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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Subedar Major Harbans Lal Jaidka.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 8*th June* 1949

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

DRAFT CONSTITUTION—(*Contd.*)

Shri B. Das (Orissa : General) : Sir, may I know whether the House is sitting tomorrow or not?

Mr. President : I understand it is a public holiday.

Shri B. Das : Republican as I am I do not like a holiday on the English King's birth day.

Mr. President : You are free not to attend any functions.

Shri T. T. Krishnamachari (Madras : General) : Are we working on Saturday as a compensation for tomorrow's holiday?

Mr. President : I have no objection if the House has none.

Shri R. K. Sidhwa (C. P. & Berar : General) : We have some other Committee meetings on Saturday.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We have already fixed so many other engagements for Saturday.

Mr. President : It seems the Members are not willing to sit on Saturday.

Shri T. T. Krishnamachari : It has to be remembered that the taxpayer has to pay Rs. 45 to each Member for every day spent here.

Shri Mahavir Tyagi (United Provinces : General) : If we sit on Saturday the King will feel that he is hoodwinked by us !

Article 204—(*Contd.*)

Mr. President : We shall not take up the discussion of article 204.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I would like to move an amendment to article 204. I mentioned that I would have to consider the position; I have since considered it and I would like to move the amendment. Sir, with your permission I move :

"That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article be substituted :

Transfer of certain cases to High Court.

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

[The Honourable Dr. B. R. Ambedkar]

> (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.' "

That is the amendment. If you like, Sir, I will speak something about it now. But I would rather reserve my remarks to the end to save time instead of speaking twice.

Mr. President : Just as you please.

Shri H. V. Kamath (C.P. & Berar : General) Mr. President, at the outset let me say that this article comes at the fag end of a long series of articles dealing with various procedural matters. In the first place, I am at a loss to understand why our Constitution has to be cumbered with so many rules of procedure. I have gone through various constitutions of the world and I find that no constitutional precedent supplied by our secretariat contains so many rules of procedure relating to High Courts or the Supreme Court. Yesterday also I raised his point as to why Article 200 should find a place in the Constitution. But Dr. Ambedkar twitted me with a facile gibe that I had not read the Draft Constitution. I gladly concede this to him, if it is a debating point that gives him pleasure, and I will freely admit that I have not perhaps read the Draft Constitution with the same care that he has done. But may I point out to him that the point I raised was quite different? As is sometimes usual with him he, however, evaded my question and gave a different answer. I had definitely and explicitly asked him whether articles of this nature had been incorporated in any written constitution of any of the countries of the world. Dr. Ambedkar pointed out to the foot-note and twitted me by saying that I had not read the Draft Constitution. I have read it with some care though not with the same care as he has done. When I went home last evening took up the various constitutions of the world and went through all of them. I found to my surprise that so many rules of procedure as we have tried to provide here...........

Mr. President : Are you replaying to yesterday's debate?

Shri H. V. Kamath : I am trying to show that this article need not be incorporated in the Constitution itself like so many other articles.

Mr. President : Then you may confine yourself to this point and not reply to something that happened yesterday.

Shri H. V. Kamath : I am more or less in a quandary. The other day you were good enough to tell us that you would not encourage the practice of asking questions of Dr. Ambedkar when he was speaking; and if you would not let us clarify our position at a later stage in connection with another article we are in a fix.

Now I will come to article 204. Because it is on a par with the articles that we have adopted already, dealing with procedural matters, I thought I could say something germane to the article in question by reference to the previous articles.

Dr. Bakhshi Tek Chand yesterday expounded saying that it shall be obligatory on the High Court to dispose of cases involving substantial questions of law. So, now, I suppose, there is no dispute so far as this matter is concerned : that is to say, that wherever cases involving substantial questions of law are pending in a subordinate court, the High Court shall withdraw such cases.

Mr. President : Relating to the interpretation of the Constitution and not merely a question of law.

Shri H. V. Kamath : Yes, Sir, that is so. The High Court shall be bound to withdraw such cases it itself. The amendment which was moved by Prof. Shah, and which stands in my name as well, sought to make it discretionary with the High Court. My Friend, Mr. Bharathi, raised a very pertinent point, which I thought my amendment would more or less indicate, if not completely cover. Mr. Bharathi cogently argued that if the High Court were to *dispose* of all these cases that come up before a subordinate court, involving substantial questions of law as to the interpretation of the Constitution, the High Court might become burdened with hundreds and thousands of cases and it would become perhaps more a court of original jurisdiction than appellate jurisdiction. To take only one instance, we have a whole chapter on Fundamental Rights—the third chapter—and when that was being discussed in the House, the criticism was frequently voiced here that we were creating more or less a paradise for lawyers with every article containing provisos restricting the freedoms and rights conferred by the article—the article conferring a right or freedom with one hand and the proviso taking it away with the other. I am afraid that when courts are moved for enforcement of these rights, substantial questions of law as to the interpretation of the Constitution are very likely to arise, because there are so many loopholes and so many provisos provided that ingenious lawyers are bound to take advantage of them—I do not say unfair advantage but fair advantage—and try to raise questions of law as to the interpretation of these articles in the Constitution. Therefore, I suggested through my amendment seeking to substitute the word "may" for the word "shall", that the High Court being a very competent body—we do not differ on that point—must be left to decide which question should be considered to be a substantial question of law as to the interpretation of the Constitution, and if it thinks it necessary to dispose of it itself, it should withdraw the case and dispose of it accordingly. Otherwise, the High Court can send it back to the subordinate court and ask it to dispose of that case and if the parties are aggrieved by the decision of the subordinate court there is the avenue of appeal and the High Court will sit as an appellate authority on that question.

With regard to the amendment of Dr. Ambedkar, I find that the first of the amendment is to the effect that the High Court, if it feels that a question of law is involved as to the interpretation of the Constitution, the High Court may dispose of the case itself. So I think, with a view to avoiding needless verbiage and wordy padding, the word "may" should be substituted leaving it to the High Court entirely to deal with the matter as it likes. I therefore feel that the amendment seeking to substitute the word "may" for the word "shall" will serve the purpose in most cases.

One last point. This article is silent on the point as to whether the reference to the High Court as regards a case involving substantial questions of law as to the interpretation of the Constitution should be made by the subordinate court itself or by the parties concerned. If the parties make the reference and invite the attention of the High Court, there is no difficulty. But if we intend that the subordinate court itself, when it entertains a case of this nature involving a substantial question of law, must invite the attention of the High Court and send the case to the High Court for a decision, then we must make the article clearer and we should say that it shall be the duty of the subordinate court to refer to the High Court a case pending before it, involving a substantial question of law as to the interpretation of this Constitution. But if we leave it to the parties, then this question does not arise. I hope Dr. Ambedkar or Mr. Munshi will throw some light on this point when either of them answers the debate. I personally feel that the simple word "may" for "shall" should meet the requirements of the article.

Prof. Shibban Lal Saksena (United Provinces : General) : The criticism which my Friend, Mr. Kamath made that this article is an article of detail and should not have found a place in this Constitution applies to most part of this Constitution. We have framed a Constitution which is a detailed Constitution, and therefore to complain now at this stage and try to chop off some portions of it will interfere with the whole scheme of things. That is something that we cannot help now.

The question raised in this article is an important one. We have provided in article 110 that all questions as to the interpretation of the Constitution shall be referred to the Supreme Court and the Supreme Court shall decide them. Therefore, if some cases involves such a question of law, it is only proper that the question regarding the Constitution should be settled first by the High Court and if the parties want to go in appeal against the order of the High Court, by the Supreme Court. Otherwise, the whole case will have to be gone through in the Lower Court, the appellate court and the Supreme Court and the expenditure will be very heavy. It is much better that when a case involves a question of the interpretation of the Constitution, this should be resolved first by the High Court and if an appeal is preferred, then by the Supreme Court. After that it remains as to who will decide the case.

The amendment moved by Dr. Ambedkar provides that the High Court may either withdraw the case to its own file or it may refer it back to the Lower Court to resolve it. I think this is a good compromise. Personally, I feel that it would be much better if such a case was originally filed in the High Court. This will mean that the litigants will not be first put to the expense of filing the case in the Lower Court and then in the High Court. I think the original case should be filed in the High Court and the High Court could, after resolving the constitutional point, send the case to the Lower Court. If there is a big case—and there have been such cases in the past, such as the Taiji case of Poona—I feel that it should be disposed of not by the High Court but by the original court. Such a case should be originally filed in the High Court and it should first decide the question of constitutional law and then decide whether it should take the case on its own file or send it to the original court. This will be fair to the litigants and the people at large.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I wish to say a few words on this article. I feel that article 204 will lead to many practical difficulties. In fact it may be mentioned that a question of interpretation of the Constitution may be raised in a petty case in a Munsif's or a Magistrate's Court. The provision is that as soon as it is known to the High Court that a question of the interpretation of the Constitution is raised, it must withdraw the case to itself and decide the question of such interpretation. The matter is not so simple as that. The question of interpretation of Constitution might depend upon the determination of facts in a particular case. It may be that a question is raised in the written statement which on the examination of witnesses and a decision on facts may no longer arise. So it may be premature for the High Court to interfere and give a decision on the interpretation of the Constitution. The question may arise in an appeal or a motion or even in the midst of a jury trial in a Sessions case. The hearing must stop and the High Court must decide the question and the case must be adjourned. After decision by the High Court, a new jury will have to be called. Endless complications will arise.

Then again, supposing the High Court withdraws the case for the interpretation of the Constitution and after its decision it goes back for determination of facts. The trial is resumed and the Court gives its finding on the facts. I would ask what would happen to a man who is dissatisfied with the preliminary

judgment of the High Court? Will he go to the Supreme Court on appeal or will be wait till the facts are decided by the original court? These are complications which the article will give rise to.

Then again, as soon as the Court or the jury, after the preliminary decision by the High Court, tries the case, is his decision open to appeal? Also, may I know whether the decision given by the High Court on the interpretation of the Constitution is subject to appeal? Will the decision of the High Court be deemed to be a decision by the trial Court or deemed to be a decision by the High Court? In the meantime the trial Court will be in a great difficulty as to what to do. The question of transfer must not depend upon a mere interpretation of the Constitution. There is no charm in a law involving interpretation of the Constitution. The vast majority of questions of law do not involve interpretation of the Constitution. The article does not say that only difficult or intricate questions of interpretation of the Constitution will be the criterion of transfer. I submit that at least it should be so limited to difficult and important questions. It may be that the question of interpretation of the Constitution that is raised is easy or extremely frivolous or unimportant. If every case must be taken up by the High Court merely because there is a contention that an interpretation of the Constitution is involved some way, it will be flooded with all sorts of petty cases. It will again paralyse the administration of justice in the *mofussil*. I submit therefore that the best thing to do would be to delete the clause altogether. The clause will lead to endless complications. I may also mention that the High Court has already got unfettered power to transfer to itself or to any other Court any case pending in a subordinate Court under section 24 of the Civil Procedure Code and also under section 528 of the Criminal Procedure Code. Of course the question of interpretation of the Constitution may sometimes be important and may concern the interests of the territory of India as a whole. In such cases the High Court may in its discretion transfer the case to itself or to any other Court without difficulty. As all questions of law are ordinarily interpreted by the lower Courts the question of interpretation of the Constitution in ordinary cases may likewise be left to be dealt with by them. This sort of artificial division of labour will otherwise lead to difficulties. There is a section in the existing Government of India Act 1935, from which I think this idea has been taken. But many important features of that section have been departed from and I think it would be better to refer to that section now. That is section 225 of that Act. That section says :

"225. (1) If on an application made in accordance with the provisions of this section High Court is satisfied that a case pending in an inferior Court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made except in relation to Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province."

One can understand a provision of this kind, namely, a decision which involves the declaration of the validity of an Act. Such question would involve questions of general importance affecting the public at large. In such circumstances the High Court must transfer the case to itself on the application of the Advocate-General of India or the Advocate-General of a province. That is a thing which is necessary and desirable. The application of the Advocate-General of India or of a province is a guarantee of its importance. Such cases would be rare. But the present clause gives the High Court no discretion whatever. It is bound to withdraw the case. It is going too far to say that even petty cases involving the pettiest interpretation of the Constitution should be transferred to, and decided by, the High Court. I need not go into these matters in greater detail. I submit that the clause should be withdrawn and if any provision is found necessary it

[Mr. Naziruddin Ahmad]

should be made on the lines of section, 225, of the Government of India Act, 1935. That is something which can be accepted. Even if we have this clause in this amended from complications will arise. It may be that in some cases the parties may be poor and if the High Court withdraws such cases to itself, it may have to give a decision *ex parte*. It will be extremely unfair, even in cases of interpretation of the Constitution, that decision should be given *ex parte* and the party put in an embarrassing position. As I have submitted, an application of a law or its interpretation may depend on questions of fact. If it is a question of fact, first of all the decision on facts should be given before taking up the question of the interpretation of the Constitution. Otherwise it will be like putting the cart before the horse. I submit that in these circumstances the clause should be withdrawn.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I have given notice of two amendments, one of which was in respect of the substitution of the word 'may' for the word 'shall' and the other was about the deletion of the clause. Now, Sir, I am convinced that this clause ought not to be passed at all, and knowing as I do the merits of the amendment which has been moved, I still stick to the opinion that it will not be fair to pass the article. The clause, reads :

> "If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case......."

In fact, the Supreme Court is the final authority in matters like these. Logically therefore if the interpretation of the Constitution is the sole monopoly of any court, it is that of the Supreme Court. The High Court does not come in at all. In my humble submission, so far as the administration of law in this country for the last one hundred years or more is concerned, all courts have possessed the right of interpreting the Constitution and I do not think that there is any question of principle involved in withdrawing this jurisdiction from the ordinary courts. On the contrary I think that our entire Constitution is based upon the idea that every court is competent to decide this question. I know that in certain countries, there are different courts for dealing with the constitution, for dealing with the administration etc. In France, for example, there are *droit* administrative courts and other courts. In India, we have courts which are competent to decide each and every question. In fact, my complaint is that we are seeking to depart from the fundamental principles of the administration of justice as it has been and will be vogue till this proposed amendment will come into force. I deprecate the principle of pecuniary jurisdiction and special jurisdiction courts. How can one justify the wrong principle that if the dispute involves greater amounts, then the court dealing with it should have greater jurisdiction and should be more competent? I think this is a very pernicious principle. We have guaranteed equal opportunities and equality before the law to every person in this country and it is but meet that we should see that every litigant in this country gets full justice in the most competent court. It is said that the subordinate courts are not competent to interpret this Constitution, but we have started with the guarantee, with the postulate, that every court should be competent, and we have guaranteed that every person should have the fullest opportunity, of getting justice. When such is the case, it is unfair to say that the High Court and the High Court alone is the appropriate place where this Constitution should be interpreted. Now, Sir, apart from this, this question of interpretation will arise in two classes of cases. One class is between Government and Government, where both parties to the dispute can engage the best of counsels and incur any amount of expenses and the case may be decided by the High Court or by the Supreme Court. The second class of cases is between private parties. If it is a small

case involving hundred rupees or less, the parties will go to the court little knowing what the Constitution is, little knowing what a substantial question of law is. A party to the dispute may be met by the other party with the plea that the case involves an interpretation of the Constitution, involves a substantial question of law. In that case, the court will have no option but to refer the case to the High Court. Supposing the other party does not raise this question, then the Court itself may raise this question and send it on to the High Court, even though both the parties to the dispute may not desire to take the case to the High Court. In that case they shall have to go to the High Court which will involve them in more expenses by way of engaging counsels, etc., than in ordinary courts. Looking at the question from all these points I consider that this compulsory reference to the High Court is certainly not calculated to bring about the administration of justice in a less expensive manner to the ordinary litigant.

Apart from this, Sir, I think that cases may involves many points. First of all, two questions have to be decided, substantial question of law and the question of interpretation of the Constitution. Now, Sir, I do not think that these questions are of such a nature that they can be divorced from facts. After all, the question of law will not ordinary be such that it can be determined without reference to facts. Facts have to be gone into. Absolute questions of law will never arise. Then again, even if it is a question of law, it is not sufficient; it must be a substantial question of law. This will be another difficulty. In section 225 of the Government of India Act 1935, the words used are "involves or is likely to involve the question of the validity of any Dominion or Provincial Act". Here, the words used are "the interpretation of this Constitution" which have got very extensive meaning as compared with the words "validity of any Dominion or Provincial Act". Apart from this, Sir, even today the High Court are competent to withdraw any case, to transfer any case they choose. When there are, say, five hundred cases involving interpretation of any statue, I can understand the High Court withdrawing all these cases and then deciding on them. But in individual cases, one or two cases, there is no occasion for calling up these cases. I cannot repress my feeling and I cannot desist from expressing it that those who are at the helm, who want this Constitution enacted in this form, they are not fully conversant with the difficulties of the poor man. I feel that they are putting an obstacle in the way of the poor man getting justice. Why, Sir, may I ask, this question of interpretation of the Constitution is so sacrosanct that an ordinary court cannot be entrusted with it? When those ordinary courts can give justice in regard to civil claims, I cannot see any reason why they cannot decide the question of interpretation of the Constitution? Why compel the poor man, the villager, to go to the expense of going to the High Court? We are taking away from the dignity of the ordinary courts which is a characteristic of Anglo-Saxon institutions. Sir we are making a very dangerous experiment and tampering with the prestige and utility of subordinate courts and making the dispensation of justice more dilatory, onerous and expensive.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, I should like to make a few observations on the article as is now proposed. I feel considerable misgiving as to the utility and the appropriateness of the article and as to the advisability of departing from the existing provision. If a case raise a clear constitutional issue, which is sufficient to dispose of the case there is no difficulty. The case can be withdrawn to the High Court and from any decision of the High Court there will be an appeal to the Supreme Court as is already provided in the article relating to appeals to the Supreme Court. The real difficulty arises in cases where the constitutional issue that is raised, though a material point, is one of several issue that are raised in the case. In such cases, if the case is to be withdrawn to the High Court, though the power to send it back to the sub-

[Shri Alladi Krishnaswami Ayyar]

ordinate court for the taking of evidence and for the disposal of the other points in the case is there, the question arises : is an appeal to be provided for the Supreme Court at this stage, though it may turn out that in spite of the decision on the constitutional question one way or the other, the ultimate decision in the case may not be affected at all and the party who loses on the constitutional question in the final court may ultimately win on other facts and other evidence in the case? Supposing you provide for an appeal on the constitutional question to the Supreme Court, is the case to be hung up in me meantime until you have the decision on the constitutional question one way of the other? The jurisdiction of the Supreme Court in respect of constitutional matters is very wide under our Constitution; it may raise the question of the Construction of an order, it may raise the Construction of any article of the Constitution; it may relate to the distribution of powers between the Centre and the units. Therefore, all and sundry constitutional questions might be raised in the court in the first instance; they may ultimately turn out to be material or not material for the disposal of the case. Even if material, the party who loses the case on the constitutional question may ultimately win in that case. Is the High Court to be a battle-ground for the fighting of lawyers on constitutional questions? That is the point which the House will have to take into consideration and decide.

Again a constitutional question may arise in a civil case or may arise in a criminal case. The decision on the constitutional question may be in favour of the accused or may be in favour of the Crown. What is to be happen in regard to those criminal cases? There is also the further point to be considered. It is not as if every constitutional question can be considered in vacuum without reference to the facts of a particular case. That is one of the reasons, for example, the Supreme Court of the United States never entertains what is called "consultative jurisdiction" though we have departed from that principle to some extent. In effect, this amendment practically resolves into enlarging the consultative jurisdiction on a point of law, which is one of the several points that may arise in the case. Withdrawal of the case for the decision of a particular point is a very novel procedure. In the Australian Constitution, for example, there is a provision that if a question arises as to the *inter se* powers between the Commonwealth and the States, the case itself may be withdrawn to the High Court of Australia. Therefore, it is not the withdrawal of any particular point or the decision on a particular point that is contemplated; it is the withdrawal of the whole case. Therefore, I should think it is much better that there is a general provision that the High Court can withdraw a case if on a perusal of the pleadings and material records in the case it is of the opinion that a substantial question of constitutional law arises which is enough to dispose of the case. The Court will not then direct a withdrawal of a case if it is satisfied that the constitutional question is one of the several questions that arise in the case, even if it be a material question. I ask the House, whether in the larger interests of the litigant public, leaving alone any other consideration, and in the interests of even sound constitutional jurisprudence and securing as far as possible, the ultimate decision of the ultimate tribunal at as early a stage as possible, this kind of procedure is calculated to further the ends of justice. I have considerable doubts in regard to the new proposal and I place before the House my ideas for what they are worth, for your careful consideration : "I am not wedded to any particular theory; I am not against the disposal of constitutional question as early as possible, but there must be a finality. If the constitutional question will ultimately determine the case, by all means, have a decision as early as possible. If, on the other hand, it hinges on other facts or other considerations, if it is one of the several issues in the case, the whole case must be taken up by the High Court. If the constitutional question alone is to be decided,

is there to be an appeal or is there not to be an appeal? If there is to be an appeal, the case will be hung up. As it is, I am quite clear that there can be no appeal at all because we have already provided an order is a final order only when, if it is decided in one way, it completely disposes of the case". That is that definition which we have given to the words "final order" in the chapter on Supreme Court.

With these words, Sir, I trust that Dr. Ambedkar will take these facts into consideration and after a fuller consideration will place the necessary amendment before the House. I may at once state that I am not wedded to any particular theory; I am quite open to conviction, but I do feel that this is calculated to delay proceedings, prolong litigation, and lead to unnecessary expenditure. I might mention similar things have happened already, that is in regard to cases where there was no definition of 'final order'. Every case was brought up before the Federal Court and the Federal Court decided at this stage "it is no use deciding this; we must have further facts before deciding the case". I trust that these considerations will be borne in mind by my honourable Friend, Dr. Ambedkar and other friends of the House before this clause is proceeded with.

Shri Rohini Kumar Chaudhuri (Assam : General) : *Mr. President, Sir, my honourable Friend, Mr. Alladi Krishnaswami Ayyar has asked us to consider this article taking into account the larger interests of the litigant public, and I have no hesitation in saying that if you take into account the larger interests of the litigant public, there should be no doubt that this article must be dropped. This is one of the few articles which have not been taken from the Government of India Act. There is no such provision in the previous law and I would most earnestly request the authors of this article to explain to the House the utility of this article, the circumstances which have led to the framing of this article, what were the difficulties before and what are those difficulties which this article is going to remove.

Sir, as matters stand at present, any one who is affected by the Constitution may bring a suit in the lowest court which has jurisdiction to try that suit. Sometimes, the parties may compromise in the very initial stages and the case may not at all go to the High Court. A lot of expenses will be saved. A large number of cases are disposed of in the lower court by compromise and settlement. Every one is afraid of going to the High Court because of the expenses which it involves and the delay which it involves. Suppose a party has got some grievance arising out of the interpretation of the Constitution, he files a suit against a particular party from whom he claims damage. If the matter is settled then and there in the *moufussil* court, why should you drag him to the High Court at all? There is no necessity for him to go to the High Court. After all, what is the object of filing a suit? If the quarrel involved is settled without going to the High Court, why should we have a provision which would compel the party to go to the High Court? That is the first question which strikes me.

Again, even now if an erroneous decision is giving by the Munsiff or the subordinate Judge, the party affected may always go to the High Court and there have the matter settled. Under the present arrangement every case shall necessarily go to the High Court. As far as I can foresee, the State will be one of the parties to suits of this nature. When this provision is there, the Government who has not got to fear either for the expenses or the delay,— in almost all such cases, the Government will be the defendant—will at once take the case to the High Court. If that is the position that in every case the party must, by virtue of this article 204, necessarily go to the High Court, I say, why not give to the High Court the exclusive jurisdiction to entertain the suit itself? In that case, you at least avoid filing a suit in the lower court first and after some time to take it to the High

*Uncorrected speech.

[Shri Rohini Kumar Chaudhuri]

Court. That is to say, such cases, if at all, must first be instituted in the High Court. The High Court can dispose of the case if it likes or it can send back the case to the lower court in order to assess the damage, or in order to find out the relief to be granted. I ask why have this lengthy procedure of filing a suit in the lower court? Every plaintiff must know that it is a case which will involve an interpretation of the Constitution. Even if he does not know, every case of this nature in which the Government will be a party will be taken to the High Court. In order to avoid double expenses to the litigant, it should be laid down in the Constitution, if you want this article at all, that the High Court shall have exclusive jurisdiction in such cases. Personally speaking, I do not see any utility of this article. No one has suffered by the absence of this article for so many years in the Government of India Act. I have not found any complaint in the press or in the platform that on account of the absence of such an article, injustice has been done or that parties have been seriously affected. After all, everybody knows that the number of such cases will be limited. If such cases are limited, why not give the High Court exclusive jurisdiction to entertain such suits? After deciding the question of interpretation of the Constitution, the High Court may either dispose of the case or send it back to the lower court for the purpose of adjudication of damage or to find out what is the relief that should be granted. I particularly request my honourable Friend to take this aspect of the matter into consideration. I tried to place this aspect of this matter before him outside the House; but I failed. I am at my wit's end to get clarification from that quarter, but I have always been ignored and sometimes ignored with contempt. I believe in a small piece of poetry which I read in my school days:

> "Once or twice though we may fail,
> Try, try, try again."

In my case, I have tried several times and failed. I always say, "try, try again" and this is one of my attempts. I shall also make future attempts.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, no doubt this question is fraught with difficulties and the House has to consider as to the best method of solving the difficulties.

I find that three points are raised against either this particular article or the wording of the amendment as moved by my honourable Friend Dr. Ambedkar.

The first is that there should be no such section. The second is that if there is to be such a power in the High Court, the whole case should be disposed of by it and not merely the point of constitutional law. The last position is that if a constitutional issue is a preliminary issue, it may be referred to or withdrawn to the High Court; but where it is a mixed question of law and fact, it would not be proper to do so. These are the three positions that have been taken up in the debate so far.

In this connection, it is necessary to remember the position of a constitutional issue. A law is passed affecting, say the liberty of a citizen, which contravenes the Fundamental Rights. In that case, he has the constitutional right straightaway to go either to the Supreme Court or to the High Court. Therefore, in most criminal cases, the citizen has a right to go to either of the two courts with a view to have a constitutional question determined. That is the first position.

The second position is that by articles 110 and 112, the Supreme Court is invested with the jurisdiction of deciding constitutional questions from any judgment or decree or final order from any court or tribunal by way of appeal, or where special leave is granted. Therefore, is all matters relating to constitutional questions there is a final resort to the Supreme Court.

There are certain classes of cases which do not fall within the one category or the other, and the question is whether a special method should be devised by which the constitutional question is decided before going into other unrelated questions of fact or law in a case or whether it should be left to be decided in the ordinary course till after a first and second appeal, the case reaches the High Court. We have to consider two sets of difficulties. One difficulty has been placed before the House by my honourable Friend Shri Alladi Krishnaswami Ayyar and other honourable Members of this House. But the more important set of difficulties which we have to consider is this. A constitutional issue goes to the root of the matter and if that is not taken up and decided at the earliest stage, there will be considerable doubt as to the position in law. Take, for instance, the question whether a particular law falls within the ambit of the legislative power of a State or the Centre. That question may be so important that if not decided as early as possible, it would lead to transfer of interests; to extinction of rights or to divesting vested rights. After all this is done for a number of years, say four or five years, the Supreme Court or the High Court declares the legislation to be *ultra vires*. Is it not much better therefore that the constitutional provision should be construed at the earliest possible opportunity to avoid such difficulties?

This article is intended to provide against such difficulties. What has happened in the past is this. One subordinate judge decides a question of law in one way; in another district another view is taken; and this diversity persists till the matter is decided by the High Court. It is desirable that this kind of diversity of judicial interpretation should prevail as regards a constitutional point? If not, a method has to be devised which would enable a litigant, if he so desires, to have such a point decided as early as possible.

This is nothing new. The House will remember that even under the C.P.C. Order 46 there is a power in the subordinate courts to refer a question of law to the High Court on reference if the question of law becomes important. Again as already mentioned to the House by my honourable Friend Mr. Naziruddin Ahmad, under Section 225 of the Government of India Act, it is competent to the High Court or rather it is incumbent on it to transfer to itself all cases in which a constitutional point has been raised. There is already precedent for deciding certain issues of law or constitutional issues by the High Court by taking it out of the hands of the subordinate courts. The amendment which is now moved, therefore, makes a provision that if in a subordinate court a question dealing with constitutional propriety is raised, one or the other party could go to the High Court and satisfy the High Court as to two things : first, that there is a substantial question of law as to the interpretation of this Constitution; and secondly it is necessary for the disposal of the case, not any issue which has no bearing on the disposal of the case. If these two conditions are fulfilled, then only will the High Court withdraw the case. In withdrawing it, the High Court will do exactly what it can under Section 225 of the Government of India Act, but without the limitation that the High Court must dispose of the whole case. We have two alternatives in this article, one is that the High Court can dispose of the case itself or if it thinks proper, it shall determine the question of law only. In the latter case it will decide the particular question of law and send the case back to the subordinate court for the decision of further issues. In mixed questions of law and fact the High Court will consider the question whether it is possible to isolate the constitutional question and of course if it is not possible to do so, it will dispose of the case itself as it could do under the present Section 225 or ask the first court to determine the question of fact necessary for the determination of the legal issue. There is no clear-cut way out of the inconvenience involved but on a balance of convenience it is much better that there should be uniformity in the construction of the constitutional provisions rather than it should be left to the subordinate courts to take divergent views.

[Shri K. M. Munshi]

I am surprised at the opposition to this article for this reason that vast powers of issuing constitutional writs which the House has vested in the Supreme Court are such that a very large number of cases relating to constitutional propriety will be determined by the Supreme Court or the High Court before anything else is done in a case. My Friend Pandit Bhargava raised two objections, one of the cost of litigation and the other of delay. If the whole position is analysed neither of these arguments will be found to be valid. As regards cost, is it not much cheaper that a constitutional issue which goes more or less to the very foundation of the case should be decided at an early stage rather than evidence which will be useless is led in the case before the party comes in appeal to have the constitutional issue decided? The latter course is bound to be more costly. Most cases would practically be decided one way or the other by the decision of the constitutional issues. Then as regards the delay, it is common knowledge that in subordinate courts it takes a long time before a case is disposed of and the party which wants to raise a constitutional issue is sure to go to High Court at an earlier stage of the case and there will be no additional delay so far as the progress of the case in the lower court is concerned. Long before a case ordinarily reaches the hearing stage in the subordinate court such an issue would have been decided by the High Court.

The next point is this that such a decision at an early stage would be of an all India application. Clause (b) of the new amendment says:

"(2) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment."

The word used is 'Judgment'—the same as in article 110. Therefore on this question of law if necessary parties can straightaway go to the Supreme Court in appeal so that there may be uniformity of decision throughout the country. It is in the nature of consultative jurisdiction—though not quite—but the way in which the Constitution has set up the Judiciary as the arbiter of constitutional propriety it is absolutely essential that at the earliest possibility there should be one decision, one definite binding decision throughout the province if not throughout the whole country on constitutional provisions. The whole machinery devised in article 25, 120, 112 is to facilitate such uniformity and this article only adds to the scope of this constitutional forum. I therefore submit that this is the best way out of the difficulties and I hope the House will accept it.

Shri T. T. Krishnamachari : Mr. President, Sir, as a layman who has been listening to the dissertations on law by the lawyer Members of this House for a number of days past, I feel that the time has come when a word of warning has to be uttered against the manner in which amendments are moved, changes are made, jurisdiction is being extended to cover cases which are purely based on conjectures and on hypothesis with all the uncertainty that goes with such procedure as one hypothesis is as good as another. Today we have heard a number of lawyers one contradicting the other, one visualizing instances where contingencies which we seek to incorporate in an article, are not likely to occur or are likely to be controverted. In fairness to all these speakers it is perhaps safe to assume that everybody is right up to a point. After all if the whole thing is going to be based on hypothesis there is certainly nothing sacrosanct about what occurs to Mr. Munshi as against what occurs to Mr. Alladi Krishnaswami Ayyar.

Sir, I have no desire to controvert the utility or otherwise of the article before the House and the amendment proposed by my honourable Friend Dr. Ambedkar. But I would like to say this that in matters like this it is best to leave it to Parliament to make laws or allow the matter to be regulated by rules that

might be made by the Supreme Court or by the Supreme Court in conjunction with the High Courts, which will have the approval of Parliament, if necessary. The whole point really is, are we here in a position to visualise all possible contingencies that are likely to arise? I do not think it is possible. Much as I respect the legal wisdom of those concerned with the drafting of this amendment or the amendments that have been agreed to and approved by the House in regard to the previous articles, I feel a certain amount of hesitancy in controverting the allegation made by some Members of this House that this will tend to increase the possibilities of litigation in the country.

Attempts have been made right through the discussions in regard to the judicial provisions to extend the scope of the work of the Supreme Court. It has been said that that is the only way in which we could guarantee the liberties of the individual. On a subsequent occasion probably an opportunity will occur, when I would like to deal with the point whether liberties can best be defended by a multiplication of appeals. In the present instance regarding this particular amendment in regard to article 204 and those that preceded it, Mr. Munshi says that we want one binding decision which will cover all possible cases in future. Is it possible? If one decision were binding would there be so much case law in the world? Mr. Munshi is undoubtedly familiar with the history of judicial procedure in America, where the country has suffered a great deal of uncertainty by the constitutional provisions being terse instead of being elongated to fit into it all manner of contingencies that are likely to arise which the human brain can visualise in the manner in which we are considering the article before the House.

At the same time, I feel that there is no particular magic attached to Mr. Munshi's interpretation as against Mr. Alladi Krishnaswami Ayyar's interpretation. A friend has asked me what happens if article 110 operates and the question involves a matter of interpretation of the Constitution. Does it go to the Supreme Court? We do not know, but there is no use Mr. Munshi saying "this and this will happen and everything will ultimately be all right". Every thing cannot be all right. We are dealing not merely with all contingencies such as we think are likely to arise but we are also dealing with the human material. One judge may hold one opinion and give a decision in a particular manner and another might give another decision. The decision of one set of Judges cannot be binding on those that decide similar questions later on. There is always the possibility of one decision being over-ruled by another.

While this amendment might go through for the time being I do feel that right in this Constitution there must be some provision by which most of these lacunae can be covered by parliamentary legislation. I am not one of those who believe that we must defend the country, the litigant the lawyer and everybody else as against the vagaries of Parliament. I would rather trust five hundred people with less than even mediocre abilities than four or five people with perhaps some claim for superior abilities but at the same time having their own personal prejudices. And in this matter I am undoubtedly right in view of what is happening in the United States, where the judges are influenced by political considerations and a whole series of judgments given by them until 1936 had been changed after 1936 as in some instances even the same Judges have been interpreting the provisions of the Constitution in a different way. Therefore it seems to me that somewhere in this Constitution there must be a provision so that most of these difficulties can be removed by parliamentary legislation, even though it might mean that you are allowing Parliament to arrogate to itself a certain amount of jurisdiction over the Courts as a relative quantum of jurisdiction will thereby be taken away from the Supreme Court and the High Courts. That seems to be the only way in which we can prevent increase of litigation in the Courts.

[Shri T.T. Krishnamachari]

I would like before I resume my seat to tell the House that all that we are doing today is we are running right counter to popular opinion, which does not want multiplication of litigation, and we are merely providing opportunities for more and more litigation. I do not want to claim any particular type of wisdom for having uttered on a previous occasion that this Constitution might well prove a paradise for lawyers. Whether I was right then or not, I do feel that I am more than right today in view of the provisions that we have introduced both in regard to the Supreme Court and the High Courts. We are multiplying the possibilities of litigation increasing tremendously. My honourable Friend Mr. Munshi said in a different context that the opportunities for employment of High Court judges will increase tremendously. If that were to be so litigation must increase. Who will pay for it? It will be an unnecessary waste of the wealth of the people, who in most cases cannot afford to pay. Ultimately when two litigants begin to quarrel it ends up like the proverbial fight between the Kilkenny cats; what is left is only the tails. This might profit the lawyers, this might profit the judges and also provide revenue for the State. But the people of the country will suffer. I therefore feel that unless the House or those who are responsible are guided by considerations purely of the immediacies of the situation or whether a particular case they have in mind can be covered or not, they should provide, in the interest of the country, a saving clause somewhere by which most of these matters will be dealt with either by Parliamentary legislation or by rules made by the Courts with the approval of the Parliament, so that possibilities of any phenomenal increase in litigation might be avoided.

I do not know anything about the present amendment except that it looks simpler than other amendments that have been suggested, since the House adjourned yesterday, which were longer and therefore more difficult to understand. Therefore, perhaps, there is something in this amendment to commend itself to the consideration of the House. I would only submit that this should not be treated as the last word on the subject and the House must empower the Drafting Committee or those responsible to go through the whole series of articles passed in this connection and provide some kind of safety valve, by which parliamentary interference can avoid an increase in litigation.

With these reservations, Sir, I support the amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any very long discussion is necessary to come to a decision on the amendment I have moved. The House will remember when we were dealing yesterday with article 204 my Friend Mr. Bharathi raised a question which related to the last sentence in article 204, *viz*., that the High Court shall withdraw the case to itself and dispose of the same. The question which Mr. Bharathi put, which I thought was a very relevant one, was this. Why should the High Court be required to withdraw the whole case and dispose of it, when all that the main part of article 204 required was that it should deal with a substantial question of law as to the interpretation of the Constitution? His position was that in a suit many questions might be involved. One of them might be a question involving a substantial question of law as to be interpretation of this Constitution. The other question may be questions as to the interpretation of ordinary law made by Parliament. If there was a case of this sort which was a mixed case, containing an issue relating to the interpretation of the Constitution and other issues relating to the interpretation of the ordinary law while it may be right for the High Court to possess the power to decide and pronounce upon the question relating to the interpretation of law, why should the High Court be required to withdraw the whole case and decide not merely on the issue relating to the interpretation of the Constitution but also upon other issue relating to the inter-

pretation of ordinary law? As I said, that was a very pertinent question the force of which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept back.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121, which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges. The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say-for the purpose of getting the benefit of a Bench of five-raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment, List No. I, Amendment 43, they will find that we then introduced a proviso which said that in a case of this sort where an appeal comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary Bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judges. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal may be referred to a Bench of five Judges. Even then Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original Bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making this amendment to article 204 which I have moved this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure...

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if it is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment, I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

[The Honourable Dr. B.R. Ambedkar]

Then two questions have been raised. One is with regard to the use of the word 'judgment'. It has been said that the word 'judgment' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purposes of determining the constitutional issue may not be in a position to approach the Supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgment or the final order of the High Court. The contention is that the judgment may not be regarded as a judgment within the meaning of articles 110 or may not be regarded as a final order. Well, having used the word 'judgment' in article 110 in that particular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understood why the use of the word 'judgment' in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word 'decision' instead of 'judgment' and adding an explanation such as this that "the decision shall be regarded as a final order for the purpose of article 110". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly be open to the party whose case has been withdrawn to do what it likes. Once the judgment has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightaway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something sitting there. I could not hear him. But in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High Court should not be encumbered with a decision of all the issues when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole

case. It has no power of partial withdrawal, while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, is that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am therefore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the Assembly has passed.

Mr. President : I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President : Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :

"That for article 204 the following article be substituted :

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

Transfer of certain cases to High Courts

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.' "

The amendment was adopted.

Mr. President : Now this becomes the original article. It disposes of all the amendment moved.

The question is :

"That article 204, as amended, stand part of the Constitution."

The motion was adopted.

Article 204, as amended, was added to the Constitution.

Article 205

Mr. President : The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

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

"That for article 205, the following be substituted :—

'205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct

Offices and servants and the expenses of High Courts.

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultations with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.' "

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President : You can move it.

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

"That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, the following proviso be substituted :—

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.' "

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President : That covers your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir it obviates the necessity for moving my amendment.

Mr. President : There are two amendments by Mr. Mahboob Ali Baig to this article. No. 141 and No. 142 in the printed List of Amendments to amendments.

(The amendments were not moved.)

Now the article is for general discussion.

Shri Brajeshwar Prasad (Bihar : General) Mr. President, Sir, I am not in favour of any whittling down of the powers of the High Courts. I feel, Sir, that in matters of salary, leave, pensions, etc. consultation with the Governor is necessary, if the word 'governor' here does not mean governor in consultation with the cabinet—with the Prime Minister. It is not clearly mentioned—it would have been better if it had been—that the Governor in his discretion should be consulted so far as the salaries, allowances and pensions of the Judges and other servants of the High Courts are concerned. Sir, there is another

provision that the conditions of service should be prescribed by the Chief Justice subject to any law made by the State Legislature. I do not want that either the Governor or the State Legislature should have anything to do with the provincial High Courts. There should be an integrated judiciary in this country. All the High Courts should form an integral part of the Supreme Court. I am against the provincialisation of the High Courts. I am against the interference of the executive authorities, the Governor and the Legislature, because of my well-known feeling against provincial governments. If these authorities are allowed to have any say in the administration of the High Courts, then there will be no independence for the provincial High Courts. Already the feeling is rampant, charges have been made, that there have been cases of interference with the administration of justice. I am definitely of opinion, Sir, that instead of the State Legislature and the Governor, we shall have to make a provision that Parliament and the President should be consulted. I know that the administrative expenses of these High Courts shall be charged upon the provincial revenues, but I think this difficulty can be obviated by charging this expenditure upon the Central revenues. Of course, this suggestion will entail an adjustment of the sources of the Central and provincial revenues. But in the interests of efficient administration, in the interests of one judiciary in the country, whatever difficulty there may be in the way must be overcome, and all questions of pensions, salaries, leave, etc. of the Judges and other servants of the High Courts should be placed in the hands of the Parliament and the President in consultation with the Chief Justice of the Supreme Court.

Mr. President : Do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, I should like to oppose this amendment moved by the Honourable Dr. Ambedkar. Apparently it looks to be very innocent, but I am afraid this might have far-reaching repercussions so far as the independence of the Judiciary is concerned. If we look at the different stages through which our Draft has been developing, I am constrained to conclude that we have been receding from democratic principles and centralising all powers in the executive or the legislature; rather I might say that we are proceeding towards the evolution of a police State. The history of this article is only one instance of so many and posterity would judge whether we are growing wiser everyday or whether we are going against democratic principles recognised all over and trying to centralise most of the powers in the legislature. If we just have a look at the original Draft, we will find that article 205 as drafted in February 1948 only provided that the salaries, allowances, pensions, etc. payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat. But when in November this List of Amendments was published, there was some change and then it was laid down in the proviso to this article :

> "Provided that the salaries, pensions, etc., payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat."

I think that so far there was no harm done, if we confine ourselves to this consultation. But now the present amendment says :

> "Provided that the rules made under this clause shall, so far as they relate to salaries; allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat."

[Sardar Hukam Singh]

This substitution seems to me to be a very serious one, though it looks to be a small matter on the face of it. The judiciary is the only safeguard against any infringement of public liberties and any encroachment however small on its independence, so far as I can make out, should be carefully watched and jealously guarded against. The judiciary itself, it is admitted, is too feeble to defend itself against the encroachment by the executive and the legislature and any dependence of it or inter-linking it with the legislature or the executive would jeopardise its independence. There is always a danger of its being overpowered by the execute or the legislature. As I have said already, I find this change towards vesting of more and more powers in the legislature and impairing the independence of our courts. In my opinion such a change as this amendment provides may turn out to be a source of friction between the judiciary and the executive by creating pinpricks. When you ask the Chief Justice to have the approval of the Governor, I think, it would humiliate him and bring him to a subordinate position. Psychologically at least such a procedure would have that effect. The very fact that the Chief Justice has to consult the Governor would be a sufficient guarantee that the rules would be framed in a spirit of accommodation. Can't he be trusted that he would not unnecessarily burden the exchequer by extravagant expenditure? No doubt the Governor is the keeper of the purse, but at the same time the judiciary is the guardian of the civil liberties and nothing should be done to jeopardize the independence of the latter. Consultation would be sufficient and I think this amendment now moved is a dangerous one and I oppose it.

Mr. President : The question is:—

"That for article 205, the following be substituted:—

'205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct :

Offices and servants and the expenses of High Courts.

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State. And any fees or other moneys taken by the Court shall form part of those revenues'."

The amendment was adopted.

Mr. President : The question is :

"That article 205, as amended, stand part of the Constitution."

The motion was adopted.

Article 205, as amended, was added to the Constitution.

Article 206

The Honourable Dr. B. R. Ambedkar : Sir, I move that this article be deleted.

Mr. President : The question is :

"That article 206 form part of the Constitution."

The motion was negatived.

Article 206 was deleted from the Constitution.

Article 90—(*Contd.*)

The Honourable Dr. B. R. Ambedkar : Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President : We had a number of amendments to this article which were moved that day before we adjourned discussion. They are amendments Nos. 3, 4, and 6 standing in the name of Dr. Ambedkar.

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

"That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted :

'(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;'"

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not moving it.

Sir, I also move :

"That in sub-clauses (e) and (f) of clause (1) of article 90, for the words 'revenues of India', the words 'Consolidated Fund of India' be substituted."

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with this matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

[The Honourable Dr. B. R. Ambedkar]

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is "Public Account of the Governor-General of India". If honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. "Public Account of the Central Government means the Consolidated Fund into which moneys received on account of the revenues of the Governor-General as defined in section 136 of the Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word "Consolidated Fund" is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund. This notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was this. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Often times, the King spent the money for purposes quite different from the purposes for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage, Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the budget. In order to avoid this squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it comes to decide upon the budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary thing in order to prevent the proceeds of taxes being frittered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I there fore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the Constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be pooled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this : the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94 dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93

what happens is this : Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head, item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This thing is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the provisions contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in this discretion and in his individual judgment. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgment were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under our new Constitution the President has no functions at all either in his discretion or in his individual judgment. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Governments in Canada, Australia, South Africa and in Great Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself, as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

[The Honourable Dr. B. R. Ambedkar]

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has to be presented under heads, sub-heads and items. Parliament has to pass the budget with regard to heads, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz.,* no money is to be spent unless all the details are passed by Parliament and if you also have the provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions of article 93 you cannot spend any money unless the budget had been passed in all its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93 or you may make another provision making an exception to article 93. The vote on account procedure which we propose to introduce by an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length—I don't say fully—the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.,* lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition—unless you make a provision for a vote on account you will not get time to discuss the budget at any greater length than what you have now. The House will remember that the last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called 'Provision for Votes on account'. These are, if I may say so, the three main changes that we have made in the Draft Constitution. Sir, with these words I move the amendments I have tabled.

Mr. President : Does anyone wish to speak now?

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, the speech that has just been made, explains in some details the new nomenclatures we are going to adopt as well as make certain provisions which were not thought of upto this moment. Sir, the whole structure which was embodied in the Draft articles as we have before us was really based wholly on what is provided for in the Act of 1935. Now the Honourable Dr. Ambedkar wants certain alterations and modifications so that the procedure in financial matters approximates greatly to the procedure which obtains not only in the British Parliament but which has been copied by the various Dominions. Therefore, we are required to have phraseologies and terms which are altogether unfamiliar to the

House. The learned Doctor has undoubtedly given a very brief and exquisite commentary on the various proposals he has to make and if many Members of this House find it difficult to comprehend all that they signify, I do not think the intelligence of any Member can be blamed for it. (*Laughter*). For the first time we are having—instead of the well-understood and well-explained familiar terminology of the revenues of India (that was one phrase which was used, probably for various purposes and a phrase which is well understood by all of us)—what is termed as the Consolidated Fund. It is impossible, Sir, from the speech that has been made to understand exactly why it is necessary to change the name. The purpose has been explained but I do not feel convinced. I do not see why it is not possible to continue to call it "the revenues of India" and then make provision for the solution of certain difficulties which have been encountered in our financial procedure. And for this purpose I am not absolutely certain that the nomenclature need be changed. Undoubtedly, one difficulty which the Honourable Dr. Ambedkar wants to overcome is that there should not be any restriction on passing the budget by a certain date. There should be some amount of elasticity about it. The Parliament of India could go on discussing the budget and the expenditure for months if they like, even after the first of April, by which time, according to the present procedure the budget must be approved. But if that is the only difficulty which it is sought to overcome, I do not think the whole structure of all these articles need be altered. The provision for allowing the executive to carry on the day to day administration, irrespective of the fact whether the whole budget has been discussed and passed or not, does not, I think, make the alteration of so many articles necessary. But if our anxiety is to bring ourselves into line with the British House of Commons and the various Dominions, then of course the changes that have been suggested ought to be accepted.

In the change of nomenclature and the introduction of the words 'the Consolidated Fund of India', a common man's interpretation would be that this would be a certain fund which is over and above or something different from the revenues of India : otherwise there would be no sense in substituting or incorporating this new phraseology called the Consolidated Fund of India. Then the various new terms such as "Vote on Account", "Vote on Credit" etc.—the Honourable Dr. Ambedkar will have to incorporate sooner or later because these are the things which follow in the wake of the whole structure of the financial business and financial transactions of a State. I am referring to the procedure in the House of Commons where besides the Consolidated Fund, there are a variety of things, and I am sure that sooner or later all will have to be incorporated. The Honourable Dr. Ambedkar has explained that Vote on Account is a grant in advance for the estimated departmental expenditure for the year before complete and detailed sanction has been given to that expenditure. Then there will be Votes on Credit, of which we have not heard so far but probably at a later stage it will have to come in. It has been defined by the British Parliament as "an unexpected demand upon the resources of the United Kingdom for example for the defence of the Empire or for a military service". It is on account of the magnitude or in definite character of the service that the demand cannot be stated with the details given as in an ordinary estimate to be laid before "Parliament on an application based on the demand of the total sum required etc."

Then, Sir, we will be incorporating more or less the whole procedure that is current in the British Parliament. I am so far not fully convinced that we should alter the structure of our financial transactions that has stood the test of time, and excepting the difficulty of finishing discussions by the 1st April, no other grave difficulty has arisen so far. But if the learned Doctor can say that unless we alter this we will have insurmountable difficulties and for an independent Parliament of India it would not be possible or feasible to

[Dr. P. S. Deshmukh]

work, then of course we will have to accede to his request and accept the motion that he has made. I feel, Sir, not at all convinced that without having the Consolidated Fund, without providing for a Vote on Credit, without providing for a Vote on Account, it is not possible to manage the finances of India. The terms which are current are very well-known pharseologies and the procedure is well established here and I would much rather keep to the old phraseology and other provisions rather than embark upon a whole set of altogether new terms and phrases. My ground for saying so is that in spite of my carefully listening to the speech, I have not been able to follow that it is absolutely necessary to alter the whole structure of these provisions. I have already said that excepting one practical difficulty, no other difficulty is such as, under the existing of the Draft provisions which are before us, cannot be solved. So, Sir, I for one feel that if it is possible to keep to the well-understood terminology and procedure, it would be far better. After all the whole thing is not very complicated. The main fundamental principle is that there should be no appropriation of any revenues of a State unless Parliament's sanction is there. With regard to this provision my Friend Mr. Sidhva also stressed that even the Auditor-General must not pass a single transaction unless it finds a specific place and has been approved by Parliament. All these things, namely, that without the sanction of Parliament no expenditure shall be voted, no expenditure shall be incurred, is a thing which is not jeopardized by the provisions as we have, and therefore I suggest that if it is possible we should not have these new phrases, which probably are very appropriate for the Parliament of England but for which we have no very specific use. Even under the foreign Government we have managed our finances fairly well. There has never been an instance like the one the Independent Parliament of India had to face of the appropriation of crores of rupees without their ever having been mentioned in Parliament or having been specified at any time. That is a contingency which did not arise even under the British regime and these were the exact provisions under which the whole financial administration of the country was going on. Therefore, I feel that if it is possible to keep to the old phraseology and restrict ourselves to it, it would be far better than incorporating provisions which are not familiar to us. The explanations and interpretations by the various lawyers in the Parliament will also involve us in a considerable amount of trouble and that is my fear. If there is no other difficulty except the one I have mentioned I am not convinced that this alteration of the whole structure is necessary.

Shri R. K. Sidhwa : Sir, with my parliamentary experience of three decades I can safely say without exaggeration that the present procedure and system of discussion of money Bills and budgets in the various legislatures is nothing but a farce and a waste of public time. I am yet to know any legislature where a budget is discussed, where the members had any occasion to curtail or reduce the amount of expenditure under any head. The entire power under the 1935 Act or even before was vested in the executive as far as the finances of the State were concerned. It was merely to show to the world that the demands and income were brought before the legislature and after a few days' discussion the legislature had to accept all the items both on the expenditure and income side.

After independence we have adopted the same procedure in regard to the two budget that came before our Parliament. Barring the fact that a few more days were allowed during the last session, after a great deal of complaint, for the discussion, we were able to do no more substantial work or contribute any suggestion towards the expenditure or income side of the budget. I therefore welcome now the amendment moved by Dr. Ambedkar. It is a

very healthy amendment and I am rather surprised to hear my friend Dr. Deshmukh saying that there is no necessity to change the present system or nomenclature. Crores or rupees could be raised and crores spent without the legislature in the true sense having any voice in it. Even under the article as originally drafted I can safely say that the members would have had no opportunity to judge the money Bills or the budget. Therefore, this amendment has come at the right moment.

It was argued by Dr. Deshmukh that it should be left to the Parliament. Matters like this should not be left to the Parliament but should be embodied in the Constitution. After Dr. Ambedkar's amendment a minister had to state openly that the present procedure is perfect and there is no necessity, as Dr. Deshmukh stated, to make any amendment. I know ministers will object to any latitude or privileges given to members, because I know from my experience of two sessions that so far as the ministers are concerned they feel the sooner the budget discussion closes the better it is for them, because they come under criticism. If it is left to Parliament I am positive that the ministers will combine or the government of the day will combine and will not allow any kind of law to be passed for such a purpose. Therefore it is in the fitness of things that such a provision should be made in the Constitution. There should be no loophole left for any future government as far as the State's finances are concerned.

What happens during the budget discussion? Only five or ten minutes are allowed to a member to discuss an important financial item. He could not place properly and explicitly his viewpoint before the House. A number of members have to speak and within the seven days allotted for the Demands nothing material ultimately turns out. After the clamour of the members during the last session, three more days were allowed but I must say straight away that even those extra three days were merely given to the members to ventilate their views and nothing substantial was done. We want that the members should have a stronghold on each item spent by the executive. Unfortunately few members take interest in the budget. Perhaps they do not understand it. Finance is a complicated item and obviously members are at sea at times. The executive, under Contingencies and other headings, provide lakhs of rupees without any details and the House has to pass them. Do you want to give that kind of power to the executive still? How are we going to influence the Government unless and until sufficient time is given to the members to place their views before the House? It is one of the fundamental duties of a member to voice his views and those of his electorate, otherwise he is not worth being returned by the people to this House. Our people want to know what kind of taxes are being imposed, what is the necessity for them and how the Government propose to spend the money. If members have no opportunity to ventilate their views and those of the people who returned them, there will be no value in their being members of the legislature. We could understand the executive not wanting to give power to the legislature. Today we are ourselves the masters and yet Dr. Deshmukh has the audacity effrontery to come and say "I do not want this. The present procedure is very good and there is no necessity to change the nomenclature. Parliament will do its duty." It was very surprising. I thought every member of the House would welcome the proposal of exercising his rights properly. I am sorry for the opposing to this. I wholeheartedly welcome the proposition and I repeat that if you leave it to Parliament, the Ministers will combine and never allow you to go into the details of the Budget. Therefore, the provision in the Constitution suggested by Dr. Ambedkar is very necessary. I am sure the House will give credit to the Drafting Committee that, even at this late stage, from our experience of the last two Sessions of Parliament, they have come to the right decision that while the Auditor-

[Shri R. K. Sidhwa]

General alone should be a watch-dog, members also should be watch-dogs of finances of the State. We could give on credit certain amount for salaries of the staff etc. before 31st March. The House can then have ample time to go item by item and reduce or increase the demand. The executive will then have no alternative but to accept it.

Dr. P. S. Deshmukh : Is that your object?

Shri R. K. Sidhwa : I have much more in view than this but all could not be incorporated in the Constitution. Fundamentally you are opposed to this provision. From your speech, I felt that you wanted the *status quo* to remain I object strongly to it.

Dr. P. S. Deshmukh : That was not my idea.

Shri R. K. Sidhwa : If you cannot express your mind clearly I cannot help it. If that was not your idea, I am glad.

This is the part of the important question which was held over last time. The House should unanimously pass the amendment moved by Dr. Ambedkar. I welcome the amendment.

Prof. K. T. Shah (Bihar : General) : Mr. President, the amendment proposed by Dr. Ambedkar makes certain innovations in the practice and procedure in dealing with the Budget, to which we have been accustomed all these years. This is what I may call the mechanics of getting the Budget passed through Parliament; and as such a matter of procedure rather than of principle.

Before I speak on the specific changes made, may I draw the attention of the House to certain basic principles of the Constitution, which are implied in this amendment, and which seen to be liable to misunderstanding if they are not properly clarified?

I think it is a perfectly sound principle to urge that there shall be no taxation without a law imposing it. The Constitution should lay down an equally sound proposition that there should be no tax levied except with the authority of the legislature. It is one of the basic principles of our Constitution. It is a very sound principle to incorporate in the Constitution.

Secondly, there shall be no expenditure without also the authority of Parliament by an Act and not merely by resolution of the Legislature. That is no say, there would be two Acts, a Finance Act, and an Appropriation Act, both separately, one sanctioning and authorising the raising of revenues for the year, and the other permitting expenditure by authority of an Act of the Legislature.

These are sound principles implicit in this amendment. The other parts of the motion, that is to say, the introduction of Votes on Account and Votes on Credit appear to me to be matters, more of procedure, or practical detail, or parliamentary time-table, to get the Budget passed through Parliament in due time. This may, I think, be more conveniently left to Parliament to look to, and not included as intrinsic parts of the Constitution itself.

I am afraid there is a tendency, inconvenient at times, to burden the Constitution with too many details, which, in a changing world and under changing conditions, may become very difficult always strictly to apply.

The question moreover that the Vote on Account or Vote on Credit or Estimates may be introduced as and when and where may be convenient is in no way undermining the sovereignty of Parliament as a watch-dog of the financial administration of the country. That all of us accept. But the actual experience has been that members more often talk rather than watch.

There is no provision except for talking. To scrutinise or watch the finances of the country is, under the present time-table, almost impossible to provide. The Constitution, however, which is an act of the sovereign people, in the exercise of their absolute sovereignty need not, in my opinion, go into the details of the various votes and procedures by which the several items may be provided for.

An Act of Parliament, however, the Legislature's authority given in the most solemn form of an Act, is indespensable and absolutely necessary. But it may also be provided for by the rules made by Parliament, so that the various stages of the Budget, and the various results of the Budget, presented to the House, in the shape of the Finance Act or Appropriation Act can be regulated so as to keep pace with the requirements of the country and also maintain the supremacy of Parliament in enacting such legislation.

I am afraid some members seem to have misunderstood the nature and purpose of this amendment when they declared that, by such provision as we are now considering the power of the executive would be reduced and the power of the legislature would be increased. There is no such suggestion in this amendment. The executive power will not be increased or diminished whether or not you accept this proposition. Parliament's power to superintend, to scrutinise, regulate and determine the financial administration as indicated in this amendment must be an essential safeguard for the sound administration of the national finances. But I repeat that it is not necessary to burden the Constitution with these things. And that too from a somewhat different angle than is customary in the British model from which we seem to be copying these things as pointed out by Dr. Ambedkar. But even the copying also is not complete and exhaustive, inasmuch as the "Votes on Credit" and Estimates for instance have been omitted. They may become necessary not only in hour of emergency, but even in any ordinary commercial or economic crisis—and consequently the practice of presenting the Estimates in order to allow the House to consider the policy of the various spending departments is also not mentioned in this mechanical stage of Budget passing through the legislature hereafter.

The nature, moreover, of the two funds mentioned specifically in the amendment—Consolidated Fund and Contingency Fund—leaves, in my opinion, some room for clarification and proper understanding. A Consolidated Fund has become necessary from the standpoint of certain items or expenditure, which are not open to annual voting by the express desire of Parliament itself, such as the Civil List, the judges' salaries, interest on the National Debt, and so on. Now, the idea that the Consolidated Fund is, as suggested in this amendment, a mere collection of the revenues collected may be all well in its place; but the origin and nature of the Consolidated Fund must also not be lost sight of.

As regards the Contingency Fund, I am afraid I must plead ignorance of that Fund. I do not remember if in the British practice there is any corresponding Fund. Even if it is, I feel it is liable very much to be abused under circumstances that we can all imagine. I see therefore no reason why we should make provision for such a Fund in the Constitution itself. If and when it becomes necessary for Parliament, in the event of there being special requirements or special emergency to establish such a Fund. I take it that Parliament is supreme and sovereign enough in these matters to be able to do so. There is no necessity for us to provide a constitutional authority in the basic law of the land, to enable Parliament to do so, because Parliament would have supreme financial authority. All the various, necessary stages of the procedure and the time table would and should be regulated by Parliament whether it is the necessity for a Contingency Fund or any special

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provision that any emergency may require for the moment. I do not think it, would be wise to tie down the future Parliament by constitutional provisions, even if they were to have the appearance of a special facility. I am afraid this is likely to be abused and so I feel inclined to propose it.

On the whole, therefore, the changes made, while improving the procedural side, appear to me to burden the Constitution too much with details, which are liable to detract attention from the basic principles that are perfectly sound and liable also to create occasions for future abuse against which we cannot be warned too much.

Shri Jagat Narain Lal (Bihar : General) : Sir, I have been trying to follow the arguments of Dr. Ambedkar in support of the amendment and also the vehement eloquence spent upon it by Mr. Sidhva. I feel that Dr. Ambedkar has given us the history and the origin of the Consolidated Fund as it came into existence in the United Kingdom. I do not know if that history has any relevancy to the method of expenditure, the budget expenditure, which is followed in our country and which has been followed for years past. I do not think there has been felt any such difficulty or inconvenience which was felt in the United Kingdom when that Consolidated Fund was brought into existence and he has given the reason for the origin of that fund, *viz.,* the misuse by the Crown and so on. I was surprised to hear Mr. Sidhva arguing so eloquently in favour of this change on the ground that it would create watch-dogs for the budget. If he were really to understand what a Consolidated Fund or a Contingency Fund is, I think he will be arguing just in the reverse way. I will read from a House of Commons publication called "Manual of Procedure for the Public Business", page 164 :

> "The object of a consolidated fund is to empower the Treasury to receive out of the Consolidated Fund for the service of the departments for whose use money has been granted such sums as may be required in anticipation of the final sanction given by the Appropriation Act."

This is just the reverse of what he thinks. What the amendment seeks to do is only to substitute the words "Consolidated Fund or the Contingency Fund" for the words "revenues of India" in clause (1) of article 90. Instead of the revenues of India out of which expenditure could be met only according to the sanctioned budget, a Consolidated Fund or a Contingency Fund would be created, and the purpose is that the Government could go on spending out of the Consolidated Fund or the Contingency Fund without any difficulty. I wonder and I would like Dr. Ambedkar to think over it, whether it is at all necessary. Firstly, as Dr. Deshmukh has said, the term "Consolidated Fund" will be very much misunderstood. The term "revenues of India" is very simple and has certain implications. The budget procedure as followed in the Central Legislature and in the Provincial Legislatures has been understood by all. The term "Consolidated Fund" is apt to be misunderstood, and especially when this construction is going to be put on it that out of this you will have the right to spend as you like even when the Appropriation Act has not been passed, it is liable to be misinterpreted and will lead to a good deal of hostile criticism. I would therefore like Dr. Ambedkar to consider whether it is at all necessary to have it here and whether we could not retain the article as it stands. I do not like to say much more on this amendment, and I think that what I have said will be taken into consideration.

Prof. Shibban Lal Saksena : Mr. President, Sir, I have been surprised to hear the speeches of the two friends who have raised some doubts about the proposal of Dr. Ambedkar. I have very carefully read all the amendments of which he has given notice and also studied and practice which obtains in the

British Parliament. Sir, I have been in the U.P. Provincial Assembly for about ten years and in this Assembly for the last three years and I have seen so many budgets passed, but I do not remember one single item of any "single estimate" in the budget proposals either in the provinces or in the Centre ever changed. What actually happens is that the Finance Ministry brings out a printed book containing all the detailed estimates. When the budget is presented before the Provincial Legislature or the Central Legislature, copies of the printed estimates are distributed to the members and we are allowed only to ventilate our grievances, to say something about each item and then to pass the whole budget by a certain fixed date. I ask the House whether we, who are send here by the country to act as the watch-dogs of their money, are merely here to put our seal of approval on what the Finance Ministry puts in that booklet known as the "estimates"? I feel, Sir, that Dr. Ambedkar has done a very great service by bringing in even at this late stage these amendments which will put the procedure in our Parliament on a par with the position in Great Britain. Probably we have been so much accustomed to the procedure adopted here that we have almost fallen in love with it. We still cannot get out of the habits of slavery of the past so many years and we think what has happened is what should continue to happen. If only we tried to review how the British Parliament is enabled to examine each single item in the estimates, then I think we shall realize that Dr. Ambedkar's amendments are very sound and the House must give him wholehearted approval. Sir, after the King's speech in the British Parliament at the commencement of the year, the House of Commons fixes a date for resolving itself into a Committee of Supply and so consider the estimates which are presented to it. The estimates are presented in our parts, the estimates for the Navy, estimates for the Army, estimates for the Air and Civil estimates, so that the House can examine them separately. The procedure they follow is this. The House resolves itself into a Committee of Supply and a motion is made : "Mr. Speaker do now leave the Chair". On that motion a general debate follows on each estimate for one or two days and then all the estimates are discussed in a general manner by the House. After that when that motion is carried the whole House resolves itself into a Committee of Supply.

Dr. P. S. Deshmukh : Has may honourable Friend seen any such amendments in the proposed amendments?

Prof. Shibban Lal Saksena : I will tell you that this Constitution need only provide those amendments which are necessary to enable the Parliament to adopt the British Parliamentary practice. It is not necessary that every single thing which is done in Britain should be brought into the Constitution. These procedural matters will be provided for under the rules of Parliament, but those portions of the procedure which are necessary to be incorporated in the Act of the Constitution are being provided for in these amendments. Therefore, Sir, this amendment is essential if we want to adopt the system which prevails in Great Britain.

Then in the Committee of Supply the period for consideration is fixed as 20 days, and the estimates are closely examined and discussed. In the Committee stage every member has got the right to speak as many times as he deems necessary. At present while the Budget is presented, we cannot speak more than once and if we really want to change the estimates, we must be able to speak a number of times. Thus, when the House resolves into the Committee of Supply, the whole thing is discussed threadbare. It must be remembered the House of Commons meets for about nine or ten hours a day and for twenty days in all, so that almost every single estimate is closely

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scrutinised and examined and thereafter on the twentieth day, the whole thing is passed and then a report is submitted to the Speaker and the House again meets to consider the report and there may again be a debate. Thus for each estimate there is a debate for one or two days at the beginning, then there is the detailed consideration of the estimates by the Committee and there may again be a debate at the report stage, so that in this manner the whole thing is discussed threadbare and thus the necessary changes are brought about in the estimates. The members of Parliament do not accept everything that the Treasury place before them, but they alter them according to the needs of the country. After the Committee of Supply there is the committee of ways and means. The Committee of Supply votes the expenditure and the Committee of Ways and Means discovers the methods to provide for that expenditure by changing the Income-tax laws, etc.; that also has got a limited time of ten days and in that time the proposals for new taxation are examined carefully and after the Committee of Supply has reported, the Committee of Ways and Means meets and they also pass those estimates. Thus, Sir, the whole thing is properly scrutinised and then passed. As I said there are four estimates and there are thus about twelve debates in all in the open House, besides detailed scrutiny in the Committee of Supply and the Committee of Ways and Means, so that you can understand that the Parliament does not spend a single pie which has not been carefully considered and voted upon by the Members of Parliament. Every one knows that here in India at present we finish the whole general discussion and the discussion of cut motions in seven days and the entire budget is then passed finally and we never have again an opportunity to go through the estimates and ultimately the guillotine is applied and the whole thing is passed. This really means that the Assembly does not get the opportunity to perform its duties and whatever the Ministry of Finance says is carried. I am therefore extremely grateful to Dr. Ambedkar and I hope posterity will be grateful to him for these amendments through which he has provided in the Constitution for real power to the Parliament over the Exchequer. The Parliament will henceforth be able to scrutinize the estimates and even to alter them by their votes. Now, Sir, this elaborate procedure takes time and therefore, there must be a Vote on Account, so that during the time that Parliament scrutinizes the expenditure, Government may carry on its work. For that the Vote on Account is passed. I do not think that the Vote on Account should be rigid and this is provided for in the amendment which Dr. Ambedkar has moved. It is an important thing and it is essential to the Constitution, and I do not agree with Prof. Shah that it is one of detail. Therefore I fully support that portion of the amendment.

Then, Sir, when the House of Commons meets there are also supplementary estimates for the previous year which are discussed along with the Votes on Account. By the 31st of March, the House of Commons passes the Consolidated Fund Act, with the result that this Act gives the Government authority to carry on the Government until the Appropriation Act is passed. It must be remembered that at present we are only about a hundred and fifty members in the Parliament, I mean those who attend it. In the new House of the People there will be five hundred members and if only seven or eight days are allowed for discussion of the budget in Parliament, nobody will be able to say anything about it. I therefore think that by adopting the provisions we are here making, we shall bring our procedure exactly in line with that of the British Parliament and in that way we shall be able to examine every portion of the Budget in detail and then give our consent.

Then, Sir, as I have said, there is the Consolidated Fund Act, and then there is the Appropriation Act. The Appropriation Act, in fact, is the docu-

ment in which the amounts to be spent from the Consolidated Fund are included, so that the Appropriation Act is really the authority of the Parliament under which Government can spend any money.

That is the scheme of things which, as I understand it, Dr. Ambedkar has placed before the House. I hope the House will be grateful to him for the labour which he has taken over the matter and for the wonderful manner in which he has incorporated this Scheme into our Constitution. Although we were copying our democracy from the British model. We had so far left out the kernel of that system, for the perfect control of popular representatives over the finances is the essential feature of British democracy. This scheme of Dr. Ambedkar will now enable us to model our Parliamentary procedure on the British lines.

In this connection. I wish to mention that in Britain the financial year commences in April. I wish to state that the months of May and June are very hot here. We may also change the financial year from the 1st of November to 31st October, so that we can finish our Appropriation Act by the beginning or March of March or April and we can have more time to discuss all matter in detail. I therefore propose to bring this suggestion before the House when the proper time comes, by an amendment. I think in our country it has been the practice from times immemorial to commence the financial year from the Dipawali which falls about the first of November.

I heartily support the proposals of Dr. Ambedkar and I hope the House would be grateful to him for these proposals.

Shri B. Das : Mr. President, Sir, I join in the plethora of congratulations which have been showered on Dr. Ambedkar. Sir, the House is indebted and we are all indebted to Dr. Ambedkar, my honourable Friend Mr. T.T. Krishnamachari and other members of the Drafting Committee for evolving a new draft to suit the tempo of Parliament during the last two years. We were very unhappy at the way in which budgets were introduced and passed. We were very unhappy at the close imitation of former budgets that were being presented by alien rulers to the former Assembly. I am grateful to Dr. Ambedkar for nothing how 118 crores of Rupees were passed as supplementary estimates on the last day of the year 1948-49.

That there should be a certain amount of money "charged" to the Consolidated Fund of India is essential to maintain the credit of India and soundness of our India national finances. The several items have been detailed in article 92 and there is no use the Parliament trying to vote down. Parliament ought not to reduce those charged items that will be placed by the President or the Finance Minister before it. Some of those charged items have been bequeathed to us by those alien rulers. They did commit us to an enormous debt and we are paying the interest charges on that debt. The Parliament will be justified in condemning the past Rulers for their extravagance and for their large public debt. But, as those debts are now national debts, interest charges on those must be paid. Similarly, the establishment charges of the President, the Supreme Court, the High Courts, the Auditor-General, and one or two other items should be charged to the Consolidated Fund. The future Parliament will be justified in criticising any extravagance in any of the charged heads of expenditure; but it will be improper for us to reduce them, or to treat them as voted items of expenditure. Therefore, I think, in the present juncture of our national finance, such a system of financial control should operate.

I could not follow why my honourable Friends Professor Shah or Shri Jagat Narain Lal fought shy over the word Consolidated Fund or the Contingency Fund. In the past we were committed to large capital expenditure. Money

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is voted; but the money is never spent during the year. If there is a system of creating this Contingency Fund of India, the moneys voted on these particular items of capitals expenditure, whether they are multi-purpose projects or heavy industries, may be consolidated and spent in the next year or years to come. I believe that is the idea of creating this Contingency Fund which is a carry forward fund apart from the Consolidated Fund for the year under review before Parliament.

Sir, we have to evolve our own traditions. If I have revolted previously against the mention of British Parliament or Canadian Parliament or any Dominion Parliament on the floor of this House, I do not fight shy today to follow the British system of financial control in India. We have followed, and we were forced to follow it, under the foreign rulers. Today, we are just trying to modify it to suit our new status and at the same time to exercise full financial control. Dr. Ambedkar has already referred to the point that Parliament is given power to extend the time for discussion of the budget. Mr. Sidhva also criticised on the point. But, it is not the discussion in the Parliament, talking about small things, forgetting that we are discussing the financial estimates presented by the Finance Minister, the important part of the Parliament's duty. It is better that when a Budget is introduced in Parliament, the House resolves itself into an Estimates Committee to which my honourable Friend Prof. Shibban Lal Saksena has already referred. In the Estimates Committee, without discussing the principles of finance and expenditure, we may go into the items of expenditure of every Ministry so that we may control their extravangance of budgeting or their Utopian ideas of planning over which large sums have been spent in the past. I hope in the future no expenditure on Utopian planning will be allowed to the various Ministries. In the Estimate Committee, where the whole House has resolved itself into a Committee-I again apologise if I quote the British practice—the President will have to retire and a Chairman like my honourable Friend Pandit Thakur Das Bhargava will have to preside. In that Committee we may discuss every item of expenditure and not leave it to the Departments to appropriate or reappropriate as they have been doing in the past. If that Estimates Committee comes into functioning soon after the declaration of the Republic of India early next year, much money will be saved. It is not a surprise, but I wish to repeat today that the Government is a bankrupt Government which borrows money, some 26 to 28 crores of Rupees to run its normal expenditure for the year 1949-50. That means every year a crore of Rupees is being added to the interest charges which under this article are going to be a charge on the Consolidated Fund of India. The House will be chary to permit its future Finance Minister or the present Finance Minister who will be naturally functioning in the next year to incur loans to meet the normal expenditure. We know in the last two years the budgetary affairs of the Government of India are running at a loss of 150 to 200 crores if we include the capital expenditure also. If capital expenditure is properly designed, it will pay its own way. But today there is a huge staff under the Government and extravagant ideas of expenditure in the various Ministries and they function not as one Government but each Ministry is functioning as an autonomous Ministry defying the Finance Ministry or the Auditor-General. I am glad that the Auditor-General's position has been assured by the Constitution, but it is for the cabinet of the Government of India to see that the Finance Ministry also exercises proper financial control over the various Ministries. It is not done today properly and therefore every year the unproductive debt of India is going up by 20 or 30 crores—it was 288 crores in 1938-39 and it is 900 crores today—and it is disgraceful to us if we borrow money and live on it and show our grandeur of administration under independent

India throughout the world or inside the country. Sir, I again feel happy being always interested in the national finances and in proper financial control of expenditure of the Government of India—I again feel happy that these article, as now going to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Sir, before I speak, I would like to ask Dr. Ambedkar some clarification of certain points. Does this amendment force the Government of India to have a fund which is to be called a Consolidated Fund? Or is it an enabling amendment?

The Honourable Dr. B. R. Ambedkar : It is already there. It is only a change of name.

The Honourable Rev. J.J.M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session?

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J.J.M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministers of the Government of India or it might be by the Governments of the provinces. I suppose the principles in this article 90 will apply to the provincial Governments also—the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J. J. M. Nichols-Roy : A complaint has been made here in this House that in the Legislatures no time has been allowed for the discussion of the cut motions or the demands for grants. That may be a very just complaint but that may also be avoided by giving more time to the Legislature. Why can't the Legislatures have more time for discussion of cut motions? The rules of legislatures can be changed in order to allow more time for discussions re. cut motions and demands. Why should there be any other method different from what we have had all these years in this country in order to give more time to members to discuss demands for grants? The Appropriation Act to be passed will take some time and it may be inconvenient for provincial legislatures to do that. Some provinces will find it very difficult to pass the Act in the same session, but it is provided by the Votes on Account that a lump sum amount may be provided by the Legislature for meeting the expenditure for some time. But that also will be inconvenient to some provinces. In Assam sometimes we have had to shorten the days fixed for the budget session. Many members wanted to go back to their work. In our last budget session we had to curtail a few days by the agreement of the members of legislature.

Shri L. Krishnaswami Bharathi (Madras: General): If they are unwilling, they have no business to be members of the House.

The Honourable Rev. J. J. M. Nichols-Roy : In Assam we have had some times to curtail the days which have been provided for the work of legislature. There are different conditions in different provinces. Therefore to say that there must be another method of allowing the legislature to extend to days for discussion of the cut motions and demands for grants—seems to be unnecessary. This should not be a reason for any change at all. Then there has been also some criticism about the waste of money by the Ministries. I do not believe that such an accusation is based on facts. This accusation cannot be made of the Ministry of our province at least, and I believe of other provinces also. There is a demand from the Legislature to spend more

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money for the good of the people of the province and we are not able even to meet the demands of the Legislature on account of the lack of money in the province, and to say that the Ministry is wasting money is rather unreasonable; and to base any action of ours here on that supposition is, to my mind, wrong altogether. I think that this system which we have had so far for the Governor of a province of the President to certify will not in any way affect badly the administration of revenues of the country, but if this Appropriation Act is not forced upon a province but it is only an enabling Act in order to allow a province if it wants to pass such an Act or if it wants to continue the present condition, to do so, then there would be no objection at all. I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account it may ask the Legislature.

The Honourable Rev. J.J.M. Nichols-Roy : Suppose the Ministry in Assam or in any province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to it to do so?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

Shri L. Krishnaswami Bharathi : There will be no difference in the procedure.

The Honourable Rev. J.J.M. Nichols-Roy : There will be difference inasmuch as it means so much time. In my opinion I think this will not be necessary at all. It will mean time and will be a waste of public money for the Legislature to continue when it is not necessary for it to continue. It may be necessary at the Centre but I do not think it will be necessary in all the provinces to have this. For the provinces there must be permission to continue the present system or to adopt the system which you have proposed for the Centre.

Shri T. T. Krishnamachari: Mr. President, Sir, I am glad that the House has taken a cue from Dr. Ambedkar, and taking advantage of his lucid explanation of the changes that the Drafting Committee have made in the financial provisions both at the Centre and in the provinces they have discussed the whole scheme threadbare. Though we have not yet reached the provision in which the major changes have been made, I take it that when discussion of the various clauses take place these arguments will not be repeated since the House has fully discussed the whole scheme in all its aspects. I am also happy to see that this new scheme, if it could be called, has had the enthusiastic support of my honourbale Friend Mr. Sidhva and my honourbale friend Prof. Shibban Lal Saksena I do feel that they have understood the scope of these new amendments correctly and they find in them the essentials of those elements which can be developed if Parliament so wills so as to provide effective control by the representatives of the people over expenditure by the executive. I would at once say that that was the intention of the Drafting Committee in making these changes.

I also listened with considerable respect and attention to the speeches made by my honourable Friend Dr. Deshmukh as also the short speech made by Pandit Jagat Narain Lal. So far as Dr. Deshmukh's criticism is concerned it seems to revolve rather on an affection for the *status quo* than on a positive objection to the new provisions that have now been suggested by Dr. Ambedkar. He sees no harm in the *status quo* continuing and the revenues of the Government of India being called the public revenues of India; and he sees no particular in the new provisions. On the other hand he see

a lot of trouble in the introduction of the words ‘Consolidated fund’ and ‘Contingency Fund’. I am afraid if he holds those views even after the explanation given by Dr. Ambedkar, I will have to leave it at that rather than attempt to convert him. If he had understood Dr. Ambedkar aright he would have realised that the introduction of the words Consolidated Fund is merely a change in name but is nevertheless a change that is appropriate at a time when we are framing a Constitution for ourselves. Dr. Ambedkar has very rightly called the attention of the House to an analogous provision in other constitutions, to the Canadian Constitution where article 102 refers to the Consolidated Revenue Fund, as it is so called there, and to article 81 of the Australian Constitution where a similar reference is to be found to a Consolidated Revenue Fund. There is also a similar reference, though in a different way, in the South African Constitution. But if anybody goes into the history of the Consolidated Revenue Fund as it began in England I would at once say that we have no idea of following the implications of that history because the Consolidated Fund of Great Britain came into being some time in 1787 and the only change it made was a departure from the practice obtaining before that time, namely, that particular taxes were appropriated to particular heads of expenditure. At that time the whole of the public account was brought under one scheme under the head the Consolidated Fund and it was decided that particular taxes should not be appointed to particular heads of expenditure but that the whole expenditure should come out of the Consolidated Fund and be appropriated to different heads, of expenditure. Therefore, it has a historical background which has no validity so far as we are concerned.

Dr. Ambedkar has very rightly pointed out that there have been occasions when our rulers in the past had thought of making a change in the accounting procedure and also in the financial provisions so far as the Legislature was concerned, and it was met by serious opposition from the executive of the day. I have gone through the discussions at various stages before the passing of the 1935 Act and at every time when a change in the procedure was suggested it was merely met by an argument similar to that put forward by my honourable Friend Dr. Deshmukh, namely, that the existing provisions were all right in practice and no change need be made. But I would at once say this with my experience both of the Central budgeting and also Provincial budgeting: I have always felt that the procedure followed was one of the most lax in the world. In fact, so far as the Centre is concerned, the demands are passed by the Legislature—at any rate some of them are discussed and so far as the others are concerned the guillotine is applied—and a consolidation of those Demands is done by means of the Authenticated Schedule presented to the House under the signature of the Governor-General. As Dr. Ambedkar has very rightly pointed out, in the New Constitution the responsibility will be taken over by the Parliament itself by providing for an Appropriation Bill in which Parliament will give its *imprimatur* to a summary or a consolidation of its decisions while passing the various Demands. In the Province also there is a similar procedure of placing before the Legislature an Authenticated Schedule. But while at the Centre some discussion on the financial administration and on the general administration is made during the time of the discussion of the Finance Bill, because we have provision for an annual Finance Bill for the reason that the Income-tax proposals should necessarily be brought up every year and the Schedule of rates must be sanctioned by the Legislature every year—we have no such provision in the provincial Legislatures. In this connection I was happy to see a Provincial Minister taking interest in these new proposals. So far as the Provinces are concerned there is no provision for discussion of the general policy of the Government similar to what takes place in the Finance Bill discussion at the Centre. There might be a taxation legislation if a new tax is to be levied—often times there is. But it is not a consolidated statement of providing the ways and means for a particular year for the provincial

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administration, and therefore it does not provide for a general discussion of the financial set-up or the financial administration of the Province concerned. If, as Mr. Nichols-Roy wants, these provisions should, if necessary, apply only to the Centre and not to the Provinces, then the lacuna which I think is more serious in the Provinces will continue to exists, which is very undesirable. What is low sought to be done, as Dr. Ambedkar has explained, is that we shall have an Appropriation Bill. We have not made provision for a Finance Bill in the Provinces—it all depends on the Province to make an appropriate change if it so desires.

But in regard to one particular objection made Mr. Jagat Narain Lal where in he objected to a difference in the wording of the amendments—No. 5 in List No. 1 in the name of Pandit Kunzru and the amendment moved by Dr. Ambedkar—I would ask him to study the amendment in its context. Though we have discussed the entire scheme that is now sought to be introduced, the field covered by the scheme that is that subject of discussion is very limited. It is in regard to terms of sub-clause 1(c) and 1(d) of article 90 where there is an enlargement of the definition of a Money Bill and in defining a Money Bill it is perfectly right to say that it includes the custody of the expenditure out of the Consolidated Fund or the Contingency Fund, because various other items are also enumerated and certainly the word "or" is perfectly correct in the context and there is no place for the word "and".

There is only the point I would like to stress at this stage and it is this. There is no compulsion in this scheme, excepting in two matters; one is in the change of the name of the public revenues of India—if it is made in the Centre it has to be made in the provinces as well so far as the public revenues are concerned. The second thing is that instead of the authenticated schedule presented to the Legislature by either the Governor-General or the President, or by the Governor in a province we shall have an Appropriation Bill which will be passed by Parliament or the appropriate legislature as the case may be. So far as the other provisions are concerned, they are purely optional. If it is the intention of a particular Provincial Government to maintain the target date of 31st March for the passing of their budget provisions which has the concurrence of the legislature concerned there is nothing in this particular series of amendments to prevent a province from doing so. If Mr. Nichols-Roy wants his province to stick to the present system, they may do so. There is absolutely no obligation for them to change the system. If they find that the Legislature is tractable enough to say that they will not take advantage of these enabling provisions that they will discuss the entire budget scheme but the 31st March and expect the Government of the day to put in an Appropriation Bill which will also be passed on the 31st March, there is nothing to prevent them. But what we have sought to do by the amendment in article 95 by introducing the Vote on Account is merely that the inexorable necessity of passing a budget on a particular day will not be there if the Parliament or the legislature of a State so wills it.

The House might ask for how many days do you want to extend the budget discussions. That is a point that might be raised. But we wish to leave it entirely to Parliament or the legislature concerned to fix the number of days that the budget discussions can go on after the beginning of the financial year; and for the purpose we have sought to introduce an enabling provision in 98(A) of which Dr. Ambedkar had already made mention, which provides that the Parliament can make any law relating to the financial procedure and it may be that the Parliament will follow the same system as in England by fixing a day in August by which the budget must be passed, or it may be that Parliament might consider one month's extension adequate. It is left to the Parliament of the future, either to make that change or to make no change, and leave it entirely as it is. The same thing applies to the provinces. Therefore this provision of a Vote

on Account is an enabling provision and it is not a compelling provision. It gives Parliament room for escaping the rigidity of a target date. Members of this House might have been aware that a similar rigidity exists in regard to budget procedure in the French Parliament, and last year owing to the political difficulties which they had, made them stop the clock in Parliament House just before it reached the dead line. The clock was stopped just a few minutes before 12 o'clock at midnight on the last day of the year though it does look absurd that merely for the reason that the clock stopped it can be taken for granted that movement in the whole world had stopped! Such devices will not be necessary and the new scheme will be flexible enough for Parliament to make suitable arrangements. The procedure to be followed for a Vote on Account will be very much the same as for an Appropriation Bill. Parliament might make the necessary legislation undertaking that such and such shall be the procedure to be followed in such matters. It can lay down that the executive must present the demand for a Vote on Account, or call it a Consolidated Bill No. 1, to cover expenditure for two months. All the heads represented in the budget demand must be represented there and the demand must be *pro rata* for the period covered. It might say that no new expenditure must be incurred during this period. All these conditions can be imposed by Parliament, or the Parliament might decide that it does not propose to take advantage of the new scheme but would prefer to follow the existing practice. At any rate the next Parliament may not and the budget discussion will go on as it is at present.

With regard to the other objections, I would say at once that most of us responsible for this new scheme were chary of making any change which was a change having far-reaching consequences. We feel therefore that we have not made any serious departure. At any rate there will be no obligation for the Parliament at the Centre or the Legislatures in the Provinces to make any serious departure and they could continue the existing scheme, if they wish to do so. If Parliament wants to exercise full control, as it ought to—and so should the State Legislatures—there is room for them to take advantage of the powers given to both the State Legislatures and Parliament by means of these amendments to exercise that type of control which goes along with any decent democratic system of Government. I think that the various points raised by the Speakers I have tried to meet, at any rate in part, and the rest will be probably met by Dr. Ambedkar in his final reply. After that there should be no need of further discussion so far as the general principles of the scheme are concerned. Sir, I support the amendment of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think I can add anything usefully to what Mr. T.T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

Mr. President : The question is:

"That in clause (1) of article 90, the word 'only' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That at the end of sub-clause (a) of clause (1) of article 90, the words 'duty, charge rate, levy or any other form of revenue, income, or receipt by Governments or of expenditure by Government' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (e) of clause 1 of article 90, for the words 'the increasing of the amount', the words 'varying the amount of, or abolishing' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted:—

'(c) the custody of the Consolidated Fund of the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;' "

The amendment was adopted.

Mr. President : Now I will put amendment No. 6 to vote.

The question is:

"That in sub-clauses (e) and (f) of clause (1) of article 90, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Now I will put article 90, as amended, to vote.

The question is:

"That article 90, as amended, stand part of the Constitution."

The amendment was adopted.

Article 90, as amended, was added to the Constitution.

Mr. President : Article 91 was passed the other day.

Therefore the House will take article 92 into consideration.

Article 92

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

"That in clause (1) of article 92, after the word 'President', the following be added:—

'or the Finance Minister acting under the authority of the President, specifically given for the purpose'; and for the words 'both the Houses' the words 'the People's House' be substituted and after the words 'estimated receipts' the following be inserted:—

'On revenue account as well as from borrowed moneys, or transfer of sums from other accounts to Revenue Account.' "

Sir, there are two points in this amendment which I would like to place before the House. In the first place the clause as it stands makes the Budget Presented by the President only, as it were, or caused to be presented to Parliament by the President. The House has accepted the principle that all executive action of the Government of India shall be always in the name of the President. Accepting that, it does not still seem to be appropriate that, in this matter, the President should be made to figure as the authority for getting the Budget presented to Parliament. The obvious person who could and should act in relation to this would be naturally the Minister in charge of the finances of the country. He is in the House and is in direct touch with it and with the financial administration of the country. The room that this article provides for any alternative or other Minister for the matter, to come before Parliament seems to me improper and ought not to be permitted.

Retaining the sense of the principle previously accepted in the article whereby the Government of the country is to be carried on in the name of the President, I have nevertheless tried to improve it by making the Finance Minister specially, though acting with authority given for that purpose to be in charge of the Budget. Speaking for myself I would have liked the President to be wholly excluded from acts of this kind. Complete and exclusive supremacy and authority of Parliament over matters financial should be left unquestioned. As it is, however, I would try to meet the principle of the previous article or the sense of it by requiring

that the Finance Minister should, for this purpose, have specific authority from the President, and therewith do the needful in the Houses of the People.

This may seem a mere matter of procedure, or a matter of nomenclature. I hold, however, that it involves a great principle of Parliamentary democracy and responsible Government inasmuch as it excludes the executive head from taking part even by implication in matters of this kind.

The second principle that is involved in my amendment which is of greater importance is the association with the Budget.....

Shri L. Krishnaswami Bharathi : On a point of order, Sir. Is this amendment in order, because the executive function of the Union is to run in the name of the President? The Finance Minister as such does not come into the picture. The amendment is that the Finance Minister shall lay the Statement before Parliament. It runs counter to the very scheme of the Constitution under which all things are done in the name of the President. There is no point in the amendment that the Finance Minister should come into the picture. Article 42 says that the Executive Head of the State shall be the President.

Mr. President : He started by saying that he was aware of that principle, but in spite of it, he thinks that the Finance Minister should also come in.

Prof. K. T. Shah : The second point is much more important, inasmuch as the financial supremacy of the People's House should, in my opinion, be asserted categorically, and no room left for any sense of equality between the two Chambers so far as matters of finance are concerned. As the article stands, it suggests a question of equality between the two Houses of Parliament in financial matters, which I think is fundamentally opposed to the basic idea of the Constitution as we have provided it so far. Hence it is that I, by this amendment, suggest that this matter of finance must be left entirely to the House of the People; and, if necessary, as a mere matter of information, the other House may be informed only, just as the public and the various Departments of the administration are informed and supplied with copies of the Budget. As a matter of constitutional right and constitutional requirement or policy, I think it would be but correct and proper that the only body interested in and concerned with finance should be the People's House. If you desire the supremacy of the popular representatives of the people to be unquestioned in matters financial, then I think this amendment, which provides for the Budget to be presented only to the People's House, should be unopposed. The other House may have joint and equal association in ordinary legislation, and may even be entitled to suggest some modification, if they so like, in matters financial. But theirs cannot be the last word. The pre-eminence of the House of the People, the primary interested and concerned authority of the People's representatives in matters financial, should be left utterly undoubted.

I therefore make this amendment affecting not merely the revenues, but all items of expenditure whether from borrowed funds, or transferred from other funds, which are to be utilised for the service of the country.

I suggest that the amendment I am proposing here is in full accord with the basic principles of the Constitution as we have been developing them and as such would be acceptable to the House.

Mr. President : Will you move the other amendments also? 1694 is already included.

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

"That in clause (1) of article 92, after the word 'expenditure' the words 'whether charged upon the revenues of India or on other account' be added."

[Prof. K. T. Shah]

Sir, this is in tune with the general line of argument I am advancing. There shall be no discrimination, from the standpoint of presenting to the House of People all items to be spent on account of the country's services whether they are charged upon the revenues or on the Consolidated Fund or on the ordinary Revenue Account. I hope the amendment will be accepted.

Mr. President : There are two other amendments in your name—Nos. 1697 and 1698.

Prof. K. T. Shah : I would like to move them.

Mr. President : You can move them on Friday.

The House stands adjourned till 8 o'clock on Friday.

The Assembly then adjourned till Eight of the Clock on Friday the 10th June, 1949.