360 and 371, as originally passed, truncated. The clauses there empowering the President to hold that there has been a failure of the Constitution have been taken out and incorporated in article 365. A wholesale deletion will go against the decisions which the House has already taken. It is only because they have brought article 365 that they have deleted the clauses in 360 and 371. A deletion therefore will not be in order but an attempt to restrict the application of article 365 to those articles will be in order. Otherwise we will be practically nullifying the original articles 360 and 371.

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

"That in article 365, after the word where the words 'the President is satisfied that' be inserted."

During the second reading of the Constitution I made certain observations with regard to this article in the chapter on Emergency Provisions and I tried to mellow the harshness of some of the provisions and to tone down the drastic nature of some of them. I do not at this stage, therefore, propose to say anything, on the merits of the proposition, as the House has accepted the articles dealing with the emergency provisions in the Constitution. Once they have been accepted I suppose there will be room for this article as well. The only point in my amendment is that we must make it clear in the first part or the article as to what the *modus operandi* should be before the President holds that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. If the House will turn for a moment to article 356, there it is laid down that the President can

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not act unless and until he receives a report from the Governor or Rajpramukh and he is satisfied. Of course the words "or otherwise" are also there. If the House will turn to article 360 dealing with a financial crisis or emergency there also it is made clear that the President should be satisfied that a situation has arisen whereby the financial stability or credit of India is threatened. In both these articles dealing with emergencies it is specifically and clearly provided that the President must be satisfied, in the first instance, on the report of the Governor or Rajpramukh or otherwise, in whatever way he thinks fit or necessary. In both cases, my honourable Collegues will see that unless, the President is satisfied the rest of the article cannot become operative. Therefore , I seek through my amendment to make a similar change in this article in conformity with the two articles to which I have just now referred and I would plead with the House that they accept my amendment, so that the article will be quite clear on this point, that once the President is satisfied that a State has failed to comply with or give effect to any directions of the Government of India, then he may hold that a situation has arisen where his special powers will have to be invoked. I, therefore, commend my amendment for the acceptance of the House.

Shri R. K. Sidhwa (C. P. & Berar: General): Sir, I move:

"That in article 365, after the words 'under any of the provisions of this Constitution' the words 'which is in direct contravention of the declared policy of the Union' be inserted."

Sir, I do not want to discuss this article at length, as you have very lucidly and rightly answered the arguments advanced by Pandit Kunzru and Pandit Thakur Das Bhargava. I only want to remind my honourable Friends who are opposed to this article that when we were discussing the Objectives Resolution in the very first session of the Assembly, very great stress was laid by every Member who spoke on the occasion that the Centre should be made strong and very strong. I wanted to know whether there was any Member at that time who stated that the Centre should not be made strong and everybody pleaded that the Centre should be made strong. From that point of view brought to bear on the Objectives Resolution, the Drafting Committee have borne that point in mind and amended the Constitution accordingly. While I do not want that the Provincial Government should be made a skeleton Government, still I do feel that under the conditions that are prevailing it is very necessary that the Centre should have some power in the event of the provinces going wrong. Do we for a moment think that any one believes that the Centre will exercise its power if the Provinces are functioning correctly? My amendment says that it is only "against the declared policy". I want to make that clear. Let it not be understood by Provincial Governments that in any ordinary matter the Centre is going to issue a fiat that "since you are not behaving well, your, powers are suspended". I say when the Government is able to convince the people and also the province that they have gone against the declared policy and against the Constitution and that they are going wrong, then certainly the Centre should have the right to intervene. If the Centre has no right to intervene this Constitution will be a scrap of paper, and if one province goes one way and another some other way against the decision of the Centre, there will be chaos. Do we not know that so many situations are arising over price-control and finance and in so many things where we have given power under the Concurrent List and the Provincial List to the provinces? So if they squander away the money and go on controlling food and other articles as they like against the declared decision of the Government of India which voices the feelings of the people as a whole—it is they who look to the interests of the people—it will result in the provinces looking to their own provincial interests. I have seen in so many provincial matters that some of the Members look to the interests of their province alone at the cost of the people as a whole. I have seen that and

therefore the Government of India is justified if they interfere, as they represent the people of the country, they are the masters of the Provincial Governments. I would use that word. If the master's orders are not obeyed, then they would be called upon to behave properly; if they do not improve, that administration should be taken over by the Central Government. The necessity of this article has been very rightly and lucidly explained to the House. It is not in contravention of what we have decided I have tried to read into the arguments and Pandit Thakur Das Bhargava. Undoubtedly, there is a change in by Pandit Hirday Nath Kunzru the wording but the intention is still there: the object is there. Therefore, I contend that this article Should remain and the amendment that I have moved is commended for the acceptance of the House.

Shri Brajeshwar Prasad : I rise to support article 365 as moved by the Drafting Committee. Unfortunately, Sir, I have not been able to see eye to eye with Dr. Ambedkar on most of the fundamentals of this Constitution. But here is one article, which to my mind, seems to be a very important article and with which I am in perfect concurrence.

Sir, my Friend, Pandit Thakur Das Bharpava, made an observation during the course of his speech that he is not in favour of arbitrary powers being vested in any authority in the Government of India or in the provinces. I feel that our notions about power must be revised. We have not got the proper appreciation of the difficulties of the problem of power. Power must have some relation with the facts and with the political situation prevailing in a country. The facts of Indian life cannot be ignored. In India the danger is not of arbitrary power being vested in the Centre : the danger is, as Indian history will bear ample testimony to it, that fissiparous tendencies may gather momentum and as in the past they have led to the downfall of empires and kingdoms, may lead us to same fate. I feel that if Indian unity is to be attained, 'if the danger of innumerable Pakistans being set up in this country is to be averted, this power must be in the hands of the President. I do not care if this article is in consonance with the other articles: I am indifferent to the argument that the Drafting Committee has overstepped the limits of its authority. I know this article bears the stamp of a realistic approach. If this power is not vested in the hands of the Centre, the provincial Governments will go on acting without caring for the authority of the Central Government.

Dr. Ambedkar has referred to the case of the food situation in Punjab. He referred to the case where the Punjab Government refused to fall in line with the food policy of the Government of India. Why go so far' Even today it has been brought to our notice-birds whisper in our ears that there are recalcitrant Prime Ministers today who refuse to conform to the directions issued by the Government of India. This tendency must be checked, or else Indian nationalism has no future. Today, Sir, the situation prevailing in East Punjab, the situation prevailing in West Bengal, the situation prevailing to a more or less similar extent in other provinces as well are of a dangerous character and if this power is not vested in the hands of the Government of India, there is no future for this country.

Shri B. Das (Orissa: General): I speak with sorrow and misgivings. I listened to my Friend Mr. Santhanam. But I do not think there was any necessity of article 365. Pakistan Government retained section 93 in their Government of Pakistan Act and we abolished section 93 from the Government of India Act. We know the meaning of democratic Provincial Governments democracy in the sense of a qualified democracy from the position of Provincial Governments. under the British rule. Today we have not only introduced article 371, but the Drafting Committee suddenly in their wisdom, during the recess of a fortnight saw to it that article 365, which is nothing but section 93 of the Government or India Act, 1935, in all its nakedness and horror,

[Shri B. Das]

had been introduced. I do not see eye to eye with my Friend Mr. Santhanam that this is necessary. I thought article 371 was enough. It gives the Government of India general powers to tighten the Control over the States which are no more autonomous today, and which were never autonomous and never will be autonomous under this Constitution. Why is it that we want to look in to the horrors of revolt of the State? That means failure of the President and the Cabinet. If the States get out of control and try to revolt, then it would mean that there is not that cordial relation between the Government of the Union and the States, and any body who is not a lawyer even a layman like myself-when he reads this Constitution which we are shaping, will see that it does not leave the Provinces any power. The provinces are today glorified municipalities and corporations. If that be so, why go to the horrors of article 365 ? We are not going to evolve a Fascists democracy. We are going to evolve democracy. Why this fear? Why this suspicion? The President has got enough emergency powers and article 371 is ample. Do you mean to say that this Constitution denies the right to the President and the Cabinet to take over control without the introduction of this article 365? I do not think so. I think the President and the Central Cabinet have got ample reserve power to meet an emergency of the type that Pakistan Government met in taking over the Government of the West Punjab. I do not like at the fag end, when we are nearing the end and giving the finishing touches to this Constitution, to harbour the feeling in my mind that we are legislating as autocrats. I do not wish to raise the cry that we must vote down article 365. But how is it and why is it that the Drafting Committee gets all the odium of Fascism in the fortnight's recess that we had? When we separated we felt, in spite of many shortcomings in this Constitution, that at least we have evolved a democratic Constitution. Article 365 introduces the horror of the Section 93 by which most of us suffered for many many years. I am glad that Dr. Ambedkar is present. I want him to justify his wisdom in having recourse to this new article 365.

Shri K. Hanumanthaiya (Mysore State): Mr. President, Sir, every time the question of the Centre comes up, people say that they should make the Centre strong, because the provinces misbehave and that we must always keep a vigilant eye on them. Not that I am in favour of the view of making the Centre weak, but people who have fought for democracy, people who are framing a democratic constitution, forget that if the provincial governments misbehave there are provincial legislatures to set them right. It is a sad commentary upon the psychology of most of us that we completely ignore the provincial legislatures and the people in the provinces, and attribute all virtues to the Centre and to the Government that exists in Delhi. If we scrutinise for a moment the way in which the Governments are run in the provinces and the Centre, I for one do not find that the Government at the Centre is being run on very much more efficient or honest lines than the Governments are being run in the provinces. It is far better that we take note of the facts as they are. Can we say that the Secretariat here in Delhi is being run more honestly or more efficiently than the Secretariats are being run in the provinces? It is a sad commentary, as I said before, on us that forgetting these facts we decry the regimes in the provinces and the provincial legislatures every time and praise the Government here to the skies. That is a psychology which will ultimately work to uproot democracy in this country. As a friend of mine suggested a little while ago, we are investing the Central Government with powers which it will not be able effectively to exercise or honestly make use of.

Having said this, I would like to point out that when we were fighting for freedom one of the principles on which we concentrated our mind upon in constitution-making was decentralisation of power. In this vast country,

centralisation will ultimately work to the detriment of what we call "unity" itself. it is impossible for any human being or any Government to control effectively all the administration from Cape Comorin to the Himalayas. Decentralisation is a necessity. It was also the principle on which Mahatma Gandhi wanted to construct this Constitution. Of course, we have given up his ideas in many respects, and I am not quoting him for the purpose of winning sympathy for that cause. Anyway, I make this observation with all the sense of responsibility that I have certain classes and interests and communities have taken hold of the Government in the Centre and they think they will be able to carry on tile Government and enioy all the privileges that could be enjoyed by taking as much power as possible for the Centre. This is the psychology...

Shri M. Thirumala Rao (Madras: General): What do you mean by "communities"?

Shri K. Hanumanthaiya : You know it and I know it. Therefore, why question ? They think they will be able to get all power and all privileges. This is the underlying psychology and that will be the rock on which this Indian unity will break ultimately, if people do not mend their ways.

Now, Sir, it is not as if I am not in favour of this article. It is the logical culmination of the kind of Constitution-making we have been doing. We have given to the Centre—financial, executive and legislative powers—in varying degress, to the detriment of the provinces and the units. Article 365 is merely the "operative portion" of the powers we have given. Once having conceded so many powers to the Centre, it would be illogical if we do not entrust it with the power to operate them as well. It is this, what article 365 seeks to do. But in supporting this article, I wish to sound a note of warning. Let those people who think that they are making hay while the sun shines take note of the future also. If this article is worked, as we apprehend, in the interests of the classes or the communities that have taken hold of the Government of India, people will not keep quiet. That will be the starting of trouble to break the much sought-after Indian unity and Indian nationalism.

Shri Mahavir Tyagi : Sir, I am in favour of the newly proposed article 365. I feel there is no violation of the scheme of decentralisation according to this article. This article establishes links with the rest of the units. To talk of decentralisation does not mean, if I may use the word, "circumferising" the whole State. If we want to link all the States together in a circumference, we must have a Centre. A circle cannot exist without a Centre. This article merely provides the tender links and the lines of the circumference. These rights are being given not to Ministers or States or Governments alone,. Here in this Constitution, the rights of the poeple are being defined. When the Constitution is violated and the rights of the people denied to them in a province or State, the people will have no other course except to appeal to Parliament to their representatives though these representatives after taking the oath as representative have in actual practice nothing to do with the people except to tax them and govern them. Therefore, the people who are thus governed must have a forum or making their appeals for the redress of their grievances. This article is the security for the people that the provincial Governments will govern them properly. If they do not govern them according to the articles of this Constitution, the people must have the right to go to the Centre and appeal. The Centre alone can take a dispassionate view of things. Here in the Centre there will be so many representatives from the States sitting together. They will always take a dispassionate view of things and surely, whatever. action the President takes will always be considered by Parliament. Parliament is the Supreme Court of the land and therefore it must have the right to enforce the rights of the people in the various States. It is not a question of centralisation at all. This is neither centralisation nor what I could call circumferisation. The real position is that there should not be disintegration. These are the tender

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Guarantees for the consolidation of the State. I must congratulate the Drafting Committee for introducing this provision. Although some might object to it. I support it. It is a great security of the rights of the people that the President should have the authority to intervene whenever he finds that the State Govrnments are not working according to the article of this Constitution

Mr. President : I desire to point out to the Members that we are really running a race against time. As this is an important article, I have allowed so much discussion on it. But if any other Member wishes to speak on this article he will have to bear this in mind. There are other articles also to be discussed. However, tomorrow by one o'clock we have to finish all the amendments.

Shri Kuladhar Chaliha (Assam: General): This is a very important article.

Mr. President : Therefore we, have discussed it for more than an hour and a half.

Pandit Hirday Nath Kunzru : Mr. President, many honourable Members have justified the language of article 365 on the ground that everybody recognises the need for a strong Centre in the present circumstances. Sir, I am at one with all those Members who wish that the Centre should have adequate power to discharge its responsibilities. But we cannot use the need for a strong Centre as an excuse for giving any bias we like to our Constitution.

My honourable Friend Dr. Ambedkar, in defending the draft of article 365, said that it was obviously necessary, when articles 256 and 257 authorised the Central executive to issue instructions in certain cases to the State executives, that a general remedy should be provided against a failure of the State executives to carry out the instructions of the Central executive. But Dr. Ambedkar has not been quite consistent in this matter. When he was asked some time ago whether any limitation had been placed on the power of the President, that is, whether there was any provision in the Constitution requiring the President to act in accordance with the advice received by him from the Ministry, he said that the Constitution proceeded on the assumption that every authority would be prepared to play the part assigned to it in the Constitution. It could not assume that every authority would try to violate the Constitution under which it was brought into existence. But, today he has taken almost an opposite view and he wants that the power of the Centre over the provinces should be made absolute. He wants that its instructions should not be allowed to be disregarded by the provinces in any circumstance.

However, that may be, Sir, I am quite prepared to consider this question on its merits. Let us see whether there are any provisions in the Constitution, apart from article 365, that enable the Central Government to take action when a provincial Government fails to discharge its responsibilities. If, Sir, the action of a provincial Government is of such a character as to lead to misgovernment and to create the possibility of disturbances occurring in the State, it will be open to the President under article, 352 to issue a Proclamation of Emergency and, when such a Proclamation has been made, he will have adequate powers to compel the provincial Government concerned to carry out the instructions of the Central Government. There may be other cases in which there may be mal administration and misgovernment in various directions, but the peace of the Province may not be endangered thereby. If such misgovernment goes so far as to make either the Governor or the Rajpramukh or the President himself feel that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, the President will again be able to provide the necessary corrective under article 356. But articles 352 and 356 assume a little patience on the part of the Central executive. They can be brought into play only

when the Provincial Governments show persistent disregard of their responsibilities. If the Central Government is wise, it will not dream of compelling the provincial Government to carry out its wishes in every case. Its legal power may be there: yet experience of the world and the necessity for carrying the public and the provincial governments with it will tell it that it must occasionally wink at their negligence and allow the provincial electorates and the provincial assemblies to bring about a healthy change in the situation. If. however. the provincial electorates and the provincial assemblies fail to fulfil their responsibilities and the provincial governments continue to disregard the views of the Central Government, then the Central Government will have adequate powers under this Constitution, even if article 365 is deleted, to see that the government of the country is carried on in accordance with this Constitution.

I should like, Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justification of the language of article 365. Now, one of the articles so referred to is article 371 which corresponds to the old article 306B. Had that article been omitted, then there might have been some justification for article 365, but article 306 B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306B in the Constitution as amended by the Constituent Assembly last month. If their language is the same—somebody says it is the same,—then I do not see how the Drafting Committee could refer to this article as a justification for bringing in article 365. The reference to article 371 is wholly irrelevant. There are two other articles referred to by the Drafting Committee to which I would like to refer, and they are article 353 and article 360. Article 353 deals with.....

The Honourable Dr. B. R. Ambedkar : Before my honourable Friend proceeds further. I would like to point out that the words "and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution" have been omitted from article 371 which corresponds to the original article 306B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect, 'If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306 B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306 B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft or the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to articles 353 and 360 when my Honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also?

Honourable Dr. B. R. Ambedkar : "Notwithstanding anything in this Constitution during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide. . ." etc.

Pandit Hirday Nath Kunzru : Sir, article 353 refers only to the powers that can be exercised by the Central executive and the Parliament after a Proclamation of Emergency has been issued. Obviously, emergencies will last for a short time. This power therefore is not general: it has to be used only in certain circumstances of a special character. Again, article 360 refers to a situation in which the President is satisfied that the financial stability or credit of

[Pandit Hirday Nath Kunzru]

India or any part of it is threatened. In such cases, instructions can be issued to the provincial government regarding the canons of financial propriety that they should follow. This provision too can be used only in special circumstances. It is clear that it can be-used only in an exceptional situation. As I pointed out, Sir, when this article was under consideration, this article was brought in towards the end of our discussions simply in order to enable the Central Government to order the Provincial Governments to give up the policy of prohibition. For all practical purposes that was the sole object of this article. (Shri T. T. Krishnamachari: 'Question'). The language is certainly wide: but I feel morally convinced that had the Provincial Governments not persisted in giving up their Excise revenue in disregard of the advice given by the Central Government article 360 would have found no place in this Constitution.

I have shown, Sir, that the Drafting Committee has justified the new article 365 by referring to many articles the operation of which will be of a limited character. None of those articles justifies the extension of the power of the Central Government to such an extent as to make it permanent and applicable in all circumstances. I think, Sir, that if my honourable Friend, Pandit Thakur Das Bhargava's amendment is accepted, no difficulty will arise. We can be go back to the position that existed before the Drafting Committee, eager to introduce as many changes as it could, suggested the insertion of the new article 365 in the Constitution. I, therefore, heartily support Pandit Thakur Das Bhargava's amendment.

Mr. President : I think we had better close this discussion on this article now.

Honourable Members : Yes, Sir.

Mr. President : We have had enough discussion and all the view points have been placed very clearly before the House. It is now for the Members to decide. We shall now go to article 372.

Shri H. V. Kamath : We have article 366 and there is my amendment No. 411. Mine is a new definition.

Shri T. T. Krishnamachari : There is no new item, Sir, referring to the Constitution.

Shri H. V. Kamath : The article as a whole has been amended by the Drafting Committee. I have got an amendment to the article, and it is consequential upon the amendments made by the Drafting Committee

Mr. President : It is quite clear that the 'Constitution' only means 'the Constitution of India'; it cannot mean any other Constitution. I think you had better leave it to them.

(Amendment No. 412 was not moved).

Shri R. K. Sidhwa : Mr. President, Sir, my amendment says:

"That article 373 be deleted."

This article relates to article 22. It says that after the commencement within one year the President shall have power untill the Parliament makes the law for article 22. I feel, Sir, that article 22 is very important. Parliament will make law within three months after the commencement of this Constitution and therefore in my opinion.....

Shri T. T. Krishnamachari : It would not do because something has to be done under clause (4) of article 22 which nobody will be able to do on the 26th of January. If we do not have this provision, the whole thing will become inoperative.

Shri R. K. Sidhwa : I see the importance of it. I thought that the Ministry would be able to bring in a Bill in the Parliament within three months. If it is humanly not possible, I do not want to press.

Prof. Shibban Lal Saksena (United Provinces General): Mr. President, Sir. I beg to move:

"That in article 373, for the words 'one year' the words 'three months' be substituted."

Sir, this article 373 is intended to give the President power as a sort of substitute for Parliament under article 22 especially clauses (4) and (7). If the new clause of Dr. Ambedkar, i.e., amendments 545 and 546 be taken as the final form in which article 22 will be in the Constitution then after the amendment is made, it will read like this :

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by order made by President under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of order made by president under sub-clauses (a) and (b) of clause (7)."

And clause (7) will read as follows :

"(7) The President may by order prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause(4)".

Thus, Sir, the powers given to Parliament in the final form of article 22 are taken by the President for one year. I think, Sir, that this is something drastic. I can understand that immediately on the 26th of January we may not be ready with the new legislation. But I should certainly think that before the budget session is over, that is by April. we should have the new law passed. I am, therefore, suggesting, not the deletion of the article as my honourable Friend Mr. Sidhva has suggested, but the substitution of three months for one year. It is, of course, obvious that the present session of the Assembly will be over by the 22nd of December and it may not be possible to meet again and pass the law before the 26th of January. But, I think before the budget session ends, the new law should be passed and we should not have to wait for one year to make this law, that is till the next December or January. I personally feel that the use of the words ,one year" shows to some extent the respect that the Drafting Committee pays to the liberties of the subject. This question deals with the taking away of the liberty of the subject and keeping him in detention. We do not want to leave this matter pending for one year. I think the period of three months given in my amendment is quite enough, and I think before the end of three months we should be able to provide in what circumstances the Government can detain a person for a longer period than three months. Clause (7) of article 22 gives the power to Parliament to make law prescribing the circumstances under which and the class or classes in which a person may be detained for a period longer than three months as also the

[Prof. Shibban Lal Saksena]

maximum period for which any person may be detained. This must be decided by the Parliament and should not be left to the Executive itself. The fact of the matter is that this power is given to the Executive and we want to place some restrictions on the Executive. If we leave it to the Executive to frame the rules for a period of one year, there will be no restriction on the power of the Executive and there will be a denial of democracy and freedom. This article shows a great disrespect for the liberty of the subject. I therefore think that three months should be substituted for one year.

Shri B. Das : I am not moving amendment No. 415, Sir.

Mr. President : Amendment 418 : Mr. Kamath.

Pandit Balkrishna Sharma : I have an amendment No. 416, Sir.

Mr. President : That does not arise out of any amendment of the Drafting Committee.

Pandit Balkrishna Sharma : There is one in the subsequent List.

Mr. President : There is amendment No. 503. When we take up amendment No. 503, this will come in as an amendment to that.

Shri H. V. Kamath : Mr. President, I move. Sir, amendments 418 and 419;

"That in clause (5) of article 379, for the words 'after such commencement' the words 'on such commencement' be substituted."

I find from List IV, Sir, circulated last night, the Drafting Committee has thought better and they have accepted this amendment.

"That in clause (5) of article 379, for the words 'as the case may be, the Deputy Speaker' the words the Deputy Speaker, as the case may be' be substituted."

This is more or less formal amendment and if you will please, Sir, a verbal one, and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 387, amendment No. 420.

Shri H. V. Kamath : Sir I move:

"That in article 387, the words 'and different provisions may be made for different States and for different purposes by such order' be deleted."

Sir, this article 387 deals with special provisions as to the determination of population for the purposes of certain elections. My recollection is that in the last session of the Assembly, under the corresponding original article, more power was sought to be given to the President than visualised in the present article minus the italicised portion. There was a full dress debate in this House and the article was later on amended so as to refer only to the determination of the population of India or any part thereof. The other matters were stated to be important enough to be left to regulation by Parliament, and I believe you too intervened in the debate and assured the House, that what was contemplated was merely the determination of the population figures for the country or any part of it. The italicised portion of the new article deals with matters which are in my humble judgment, so important that they should not be left to the discretion or judgment of the President and the Executive. This portion refers to different provisions and for different purposes also. I do not know which are the purposes that are intended here. I think this should not be left to the initiative of the President and the Executive. I move amendment number 420 and commend it to the House for its earnest consideration.

Amendment 421, I leave to the Drafting Committee. Amendment 422 this is also a verbal amendment and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 391: amendment No. 424.

Shri H. V. Kamath : There is an amendment by Shri Thakkar Bapa, No. 423, Sir.

Mr. President : There is no amendment of the Drafting Committee; you proceed with article 391, amendment No. 424.

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

"That in clause (1) of article 391, for the words 'amendment in' wherever they occur, the words 'amendment to' be substituted."

This is also a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Sir I move:

"That in clause (1) of article 391, for the words 'anything in this Constitution', the words 'anything contained in this Constitution' be substituted."

This amendment is also on a par with amendment 424 and I leave it to whatever fate may overtake it at the hands of the Drafting Committee.

Shri R. K. Sidhwa : Mr. President, Sir, I move :

"That at the end of article 391, the following new clause be added:—

'(3) Such an amendment or amendments shall be placed within two months of the passing of Such an order before Parliament for its approval.' "

Sir, this article is a very important one.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and point out to him that the President will merely be putting into the provisions of the Constitution what would be a matter of fact and that would not admit of any approval by Parliament or of even placing before Parliament because on the 26th of January, these changes must become part of the Constitution. Otherwise, these States to which these changes refer will be hanging in the balance.

Shri R. K. Sidhwa : My point is this, I will just read the article as it is:

"if at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires any amendment in the First Schedule and the Fourth Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken and any such order may contain such supplemental, incidental and consequential provisions, as the President may deem necessary."

I refer to the First Schedule. I do not want to give any power to the President for First Schedule, which is a most contentious subject; during the last session we discussed it and postponed it for the consideration of this House. The First Schedule relates to addition or subtraction relating to the States and also the names of the States. If any additional name is to be made, could it be left to the President? Supposing Madras is to be divided, may I know if merely the President will have a power to add Andhra into this list or Maharashtra to be added to it and also to change the names of the States?

Shri T. T. Krishanamachari : Action would have been taken under the Government of India Act already before the promulgation of the Constitution.

Shri R. K. Sidhwa : I feel that the change in the name of States should be in the absolute power of this Assembly. With due respect to you, I feel that this is an important matter on which the House must have a voice. Already we have received a suggestion from U.P. to change the name of the

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State and there is a great deal of opposition from the Members except the U.P. Members. Then again about the new provinces that are to be created, may I know whether our voices are to be stifled down, and that it should be confined to Members of the province concerned? We should have a voice in deciding whether there should be additional provinces or separation of provinces and in the renaming of the provinces. Therefore I have formally moved this amendment. My intention is that the President should not be .empowered. On the contrary it embarrasses the position of President by giving him the power on this vital matter where there is a great deal of opposition in the House and various Members.

I therefore contend that this article should be re-drafted or if the addition is to be made by tomorrow, we might make it. Or we might, by common consent, hold it over and before we disperse, just before the passing of the third reading, we might consider this subject and decide it here but it would be unfair, in my opinion, to take away my righter express my view—on the question of naming of States and also the creation of new States. I therefore submit and request you—this is a personal appeal to you, Sir, that.....

Mr. President : This article contemplates action taken under the provisions of the Government of India Act. If a new province is created tinder the Government of India Act, the President may take note of that fact and act under this article. It has nothing to do with the naming of existing provinces.

Shri R. K. Sidhwa : May I know whether the President will not change the name under this Constitution ?

Mr. President : Not of existing provinces but of course, if a new province is created, it will have a name. If the action has to be taken under the provisions of the Government of India Act, 1935 *i.e.*, a province will have been created by the 26th January, under the Government of India Act, 1935, and when that province is created, the President has simply to take note of that fact and to incorporate it in the Schedule.

Shri R. K. Sidhwa : Parliament will have a voice in it ?

Mr. President : It is the Governor-General who acts under section 290 for creating a new province and the President has to take note of that fact and to mention that particular new province in the Schedule.

Shri R. K. Sidhwa : That would mean under that clause the Governor General, at the instance of Ministers, would act?

Mr. President : Of course it is entirely the Governor-General who will act on the Ministers' advice. The Governor-General is not likely to act without ascertaining the views of the Legislature or of the provinces.

Shri R. K. Sidhwa : May I know whether the Governor-General will have a right to rename the provinces under that Act?

Mr. President : Not to change the names of the existing provinces but to create new provinces. If a new province is created, then the President is expected to take note of that fact and to incorporate that in the Schedule.

Shri R. K. Sidhwa : That means we are precluded from expressing our views.

Mr. President : Otherwise the creation of provinces has to be held over till after the new Constitution comes into force. It comes to that. This new article has been brought in to enable new provinces to be created if conditions are created in which such action becomes possible but that would take away the

right of the Governor-General to act under section 290 before even 26th January. You cannot take away the powers given to him under the Government of India Act before 26th January. That power is there under the Act.

Shri R. K. Sidhwa : Before we disperse on the 26th November could not we know?

Mr. President : it is more than I can say.

Shri M. Thirumala Rao : That is a matter for the Legislative Assembly. We are drafting the Constitution for the future. Mr. Sidhva's amendment is entirely irrelevant because it is a matter for Parliament.

Shri R. K. Sidhwa : I am particular about expressing my view.

Mr. President : What ever the Governor-General can do under the Act of 1935, he can do upto 26th January and you may take any remedy under the Act.

Shri R. K. Sidhwa : There is no remedy.

Mr. President : It can come up as an amendment of the Act.

Shri R. K. Sidhwa : There is no time.

Mr. President : That is why it has been introduced here to meet that particular emergency.

Shri R. K. Sidhwa : I hope you will bear this in mind. This subject was before the House and the right of this House is being taken away by this clause.

Mr. President : There is no right of the House being taken away. It only enable the President to take note of the fact which has taken place in accord with the Government of India Act of 1935.

Shri R. K. Sidhwa : The right is this : In the last session we discussed this First Schedule and the question of creating new provinces. Then the matter was held over.

Mr. President : What was held over—whether the province was to be created or not? Now that is held over.

Shri Mahavir Tyagi : Sir, I hope President means the President of the Constituent Assembly, and not the 'Governmental President'.

Mr. President : There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I propose to explain this matter in my reply. Mr. Sidhva may conclude his remarks.

(Amendment No. 427 to article 392 was not moved.)

Mr. President : Amendment No. 428—Mr. Kamath. But I think it has been accepted?

Shri H. V. Kamath : No, Sir, it is not accepted.

Mr. President, Sir, I move my amendment No. 428. But I find that this proposed clause (3) of article 392 has been re-drafted, and List IV received last night gives us the amended or revised clause. So may I relate my amendment to that, Sir?

Mr. President : Yes.

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

"That in amendment No. 505 of List II to the proposed clause (3)—(now it will be No.572 of List IV)—for the word 'before' the word until' be substituted,"

or alternatively,

"In amendment No. 572 of List IV, in clause (3) of article 392, for the word 'before' the words 'until immediately before' be substituted."

I find, Sir, the word "before" here is not quite accurate and does not convey the exact sense of this clause. What is meant is that until the new Constitution commences—may be at sun-rise on the 26th January, that this clause means that until that very second, before 6 o'clock or sun-rise on the 26th January, the Governor-General will have these powers and exercise these powers conferred by this article. The word "before" is somewhat vague, especially when used in a Constitution, and I feel it is not quite happy. I therefore suggest that it may he substituted by the word "until". It conveys the sense better than the word "before". "Before" can Mean any time before the commencement; there is no precision about it. I do not like the word "before". But I am open to correction and I am prepared to give place to men of better knowledge of the language, to more competent men, in this matter. But left to myself, I would choose the word "until" Or if the word "before" should be there. I would have "until immediately before" the commencement on the Constitution. But as I said, I would leave it to the wisdom of the House and of the Drafting Committee to deal with this amendment as they like.

Then I come to the next amendment-431.

"That in item 5 of Part A of the First Schedule for the name Koshal Vidarbh' the name 'Madhya Peadesh' be substituted."

Sir, the House will remember that when this Schedule was adopted during the last session, you, Sir, told us that whatever changes might be made or sought to be made in the names of the States in Part A of the First Schedule, they will be considered during this session and the amendments that had been tabled during the last session were referred under your instructions, to the Provincial Governments.

Mr. President : It might cut short discussion if I say that I understand that the C.P. Government have recommended the name Madhya Pradesh. So perhaps. no further discussion is necessary on this amendment.

Shri H. V. Kamath : Sir, there was some controversy in the papers; but if that name has been accepted, I agree there will be no necessity for further discussion. I heard that the Drafting Committee had referred it back to the Provincial Government.

Shri R. K. Sidhwa : Sir, on a point of information, may I know whether the recommendation of the Provincial Government will be automatically accepted?

Mr. President: Nothing is automatically accepted. I am only saying that this is now practically an amendment of the Drafting Committee, and it will be subject to the vote. Mr. Kamath need not now press his amendment.

Pandit Balkrishna Sharma : Sir, in view of what you have said, may I know whether the recommendation sent up by the United Provinces will also automatically become the amendment of the Drafting Committee?

Shri R. K. Sidhwa : Sir, that was exactly the point to which I drew your attention, whether the decision of the Provincial Government will automatically become the decision of the Drafting Committee? I do not think it is so Sir.

Mr. President : Very well, if that is your view, we shall take it in that way.

Shri Mahavir Tyagi : We decided the other day that the names should be accepted when they come from the Provincial Government.

Mr. President : Names have been recieved, but if some Members object, it is open to the House to take any name that it choses, irrespective of what the Provincial Government has sent.

Shri R. K. Sidhwa : Sir, you also said that the Drafting Committee will consider the names received.

Mr. President : Very well. We now go to amendment No. 432.

Shri H. V. Kamath : Regarding my amendment No. 431, I am happy the Provincial Government has also sent up the name "Madhya Pradesh". I think it is a far happier name than "Koshal Vidarbh", and I have no doubt that the House will accept it.

As regards No. 432 I move:

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Gangavarta' be substituted."

Shri Mahavir Tyagi "Gangaputra"?

Shri H. V. Kamath : No, "Gangavarta."

Shri R. K. Sidhwa : May I submit that this may be held over till we know the opinion of the Drafting Committee? You, Sir, said last time that the Drafting Committee will place its proposals.

Mr. President : The proposals are there, and we shall know the opinion of the Drafting Committee before the vote is taken.

Shri H. V. Kamath : Sir, while I do feel that the name Aryavarta will be a dignified Sanskrit name,—perhaps it occurs in the Vedas too,—but at the present day, I am sure nobody will differ from me when I say that the name "Aryavarta is applied more to the whole of India than to a particular part of it, (*hear hear*), and I do not think at this time of day we should name any particular province on a racial basis, and the name Aryavarta has a racial odour about it.

Pandit Balkrishna Sharma : It has nothing, except a cultural odour about it.

Shri H. V. Kamath : Even if it is only cultural odour, I would not subscribe to that name, because the culture of the whole of India is one, whether you call it Aryan, or Indian or Bhartiya, it is all one. To call a particular province by the name "Aryavarta"—this is, the *home* of the Aryans, or whatever else it may mean—it will cast a reflection upon the inhabitants of the rest of India and it will, I feel, be resented by them. We should not name a particular province "Aryavarta" when the whole of India is known as Aryavarta. In one of the Vedas, I believe when the Aryans first came to India and settled down in a particular part of Northern India, they called that part Aryavarta. When they went down South the name was intended to comprise the whole of India, as we know it today. Therefore, I feel that the name Aryavarta is not very appropriate as the name of one province or State of India.

As regards the name "Gangavarta" I have it on very reliable authority—I have not read the Vedas myself but I am told—that one of the Vedas, either the Rig Veda or Sama Veda—refers to the part where the early Aryans had settled down as Gangavarta. Perhaps more often the name 'Aryavarta' is used but this name 'Gangavarta' also appears occasionally; and it has no racial or Cultural bias or odour attached to it. The Ganga is the biggest and most

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sacred river in India, and in the estimation or all Indians it is one of the biggest and holiest rivers in the world. There is an ancient tradition about the Ganga. I would request my honourable Collagues from the U.P. to think deeply over this name and decide whether it would not be wiser and more appropriate to call their province Gangavarta instead of Aryavarta. In our Indian tradition and history. the Ganga has played a very prominent part, and even in our philosophy, our Vedas and Puranas and our scriptures. I for one would feel proud if the U.P. is trained Gangavarta and not Aryavarta, as latter applies to the whole of India.

Prof. Shibban Lal Saksena : Sir, I move:

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Aryavarta' be substituted."

My honourable Friend Mr. Kamath has proposed the name of Gangavarta and opposed Aryavarta, which our province wants to keep for itself. His main reason is that Aryavarta is the name of the whole of India. If he would only turn to article 1 of the Constitution he will find that the whole country is named Bharat and the name Aryavarta has been discarded. So his saying that the name Aryavarta applies to the whole of India is not correct. If our province had appropriated the name of Bharat then his argument would have been of some value but when we call ourselves Aryavarta his argument has no validity.

The whole of India was never called Aryavarta. Only Northern India,. particularly the Punjab, the U.P. and Bihar were called Aryavarta. Mr. Kamath has suggested the name Gangavarta but the Ganga also goes through Bihar and Bengal besides U.P. The same argument will have to apply there. It is not an argument to say that we are trying to a appropriate name which applies to the whole country . . . . . .

Shri B. Das : You force your language on me and you steal our common country's name also for your province.

Prof. Shibban Lal Saksena : The word 'Aryavarta' has been suggested not by myself alone but by our Provincial Congress Committee consisting of 650, members who met and discussed the matter. This was their unanimous verdict that Arvavarta should be the name adopted for the province. Our provincial government have also recommended the name. I do not think this House should deny us the privilege of calling ourselves by a name which is our ancient name. If any province like the Punjab or Bihar is jealous and wants to call itself Aryavarta, that is another matter: but no other province has claimed that name and there is no reason why we should not call ourselves by that name. I hope there will be no objection raised against our province taking the name, which has been decided both by the Congress Committee and the provincial cabinet.

There was one argument advanced that if we call ourselves Aryavarta, it implies that we alone are Aryans and others are not. That is not the meaning of it. Merely because in the whole country one province wants to call itself Aryavarta, my friend says that there is something racial about it. There is no racialism about the word Aryavarta. It is an ancient name of Northern India and our province is the heart of it. I do not think this House should impose on us any name other than what we want. I hope the House will support us.

Shri T. T. Krishnamachari : Sir, this matter might be discussed tomorrow, because there is a possibility of the Drafting Committee being in a position to put in an amendment, which will probably meet with the wishes of a large body of Members of this House.

Mr. President : Yes, we shall discuss the question of names tomorrow.

Shri H. V. Kamath : Sir, I move amendment Nos. 434 to 437.

"That in sub-paragraph (3) of paragraph 9, the words beginning with 'during the period' and ending 'before such commencement' be deleted."

"That sub-para (2) of paragraph 10 be deleted,"

"That in sub-paragraph (4) of paragraph 10, for the words 'for any State' the words 'of any State' be substituted."

"That in sub-paragraph (3) of paragraph 12, for the word 'and' occurring in line 1, a comma be substituted."

Taking the last one it is purely a matter of punctuation and I leave it to the punctuating sense of the Drafting Committee.

Since I understand that a corrigendum has been issued with regard to this, I shall not press it. Coming to amendment Nos. 434 and 435 : these deal with salaries of Judges who might after the commencement of the Constitution be appointed judges of High Courts or of the Supreme Court. There is some distinction made between the appointment of new judges and the appointment of the old incumbents as judges of the Courts concerned. These clauses which I seek to amend by deletion of particular portions thereof, refer to the payment, of the difference between the pay which they used to obtain before they were appointed judges under this Constitution and the salary of judges is laid down in the Schedule to this Constitution. I think that this distinction should not be made between judges who are newly appointed, and those who were formerly judges of the High Courts or the Federal Court but now are appointed to the High Court or the Supreme Court. This refers to a few individuals and we have already fixed the salary of our judges at four figures. On top of that if we seek to give them the difference that obtains between the old and new salaries. I think the Indian people will feet, and rightly so, that we are unduly pampering our judges. If the old incumbents do not wish to serve on the new salaries, I think that the best course would be I am loth to believe that they would refuse to serve; they are patriots as much as we are, and I think they would very willingly agree to serve on the salaries as fixed in this new schedule—but if some, owing to sheer perversity or cussedness refuse to serve in the High Courts or in the Supreme Court—the Government of the new Indian Republic should ask them to quit and make way for judges, whom I think we can find in a, fairly large number among the able members of the Bar in India—men who are willing to serve our country and people on the salaries fixed in this new schedule. Once again I say that it would be wrong on our part to pamper a few individuals who were judges before the commencement of the Constitution and whom we seek to appoint as judges of the High Courts and Supreme Court. The Constitution is meant for the whole people, and not for a few individuals that might be affected by the provisions of the Constitution. I therefore commend my two amendments to the acceptance of the House.

Mr. President : Amendment 438 has already been moved. Amendment 439-Seventh Schedule.

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

"That in entry I of List I of the Seventh Schedule, after the word 'preparation' the words 'and operation' be inserted."

The words in italics comprise the amendment of the Drafting Committee and they have sought to insert the portion relating to preparation for defence. I think, Sir, so far as military science and the art of warfare is concerned, it comprises not merely preparation but operation too, and the point of my amendment is to make this quite comprehensive and not leave any loophole for doubt, of whatever nature it may be. I therefore move that my amendment seeking to insert the word "operation" after "preparation" be accepted. The new

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entry would read thus : Defence of India and every part thereof including preparation and operation for defence. . . .” I hope the Drafting Committee and the House will accept this amendment.

Sit, I also move:

“That in entry 65 of List I of the Seventh Schedule, before the word ‘police’ the words ‘administrative or’ be inserted.”

The new entry which has been inserted here refers to Union agencies and institutions for professional, vocational or technical training, including the training of police officers. After the recruitment to the old I.C.S. was stopped. Our Government inaugurated a new service called the Indian Administrative Service and the members of that service used to be trained in a school, in Dellhi—and I believe they are still trained here in this school, or may be, anywhere else in India. But the fact is that there is a training school not merely for police officers but for administrative officers as well. I do not know why you want to single out police officers alone. Either mention all civil officers : or if you mention the police then the other key service, that is, the administrative service, must find a place, like the old I.C.S., and I.P. the present I.A.S. and the I.P. must be included in this entry. I therefore commend my amendment to the acceptance of the House.

Mr. President : Mr. Sidhva, which is the entry you want transferred.

Shri R. K. Sidhwa : Sir, I move :

“That entry 34 of List III be transferred to List I.”

Entry 34 relates to price control and it is most appropriate that this item should go to List I. Control of most of the items is from the Centre and price should he regulated from the Centre. At times there have been different kinds of prices prevailing and Provincial Governments have fixed prices without consideration, and you very well know the state of prices today. If price control is to be effective, it should be regulated through the Centre in the interests of all, and the provinces should have no voice in it. Take sugar, some provinces have fixed prices which are most incommensurate with the prices that are prevailing in other provinces, bearing in mind the railway freight and other charges. I therefore feel, if it is left to the Centre they will regulate it properly. They will see to the interests of the people and there will be no kind of bickering or bitterness among the people. You need price control, because prices is the factor which has brought about great discontent among the people and the Government of India is being blamed sometimes for no fault of their own. Well the Provincial Governments are responsible. This control item should be exclusively put in List I. I am sure the Provincial Governments will welcome it because it avoids all bickering and discontent, and if left to the Centre there everything will be regulated properly. I commend it to the acceptance of the House.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at 3 P.M., 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.

Mr. Hyder Husain (United Provinces : Muslim).

Shri H. V. Kamath : Mr. President, before we proceed to the second list, may I point out that there is an amendment of mine, No. 156* in the first list, to article 57 of the Constitution, which has escaped your notice?

Mr. President : We shall take it as moved.

Shri H. V. Kamath : I have an amendment No. 138 to article 41. I think the particular word used is patently inaccurate,—"Public assistance" It ought to be "State assistance".

Mr. President : You may leave it to the Drafting Committee to consider. We shall now take up the second list.

Shri T. T. Krishnamachari : Sir, I beg to move

"That in article 9, after the word and figure 'article 5' the words 'or be deemed to be a citizen Of India by virtue of be inserted."

Actually, this amendment merely amplifies the wording of the article and does not need any comment.

Mr. President : Then we come to article 22.

Shri T. T. Krishnamachari : I will move the latter amendment in list IV. The number is 545. Sir, I beg to move :

"That for clause (4) of article 22, the following clause be substituted

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or. have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause lb) of' clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)'."

Mr. President : I move :

"That for clause (7) of article 22, the following clause be substituted:—

'(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub- clause (a) of clause (4) ;

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)'."

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*56. That in article 57, the words "subject to the other provisions of this Constitution,", be deleted.

The House will understand that this is merely a restatement or clauses (4) and (7) of article 22 incorporating therein the amendment originally tabled by the Drafting Committee, No. 443, which sought to provide that Parliament may by law indicate the maximum period or prescribe the maximum period during which any person can be detained. This was a lacuna in clause (4) as it stood when the House passed it on the last occasion. The -House will agree that it is a wholesome amendment in that, as clause 4(a) stood is the House passed it, there is no maximum period prescribed or could possibly be prescribed by Parliament or any authority for the period of' detention of any person whom the Advisory Board considers to be a person who should be detained. Tile original amendment No. 443 was tabled for that purpose, but subsequently it was found that this has to be closely inter- related to clause (7) which is the operative clause under which Parliament might act. Thereafter it was found that it is better., to split up the original clause (7) into three parts and clearly indicate that there will be a maximum period for which any person or any class or classes of persons can be detained by any law providing for such detention. The matter does not involve any controversy and I believe, quite a number of Members of this House who were consulted in this matter were in agreement that this provision was necessary. This is the only provision that would really make any indefinite detention impossible. I hope the House will accept the amendments.

Mr. President : There were several amendments moved yesterday such as Nos. 78, 82 and 83. Does the present amendment No. 546 cover all those points ?

Shri T. T. Krishnamachari : I may mention, Sir, that in drafting this amendment in the present form, we took the advice of those Members who moved the amendments previously referred to. While I am not in a position to commit them, if appears to me that they are satisfied that this amendment wilt cover all possible contingencies they had in mind.

Prof. Shibban Lal Saksena : We will withdraw our amendments.

Mr. President : You withdraw both your amendments ?

Prof. Shibban Lal Saxena : Yes, Sir.

Mr. President : Then there are certain amendments to amendment No. 545 ,of of which notice has been given. Mr. Kamath may move his amendments.

Shri H. V. Kamath : Mr. President, I beg to move amendments Nos. 579, 581 and 583.

"That in amendment No. 545 of List IV, the proviso to sub- clause (a) of the proposed clause (4) of article 22 be deleted."

"That in amendment No. 345 of List IV in sub-clause (a) of the proposed clause (4) of article 22, for the word or occurring at the end the word 'and' be substituted."

"That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22 the words 'without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause-(4)' be deleted."

Taking the first of these amendments first, I need not expatiate at great length thereon. I shall only point out that in clause (7) we have merely provided that Parliament may by law prescribe the maximum period for which any person or any class or classes of persons may be detained under any law providing for such preventive detention. After having said that Parliament alone will regulate this matter, no one dare say that any authority in the State will be able to override the law promulgated by Parliament. Therefore in my judgment this proviso to clause (4) is superfluous and redundant. I have no objection

to ‘it in principle but I think it is unnecessary. We have laid down clearly that Parliament alone is empowered to regulate the maximum period of detention under this article.

Sir, coming now to my next amendment, 581, I may say that this brief monosyllabic amendment seeks to substitute the word ‘or’ by The word ‘and’. In this amendment I wish to make a last attempt towards safeguarding the liberty of the individual. Of course this liberty cannot be safeguarded absolutely, because there is no absolute individual liberty nor is there any absolute safeguard against the violation of such liberty by the executive. I only wish to safeguard it in so far as it does not jeopardise the security of tile State. If the article stands as it is, then it would mean that if Parliament lays down in a class of cases the maximum period of preventive detention, then, even without recourse to the machinery of the Advisory Board, a person can be detained upto the maximum period of two or three years—whatever period Parliament may prescribe. Clause (4) refers to two classes of cases; in one category fall those whose cases have been referred to the Advisory Board and who have to be detained for more than three months; and, in the other are the cases of those who have been detained in accordance with the provisions of any law made by Parliament under clause (7).

Under clause (7) Parliament can legislate with regard to the maximum period of preventive detention. I want, Sir, that in every case of preventive detention. the detenu’s case must be referred to the Advisory Board,—in all ,cases. If the State, if the Government, wants to detain him for a longer period than three months, his’ case must be referred to the Advisory Board, whatever the class of case it may be; but as the clause stands, the word “or” complicates and vitiates the whole situation. Therefore I propose to substitute the words “ or” by the word “and”, so that every person must be detained tinder the law of preventive detention and that person’s case must be referred to the Advisory Board in case of detention for a longer period than three months. These are the conditions which must be satisfied before the person can be detained for a period longer than three months. Therefore I suggest that the word “or” in clause (4) may be replaced by the word “and”. My amendment No, 581 seeks to do that.

By amendment No. 583, I seek to delete the words “without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)”. This flows logically from the amendment which I have just moved, No. 581. This amendment No. 581 visualises the reference of all detention cases, irrespective of their category or class or circumstance, to the Advisory Board in cases of detention prolonged beyond the period of three months, and therefore the distinction sought to be made in clause (7) between the class of cases which should be referred to the Advisory Board and the other class where persons are detained without reference to the Advisory Board, goes. Therefore when all cases have to be referred to the Advisory Board in the event of a longer period than three months, the words which I have sought lo delete in clause (7) are not necessary. I therefore move amendment No. 583.

The only Fundamental Right which this article 22 which we discussed at such great length in the last session confers is the right to detain without trial. I do not know what sort of right it is, but whatever it may be, let us mitigate the harshness and the injustice that might result from the abuse of power. I make this last attempt to safeguard the liberty of the individual, in so far as it is not inconsistent with or does not jeopardise the security of the State. I move my amendment Nos. 579, 581 and 583 and commend them for the acceptance of the House.

Shri Ajit Prasad Jain (United Provinces : General) : Sir, I move:

"That in amendment No. 443 of List II, for the proposed proviso to clause (4) of article 22, the following be substituted:

'Provided that nothing in this clause shati authorise the detention of any person beyond the maximum period prescribed by any law under the authority conferred by Parliament under clause (7)'

I find that the redrafted clause (7 does not authorise the Parliament to make any law providing for preventive detention. On the countrary it authorises Parliament to prescribe the circumstances and the classes of cases in which persons may be detained for a period longer than three months. It will be seen that in the opening part of clause (4), ordinarily it will be open to a State Legislature or the Parliament to pass laws for preventive detention for a period upto three months, but two exceptions have been provided: one is sub-clause (a) where the case goes to an Advisory Board consisting of persons qualified to be appointed is judges of the High Court and two is sub-clause (b) when Parliament prescribes the circumstances or the class of cases where a larger period of detention may be provided. It is apparent that in many cases the law win have to be made by the State Legislature as preventive detention falls in the concurrent list. The amendment which I have given takes into account the fact that the law will have to be made by the Legislature of the State but the authority for making that law which prescribes for detention for longer than three months will be made by Parliament. That point is not clear from the amendment of the Drafting Committee and it is to make that point clear that I have moved this amendment.

Sir, I also move :

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:

'(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause (7).'

or alternatively,

"That with reference to amendment No. 545 of List IV, for sub clause (b) of clause (4) c article 22, the following be substituted:—

'(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).' "

This amendment is connected with amendment No. 580. Here I have given two alternative drafts for the substitution of sub-clause (b) of clause (4). Sub-clause (b) at present says "such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)." Clause (7) does not provide for the detention of any person but only prescribes the circumstances and the class or classes of cases in which a longer period may be prescribed. It is to bring clause (4) and clause (7) into line with each other that I have given notice of this amendment, but in fact I must confess that the new amendments which Mr. Krishnamachari has moved just now were not with me and I have not been able to follow exactly the implications of the amendments moved by him. If the points which I have raised in the two amendment Nos. 580 and 582 are covered by his amendments, then of course there is no force in my moving my amendments. As I was not clear I have taken the opportunity of moving these two amendments.

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

"That in the Explanation to article 58, for the words 'For the purposes of this clause' the words 'For the purposes of this article', be substituted."

"That for clause (3) of article 59, the following clause be substituted :—

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until, provisions in that behalf is so made, such emoluments, allowances and privileges as arc specified in the Second Schedule."

"That in clause (3) of article 65, for the words 'privileges, emoluments and allowances', in the two places where they occur, the words 'emoluments, allowances and Privileges' be substituted."

"That in the Explanation to article 66, for the words 'For the purposes of (his clause' the words 'For the purposes of this article' be substituted."

"That in clause (2) of article 71, for the words 'before the date' the words 'on or before the date' be substituted."

Mr. President : There is an amendment to this, No. 584 by Mr. Naziruddin Ahmad. I am sorry there is an amendment left out by mistake, No. 617 by Mrs. Purnima Banerji.

Shrimati Purnima Banerji (United Provinces : General): Mr. President, Sir, I move :

"That in amendment No. 546 of List IV. the proposed clause (7) of article 22 be deleted."

And the Draft as it stands in Draft Constitution may stand. I mean the original one as circulated by the Drafting Committee and given in the new draft tinder italics—that should remain. Sir, most of us will agree with the new change made in article 22 by amendment No. 545 providing the proviso that the Advisory Board would not be able to detain a person in spite of a revision of his case for more than the period prescribed by law, but however a change is now sought to be made in clause(7). It raises a certain doubt in our minds. None of us at any stage believed that the Advisory Board would at any stage take the place of Parliament; it was only suggested that in the absence of any law if a person were to be detained for more than three months, then the matter would go before a judicial body which would look into the case and allow further detention if need be in the absence of any law prescribing detention for more than three months. The doubt we have in our minds today is that under this new amendment proposed by the Drafting Committee where it says in clause (7) that Parliament may prescribe the cirumstances of detention "without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)" makes us feel that suppose if Parliament has got the power and we do not content that it has not—of laying down a law by which a man can be detained for more than three months, even so, if any person came under the Jurisdiction of that law, would it mean that the case of that person would not go for a judicial review before an Advisory Board? Could the Parliament dispense with the constitution of Advisory Board itself ? Sir I suggest that that should not be and the process of review before an Advisory Board should be kept intact even if it may be perfectly legal for Parliament to enact a general law providing for detention beyond a period of there months. If in the Constitution you have statutorily provided for the detention of a man without trial for a period of three months you have taken away a part of the sting of that measure by providing an Advisory Board which would look into the matter and give a judicial review of the case and decide whether further detention was justifiable or not. If this is not done the man would be dealt with in accordance with the law of the land which Parliament may enact. In the new draft you have specifically said that the Advisory Board need not be consulted. If it means that in the making of the legislation that Board need not be consulted, we are in full agreement and possibly there can be no objection to it. But if it is meant that if a general law provides for the detention of persons for more than three months, and if' after the general law has come into force a man innocently has got under the clutches

[Shrimati Purnima Banerji]

of that law, it seems as the clause now reads in the Constitution that a detenu's case need not go to an Advisory Board it all. Parliament may be empowered not to constitute an Advisory Board at all for even the judicial review of individual cases and that you are going to leave the formation of such a Board to any future law that Parliament may make. I therefore, suggest that the wording of clause (7) of article 22 should remain as it was stated by the Drafting Committee and this particular reference of not consulting the Advisory Board which raises that legitimate doubt in our minds be removed. At no stage we thought that the Advisory Board was to take the place of Parliament or was to be a law giving authoritative body. It was meant to be a judicial committee on which people of the stature of judges of the High Court would be sitting and would be a substitute for the ordinary channels of law denied to a detenu and therefore I would suggest in the drafting of this clause, the provision that such a Committee would be constituted in any case wherever a man is detained. That should be explicitly stated here and should not be left to an ambiguous interpretation. With these words, I move my amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That with reference to amendment No. 448 of List II, clause (2) of article 71 be deleted."

or alternatively,

"That with reference to amendment No. 448 of List III in clause (2) of article 71, for he words 'before the date of the decision' the words 'up to the time when the decision is communicated to him' be substituted."

The official amendment says that if the election of the President or Vice-President is set aside by the Supreme, Court, then according to the amendment, tile President or the Vice-President will function on or before the date of the decision of the Supreme Court. I submit, Sir, that this would lead to absurdities If the decision of the Supreme Court is passed, say, at 12 o'clock on a certain day, then according to the amendment the President or the Vice- President will function for the whole of the day on which the judgment is passed. He will function even after he ceases to have office. Although his election is set aside at 12 o'clock, yet he will be able, according to this clause, to function after 12 o'clock for the remainder of the day. My amendment would try first, to eliminate that article because the normal law would be that as soon as the judgment is passed, the President or the Vice-President loses his job and, therefore, he ceases to function altogether and therefore, a clause of this nature is not at all necessary. Even if it is necessary, it should be, I submit as in my amendment, the second part of amendment No. 584. It is to the effect that as soon as the judgment of the Supreme Court is communicated to him, he ceases to function at once and from that very moment. That is a sensible way of looking at it and the judgment should be effective as soon as it is communicated to him. Unless we are very precise as to the moment when the President or Vice-President ceases to have any office, very glaring constitutional anomalies may follow. In fact the President or the Vice-President may have to perform very important constitutional acts and the legality or propriety of the act will be very much jeopardized or be open to question if we are not very precise as to the moment when he ceased to function because anything done after that will be ultra wires and anything done upto that moment would be intra vires. In this view of the matter. I think, that the precise moment when the judgment is communicated to him should be tile real operative moment from which he ceases to function. That is the reason why I have submitted this amendment.

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

"That in sub-clause (b) of clause (1) of article 72. for the words 'offence under any law' the words 'offence against any law' be substituted."

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

"That amendment No. 449 of List 11 be deleted."

The amendment is to the effect that the words "offence against any law" be substituted. The question is whether there can be any offence 'against' any law. The text refers to offences under any law. You may offend against certain moral principles, against society, and so forth; but you cannot offend against the Penal Code or any penal enactment. There is an offence tinder a panel law. The original text as it was, was very good. But, in our attempt to improve it. I think matters have become worse. The way at which the Drafting Committee is proceeding to change its mind makes it obligatory on our Part to agree to the Constitution being passed at once. That would have the immediate effect of stopping the activity of the Drafting Committee. Now, the danger to the Constitution is not likely to come from Members like Mr. Kamath and my humble self, because the amendments will all be rejected, but the real danger to the Constitution is likely to come from the Drafting Committee itself. In order to prevent change of mind up to the last moment. I think, the best way would be to stop all amendments and to pass the Constitution as quickly as possible. It is from this point of view that I regard this attempt to alter matters.

Mr. President : Very well. Amendment 586. That also stands on the same footing.

Amendment No. 450 :

"That in the proviso to clause (1) of article 73, after the words 'any State' the words and letters 'specified in Part A or Part B of the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I move :

"That amendment No. 450 of List 11 be deleted."

In fact, Sir, I really oppose the amendment. The original clause (2) of -article 73 dealt with the authority of Parliament to extend to any State, that in States in Parts A, B, C and D. But by the amendment, it is now sought to be restricted to a State specified in Part A or Part B of the First Schedule, I do not know why Parliament will cease to have any authority.....

Mr. President : Because the others are directly under Parliament.

Mr. Naziruddin Ahmad : If that is so, what is the need for specifying if here, I fail to see. In fact, it is difficult to follow the exact implications of this and the result, if any, if this is not passed. At any rate, these difficult constitutional principles are being showered upon the heads of Members with incredible speed and I do not think, I am quite sure, that this amendment is needed. In fact, if we try to introduce last-minute amendments, we do not know what anomalies we would be creating. In order to cure a malady, possibly we are introducing more maladies into the Constitution.

Mr. President : Article 81, Amendment No. 451 by the Drafting Committee. There is no amendment to this.

"That in sub-clause (a) of clause (1) article 1, for the words and figures 'article 331' the words and figures 'articles 82 and 331' be substituted."

Mr. President : Article 100. Amendment No. 452 by the Drafting Committee.

"That for clause (3) of article 100, the. following clauses be substituted:—

'(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time 'during a meeting of a House, there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

There are two or three amendments to this : No 587, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move :

"That in amendment No. 452 of List II, in the proposed clause (3) of article 100, for the words 'Until Parliament by law otherwise provides, the quorum' the words 'The quorum' be substituted."

Sir, the text of the amendment will make it that the quorum which will be fixed by the Constitution may again be interfered with by Parliament. I should submit that quorum is a fundamental principle and it should not be allowed to be altered by Parliament. The result would be that quorum will depend upon the mood of the Parliament for the time being. That has to be fixed on fundamental principles and on considerations of a fundamental nature. Once we lay down the quorum in the Constitution, it should be kept absolutely free from interference or alteration, by Parliament. If it is necessary to make any change, that change should be in the Constitution itself with the necessary safeguards attaching to an amendment of the Constitution itself. It is an important principle and should not be made to fluctuate with the temper of the House for the time being. In the Government of India Act, the quorum was fixed and it was not liable to be changed by Parliament. It has to be fixed in the Constitution.

Mr. President : Amendment No. 588 : Mr. Sidhva. Your amendment is that the quorum should be one-sixth and not one-tenth. That is covered by an amendment which you have already moved. I will take it along with this also.

Shri R. K. Sidhwa : All right, Sir, It runs :

"That in amendment No. 452 of List II in the proposed clause (3) of article 100, for the word 'gone-tenth' the word 'one- sixth' be substituted."

Mr. President : The next amendment is 589, to suspend the meeting for half an hour. Do you need a speech for that ?

Shri R. K. Sidhwa : I do not want to make a speech, Sir. I formally move amendment 589 :

"That in amendment No. 452 of List II, in the proposed clause (4) of article 100, after the words 'suspend the meeting' the words, 'for half an hour' be inserted."

My point is that the article as amended states that the meeting shall stand adjourned.....

Mr. President : Either adjourn the House or suspend the meeting.

Shri R. K. Sidhwa : Up to what time, Sir ? Supposing there is no quorum ....

Mr. President : Until there is a quorum.

Shri R. K. Sidhwa : That means for the whole day and the other Members will have to wait in the House without doing any business. That is the point. I feel this is not correct. After all, fix one hour if half an hour is not sufficient. Some time limit should be fixed.

Mr. President : That would, I think be provided in the Rules of Business. Anyhow, you have moved the amendment.

Shri R. K. Sidhwa : I state, Sir, that a time limit should be there. The quorum is always provided in the Constitution and not in the Rules. We are actually providing for the number of the quorum. Therefore, the time limit should also be there in the Constitution.

Mr. President : Amendment No. 453 by the Drafting Committee. I take that as moved.

"That in article 104, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 454 in article 105. There is no amendment to this. I take that also as moved.

"That in clause(1) of article 105, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted."

Article 114. Amendment No. 455

"That in clause (2) of article 114, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible be substituted."

There is an amendment to this : No. 590 : Mr. Naziruddin Ahmad.

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

"That in amendment No. 455 of List II in clause (2) of article 114, for the words 'whether an amendment is inadmissible' (*proposed to be substituted*) the words 'as to the admissibility of the amendment' be substituted."

It is practically a drafting amendment; but I submit that the draft that I am suggesting would be better in clause (2) of article 114 as it would be amended by the amendment of the Drafting Committee, the text would be that 'the decision of the person presiding as to amendments being inadmissible under this clause shall be final'. I want to make it clear that the decision of the person presiding as to the admissibility of the amendments under this clause shall be final'. In fact the official amendment is that the decision of the person presiding as to whether the amendment is 'inadmissible' is final. I should submit the ruling or the decision of the person presiding as to whether it is 'admissible' or 'inadmissible', both, should be final and therefore it should be expressed rather more generally that the decision 'as to the admissibility of the amendment' shall be final. It will mean that his decision that the amendment is 'admissible' is final, as also his decision that it is 'inadmissible' is also final.

Mr. President : We go to article 124.

Shri T. T. Krishnamachari : If I am permitted to explain the reasons for my amendment to 124, my honourable Friend will probably be satisfied. I move :

"That in clause (1) of article 124, for the words 'seven other Judges' the words 'not more than seven other Judges' be substituted."

As it now stands 124 (1) runs thus—

"There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of seven other Judges."

It means that immediately on the 26th January when the Constitution is promulgated, the number will have to be raised to that figure whether or not there is enough work. So the alteration has been made prescribing the maximum and leaving it to Government of the day to go on increasing the number or approach Parliament if necessary to go beyond the number 7, so that action need not be taken on 26th January when Constitution is promulgated.

Mr. President : Do you wish to move your amendment?

Mr. Naziruddin Ahmad : I beg to move:

"That amendment No. 456 of List II be deleted."

I find this is again a last minute change of mind on the part of the Drafting Committee. In the clause in question we have fixed the number as '7 other Judges' apart from the Chief Justice. The amendment would reduce the number by substituting the words 'not more than 7 other Judges'? In fact under the amendment it would be possible to appoint less than 7 Judges. I do not know on what basis the original article was conceived and passed by the House. If there was not enough work, then that was the time to introduce suitable amendments in the text. The House has not been given any indication as to the exact amount of

[Mr. Naziruddin Ahmad]

work which the Federal Court has or the Supreme Court will have on and from the 26th January next. In fact these changes should be based upon actual figures or actual estimates of work which would be in the hands of the Judges. I believe that the removal of the Jurisdiction of the Privy Council and also giving the Supreme Court the right over criminal matters, general superintendence and various other matters connected with the Constitution, there would be enough work for the Supreme Court on and from the 26th January. So this over-caution in respect of the number of Judges being placed in the discretion of the Government would be wrong. We should proceed on the basis of actual or estimated amount of work which the Court will have on and from 26th January. It is for this reason that I have asked for deletion of this amendment.

Mr. President : Article 133. There is amendment to this by the Drafting Committee—*457 and *457A. There is an amendment by Mr. Naziruddin Ahmad to 457A.

Mr. Naziruddin Ahmad : I move:

"That in amendment No. 457A of List II, in the proposed new clause (3) of article 133, for the words 'notwithstanding anything in this article, no appeal' the words 'No appeal' be substituted."

This House has been made too familiar with the expression 'Notwithstanding anything in this article or this Constitution'.

There are so many 'Notwithstandings' scattered throughout the Constitution that one ought to be extremely doubtful about how to interpret a particular clause. In fact the Drafting of the Constitution has been progressing on a hand- to-mouth basis from day to day. It is for this reason that this familiar device of 'notwithstanding anything' has been freely introduced here. The more satisfactory way would have been to draft it without these clauses so as to make them not at all necessary. I do not know why this 'notwithstanding' has been used in the context. The matter should require clarification.

Mr. President : We go to article 135. There amendment No. *458 by the Drafting Committee. There is no amendment to that. Similarly there is *459 to article 136 by the Drafting Committee. No amendment to that. Then there is article 145—there is an amendment No. *460 by the Drafting Committee. There is no amendment to that, but there were certain amendments which were moved yesterday—308 and 309. I do not know if they are covered.

Shri H. V. Kamath : My amendment No. 550, Sir.

Mr. President, I move, Sir:

"That for amendment No. 460, of List II, the following be substituted:—

"That in sub-clause (c) of clause (1) of article 145, for the words 'rights conferred by Part III' the words 'right guaranteed by article 32(1) of the Constitution' be substituted."

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*That the proviso to clause (1) of article 133 be omitted, and for the colon at the end of the said clause a 'full stop' be substituted.

After clause (2) of article 133, the following clause be added:—

'(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

*458. That in article 135, for the words, "not being a matter referred to in any of the foregoing provisions of this Chapter" the words "to which the provisions of article 133 or article 134 do not apply" be substituted.

*459. That in clause (1) of article 136, for the words" "The Supreme Court" the words "Notwithstanding anything in this Chapter, the Supreme Court" be substituted.

*460. That in sub-clause (c) of clause (1) of article 145, for the words "enforcement of the nights" the words "enforcement of any of the rights" be substituted.

As amended, the article would read:

"145 (c) rules as to the proceedings in the Court for the enforcement of the right guaranteed by article 32 (1) of the Constitution."

If the House will turn to article 32, is adopted by the House, my honourable colleagues will see that clause (1) of article 32 provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Sir, I am happy to see that in List IV of amendments, this article has been suitably amended. The word "rights" which occurs there in clause (4) has been suitably amended, and altered to the word "right" because under clause (1) of this article, there is only one right that is guaranteed, and the rights conferred by the Part is something different the right guaranteed by this article. So "right" is the right word and not "rights", as it stands in clause (4) as it is today.

Once that has been disposed of, I turn to this relevant clause of article 145. I think a reference to clause (1) of article 32 will be adequate so far as the framing of rules as to proceedings in the Court under this article 145 is concerned. The right guaranteed under article 32, clause (1) is with reference to the enforcement of the rights conferred by the Part. Therefore, if recourse is had to this article 32, then it is obvious that what is meant is the enforcement of any of the rights conferred by the Part; and the right to enforce any of the rights conferred by Part III, is guaranteed under this article. Therefore, it will be more appropriate to say that the proceedings with regard to the enforcement of that right are referred to in this sub-clause (c) of article 145, clause (1). I therefore move amendment No. 550 of List IV and commend it to the House for its earnest consideration.

Mr. President : Amendment No. 461 by the Drafting Committee.

"That for clause (3) of article 158, the following clause be substituted:—

'(3) The Government shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule'."

There is no amendment to it.

Amendment No. 462 by the Drafting Committee, to which also there is no amendment.

"That in the proviso to article 162, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 463.

"That for sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:—

'(a) in the State Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.' "

To this there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move formally amendment No. 594.

"That in amendment No. 463 of List 11 for the semi-colon at the end of the proposed sub-clause (a) of clause (1) of article 163, a comma be substituted."

It is a drafting amendment and I leave it to the Draftsmen to consider the matter.

Mr. President : Then we come to article 181, and there are amendment Nos. 464 and 465 to it. These amendments have no amendments.

[Mr. President]

"That in clause (1) of article 181, the words 'of a State' be omitted."

"That in clause (2) of article 181, for the word 'House' the word 'Assembly' be substituted."

Then we come to article 185 and the Drafting Committee's amendment No. 466.

"That in clause (2) of article 181, the words 'of a State' be omitted."

To that amendment there is an amendment of Mr. Naziruddin Ahmad No. 595.

Mr. Naziruddin Ahmad : Sir, I move:

"That amendment No. 466 of List 11 be deleted."

Clause (1) of article 185 as it stands, says: "At any sitting of the Legislative Council of a State etc., etc." The words "of a State" are attempted to be deleted by the Drafting Committee. I submit that this expression "the Legislative Council of a State" has been used in various other contexts, and this amendment is a last-minute amendment. I would draw the attention of the House to article 182, where you have the words "The Legislative Council In fact there are similar expressions in . . . . .

Mr. President : Only a State having such a Council.

Mr. Naziruddin Ahmad : "The Legislative Council of a State" is not improper. I cannot find out a similar passage at a moment's notice. But if it is to be amended like this, there should be a clean sweep of all such expressions throughout the Draft Constitution in a systematic manner.

Mr. President : Article 189 and amendment No. 467 of the Drafting Committee.

"That for clause (3) of article 189, the following clauses be substituted:—

'(3) Until the Legislature of the State by Law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.'

There are three amendments to this, Nos. 596, 597 and 598.

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 467 of List If, in the proposed clause (3) of article 189, for the words 'until the legislature of the State by law otherwise provides, the quorum' the words 'The quorum' be substituted."

I have already explained my reasons for moving this amendment.

Shri R. K. Sidhwa : Sir, I formally move amendments Nos. 597 and 598.

"That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words 'ten members or one tenth' the words' twenty members or one-sixth' be substituted."

"That in amendment No. 467 of List III, in the proposed new clause (4) of article 189, after the words `suspend the meeting the words for half an hour' be inserted."

Mr. President : Article 191—amendments 468 and 469 of the Drafting Committee. There are no amendments to them.

"That in sub-clause (e) of clause (1) of article 191, for the words 'the Legislature of the State' the word 'Parliament' be substituted."

"That in clause (2) of article 191, for the words 'either for India or for any such State' the words either for the Union or for such State' be substituted."

Article 193—amendment No. 470 of Drafting Committee, which also has no amendments.

"That in article 193, for the words 'The Legislature of the State' the words 'Parliament or the Legislature of the State' be substituted."

Article 194—amendment No. 471 of the Drafting Committee.

"That in clause (1) of article 104, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted.'

Shri H. V. Kamath : Sir, I have an amendment to article 194—my amendment No. 554.

Mr. President : All right.

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

"That in amendment No. 471 of List II, in clause (1) of article 194, the proposed words 'the provisions of this Constitution and to' be deleted."

Sir, my amendment seeks to restore the *status quo*, that is to say, leaves the clause as it is. I fail to see why this change is sought to be made in this clause at this late stage. As far as the Legislature is concerned, the freedom of speech of Members of the Legislature is subject to the Rules and Standing Orders of the Legislature itself. Neither Dr. Ambedkar, nor Mr. Krishnamachari has told the House why this right is sought to be restricted by the provisions of this Constitution. What exactly is meant by.

Shri T. T. Krishnamachari : I may point out to my honourable Friend that if he reads article 211 he will find that it is necessary to add these words.

Mr. President : Discussion on the conduct of Judges is ruled out.

Shri H. V. Kamath : I hope it does not refer to provisions of article 19 regarding freedom of speech. If it does, it will mean the end of freedom of speech, no freedom of speech at all, taking away by one hand what is given by the other. Well, I shall not move my amendment, as adequate light has been thrown on the matter by Mr. Krishnamachari now.

Mr. President : Then we come to article 204 and amendment No. 472 of the Drafting Committee :

"That in clause (2) of article 204, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be substituted."

There is an amendment to this, No. 599 of Mr. Naziruddin Ahmad. But it is the same as was already moved and I shall take it as having been moved.

"That in amendment No. 472 of List II, in clause (2) of article 204, for the words 'whether an amendment is inadmissible' (proposed to be substituted) the words 'as to the admissibility of the amendment' be substituted."

Then we come to article 217 and amendment No. 473 of the Drafting Committee.

"That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:

'(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India."

There is no amendment to this.

Now we come to articles 230 and 231 and amendment Nos. 474 and 475 of the Drafting Committee.

"That in article 230, after the words 'any State' the words 'specified in the First Schedule' be inserted."

[Mr. President]

"That in article 232, after the words 'more than one State' the words 'specified in the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I formally move amendment No. 600 :

"That amendment No. 474 of List 11 be deleted."

The original article had reference to "any State" but the amendment has tried to clarify "any State specified in the first schedule". I think that "any State" means a State in the First Schedule. All States are mentioned in the First Schedule in four different classes. If we refer to any State it certainly refers to the First Schedule and it seems to me that the clarification is unnecessary. Sir, I also move:

"That amendment No. 475 of List II be deleted."

The same principle is involved as in the previous amendment.

Mr. President : Amendment No. 476.

"That in article 234 after the word 'Governor' the words 'of the State' be inserted, and after the words 'High Court' the words 'exercising jurisdiction in relation to such State' be inserted."

Mr. Naziruddin Ahmad : Sit, I move:

"That amendment No. 476 of list II be deleted."

There is reference in the original article 234 to the Governor. The expression "Governor" is attempted to be clarified by the adjectival phrase "Governor of the State." "The Governor" certainly means Governor of a State in Part A of the First Schedule. There can be no Governor, except a Governor of such a State. If we say "the Governor" ……

Shri T. T. Krishnamachari : My honourable Friend need not labour the question of the Governor. He might confine himself to the latter part of the amendment. Because of the qualification put on "High Court", the adjectival phrase has been added after "Governor".

Mr. President : It is better for the honourable Member to leave it there.

Mr. Naziruddin Ahmad : I shall then leave it there, Sir.

Shri T. T. Krishnamachari : Sir. I do not propose to move amendment Nos. 478 and 479. Amendment No. 556 will cover both, which I move:

"That for the Explanation to clause (1) of article 288, the following be substituted :

Explanation.—The expression 'law of a State in force' in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in Particular areas.' "

(Shri Ajit Prasad Jain did not move his amendment No. 603.)

[*The following amendment was taken as moved :

*"That in clause (2) of article 289, for the words "any property used or occupied for the purposes thereof, or any income accruing or arising therefrom" the words "any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith" be substituted."]

Mr. President : Amendment 481.

"That for article 294, the following article be substituted:—

As from the commencement of this Constitution,

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State; and

Succession to property, assets, rights, liability and obligations in certain cases.

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights. liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.' "

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 481 of List II in the proposed article 294

(a) comma be inserted after the word 'Constitution' in line 1,

(b) a comma be inserted after the word 'Constitution' in line 23."

These are punctuation amendments that would have to be accepted if the Drafting Committee is in a favourable mood.

[*The following amendments were taken as moved :

*"That in sub-clause (a) of clause (1) of article 295, for the words 'the Commencement of this Constitution' the words 'such commencement' be substituted."

"That in sub-clause (a) of clause (1) of article 295, for the words 'the Government of India' the words 'the Union' be substituted."

"That in article 296, after the words 'His Majesty', in the first place where they occur the words 'or, as the case may be, to the Ruler of an Indian State' be inserted."

"That in the proviso to article 296, after the words 'His Majesty' the word, 'or to the Ruler of an Indian State' be inserted."

"That to article 296, the following Explanation be added:—

"Explanation.—In this article the expressions 'Ruler' and 'Indian State' have the same meanings as in article 363."

"That in the proviso to clause (1) of article 316, for the words 'under an Indian State' the words under the Government of an Indian State' be substituted."

Shri T. T. Krishnamachari : Sir, I move amendment No. 557 and 558 in place of amendment No. 488, 489 and 490 :

"That in clause (c) of article 319, for the words 'as the Chairman of a State Public Service Commission other than a Joint Commission' the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission' be substituted."

"That in clause (d), for the words 'as the Chairman of any other State Public Service Commission' the words 'as the Chairman of that or any other State Public Service Commission' be substituted."

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

"That in amendment No. 557, in clause (c) of article 319 for the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission (proposed to be substituted)' the words 'as the Chairman of a State Public Service Commission or as the Chairman of a Joint Commission' be substituted."

"That in amendment No. 558 in clause (d) of article 319 for the words 'as the Chairman of that or any other State Public Service Commission' the words 'as the Chairman of any other State Public Service Commission' be substituted."

These amendments of the Drafting Committee are to my mind an instance of the amazing fickleness of mind that they have displayed on this subject . . . . . .

Mr. Naziruddin Ahmad : It is no longer amazing: it has been a day to day affair.

Shri H. V. Kamath : Within two days they have changed their mind twice and revised their draft. These two lists represent the fruit of their ceaseless labours. I do not know whether they would again change their mind, if you would be so good as to extend the time for amendments beyond tomorrow. ……

Mr. President : You need not entertain any such fears.

Shri H. V. Kamath : But as it is I feel that the new amendments that they have suggested constitute a radical departure from the revised draft presented to us yesterday morning.

My amendments are in conformity with the amendment on article 319 which I moved yesterday. I do not see any point in the changes suggested by the Drafting Committee twice within the last few days.

Mr. President : They are only going back to the original proposition passed in the Second Reading.

Shri T. T. Krishnamachari: Going back to the Draft as approved by the House.

Shri H. V. Kamath : I do no know why they should have changed their mind about the revised draft.

Shri T.T. Krishnamachri : Because the honourable Mr. Kamath wills it otherwise!

Shri H. V. Kamath : I did not hear what he said! Anyway, I would prefer that, instead of the Chairmanship of the Union Public Service Commission or the Chairmanship of the State Public Service Commission as suggested by the Drafting Committee, the person who vacates office under clause (c)—that is to say a member other than a Chairman of the Union Public Service Commission, should be eligible for the Chairmanship of the State Public Service Commission or the Chairmanship of the Joint Commission. The Drafting Committee visualises the possibility of such a person being appointed to the Chairmanship of the Union Public Service Commission. I do not think it is quite a healthy precedent to set up that a Member of the Public Service Commission on ceasing to hold office as Member should be eligible for appointment as Chairman of the same Commission the membership of which he has vacated. He may be eligible for the Chairmanship of the State Public Service Commission or the Joint Commission.

As regards the second amendment, that refers to clause (d) of article 319. It deals with the prohibition of' holding office by a member other than a Chairman of a State Public Service Commission on his ceasing to hold office. My amendment seeks to make him eligible for the Chairmanship of any other State Public Service Commission but not of that particular State Public Service Commission. The Drafting Committee's new amendment makes him eligible for the Chairmanship of that or of any other State Public Service Commission. The revised draft had omitted "that State Public Service Commission". But now they are restoring the *Status quo*. It would be healthier if he were not eligible for the Chairmanship of that State Commission from which he has resigned but only for that of any Commission other than that of which he was a Member.

Sir, I move.

Mr. President : There is an amendment 491 to article 320 and there is a further amendment No. 559. I think that is an addition.

Shri T. T. Krishnamachari : Amendment 559 is an addition. It meets the objections raised in regard to that particular article.

Mr. President : We shall take that up later.

Shri T. T. Krishnamachari : That may be taken up now.

Mr. President : I take it as moved.

Amendment moved :

"That for clause (4) of article 320, the following clause be substituted:—

'(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335'."

Shri T. T. Krishnamachari : Amendment 491 may not be necessary because Kamath has moved amendments 394 and 395—practically the same amendment.

Mr. President : Very well. Then we come to article 351—amendment No. 492.

Dr. P. S. Deshmukh : What have you done with amendment 559 to article 320, Sir ?

Mr. President : I have taken it as moved. You are referring to amendment No. 559. Do you want to speak, Dr. Deshmukh?

Dr. P. S. Deshmukh : Yes, Sir. I am sorry to say that this new amendment does not appear to be at all satisfactory. First of all, Sir, it is very circuitous in its drafting. It is like a definition known as circular. The amendment reads:

"Nothing in clause (3) shall require a Public Service Commission to be consult as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects, the manner in which effect may be given to the provisions of article 335."

If this amendment is considered satisfactory by the representatives of the Scheduled Castes and Scheduled Tribes I would at least beg of them that my amendment to 335 may be accepted. If that is done, then the whole thing would be clearer; otherwise it will restrict the scope of this article so far as the backward classes are concerned if not have the effect of excluding them; because, from 335 already the word backward class has been by a mistake, omitted and that was the reason why I proposed that the word should be added to 335.

Mr. President : You arc referring to amendment 530.

Dr. P. S. Deshmukh : Yes, Sir. So if we have the amendment now moved by Mr. T. T. Krishnamachari I would at least request my Friend Mr. T. T. Krishnamachari whether he would accept my amendment which seeks to add backward classes to 335. If this is done then of course I would have no objection because this will bring the whole matter on all fours with the other articles on the subject : Otherwise it will be very curious because in article 16(4) we have the word "backward class" whereas in 335 there is no mention of backward class, and we have only two groups—the Scheduled Castes and the Scheduled Tribes. It would be absolutely incongruent and inconsistent. If my Friend, Mr. T. T. Krishnamachari would like this amendment to be accepted, I would be prepared to accept this provided he has no objection to the inclusion of backward class in 335: otherwise we would be saying one thing with respect to one provision but we would be including only the word backward class without mentioning Scheduled Castes or Scheduled Tribes. If this amendment is accepted it would mean that there is no mention of the Scheduled Castes or Scheduled Tribes either in 16(4) or in 320. But in article 335 there is nothing else but Scheduled Castes and Scheduled Tribes, and no mention of backward class.

I would like in the alternative, if my Friend is not prepared to accept my amendment, that this matter may be postponed because we may probably discuss the question this evening.

Shri T. T. Krishnamachari : I may mention that 16(4) is an enabling provision in regard to special representation for backward classes. 335 is an enabling provision in regard to taking into consideration the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause. It has merely been made permissible for the Governments not to consult the respective Public Service Commissions in these cases because of the mandatory character of the provision in clause (3) which requires the Public Service Commission to be consulted on every matter. So there is no question of any injustice being done either to the Scheduled Castes and Scheduled Tribes or to the backward classes or any preference being given to one over the other. I do not think my honourable Friend need have any fear that the rights of the backward classes have been taken away or anything has been done to their detriment.

Dr. P. S. Deshmukh : I do not feel at all convinced by my Friend's explanation. Article 16(4) reads:

> "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class.. . . . . "

Backward class has been used as a general term as will be evident from the speech made by Dr. Ambedkar when the House was considering article 16. It includes not only Scheduled Castes and Scheduled Tribes but also other educationally and economically backward communities. Now, my honourable Friend curiously enough wants to play between 16(4) and 335. His contention is absolutely astounding. He does not want to give the same privileges which have been given to the Scheduled Castes and Scheduled Tribes so far as reference to the Public Service Commission is concerned, although according to article 16(4) these three groups of people are supposed to get the benefit of this protection. if the reservation is made and the phrase "appointments and posts" is present in article 16(4), I think it is absolutely wrong to take the view which he is taking. I know the point of view from which my Friend is looking at the whole thing. I think he will be doing a real disservice to the backward classes and in a sort of underhand way harming their interests, because when 16(4) was provided it was for backward classes as a whole without any reference to a particular group or groups. From that point of view I request that this matter be left over for the present. It would be very wrong not to add the word "backward classes" to 335.

Pandit Thakur Das Bhargava : May I put one question to my honourable Friend? How is it wrong if the Scheduled Castes and Scheduled Tribes are given more rights than the "backward classes"? They should be given more rights. Are they not more backward?

Dr. P. S. Deshmukh : I do not claim to get more rights or less rights than the backward classes. All I want is equal rights. If "backward classes" was to include not only Scheduled Tribes and Scheduled Castes as well as the economically and educationally backward other castes, and if you are now going to exclude the backward classes simply because they have not formed themselves into one group or agitated I have nothing to say; but if you are going to drive them to that situation I do not think it will be good for the nation or for you. So I should very much like that the intention to include the backward classes as additional and apart from the Scheduled Castes and Scheduled Tribes should not be given up in this way. Originally, there was no intention of even specifying these two groups and my honourable Friend who interrupted just now was the best and most vehement exponent that the word should be "backward classes" only—the other groups should not be separately and specifically referred to.

Shrimati G. Durgabai : (Madras: General): On a point of order, the Drafting Committee has not made any change in article 335. Therefore, I do not think any amendment would arise

Mr. President : Let him finish.

Dr. P. S. Deshmukh : So my friend is really speaking against his own contention.

Pandit Thakur Das Bhargava : It is the decision of the House I want that all the amenities may be extended to all backward classes but the decision of the House is against my friend's present contention.

Dr. P. S. Deshmukh : If he is prepared to admit that it is in spite of himself, I can understand; but when he wants to lend support to the fact that it is not necessary to retain "backward classes", he is arguing against himself.

Mr. President : We have had enough discussion on this article yesterday also and today.

Now I pass on to 351. There is no amendment to 492? Then 352. There is no amendment to this either, 353-there is no amendment. 357-there is none. Then 365-amendment 496. It is being substituted by 561. Then we come to 366. There are three amendments 497, 498 and 499.

There is an amendment by Mr. Naziruddin Ahmad No. 606.

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

"That in amendment No. 499 of List II, in the proposed now clause (IS) of article 366, the following be added at the end :

Mr. President : It does not arise. Then we come to 367. There is an amendment No. 500. To this there is an amendment No. 607 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not more 607, Sir.

Shri T. T. Krishanamachari : 500 will not be moved, Sir. Instead 562-A is the amendment which will be moved:

"562A. That in article 367, the following clause be added :

'(3) For the purposes of this Constitution 'foreign State' means any country which is outside the territorial jurisdiction of the Union :

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any country not to be a foreign country for such purposes as may be specified in the order.' "

"492. That in article 351, the words' so specified' be deleted."

"493. That in clause(1) of article 352, the brackets and words '(in this Constitution referred to as a 'Proclamation of Emergency)' be omitted."

"494. That in clause (b) of article 353, for the words 'the Government of India or officers and authorities of the Government of India' the words 'the Union or officers and authorities of the Union' be substituted."

"495. That in sub-clause (b) of clause (1) of article, 357, for the words 'the Government of India or officers and authorities of that Government' the words 'The Union or officers and authorities there or be substituted."

"561. That in article 365, for the words 'the President may hold' the words 'it shall be lawful for the President to hold' be substituted."

"497. That clause (12) of article 366 be omitted."

"498. That clauses (13), (14), (15), (16), (17), and (18) of article 366, be renumbered as clauses (12), (13), (14), (15), (16) and (17) respectively."

"499. That after clause (17) as so renumbered, the following clause be inserted:

'(18) Proclamation of Emergency' means a Proclamation issued under clause (1) of article 352;' "

Shri H. V. Kamath : Mr. President, I move:

"That in amendment No. (with your permission, Sir, I shall substitute 562-A for 500) 562-A of List IV, the proviso to the proposed new clause (3) of article 367 be deleted."

Again, the Drafting Committee has revised the draft which they submitted to the House yesterday and today they have come out with a new draft of the article. It is a happy augury for the future of our country that the Constitution is being drafted by a team of wise men whose minds, are continually open to the light of truth, but my very limited vision does not enable me to grasp the scope of this proviso. To my mind, all States that are not within the territorial jurisdiction of the Indian Union must be regarded as foreign states. So long as we are not One World, I suppose these separate sovereign states will continue to exist and all states outside our jurisdiction should be regarded as foreign States. Of course if we want to treat any particular State on a special footing, then Parliament can legislate with regard to that State. We used to have what was called Imperial Preference, now Commonwealth preferences. Most favoured Nation clause in treaties and the like. I do not see why we should have a proviso here that the President may declare that such and such a State is not a foreign State. We may lay down generally that all States not within the jurisdiction of India are foreign States. It is not at all necessary, in my humble judgement that a proviso of this sort should be there in a delightfully vague form.

Shri R. K. Sidhwa : I have given notice of an amendment to this article, No. 608. I support the arguments of Mr. Kamath. I want clarification from the Drafting Committee as to why this proviso has been made. We have definitely stated yesterday that those who accept foreign citizenship their own citizenship will be affected. Those who accept citizenship of a foreign country shall not be entitled to any rights or privileges of the citizens of the Republic of India. I want to know why this power has been vested in the President to make an exception and declare any country not to be a foreign country. What is the idea behind it? We must have some information in the matter from Dr. Ambedkar. We are rather perplexed about this.

The Honourable Shri K. Santhanam : Sir, I am afraid amendment No. 562-A as drafted is defective. In the first part of it 'foreign State' is defined. In the proviso the President is authorised to declare a foreign country as such. Therefore the word 'country' or 'State' should be used in both places. You cannot define a foreign State and allow the President to declare a foreign country. There is confusion.

Shri R. K. Sidhwa : That does not solve the objection I have raised.

Mr. President : It was not said in reply to your objection.

Shri R. K. Sidhwa : If we get an answer to my doubts it will be helpful.

The Honourable Dr. B. R. Ambedkar : Sir, if my friend Mr. Sidhwa were to refer to clause (12) of article 366 in the draft as revised by the Drafting Committee, he will notice that there is really nothing new in sub-clause (3) of article 367 which is the subject, matter of amendment No. 562-A. Article 366 is a definition article and clause (12) there attempts to define what a foreign State is within the meaning of the Constitution. It was felt that clause (12) of article 366 as passed by the Assembly was rather cryptic and too succinct and that it was desirable to give it a more elaborate shape and form. Consequently the Drafting Committee thought that the best way would be to delete clause (12) of article 366. This is done by amendment No. 497 and it is sought to be replaced now by the present amendment No. 562-A. In the draft as presented to the House with the report the main provision was that it was open to the President to declare by an order that a certain country was not

a foreign State so far was India was concerned. The main part of clause(3) of article 367 is just the same. The only thing that has been added is that Parliament may legislate on this subject and, while legislating, endow the President with power to proclaim by an order what country is a foreign State and what country is not a foreign State. It was further felt by the Drafting Committee that it was not desirable to confer this power in such rigid terms as would follow from the proviso if the words "for such purposes as may be specified in the order" were not there. The President and Parliament may then be confronted with two inescapable alternatives, either to say that a foreign country was a foreign State or to say that a certain country was not a foreign State with the result that the subjects of the country which is declared not to be a foreign State would become automatically citizens of India and be entitled to all the rights which the citizens of India are entitled to under this Constitution. It may be in the interests of this country that, while it might be desirable to recognise a certain foreign country as not a foreign State, it should be limited to such purposes as may be specified in the order, so that while making the order the President would have his position made perfectly elastic enabling him to say that while we declare that a certain country is not a foreign State the subjects of that foreign State will be entitled only to certain rights and privileges which are conferred upon the citizens of India and not to all. It is for that purpose and in order to make a provision for those other matters that we thought it desirable to transpose clause(12) of article 366 and bring it as clause(3) of article 367.

Mr. President : Article 368, amendment No. 609, Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : No, Sir. We are not moving amendment 501 to article 368.

Sir, I move :

"That in clause (2) of article 370, for the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) or in the second proviso to sub-clause (d) of clause (1)', the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause' be substituted."

Sir, I also move:

"That in clause (1) of article 379, for the words 'shall exercise' the words 'shall be the provisional Parliament and shall exercise' be substituted."

Mr. President : There is an amendment to this, No. 610 by Mr. Sidhva.

Shri R. K. Sidhwa : Sir, I move:

"That amendment No. 503 of List II be deleted."

The word that I object to is the word "Provisional" before Parliament. In the last session we had discussed this matter and we said that the word "provisional" was not dignified both for the President and also for the Parliament. After all, by an Act the Parliament comes into being from the 26th January. It may be in a sense provisions but it is a Parliament duly authorised under In this Constitution, and therefore the word "provisional" does not look proper. I feel that the word "provisional" should be deleted which is now sought to be inserted. With these words, I commend my amendment to the acceptance of the House.

Mr. President : Mr. Balkrishna Sharma, your amendment Nos. 416 and 417 relating to this article 379, do you want to move them ? You can move them if you want.

Pandit Balkrishna Sharma : Mr. President. Sir, I move:

[Pandit Balkrishna Sharma]

"That in clause (1) of article 379, for the words 'the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted; and in the subsequent clauses and articles for the words 'the Constituent Assembly of the Dominion of India' wherever they occur, the words 'the Constituent Assembly of India' be substituted."

If this amendment of mine is accepted by the House, then the article will read:

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution."

and from here those words should be deleted.

"The Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

My reasons for proposing this amendment are that I somehow do not relish the idea of bringing in this Constitution the words "the Constituent Assembly of the Dominion of India." I think that even though those words find a place in the Government of India Act, 1935, as adapted, i.e. our Independence Act, yet in our Constitution it will be better if we avoid that phraseology. You will see Sir, that in the Preamble where we have resolved to give unto ourselves this Constitution, we have done so in our right, and the Constituent Assembly there is the sole authority to give this Constitution to ourselves. Now, if we bring in these words "the Constituent Assembly of the Dominion of India", we shall be perpetuating a situation which somehow historical circumstances have forced upon us, and we do not want that that name should be there. For this reason, I have proposed that this amendment of mine should be accepted by the House so that the only words which will be used will be the Constituent Assembly of India and not the Constituent Assembly of the Dominion of India.

My second amendment is No. 417. I move :

"That in clause (2) of article 379, for the words 'the provisional Parliament' wherever they occur, the words 'the Constituent Assembly of India' be substituted."

My reason for placing this amendment before the House is that it is as the Constituent Assembly and not in any other capacity that we have taken up the supreme authority of governing the country under the Adaptation Act, and so long as a duly constituted Parliament does not come into existence, it will not be proper for us to give up the ghost. Why should we commit harakiri before time? After the Constitution comes into force, we shall disappear, but I do not see any reason why this name "the Constituent Assembly of India" should be changed to Provisional Parliament at this time; because if we retain the name, then certain functions which are being performed at present by the Constituent Assembly will continue to be performed, but it we change our name, then the interpretation might be put that we as the Provisional Parliament are quite a different body from the one which exists at present, and that, therefore, those functions which we are performing through one Secretariat should automatically come to an end. Therefore I submit that it is not the Provisional Parliament that should function in future but that the Constituent Assembly of India should continue to function in future.

The Honourable Shri K. Santhanam : Not with all the present powers.

Pandit Balkrishna Sharma : My friend Mr. Santhanam says that the Constituent Assembly loses all powers on the 26th of January. But permit me to say, Sir, that on the 26th, January we cannot lose all the powers for the simple reason that,—and Mr. Santhanam will see—article 379 definitely states

that until the new Parliament comes into existence, this Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament, and because this Constituent Assembly has to perform the functions which the future Parliament will perform, it cannot be said that we shall cease to function on the 26th January. It was said that after the 26th of January the Constitution-making part of us will disappear. There is no doubt about it. It will disappear, but the legislative powers which we have been exercising even during this period shall continue to be vested in us and, therefore, I think we should not change the name "Constituent Assembly of India" to "Provisional Parliament" nor should we keep the name 'Constituent Assembly of the Dominion of India'. I take it that perhaps this "Dominion of India" was inserted in order to distinguish our Constituent Assembly from the Constituent Assembly of the Dominion of Pakistan, but I see no reason why we should stick to it. I have said that in our Preamble we have definitely and solemnly resolved as the Supreme Body to give this Constitution to the country. Why should we call ourselves as the Constituent Assembly of the Dominion of India? With these words, Sir, I commend these two amendments to the acceptance of the House.

Shri H. V. Kamath : Mr. President, I move, Sir, amendment No. 563 of List IV which is more or less identical with the one moved by my honourable Friend Pandit Balkrishna Sharma. I agree with him so far as the expression "the Dominion of India" is concerned; it is an unhappy expression and it should be quite adequate for our purposes to simply state "the Constituent Assembly of India". As regards the other point which my Friend Pandit Balkrishna Sharma made out, that the Constituent Assembly shall and ought to continue in existence even after the Constitution commences and the Republic is inaugurated, I feel I cannot agree with him on that issue. (*Pandit Balkrishna Sharma*: In France it was so). I do not know what the position in France was, but to my mind and so far as my reading of history goes, in all countries once the Constitution is inaugurated the Constituent Assembly has become *functus officio*. The Constitution will come into force on the 26th of January 1950 and once that happens, the functions of this Assembly in its capacity as the Constitution-making body cease, and this Constituent Assembly will only continue to function in a legislative capacity, pending elections under the new Constitution. Therefore it is correct to say that the Assembly will be the Provisional Parliament, because it is only saying the same thing in other words. Today, the Assembly is called the Constituent Assembly of India (Legislative) when it engages in the functions of legislation, but under the new Constitution we want to Confer on this body all the powers of Parliament and unless we call it the Provisional Parliament, that body cannot assume to itself all the powers that the Constitution seeks to confer on Parliament. Therefore, I do not think that the second point which my honourable Friend, Pandit Balkrishna Sharma made out is correct. I therefore move amendment No. 563 of List IV and commend it to the House for its acceptance though on somewhat different grounds than the one suggested by Pandit Balkrishna Sharma.

I move:

"That with reference to amendment No. 503 of List II, in clause (1) of article 379, for the words the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted."

Mr. President : There are two other amendments in List IV.

Shri T. T. Krishnamachari : May I suggest that in considering article 379 amendment No. 564 might also be taken.

Mr. President : Yes. I take it as moved:

"That in clause(5) of article 379, for the words 'after such commencement' the words on such commencement be substituted."

There are articles 385, 388 and 392 and there are no other amendments to the amendments of the Drafting Committee.

"565. That in article 385, for the words 'such commencement' the words 'the commencement of this Constitution' be substituted."

"566. That in clause (1) of article 388, for the words 'The President of the Union', in the two places where they occur, the words 'The President of India' be substituted."

"504. That in clause (2) of article 388, for the words 'the provisional Legislature' the words 'the Legislature' be substituted."

"571. That in article 390, for the words 'out of such fund' the words 'out of either of such Funds' be substituted."

Shri H. V. Kamath : There is amendment No. 611.

Shri T. T. Krishnamachari : We are considering amendments that appear in List IV and not those appearing in List II.

Shri H. V. Kamath : My amendment relates to List VI.

Mr. President : I am now taking List IV. I am taking the amendments to article 388.

Shri T. T. Krishnamachari : I am not moving 392 as it appears in List II and amendment No. 505 is not being moved and instead of that 572 is being moved.

"572. That for clause (3) of article 392, the following clause be substituted :

'(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor General of the Dominion of India.' "

Mr. President : So I take it that this 505 is replaced by 572.

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : There is an amendment to 572 standing in the name of Mr. Kamath, Amendment No. 573.

Shri Mahavir Tyagi : Sir, I could not follow Mr. Krishnamachari's reply.

Mr. President : He only suggested that instead of 505 the Drafting Committee would move 572 and notice is given of that. He is only substituting it.

Shri H. V. Kamath : My amendment No. 573 is only a verbal amendment.

Mr. President : These are all the amendments in List IV. I shall take up the remaining amendments in List IV and there are certain other amendments which have come in later and we shall take them up tomorrow. I have received requests from two honourable Members—one from Shri A. V. Thakkar and another from Prof. Shibban Lal Saksena. Shri Thakkar wants an amendment to clause (6) of article 238 regarding the appointment of a Minister for Tribal welfare in Madhya Bharat, Rajasthan, Travancore-Cochin and Vindhya Pradesh etc. This is a new amendment altogether which would not ordinarily be taken but if the Drafting Committee has no objection, I can permit that, but it depends upon the Drafting Committee. I understand that the Drafting Committee would like to consult the States Ministry before they can agree to anything like this. So we can do it tomorrow if by that time you have made up your mind.

The Honourable Shri K. Santhanam : In that case it must be brought in by the Drafting Committee and not by an individual Member.

Mr. President : If they agree, they might.

Pandit Hirday Nath Kunzru : What has the agreement of the Drafting Committee got to do with the matter. It may or may not accept my honourable Friend's amendment, but it is for you, Sir, to decide whether it should be moved.

Mr. President : We have so far taken only amendments which are amendments to amendments of the Drafting Committee. This is not an amendment to any amendment moved by the Drafting Committee and so ordinarily under that rule I would have to rule it out, but I am making a point in favour of the amendment of Mr. Thakkar especially if the Drafting Committee after consulting the States Ministry finds that it can accept it at that stage we can take it.

Prof. Shibban Lal Saksena : It is at your discretion.

Pandit Hirday Nath Kunzru : Do you permit Mr. Thakkar to move his amendment whatever the view of the Drafting Committee may be ? It may reject that amendment, but let Mr. Thakkar place that amendment before the House.

Mr. President : I have not allowed any amendment which does not arise out of the amendments of the Drafting Committee so far.

Shri T. T. Krishnamachari : The amendment may be accepted, but we will have to ask our advisers whether it would fit in and probably if we get their reply in time we shall finally decide that tomorrow.

Mr. President : Prof. Shibban Lal Saksena wants to move an amendment which came in rather late. So, that is out of time. But, otherwise, it is a valid amendment. It says that it refers to one of the clauses relating to language which clause was adopted as a matter of compromise and that some change has been introduced by the Drafting Committee at this stage and that he would like to move that amendment.

The Honourable Shri K. Santhanam : The provisions in the rules give you no option, Sir. They are absolutely mandatory. It is said that no other amendment shall be moved.

Mr. President : This is an amendment to an amendment; it was given late.

The Honourable Shri K. Santhanam : I am only referring to the other amendment.

Mr. President : I said, then I should have to rule it out unless the Drafting Committee is prepared to accept it.

Shri Mahavir Tyagi : The amendment is important from the point of view that it pertains to an agreement and therefore the Drafting Committee might reconsider it. I would appeal to you also, Sir. After all, the Drafting Committee's amendments have come as a surprise on us all; especially on matters of compromise and agreements, no amendment should have been allowed. This is an important matter and I would therefore request you to kindly consider . . . . . .

Mr. President : Which is your amendment, Mr. Shibban Lal Saksena? What is the number of the amendment?

Prof. Shibban Lal Saksena : It is not printed here. I gave it yesterday; but it was ruled out because it was late. It is not in the List. My amendment is "that for clause (3) of article 348, the original clause (3) be substituted."

Mr. President : He wants to substitute the original article as it was passed in the Second Reading stage.

Prof. Shibban Lal Saksena : Not the whole article; clause (3) only, Sir.

Shri Mahavir Tyagi : Many of the Members agree with Prof. Shibban Lal Saksena.

Mr. President : The amendment is that clause (3) of article 348, be restored in the form in which it was passed in the Second Reading stage. We shall consider this tomorrow.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): May I have a word, Sir, before you rise?

Mr. President : Yes.

The Honourable Shri Purushottam Das Tandon : So far as this amendment of Prof. Shibban Lal Saksena is concerned, I desire to point out that even in case it is not permitted technically as an amendment—because it was not delivered to the office in time, even then I submit that the whole proposition, a new proposition, brought in by the Drafting Committee can be opposed. I was thinking of opposing it. I did not move any amendment; but I reserved to myself the right of opposing anything moved in this House. That right cannot be taken away from me and I think that I could oppose the Drafting Committee's amendment.

Mr. President : That of course is clear. Every amendment of the Drafting Committee or of any other Member may be opposed and voted down.

The Honourable Shri Purushottam Das Tandon : Then, it comes to the same thing. If my opposition succeeds, the result would be that the original proposition would be restored. If you accept Prof. Saksena's amendment for procedural purposes, we can discuss that amendment because that also desires the restoration of the original clause.

Mr. President : What the effect of that Opposition will be, will also be a matter for consideration, if it succeeds.

The House will now stand adjourned till ten o'clock tomorrow,

Shri R. K. Sidhwa : Will you apply the guillotine, Sir, tomorrow?

Mr. President : Yes; at 11.30 I shall apply the guillotine and allow Dr. Ambedkar to reply and then there will be voting.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 16th of November 1949.