

Thursday, 6th January, 1949

Volume VII

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**CONSTITUENT ASSEMBLY
DEBATES
OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 6th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(Contd.)

New Article 147-A

Mr. Vice-President (Dr. H. C. Mookherjee): We shall take up discussion of article 148. But I am informed that article 147-A comes under the same chapter and so with the permission of the House we can take up article 147-A.

The motion before the House is:

“That article 147-A form part of the Constitution.”

This is in the name of Prof. K. T. Shah.

Prof. K.T. Shah (Bihar : General): Mr. Vice-President, Sir.....

Mr. Vice-President : I understand that a similar amendment in the case of the Centre was rejected by the House.

Prof. K. T. Shah : Yes, Sir. But I may point out respectfully that in that case the proposal was to separate all powers; but here it is only the legislature that is sought to be separated.

Mr. Vice-President : All right; you may move your amendment.

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

“That before article 148, the following new article 147-A be added:—

‘The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State.’”

Sir, while it is no doubt part of my thought on this subject that the powers of the organized government, in a State calling itself federal and democratic, should be separate, one from the other, I have deliberately worded my amendment in such a way that even though the other structure may remain what it is, the local legislature may be separate from the executive and the judiciary. The separation of the two is intended to secure the independence of the legislature and also freedom from any influence of the legislature over the judiciary. I would rather emphasise on this occasion and in this connection the separation of the judiciary, the independence of the judiciary, than of the legislature, as such. When we consider the judiciary, I would place similar amendments with definite reference to the judiciary. In this case, I would like to point out that whereas the law-making body makes laws after due consultation and contacts with the juristic advisers that they may have, or the technical draftsmen who may assist them, nevertheless, they should not have any contact with the judiciary as such, lest the knowledge of what took place in the legislature, the knowledge of the debates, discussions, promises or assurances given, or even *obter-dicta* that may be thrown out on the floor of the Legislature by either side, may influence judgment. It is an accepted principle—and I think quite

[Prof. K. T. Shah]

a right one—that the judiciary in their interpretation of a written Constitution should not be influenced by anything that took place in the debates on a given piece of legislation. In a federal constitution, it is inevitable that questions may crop up time and again, not only of the interpretation of ordinary legislation, but also of the very constitutional aspect of a given legislation, or acts of the Executive under the Constitution. It is but right and proper that the legislature should be completely free from the influence or any chance of being influenced by the two other organs of the State. Further, the Judge themselves having pre-conceptions—so to say, of the nature or intention of the law—are likely to give an interpretation not necessarily in consonance with the true doctrine of interpretation, but rather, because of their pre-knowledge, so to say, of the intention, even if the meaning is not properly given in the wording as finally decided upon.

For these reasons, Sir, and for securing the purity, both of the Legislature and of the Judiciary, I commend this motion to the House, that the two should be completely separate.

Mr. Vice-President : Dr. Ambedkar will reply to the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I oppose the amendment, and all that I need say is this, that the basic principle of the amendment is so fundamentally opposed to the basic principles on which the Draft Constitution is based, that I think it is almost impossible, now to accept any such proposal.

Mr. Vice-President : I am now going to put the amendment to vote.

The question is:

“That before article 148, the following new article 147-A be added :—

‘The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State.’”

The amendment was negatived.

Article 148

Mr. Vice-President : Now we come to article 148.

The motion before the House is:

“That article 148 form part of the Constitution.”

Amendments Nos. 2222, 2223, 2224, and 2225, and amendment No. 2227 are of similar import No. 2225 standing in the name of Prof. Shibban Lal Saksena may be moved.

(Amendments Nos. 2222 and 2225 were not moved.)

Amendment No. 2223 and No. 2224 may be moved; both are in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad (Bihar : General): I am not moving them.

Mr. Vice-President : Then No. 2227, standing in the name of Shri Nand Lal may be moved.

Master Nand Lal (East Punjab : General): I am not moving it.

Mr. Vice-President : Then, in List II of Sixth Week, there is an amendment to amendment No. 2222. As it is not moved, Prof. Shah may move amendment No. 2226.

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

“That for the existing clause (1) of article 148, the following substituted:—

- ‘(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature, and such request being duly made and received, Parliament shall pass the necessary legislation.’”

Sir, the original clause as it stands reads:

“For every State there shall be a Legislature which shall consist of the Governor; and

- (a) in the States of, two Houses,
(b) in other States, one House.”

I wish to put the States on a part and suggest that the Legislature of every State should be eventually determined by an Act of Parliament, and subsequently altered, if so desired, at the request of the State concerned.

Sir, I do not believe in a bicameral Legislature at least for the States. I think a Second Chamber is not only not representative of the people as such; but even if and where it is representative of the people, even if and where it has been made in such a way as to represent some aspect of the country other than the pure popular vote, even then it is there more as a dilatory engine rather than a help in reflecting popular opinion on crucial questions of legislation.

Apart from the classic example of the House of Lords, which is a hereditary reactionary and non-elected body, even where the Second Chambers are elected, they deflect the legislative machinery, for one thing; they involve considerable outlay from the public exchequer on account of the salaries and allowances of Members and incidental charges. They only aid party bosses to distribute more patronage, and only help in obstructing or delaying the necessary legislation which the people have given their votes for.

Those who like to defend the Second Chamber are, more often than not, champions of vested interests, which find a place in these bodies and as such find an occasion rather to defend their own special, sectarian or class interests than to help the popular cause.

On the question of Second Chambers, therefore, Sir, I think it is a clear division of political opinion, whether or not it is the will of the people alone which should prevail or some separate interest or special interest be also allowed a say. [It must also be admitted that in the course of centuries in the course of history, wherever there have been two chambers, means have been devised to make the popular will eventually prevail. The only result of the Second Chamber, therefore, is that wherever democracy is in working order as an effective machinery of Government the only use of the Second Chamber is to delay, or to obstruct legislation rather than to make it utterly impossible for the popular will eventually to prevail.]

In England, in America and elsewhere, the Second Chamber is ultimately made ineffective. If that is the experience of the world, I do not see why that experience should be neglected and in the States we should repeat a machinery of legislation which is bound to be only expensive and dilatory rather than useful.

The case of the Centre is different. It is so because the interests to be represented are more particularly those of the Units than of the country which is represented in the Lower House. Though a Second Chamber may therefore quite properly be provided for the Central Legislature, the arguments that may be advanced in defence of such arrangements at the Centre would not apply in my opinion to the Units. Accordingly I suggest that the place of the

[Prof. K. T. Shah]

Second Chamber may be left entirely to the Units themselves. In the first instance Parliament may determine according to the size, the population, the area and perhaps also the presence of special interests, if any, and lay down a legislative composition as in its judgment the Central Parliament thinks proper. But eventually the Unit itself and the Legislature of the Unit must have the right to say what is most suited for its requirements; and if such a request is made it should be entitled to demand a revision of the original Act as a matter of course and provide for whatever single chamber form of legislation it desires, is necessary and proper for its case.

I have therefore suggested in my amendment that though in the first instance Parliament may lay down for each particular State a form of legislature that it thinks is suitable for given areas, in the ultimate analysis the people in the Units must be able to say whether they want a Second Chamber in their case. This is not therefore summarily a rejection of the Second Chamber here and now. This is not to say that by Constitution we shall make it impossible for local opinion to prevail in the matter. All that I am asking is that in the event of the people of any Unit so desiring, they should be at liberty and entitled to demand of the Central Parliament that, in their case at any rate, a Second Chamber is needless and therefore should be done away with, whereas for others there may be a Second Chamber if the people of that unit so desire. I therefore recommend the motion to the House.

Mr. Vice-President : The next amendments Nos. 2228 and 2229 standing in the name of Mr. Naziruddin Ahmad are disallowed as being merely verbal.

Mr. L. N. Sahu may move amendment No. 2230.

Shri Lakshmi Narayan Sahu (Orissa : General): *[Mr. Vice-President, the amendment that I am moving before the House is:

“That in sub-clause (a) of clause (1) of article 148 after the words ‘States of’ the word ‘Orissa’ be inserted.”

It implies that Orissa should have two Houses instead of one and that one of these two should be the Upper Chamber. My Friend Shri K. T. Shah observed a little while ago that a Second Chamber is not very essential and that it may only be constituted where the popular will demands it. There does not appear to be anything objectionable in this proposition. But the constitution, as now being framed, makes provision for a Second Chamber. What I demand is that this provision should continue for the future as well. Second Chambers are functioning even now in Assam, Madras and Bihar. It was not felt necessary to have Second Chambers for the other provinces. I think that a Second Chamber is not needed in Assam at present. But in my opinion it would not be proper for us to decide that a Second Chamber is not necessary for Orissa merely on the ground that the Members from Orissa do not desire to have one. My submission is that there should be at least this provision, that there can be a Second Chamber if it is demanded by the will of the people. It would then be possible for us to decide whether we need a Second Chamber or not. We have adopted the American Constitution as a model in drafting our Constitution. Under the American Constitution, however, bicameral legislatures exist in all the States. Besides, we want a bicameral legislature at the Centre in order that Provinces may be represented therein. Recently twenty-five States have been merged in Orissa. So far they were separate from Orissa. Recently they have been merged in Orissa. A Second Chamber, therefore, is very necessary there.

An objection raised by a few people is that dilatory tactics are adopted in the Second Chamber and therefore it is unnecessary. As for dilatory tactics, they

* [] Translation of Hindustani Speech.

can be adopted even where there is only a single Chamber. For instance the Hindu Code Bill is under consideration for the last four or five years. Many people fear that if a Second Chamber is constituted well-to-do persons and big capitalists would be able to secure its membership quite easily. But this is what I would like to happen. Now that our country is free and until we establish a socialist State here, we should give every opportunity to men of outstanding ability and wealth to take their due share in the governance of the country. There is absolutely no justification for denying them this share. I may add that there cannot be any harm done if a few rich men are able easily to secure election to the Second Chamber. Besides, we exclude one important fact from our consideration when we criticize the proposal for a Second Chamber. It is that most probably elections are not going to be on the basis of proportional representation in the Provinces. It is, therefore, quite probable that minorities would fail to secure their due representation in the legislatures. Political parties are not yet properly formed in our country. So long as parties are not properly organised, it is possible for people of all shades of opinion to secure election only through the system of proportional representation. But there being no proportional representation, a Second Chamber appears to be essential, till parties come to be organised on a proper basis, for, then those Sections which fail to get representation in the Lower House would have a chance of getting representation in the Second Chamber.

We see that many people do not very much like a Second Chamber. But as I said a little before, Orissa has been newly formed. Twenty-five States have been merged in it recently. Therefore a Second Chamber should certainly be provided for Orissa. Besides, changes are taking place fast in our country as in the world. The creeds of Socialism, Communism and so many other isms are appearing, and are making big advances. In order to delay these changes to ponder over them and to control them, it is absolutely necessary to have a Second Chamber. Prof. Shah observed that the House of Lords in England is tradition-ridden. But this need not frighten us, for the Second Chamber we are going to constitute would not be of the type of the House of Lords. It will be altogether of a different kind. I may add that even the English people feel the necessity of a Second Chamber, for even there is a move to make it strong and effective. Further, ours is not a unitary type of government. It is federal, even though many powers of the Units have been taken over by the Central Government. I, therefore, submit that two Houses are absolutely necessary, for there is very great need of careful thought being given to all the problems that may arise. I may add that when the Centre would be so very powerful it is necessary that there should be two Chambers in the provinces. In any case a second Chamber must be provided for Orissa in the new Constitution that we are framing. I would like to add that this question of a Second Chamber may be left over to be decided by the will of the people of Orissa, and till the people take a decision in the matter we should take no decision but keep this question open.]

Shri L. Krishnaswami Bharathi (Madras : General): Sir, I move:

“That in sub-clause (a) of clause (1) of article 148, after the words ‘in the States of’ the word ‘Madras’ be inserted.”

Honourable Members will see that article 148(1) reads :

“For every State there shall be a Legislature which shall consist of the Governor; and
(a) in the States of

(here there is a blank to be filled in later on.)

My amendment, if accepted, will fill up the blank to some extent, in the States of Madras : that is to say, in the States of Madras there shall be two Houses—one the Legislative Assembly and the other the Legislative Council.

[Shri L. Krishnaswami Bharathi]

Sir, it was understood that Members representing the different provinces should meet together and come to a decision as to whether they would like to have a Second Chamber for their province. Accordingly, Members belonging to the different provinces met separately, and the representatives of Madras also met similarly under the presidency of Rashtrapati Dr. Pattabhi Sitaramayya, and after sufficient discussion it was decided that Madras shall have two Chambers. Recently this decision was come to, but last year.....

Shri Mahavir Tyagi (United Provinces : General): On a point of order, may I know if it is necessary that honourable Members from all the provinces that have decided to have two Chambers should come here and move separate amendments for their provinces: Cannot the decisions reached by those Members be included in one full list?

Mr. Vice-President : If the honourable Member will have patience for a few minutes longer, he will find the answer to this query given by the Chairman of the Drafting Committee.

Shri L. Krishnaswami Bharathi : I was saying that the Members representing Madras met together and decided sometime last year, when a similar decision was come to, and to regularise it we met recently and decided accordingly.

There is some opposition to this idea of a Second Chamber. I am inclined to think that it is born more out of prejudice of the present Second Chambers and the general view is, and I also agree with that view, that the idea of a second Chamber is to prevent or check hasty legislation. Experience has shown that so far as the proceedings of this Assembly are concerned, last year we decided many matters. In similar matters we have come to decisions and it was only submitted to the Drafting Committee to put them in order. But we find that we are revising many articles: even article 150, where we fixed a limit is undergoing constant changes. That shows that there is always need for some time to elapse.

In this connection, I might invite the attention of the House to an interesting incident reported in the life of George Washington. It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farrand reports this incident very interestingly: they were taking coffee at breakfast time. Suddenly George Washington asked: "Why, Mr. Jefferson, why are you pouring the coffee into your saucer?" Jefferson replied: "To cool it" Even so, we want to cool legislation by putting it into the saucer of the senatorial Chamber. That is a forceful way of expressing the idea and as we are going to be constituted, it is to check or prevent hasty legislation and not at all to impede progressive legislation. There shall be no mistake about it; the idea is not to check progressive legislation but to have some time so that cool, calm and deliberate conclusions may be arrived at.

Therefore, there is absolute need for a Second Chamber for some time, and as I understood Prof. K. T. Shah, I think he wanted that there must be some provision so that if we did not want a second Chamber later on, we must be able to do away with it, not necessarily by amending the Constitution, which is not an easy affair, but provision must be made in the Constitution itself. That is how I understood him.

If the Prof. turns to article 304, sub-clause (2), a provision therefore is therein made. That provision enables the Units or the Legislative Assemblies of the different States or Provinces, as the case may be, to initiate proceedings in a particular assembly with a view not to have the Second Chamber. That is a broad clause which enables a Provincial Legislative Assembly to

decide upon the number of Houses if they so desire. With your kind permission, I may be allowed to read that portion of article 304 (2)...

Shri S. Nagappa (Madras : General): Not necessary !

Shri L. Krishnaswami Bharathi : Why? It is not for Mr. Nagappa alone: I am reading it for the enlightenment of the House. I suppose, Sir, I have your permission. If Mr. Nagappa knows it, that does not mean that others need not be enlightened.

Article 304(2) reads:

“Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.”

So, provision has been made. As I was speaking, some honourable Members wanted to know whether there was a possibility of the Provincial Assembly scrapping it. I looked it up and I thought it my duty to invite the attention of the House to the provision made in this Constitution. I therefore hope that this amendment will be accepted.

Sir, I move:

Mr. Vice-President : There is an amendment to this amendment—No. 46 of List II, standing in the name of Dr. Ambedkar. Is the honourable Member going to move it?

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

“That for amendment No. 2231 of the List of Amendments, the following be substituted:—

‘That in sub-clause (a) of clause (1) of article 148, after the words ‘in the States of’ the words ‘Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab’ be inserted.’”

Sir, I should like to state to the House that the question of whether to have a second Chamber in the provinces or not was discussed by the Provincial Constitution Committee, which was appointed by this House. The decision of that Committee was that this was a matter which should be left to the decision of each province concerned. If any particular province decided to have a second Chamber it should be allowed to have a Second Chamber: and if any particular province did not want a second Chamber, a second Chamber should not be imposed upon it. In order to carry out this recommendation of the Provincial Constitution Committee it was decided that the Members in the Constituent Assembly, representing the different provinces should meet and come to a decision on this issue. The Members of the different provinces represented in this Assembly therefore met in groups of their own to decide this question and as a result of the deliberations carried on by the Members it was reported to the office that the provinces which are mentioned in my amendment agree to have a Second Chamber for their provinces. The only provinces which decided not to have a second Chamber are the C. P. & Berar, Assam and Orissa. My amendment gives effect to the results of the deliberations of the representatives of the different provinces in accordance with the recommendation of the Provincial Constitution Committee.

Sir, I move.

Mr. Vice-President : Then we come to amendment No. 2232 standing in the name of Shri Mohanlal Gautam. Amendment No. 2233 also is in his name. The honourable Member is not in the House, so these two amendments go out.

The article is open for general discussion.

Shri Kuladhar Chaliha (Assam : General): Mr. Vice-President, Sir, one of the most vexed questions of political science is the problem of a Second Chamber. In the 19th century in Europe, Second Chambers were necessary in order to check hasty legislation, but in modern days even if a second Chamber is allowed to exist we must restrict its powers so that it may not be a clog on our progressive ideas.

Almost all the important States had Second Chambers in olden days, but Turkey and Bulgaria have dispensed with them. The Second Chambers are regarded as an essential element of feudal constitutions. They are the exceptions to the rule of the Constituent units not to have any Second Chambers anywhere. In the U.S.S.R. and in the Union of South Africa the Constituent units are all unicameral. In the Dominion of Canada we find that out of eight Provinces only two have Second Chambers. In the case of Switzerland out of 18 Cantons, except two, all the other 16 are unicameral. In Weimar Germany half the States were unicameral.

The Second Chambers seem to have been created by force of tradition. It seems that the vested interests—men of dignity and nobility—want that they should adorn the benches where they can find some defence against the attack on their rights. It is said that wherever there are vested interests which require defence, the Second Chamber will always be claimed. In India we find that where there are *Zamindars* they want the Second Chamber. We find from the claims made by the different Provinces that are now claiming the Second Chamber, there are the vested interests, there are the Zamindars, and they want to be protected against the majority. But then in these progressive days legislation will be held up if we have a Second Chamber, and therefore we should not allow these Second Chambers to exist. Yet, we find that there is a certain amount of desire on the part of some of the Provinces. Assam has rightly said that they are not in want of it; Orissa has also said that they are not in want of it and C. P. has also said that. It is in the fitness of things that they have done so.

A Second Chamber is nothing but a clog in the way of progressive legislation. In our old Central Legislature, by delaying tactics, we have held up the Hindu code for about four or five years. It is very easy to obstruct progressive legislation as we have done in the case of the Hindu Code. But if we have another Second Chamber I think it will only be adding further trouble in the way of passing progressive legislation. It is really very surprising that some of our Provinces are claiming that there should be Second Chambers even today. They should think that this is rather a burden to them than adding to their progress; the Second Chamber in the past has clogged some very good pieces of legislation in Europe and other countries. I think as a modern people we should get rid of these ideas and we should march forward. Therefore, we should not have Second Chambers in our country.

Secondly, there is another thing. We do not find a sufficient number of leaders in our Provinces to man the Second Chamber. In the smaller and backward Provinces we feel the difficulty and we have rightly voted against the Second Chambers. Even in the bigger Provinces I think we have not been able to produce a sufficient number of leaders who can man it very well.

An Honourable Member : That may be the case in your Province!

Shri Kuladhar Chaliha : I see. There may be an exception but then it does not prove the case—it rather proves the other way.

You will only be clogging the progress of the country by having second Chambers in Bombay, Madras and other Provinces, so that there may not be any advance. That is how things will be done. These four Provinces will be a clog to us and they will be a drag on our progress. Therefore, the sooner they get rid of this idea and the sooner Dr. Ambedkar withdraws that amendment, the better it will be for the country. Before accepting the amendment, I trust the House will consider it properly and see whether they would like their progress to be clogged, as they want to do.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, the Draft Constitution makes provision for either unicameral or bicameral legislature, as the case may be; it leaves the choice to the States concerned and some States have chosen to have bicameral legislatures. Three States—rather Provinces—have chosen to have unicameral legislature. We are very familiar with the arguments for and against a bicameral legislature. I merely want to draw the attention of the House to the practical aspect of the matter. The people who advocate a bicameral legislature usually say that it is a device against hasty legislation. My Friend Mr. Bharathi gave a very picturesque illustration.

I want my friends who are in favour of a bicameral legislature to remember that we are framing a Constitution for a responsible system of Government. That presupposes party system. Party system of Government works in a peculiar way and not in the way of unicameral or bicameral legislature as such. Every major decision is taken in the party meeting and not in the Upper House or in the Lower House. So the real legislature from the point of view of practical politics seems to me, Sir, to be the party meeting. Once the question is decided in the party meeting, it does not matter whether the question is brought up before the Lower House or the Upper House, or even if there are ten Houses; there is no question of preventing hasty legislation, once the party decision is taken on the subject. Hence when...

Shri O. V. Alagesan (Madras : General): Will not the members of the Upper House be the members of the party also?

Shri K. Hanumanthaiya : That is exactly what I was going to say. You are arguing for me. The party in power will certainly have under the Constitution we are framing a majority both in the Upper House and the Lower House, because it happens to be an elected legislature. Once the joint meeting of the Party Members of both the Upper House and the Lower House takes a decision, that decision goes through irrespective of the opposition or the arguments to the contrary. Such being the case, it is a costly formality to have two Chambers. My Honourable Friend Bharathi gave an illustration of a cup and saucer to show the utility of the Second Chamber. Whether it is the cup or the saucer into the which the coffee is poured, it is the pot that determines the temperature of the coffee. The pot here is the party meeting; it determines the way we have to vote. Therefore, I really do not see how the Second Chamber under the existing circumstances will be able to show us a better way or a sober way.

I have got another point, Sir. In a federation the legislative field is to a very great extent restricted so far as the legislatures of the unit are concerned. Much of the legislative field and administrative field is taken under the present Constitution by the Centre and what remains is very restricted. For that restricted field, to have two Houses, I fear, is really a very costly and unnecessary affair. Apart from the point of view of legislation, there is also the point of view of administration from which we have to examine this problem. The Ministers who are popular leaders have to devote much of their time to visitors. It is the experience of every Minister in India that much of his time is taken away by visitors and by people who come to see them for all sorts of purposes and very little time is left to them. If we have got two Houses, probably the Lower House will have to sit several months in the year and in addition to it

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the Ministers would have to spend necessarily much of their time in the Upper House also. I think practically they have to do talking all the time administrative work suffers in consequence. In fact, if I may claim to know a little of the working of the Ministries in India in the units and the States, they are usually charged with inefficiency. The speed with which administrative work used to be done in the olden days is not done now. That is the specific charge levelled against the various ministries in the units. I do not know how it is in the Centre. But the real reason is they have no time; they have to be talking all the time. It is better in the interests of efficiency and speed of the administration to do away with the Second Chamber.

Mr. Vice-President : Many speakers would like to speak on this subject.

Mr. K. Hanumanthaiya : Very well, Sir. I have done.

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, I am one of those who hold the opinion that the bicameral legislature in the present context of things is unnecessary, if not retrograde. Sir, in India, particularly at the present moment, when we need to go through a good deal of legislation in the economic and social field, which has been long overdue during the years of foreign rule, I do feel that the Second Chamber, particularly in the provinces will be very dilatory. The only reason advanced for having a second Chamber is that we can thus prevent hasty or careless legislation. But, Sir, when there is a Governor, in the Province and a President at the Centre, who is empowered to send back to the legislature any Bills which may have been enacted carelessly, for revision, I do not think that this excuse obtains. However, Sir, the majority of provinces have decided to have a second chamber and therefore, in the present Constitution, we shall be embodying it. I want to point out only this, that even if we at the present moment do have to agree to have second chambers in the provinces, there should be some provision in the Constitution that the Second chambers can be got rid of as speedily as possible, not at the initiative or the votes of both Houses of Legislature in the provinces, but according to the desire of the Lower House alone. I do not think that it is right that whether a chamber shall continue to exist or not, should be left to that chamber to decide in any way. Although there is an article in the Draft Constitution regarding the manner in which the provinces may decide later not to have Second Chambers, if they do not wish to, that article prescribes that this can be done by both Houses of the Legislature. I hope, Sir, that when the time comes, at least the House and Dr. Ambedkar will agree that it should be the Lower House alone which shall decide whether the Second Chamber should continue or not. As I said before, I do not think that bringing in the Second Chamber is going to be helpful at the present moment. I do understand that the composition of the Second Chamber is going to be fundamentally different from the composition of the Upper Houses of the past. But all the same in the present context of things, as I have said, it will be very much better if we had just one Chamber. As we have seen during the past year or so, while this Constituent Assembly has been functioning as a Dominion Legislature and with an unicameral Chamber, even so the procedure by which legislation is enacted is slower than we desire. I do not see why it is necessary, particularly in the Provinces, that we should go in for a second Chamber, and if we do so, at least let us provide that the Lower Houses in the Provinces are in a position to rid themselves of this encumbrance as soon as possible.

Shri O. V. Alagesan : Mr. Vice-President, Sir, the Principle of a second Chamber directly comes before us only today. It was considered by the House when the Report of the Provincial Constitution Committee was submitted to the House not in a direct manner, but in a sort of a backdoor way, I should say.

Shri L. Krishnaswami Bharathi : How?

Shri O. V. Alagesan : Because, the Honourable Sardar Vallabhai Patel, who moved the Provincial Constitution Committee report for the consideration of the House said that the Committee generally agreed that there should be only one House of legislature; but, then, he went on to describe the procedure that the Honourable Dr. Ambedkar just now told the House. The choice was left to the Members of the Constituent Assembly from the various provinces; they were asked to decide whether they should have a Second Chamber or not for their province. This liberty was good in a sense; but that very same liberty prevented the House from going into the question in a deeper way and examining it on its merits. When the Honourable Sardar Patel moved the particular clause dealing with this matter, he expressed the hope that the small provinces may not elect to have a Second Chamber. But, actually it turned out that the six provinces enumerated by Dr. Ambedkar have elected to have a Second Chamber. They did not do it, I submit, on merits. What has been originally conceived as an exception has come to stay as a rule.

Shri L. Krishnaswami Bharathi : May I point out, Sir, that the honourable Member was not present on that occasion and that therefore he is not entitled to say this?

Shri O. V. Alagesan : That was because I was not well. That does not take away my right to express my opinion.

Mr. Vice-President : Please try to address the Chair; do not try to reply to Mr. L. Krishnaswami Bharathi.

Shri O. V. Alagesan : Yes, Sir. That particular procedure made the Members of the various provinces think, "Let us have this ornament of a second Chamber." On the other hand, if the question had been placed before the House in a direct and straightforward way, I think the House might have decided against a second Chamber. That was my submission. Since this is the first occasion when we are dealing with this question on merits, this House has got every right to say that we shall not have a second Chamber now.

Then, it was said that these six provinces happen to be big ones now. In some future date they may get split up. Then, what is the provision? They cannot easily get rid of this second Chamber. Already there is an objection to the formation of linguistic provinces on the ground of their financial instability. This will be an additional reason for that, because, the cost of the second Chamber will be an unnecessary burden on the small provinces when they are formed.

Several speakers before me showed how a second Chamber is an unnecessary anachronism. I will say that this is a sort of an old age pension device for the politicians. When we deal with the composition of the second Chamber, I think I shall be able to explain how it will be a demoralising influence and not a helpful influence in the politics of the State. My Friend, Mr. Krishnaswami Bharathi, gave us the cup and saucer example given by Washington. I beg to submit that we have far advanced several centuries from the days of Washington and enlightened constitutional opinion in America today is against a second Chamber. Several experts have prepared a model constitution for the United States of America. They have omitted this bicameral system and have recommended only a unicameral legislature for the States. Though, up till now, only one State has elected to have a unicameral system. I shall quote an American authority on this specific matter and it will be clear how this Second Chamber acts as a reactionary Chamber. The argument often advanced in favour of the second Chamber is that it will be a check on hasty

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legislation by the lower Chamber. He shows how it is only a myth. The learned author says:

“While this idea might seem reasonable and logical, the practice of the bicameral system has contributed little or no evidence in support of this theory. On the contrary, large numbers of instances indicate that politicians have played one House against the other to defeat proposals for which there was a wide public demand, and that they have in this way succeeded in avoiding personal responsibility for their action.”

In such unexceptionable words the bicameral system has been condemned by this author. So, I would like first of all that this principle of a second Chamber for the Provinces should be outright rejected by this House and if that is not possible, if the House does not propose to do that, I would request that there should be at least a provision by which the lower Chamber in any province will be able to do away with the second Chamber by a simple resolution. As it is, sub-clause (2) of article 304 was quoted. Even there, the procedure is rather complicated. When the majority in the Lower House is rather precarious, the Upper House, because it will naturally stand for its preservation, may defeat the purpose. Again, it has to be approved by Parliament to come into force. So, that provision should be altered so as to permit the lower Chamber to do away with the Upper Chamber by a simple resolution passed by a majority of the lower House.

Sir, I have done.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I have listened with the attention that a discussion on a matter like this deserves, to the speakers that spoke before me. Speaking for myself, I am in sympathy with many of those who opposed the idea of the introduction of a second Chamber in the provinces. It is a matter that has been debated all over the world ever since the idea of constitutions came into being, whether second Chambers are necessary or not, and it admits of a wide room for difference of opinion. I am not, Sir, today concerned with examining whether it is right to have a second Chamber for the provinces or not. What I wish to point out to this honourable House is that this House on a former occasion has accepted certain fundamental principles which were intended to serve as a guide for the Drafting Committee to frame the Constitution. The question is whether these principles could be given the go-by means of the negation of an article, without the whole thing being overhauled or upset in the proper way, namely by a proper number of people wanting a complete change in a decision made by this honourable House on a previous occasion according to the rules made for that purpose.

Sir, it may be open to question what is a fundamental principle and what is not. For instance, if we had said that a President is not necessary for this Constitution, that would be going against a fundamental decision made by this House on the report of the Union Constitution Committee. Similarly, if we say that a Governor is not necessary for a State, that would, again, be going against a fundamental principle. It would not be, Sir, going against a fundamental principle based on a decision of the House if we say that the Governor is to be elected in such and such a manner or be nominated in such and such a manner or that the President is to be elected in such and such a manner. On the 18th of July 1947, this House accepted the broad outlines of the Provincial Constitution Committee's report, particularly in regard to Rule 19 which bears some relation to the article that is being discussed by the House.

The Honourable Sardar Vallabhbhai Patel moved—

“There shall for every province be a Provincial Legislature which will consist of the Governor and the legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council.”

Actually, the provision was fairly carefully framed so as to give the maximum amount of latitude to each province to decide whether or not to have a second Chamber. Some of my honourable Friends have referred to the manner in which this decision was arrived at. Sir, after the particular rule was passed by this House, at the appropriate time the Secretariat of the Constituent Assembly sent summons for Members representing each particular province to meet on a particular day and arrive at a decision whether or not to have a second Chamber. Sir, I think it is not disclosing any confidence or making any breach of confidence if I say that I was one of those who stoutly opposed the introduction of second Chamber so far as Madras province was concerned in the meeting of the representatives of that province and I was outvoted, but I do not think that merely because the decision of a large number of Members who represented my province ran counter to my own views that I could take advantage of the discussion on this clause to go against not merely the decision of the legislators of my province but also against the decision arrived at by this honourable House on the 18th July 1947. Sir, the proper course undoubtedly would be, for such of the Members as feel that this is not the proper thing to do, to take advantage of Rule 32 of the Rules of procedure of the House and have the whole question mooted once again by getting the requisite number of Members to sign a requisition for reopening this particular question. That is the proper way to go about this business and I do feel that, though the House can ordinarily reject this particular article 148 either in its entirety or a portion of it,—there is nothing to prevent a sovereign House from doing a thing which it wants to do,—I think in all decency we cannot go against a principle which has been accepted on the 18th July 1947, a principle which was further supported by meetings of the representatives of the various provinces meeting separately and deciding whether or not a particular province will have an Upper House. It is a different matter completely if this House should decide that the constitution of the Upper House should be different from what it was decided on the 18th July 1947, or what is mentioned in this Draft Constitution as drafted by the Drafting Committee. I shall have something to say about that at the appropriate time. But we are perfectly entitled to say that the Upper House shall be elected in entirety by the lower House, that the Upper House should be nominated in its entirety by the Governor, that the Upper House should be elected from all kinds of mushroom constituencies, that the Upper House should only represent labour and not vested interests or conversely that the Upper House should only represent vested interests and not labour, or that there should be equal representation of both, and it may or may not have representatives of functional interests in the Province—all these things are matters in which the House has got perfect liberty morally to go into and make appropriate changes if it so feels disposed. But I do feel that in view of the commitments that we have already entered into on 18th July 1947 and a further reinforcement of that commitment agreed to by the fact that representatives of provinces have to second Chambers in those particular provinces which have been enumerated by the amendment moved by my honourable Friend Dr. Ambedkar, I think it is not right for the House to go further into the original question as to whether or not a particular province should have an Upper House and the matter should therefore be left at that and the article should be accepted in the form in which it has been presented to the House.

Shri Biswanath Das (Orissa : General): I do not like to inflict on this House a review of the working of the Upper Chambers in various States in the world. That is a function beyond the possibility of the limitations in which I am here. Sir, enough to say that the sort of second Chamber that is called upon to be constituted in the provinces is in many ways different from the ones that you find in very many States today functioning in the World

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Enough we have got a second Chamber at the Centre. The Second Chamber in the Centre is also shorn of the usual prestige and responsibility which is attached to it in advanced States like U.S.A. Nowadays it need hardly be stated that the Chamber which has an indirect election, and much less a Chamber having a nomination, has the least prestige and influence in the country and much less to arrest the progress of any legislation, be it hasty or revolutionary. Under these circumstances, the system that is being devised and kept ready to be utilized for the Second Chamber in the provinces is not very helpful. We have in it a conglomeration of various things. You have in it an indirect election, you have in it a nomination, you have in it an admixture of election and panel again leaving to the will of the Ministries. Under these circumstances, the system that is devised for the second Chamber is not useful and I must say that is not going to be helpful. Therefore it cannot influence the decision of the Lower House of which it will be merely a reflection—a sad reflection. Sir, secondly, it can not check hasty legislation if the Lower House is going to make any hasty legislation because of the limitation under which it is to work. Sir, under these circumstances the second Chamber that is devised for the provinces is not helpful and, need I say, will be a costly show. So far as our province is concerned, I must thank the honourable Members of this House and more especially those who are responsible for the decision of leaving this to the provinces. It is in the fitness of things that the delegates from the provinces are called upon to decide this question. I do not see how much could be said or stated against the point as was mentioned by Mr. Krishnamachari. True it is that it was left to the provinces. My friend says the provinces have decided. I do not know when they decided. I come from the Province of Orissa. We delegates from Orissa were never called upon to discuss this question except once and that decision was against the constitution of the second Chamber.

Sir, I have thanked, and I again thank the Committee as also the honourable Members of this House, for leaving this question entirely to the Provinces. Speaking for ourselves, we have taken extraordinary precautions in coming to the conclusion that we did. We intimated the Ministers, and also the Premier of Orissa who happens to be a Member of this honourable House, though he was absent. We also had the views of the Ministry, and we had before us the views of the Premier, and also those of the Member delegates. And to make ourselves doubly sure, we also invited the representatives of all the States who had merged into Orissa and also those of the States who intended to merge into Orissa; all these were invited and they were allowed to take part in the deliberations. Therefore, as a result of the combined deliberation of all these persons, unanimously we came to the conclusion, with the single exception of one Member, Mr. Sahu. We came to the majority conclusion that we shall not have a second Chamber. Sir, second Chambers are not useful. They are not helpful. As I have already stated, they are only ornamental. But if they were merely ornamental, that would have been something, because ornaments have their value, they make even things attractive. But here it is so very expensive, it entails such a heavy burden on the provincial exchequer, with no useful purpose, that it makes me feel that it is absolutely unnecessary and that it is an appendage which it is better if it is thrown out.

Mr. Vice-President : Dr. Ambedkar.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President,.....

Mr. Vice-President : Mr. Kamath comes from the C. P. which has no upper Chamber.
(*Laughter.*)

Shri H. V. Kamath : That is exactly, Sir, why I would like to speak.

Mr. Vice-President : I think the point has been sufficiently discussed. Some four more honourable Members would probably like to speak, but we have already spent one and a half hours, and we have to make a definite progress every day. I offer my apologies to those gentlemen who have been disappointed; that is all I can offer in the present circumstances. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret I cannot accept any of the amendments that have been moved to this particular article. I find from the speeches that have been made that there is not the same amount of unanimity in favour of the principle of having a second Chamber in the different provinces. I am not surprised at the views that have been expressed in this House against second Chambers. Ever since the French Constituent Assembly met, there has been consistently a view which is opposed to second Chambers. I do not think the view of those who are opposed to second Chambers can be better put than in the words of Abbe Seiyes. His criticism was two-fold. He said that if the upper House agreed with the lower one, then it was superfluous. If it did not agree with the lower House, it was a mischievous body and we ought not to entertain it. (*Laughter*). The first part of the criticism of Abbe Seiyes is undoubtedly valid, because it is so obvious. But nobody has so far agreed with the second part of the criticism of Abbe Seiyes. Even the French nation has not accepted that view; they too have consistently maintained the principle of having a second Chamber.

Now, speaking for myself, I cannot say that I am very strongly prepossessed in favour of a second Chamber. To me, it is like the Curate's egg—good only in parts. (*Laughter*.) All that we are doing by this Constitution is to introduce the second Chamber purely as an experimental measure. We have not, by the Draft Constitution, given the Second Chamber a permanent place, we have not made it a permanent part of our Constitution. It is a purely experimental measure, as I said, and there is sufficient provision in the present article 304 for getting rid of the second Chamber. If, when we come to discuss the merits of article 304 which deals with the abolition of the second Chamber, honourable Members think that some of the provisions contained in article 304 ought to be further relaxed so that the process of getting rid of the second Chamber may be facilitated, speaking for myself, I should raise no difficulty (*hear, hear*), and I therefore suggest to the House, as a sort of compromise, that this article may be allowed to be retained in the Constitution.

Mr. Vice-President : I am now going to put the amendments to vote, one by one.

The question is—

“That for the existing clause (1) of article 148, the following be substituted:—

- ‘(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature and such request being duly made and received, Parliament shall pass the necessary legislation.’”

The amendment was negatived.

Mr. Vice-President : The question is—

“That in sub-clause (a) of clause (1) of article 148 after the words ‘States of’ the word ‘Orissa’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is—

“That for amendment No. 2231 of the List of Amendments, the following be substituted:—

‘That in sub-clause (a) of clause (1) of article 148, after the words ‘in the States of’ the words ‘Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab’ be inserted.’”

The amendment was adopted.

Mr. Vice-President : No. 2231, standing in the name of Shri L. Krishnaswami Bharathi need not be put to vote.

Now, the question before the House is:

“That article 148, as amended, stand part of the Constitution.”

The motion was adopted.

Article 148, as amended, was added to the Constitution.

Article 149

Mr. Vice-President : Then we come to article 149.

The motion before the House is:

“That article 149 form part of the Constitution.”

Coming to the amendments, I find that amendment No. 2234, and the first part of amendment No. 2235 are identical. No. 2234 may be moved.

(Amendment No. 2234 was not moved.)

Amendment No. 2235 may be moved, standing in the name of Mr. Lari.

(Amendment No. 2235 was not moved.)

Amendment No. 2240. The Member who has given notice of it is not moving it.

Amendment No. 2236 of Mr. Naziruddin Ahmad is disallowed as being verbal.

Amendment Nos. 2237 and 2238 are of similar import. The latter being the more comprehensive one may be moved. The Member concerned, is not moving it. Therefore amendment No. 2237 may be moved. This is also not moved.

Then we come to Amendment No. 2239 standing in the name of Shri Damodar Swarup Seth. It may be moved. I understand that the Member is not in the House. It is not therefore moved.

Amendment Nos. 2241 and 2242 are identical. Amendment No. 2241 may be moved. It stands in the name of Dr. Ambedkar.

An Honourable Member : It is not being moved. (Voices: ‘Member not in the House’) *(Laughter.)*

Mr. Vice-President : (Seeing the Honourable Dr. Ambedkar coming into the Chamber) Honourable Members are at perfect liberty to go out to take a cup of coffee or have a smoke. They will kindly realise the difficulties of those who are accustomed to both these types of relaxation. Honourable Members will agree that Dr. Ambedkar is entitled to relaxation of that sort. The Chair has nothing to do but to listen to the debates, but Dr. Ambedkar has to listen to the debates and reply. *(Laughter.)*

I understand that Shri Lokanath Misra and Shri Nand Lal are not moving amendment No. 2242.

Amendment No. 2243 is disallowed as it is verbal.

Amendment No. 2244 and the first part of amendment No. 2245 are identical. The latter may be moved. As the mover Prof. Shibban Lal Saksena is not in the House, it is not moved. Therefore amendment No. 2244 may be moved. The members concerned are not moving it. The second part of amendment No. 2245 is also not moved for the reason that the Member is not in the House. The next amendment, viz., 2246, standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam, also is not moved, the Members concerned being absent.

Now, Prof. Shah may move amendment No. 2247, as also amendment No. 2248 immediately following.

Prof. K. T. Shah : Mr. Vice-President, as suggested by you, I shall move both the amendments now. I beg to move:

“That the following new clauses be added after clause (2):—

‘(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate.

No one who is unable to read or write or speak the principal language spoken in the State for a seat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.

(2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of election, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by the electors; and this arrangement shall hold good in the case of a General Election, as well as at a by-election, if and when one become necessary:

Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of Trade, Profession, occupation or interest recognised for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as a single constituency for the entire State’.”

and

“That clause (3) of article 149 be deleted and the following be substituted:—

‘The representation in the State Legislature shall be on the basis of one representative for every lakh of population:

Provided that the total number of members in the legislative Assembly of a State shall in no case be less than sixty’.”

There are several points in amendment No. 2247 which have, on an earlier occasion, been brought before the House. They refer to the disqualifications and qualifications which were stated while discussing the composition of the Central Legislature. The House apparently did not agree with me and, on that occasion, at any rate, rejected my proposal. I am again bringing it forward from the point of view now of the local legislatures, I hope with better fate.

The point, however, of great importance is that even if you cannot make all the voters literate within the time that the legislatures are constituted, you should certainly insist, in my opinion, upon candidates for the high office of the legislature to be qualified in certain ways, or not to suffer from disqualification in other ways.

[Prof. K. T. Shah]

The qualifications I have suggested are quite modest, not very exacting and in no way offend against the basic principles of democracy, that is to say, every individual should have the right to choose his representative. That being conceded, it may yet be desirable that those who offer to represent should at least have the minimum qualifications not of property, not of economic strength, not of any measure that indicates inequality as between citizens, but of capacity to render service, ability to understand the issues coming before them and honesty enough impartially to record their votes in the legislature so that you may have a fair legislation for the benefit of the country. I think that though it may be possible to have even between equally qualified and equally honourable men, differences on grounds of principle, we should differentiate between people who suffer from certain disabilities of the type I have suggested in this amendment. I put it to those who are responsible for this draft and to the House also that, even if we decide as we have decided and must insist upon that, without waiting for the coming of complete literacy, all the adult population should have the vote, we should nevertheless insist that the candidate must at least have certain qualifications and not suffer from certain disqualifications which I have tried to illustrate. These are only illustrations, not, so to say absolute qualifications or indexes of merit in themselves. I have stated nothing more than the minimum requirements for understanding the issues that would come before the legislature. As such I think it is but right and proper that at least in the case of candidates we must insist upon these qualifications. Those who become Members should similarly be free from certain practices or convictions against them; that may be taken also as the common-places of constituting legislatures and should not require any further argument on my part.

There is a point which I have made in a part of this amendment that deals with proportional representation. I am afraid the House is not in favour of that idea and therefore I will not labour the point. It is liable to be ruled out of order and therefore I shall not myself press it.

The last point stressed in my amendment No. 2248 is that the representation in the State Legislature shall be on the basis of one representative for every lakh of population: Provided that the total number of Members in the Legislative Assembly of a State shall in no case be less than sixty. The former is I admit an arbitrary selection. It may be varied. I only put it forward because I thought it is indicative of the State Legislature being really representative of large numbers of the population at the same time keeping the membership within manageable proportions. A lakh is a large number. Adult voters in a population of one lakh would be about fifty to sixty thousand and as such the possibility of securing a clear verdict on the multiplicity of issues that may be placed before the provincial electorates at the time of the general election would be too great to enable a voter justly to say that every single issue before that electorate has been clearly voted upon by all the voters even if all go to the polls.

But while recognising the limitation, I have also in mind the practical requirements of having legislative assemblies of manageable sizes and as such, this kind of arbitrary selection is necessary. That can only be remedied, I think, if you continue the process of legislative organisation in units of smaller and smaller population, that is to say, carry it from your huge provinces down to some district or municipal level where perhaps you will have a much more direct representation and therefore direct self-government of the people. But as the provinces or States now stand, it seems unavoidable to select a figure such as the one that is selected and for that I claim no more merit than that

it is likely to give you a more direct and more full representation of the people than any larger number. For the rest, the second part of the amendment gives the minimum and not the maximum. I am against keeping a clause which gives the maximum number of representatives to be found in any province of any State on the ground that by fixing such a maximum, whatever the figure may be, you deny the larger electorate really speaking, the right to assert itself. It is not that you are disfranchising, it is that you are combining them in such a manner that considerable portions may neutralise the effect of other portions and as such your representative body may not be truly representative. On these grounds I commend these two amendments to the House.

Mr. Vice-President : The next amendment is No. 2249 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, with your permission I wish to move the alternative amendment to this, *i.e.*, No. 48 in List II as I think that form it may be acceptable to the House. Sir, I move:

“That for amendment No. 2249 of the List of Amendments, the following be substituted:—

‘That in clause (3) of article 149, for the words ‘last preceding census’, the words ‘last preceding census of which the relevant figures have been published’ be substituted.’”

This principle has already been accepted in two other contexts. It is laid down in clause (3) that there should be one representative for every lakh of the population. It is stated also that that population will be found from last preceding census. My point is that the figures of the preceding census may not be available and in that case we may have to go to the immediately preceding census of which figures are available. Some doubt has been expressed in the House whether it would be wise to depend upon the 1941 census, that is to say, that the 1941 census is already obsolete in view of the mass exchange of population. Not only in the case of West Bengal and East Punjab but other Provinces also the population figures have been disturbed. So far as the next elections are concerned, I suggest that there should be a fresh census or some method of ascertaining the actual number of persons in each province and if communal reservations are allowed, we shall also need the figures on a communal basis. In any case, some method of ascertaining the population figures is absolutely inevitable. This principle has already been accepted.

(Amendment No. 61 of List IV was not moved.)

Mr. Vice-President : Amendment No. 62 of List IV standing in the name of Mr. T. T. Krishnamachari.

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

“That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, for the words ‘every lakh’ the words ‘every seventy five thousand’ be substituted.”

Sir, as the House will understand, this amendment seeks to meet certain objections that may possibly be raised to fixing the figure at a lakh in the case of areas which are backward where the population is sparse but the area is very large. Such areas abound in the country in very many provinces. There are a good number of pockets where perhaps a whole taluk does not contain more than seventy-five thousand people. Actually in the Constitution we envisage that every voter should be able to exercise his vote, but distance happens to be a very important factor in the exercise of that vote. It might

[Shri T. T. Krishnamachari]

be that in an area where there are about seventy-five thousand people, if the total number of voters are roughly half of seventy-five thousand, because of the distance to the polling booth, even a fraction of the thirty five or thirty-seven thousand voters may not exercise their votes; and the problem therefore is that we must minimise those factors which will prevent the voter from exercising his vote. Actually, in the Constitution which is based on adult suffrage, we are making no provision with regard to transit for the voter to go to the polling booth. Distance will be a vital factor for a number of people in exercising their votes. Sir, it is a matter of common knowledge to Members of the House who have had to face elections that the person who has the largest number of conveyances is usually the person who succeeds in an election, though it often happens that people go in one person's conveyance but vote for another person: But, by and large, the person who is able to command the largest number of conveyances is able to secure the largest number of votes. If possible, we should minimise the effect of this particular factor operating in our future constitution. Having in view the peculiar conditions of our country, the peculiar conditions in the various provinces, it seems right that the limit ought to be lowered from one lakh to seventy-five thousand, though the sequel to it would be that there would be variations in the number of voters in constituencies, but we shall perhaps be able to insert provisions in this Constitution later on so as to minimise these variations to the lowest possible limit. Taking my own province, we may probably have six or seven such constituencies where the population will be seventy-five thousand, but this will not detract from the representative character of the legislature concerned or do any injustice to the areas which are more thickly populated. This is a saving clause which is very necessary in order to provide representation for the backward areas. I hope, Sir, the House will accept this amendment.

May I also move the related amendment which is No. 662.

Mr. Vice-President : You can do it later on.

Mr. Naziruddin Ahmad : I have a point of order. You will be pleased to find that in the notice sent to me with reference to amendment Nos. 2249 and 2250 that in the first place neither of these have been moved. Secondly, in place of 2249 I have moved another amendment and that has a reference to a different subject altogether. In fact it has a reference to the census but the present amendment deals with the number of units.

Mr. Vice-President : Kindly come up to the 'mike'. You are inaudible to me.

Shri T. T. Krishnamachari : May I suggest that the House has already agreed to his moving an amendment to his amendment No. 2249 and as such he may be restrained from raising any further point of order.

Mr. Naziruddin Ahmad : In raising this point of order I have nothing to say against the merits of the amendment. My point will be a technical one. It is said in this amendment that it is with reference to amendment Nos. 2249 and 2250. That is amendment No. 62 in List IV.

Mr. Vice-President : Wait, wait. Do not be in such a hurry.

Mr. Naziruddin Ahmad : This amendment is sought to be moved with reference to amendment Nos. 2249 and 2250. I have not moved the first one. But I have moved a substitute amendment with regard to No. 2250. If by implication a reference is being made to the substitute amendment. That will be found to relate to a different subject.

Mr. Vice-President : Your contention is that it is not right to move amendment No. 62 in List IV here.

Mr. Naziruddin Ahmad : Yes, I want to clarify the position.

Mr. Vice-President : The position is quite clear and the common-sense view is that it should come here.

Mr. Naziruddin Ahmad : In that case we should also get an opportunity of coming in by reference to other amendments. In that case I shall be happy.

Mr. Vice-President : I shall try to accommodate you as I have done except in the case of verbal amendments.

Shall we now go on to amendment No. 2250, standing in the name of Dr. Ambedkar?

The Honourable Dr. B.R. Ambedkar : Not moving.

Mr. Vice-President : In that case amendment No. 59 in List III falls through.

Amendments Nos. 2251, 2252 and 2253 may be moved one after the other.

Amendment No. 2251 is passed over as the honourable Member is not in the House.

Amendment No. 2252 is in the name of Shri Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, here I am, moving an amendment after all! Sir, I move:

“That in clause (3) of article 149, for the words ‘autonomous districts’ the word ‘State’ be substituted.”

I think, Sir, I have to cut short my jubilation because there is an amendment to this amendment and I think that it would be more acceptable. Therefore, Sir, I merely move this amendment so that the other one may be moved.

Mr. Vice-President : The amendment to this amendment stands in the name of the Honourable Shri Gopinath Bardoloi.

The Honourable Shri Gopinath Bardoloi (Assam : General): Sir, I move:

“That with reference to amendment No. 2252 of the List of Amendments, after the words ‘autonomous districts of Assam’ the words ‘and the constituency comprising the Cantonment and Municipality of Shillong’ be added.”

It will be seen, Sir, from the amendment that has been proposed by Mr. Krishnamachari, which I hope the House will accept, that the old formula of a lakh of population has been substituted by 75,000 population. That could apply I feel to all the places except the “autonomous districts of Assam” which the amendment of Mr. Krishnamachari contemplates. By this amendment we propose to exclude also the constituency comprising the Cantonment and Municipality of Shillong. That Constituency consists of about 38,000 population. At present it represents not only a constituency with a seat for a male, but also a female constituency. That is to say, a constituency of less than 40,000 people, represents two seats today. To exclude it altogether from the category of a constituency without allowing any representation whatsoever would in my opinion be very wrong. In view of that, I have tabled this amendment and I hope the House will accept it.

[The Honourable Shri Gopinath Bardoloi]

In connection with the amendment which has been tabled by Mr. Rohini Kumar Chaudhari, I want to add this only. What that amendment proposes to do, is to exclude altogether the Province of Assam from the operation of the clause about the lakh population. I feel, Sir, that with the acceptance of the amendment proposed by Shri Krishnamachari our difficulty about the number of seats will be easy to solve. What is more, the difficulties which might otherwise arise—the same sort of difficulties that have arisen in this Assembly over the number of seats—would be obviated if we accept a general formula. In my opinion the 75,000 formula is a good one. Therefore, I do not think there is any necessity for taking into consideration the motion of Mr. Rohini Kumar Chaudhari tabled in No. 2252. I therefore request the House to accept my proposal that the constituency comprising the Cantonment and Municipality of Shillong be excluded from the operation of this 75,000 clause proposed by Mr. Krishnamachari.

Mr. Vice-President : The next amendment No. 2253 is in the name of Rev. Nichols-Roy. As he is not in the House it is passed over.

(Amendment No. 2254 was not moved.)

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

“That for the proviso to clause (3) of article 149, the following be substituted:—

‘Provided that where the total population of a State as ascertained at the last preceding census exceeds three hundred lakhs, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of three hundred lakhs and not more than five members for every complete ten lakhs of the population of the State in excess of three hundred lakhs:

Provided further that the total number of members in the Legislative Assembly of a State shall in no case be more than four hundred and fifty or less than sixty.’”

Mr. Vice-President : There are a number of amendments to that amendment. Shall I call the movers one after another? There are amendments Nos. 31 to 34. No. 31 stands in the name of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. & Berar : General): I am not moving it, Sir.

Mr. Vice-President : No. 32 stands in the name of Prof. Shibban Lal Saksena. The honourable Member is not in the House. Nos. 33 and 34 stand in the name of Shri Kamleshwari Prasad Yadav; he is not in the House. Then we come to No. 49 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I beg to move:

“That in amendment No. 2255 of the List of Amendments, in the proposed first proviso after the words ‘the last preceding census’ the words ‘of which the relevant figures have been published’ be inserted.”

Sir, the principle has already been accepted.

Mr. Vice-President : Then we have amendment No. 63, standing in the name of Shri Jaspal Roy Kapoor.

Shri Jaspal Roy Kapoor (United Provinces : General): Sir, I am not moving it. Nor am I moving amendment Nos. 64 and 65.

Mr. Vice-President : Then we have No. 66 standing in the name of Shri T. T. Krishnamachari.

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

“That in the proviso to clause (3) of article 149, for the words ‘three hundred’ the words ‘five hundred’ be substituted.”

This, I think, will not necessitate the House accepting the amendment of Dr. Ambedkar. Dr. Ambedkar's amendment seeks to explain why and wherefore the limit should be raised from 300 to 450; the logic of it is explained alongwith the manner how it is to be computed, but this is not necessary in view of the fact that there will be a body coming into being, whether constituted by the Provincial Legislature or by Parliament in whichever way the House might ultimately decide, which will definitely lay down how the maximum of the number of Members of each Lower House of the Legislature in a Province should be arrived at. Therefore, I think it is not necessary to go through the process of explaining in what manner the number is to be raised beyond the figure 300.

It is also felt that the figure 450 may not be adequate in the case of the large provinces with a growing population, particularly, for instance, U. P. and Madras, where the population is much above the 50 million mark. Therefore it was felt that 500 will not be an unduly large number in view of the fact that the House itself has approved of this limit for representation to the House of the People so far as the Centre is concerned.

These factors have emboldened me to move this particular amendment which I think appropriately enough should be an amendment to Dr. Ambedkar's amendment and which I hope he would be good enough to accept and withdraw his own amendment, so that the House can decide straightaway whether it would like the figure to be raised from 300 to 500.

Sir, I move.

Mr. Vice-President : Then we come to No. 2256 standing in the name of Begum Aizaz Rasul.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I move:

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted."

The House will remember that last year when the discussion on the different clauses of the Constitution was taking place, the House decided that the maximum number of Members in any House in the Provincial Legislature should not exceed 300. Later on, it became apparent that my province, the United Provinces, stood to lose a great deal by this clause. The population of the United Provinces, is over 55 million and it would be very unfair to that Province if the maximum number of Members for the Lower House was fixed at 300. I think this honourable House will agree that some amendment in that direction is necessary. The reason why I supported the maximum number of 300 members last year was that a House consisting of more than 300 Members would be a very unwieldy House and the discussions in a very big House on legislation would not give results that would be conducive to good working of a legislature in a State. But as I have made it clear, our Province stands to lose a great deal if this maximum number is adhered to and I am therefore moving this amendment.

I am glad to see that the Chairman of the Drafting Committee, the Honourable Dr. Ambedkar, has also seen the injustice and the unfairness of limiting the number of Members to 300 and is moving an amendment to that effect. My amendment, therefore, is strengthened a good deal by the amendment that has been moved by the Honourable Dr. Ambedkar. I hope that the number of 450 will be accepted. Though according to the population our number really should have been above 550, considering that a House of 550 or more would be an extremely unwieldy House, I feel that the number of 450 serves the purpose and we would be willing to make a sacrifice and have a lesser number of Members than our population demands. I hope, therefore, that this amendment of mine, if it is supported by the Honourable Dr. Ambedkar, will be accepted by the House.

[Begum Aizaz Rasul]

With these few words, I move this amendment.

Mr. Vice-President : There is an amendment to this amendment, No. 35 of List No. 1 standing in the name of Pandit Thakur Dass Bhargava. Is he moving it?

Pandit Thakur Dass Bhargava (East Punjab: General): I am moving another amendment, Sir.

Sir, I beg to move:

“That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, after the word ‘census’, the following be added:—

‘except in the case of East Punjab and West Bengal where fresh census will be taken to ascertain the population before the first elections under this Constitution.’”

This is a very simple amendment and I need not take the time of the House for pressing it. The exodus has resulted in the variation of the proportion of the population in the Punjab and West Bengal and the population concerned is not so trifling as to be ignored. Therefore, it is absolutely necessary that fresh census should be taken. If fresh census is not taken, then some other means must be found whereby the population of these parts may be ascertained rightly. Unless this is done, the difficulty will be that in regard to reserved constituencies, such communities as for instance, the Muslims, who have gone away from here, five million of them, will get much more representation than would be allotted to the Hindus and Sikhs, who have come in very considerable numbers—I think they are more than four millions. Therefore, my submission is that either fresh census should be taken or some other steps should be taken to see that these words “last preceding census” do not entail hardship to the rest of the population, who have come here.

I, therefore, submit, as was observed by me two days back that either a fresh list of electors should be so prepared and the population should be ascertained from that source if that is possible, but my humble submission is that it will be more or less a conjecture. The right thing would be to take a fresh census of these two Provinces before the first elections are held.

Mr. Vice-President : You may also move your next amendment.

Pandit Thakur Dass Bhargava : So far as this amendment is concerned, this relates to Amendment No. 2260 and I will move it after that amendment is moved.

(Amendments Nos. 2257 and 2258 were not moved.)

Mr. Vice-President : Amendment No. 2259 stands in the name of Pandit Thakur Dass Bhargava and two others and amendment No. 2263 stands in the name of Prof. Shibban Lal Saksena. These two amendments are of similar import. Amendment No. 2263 may be moved.

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

“That for amendment No. 2263 of the List of Amendments, the following be substituted:—

‘That after clause (3) of article 149, the following new clause be inserted:—

- (3a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State.’”

Sir, if we glance at clause (3) of article 149 together with the amendment of Mr. Krishnamachari, just moved, in every Legislative Assembly, we shall

have the maximum of 500 and a minimum of 60, but there is no provision that every constituency shall be equal. In my Province of U. P. there may be one constituency of 25,000; there may be another constituency of 2 lakhs and a third even 3 lakhs. This is something which leaves a lacuna in the Constitution. I cannot understand how the constituencies can be so different, one having 1 lakh, another 2 lakhs and a third 5 lakhs. This is certainly a grave lacuna in this Constitution.

I only want to draw the attention of the House to sub-clause (c) of clause (5) of article 67, wherein we have provided, although it is one representative for every 5 to 7 $\frac{1}{2}$ lakhs, that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India. It is provided that the constituencies shall be equal and that means if in the U. P. we decide to have constituencies of the average size of 6 $\frac{1}{4}$ lakhs, then so far as practicable, the representation will be equal. But this will not be so in actual practice; one will be 5 lakhs and another 7 $\frac{1}{2}$ lakhs. Therefore all the constituencies shall be equal and the same throughout India. Similarly I want in the States also the same and when there are various constituencies, they must be nearly equal. I think that unless this is provided for in some of the provinces, there will be grave consequences. There may be provincial jealousies which may play a role; some may get the upper hand and may be able to provide those seats. They may have more seats, having one for 10,000, and there may be others where they do not want to give more seats and they may provide one seat for 2 lakhs. I therefore think that what we have provided as safeguard in article 67 should be followed. I hope, Sir, this amendment will be accepted by the House, especially Provinces like East Punjab and West Bengal who will be particularly affected. Sir, I move.

Mr. Vice-President : Amendment No. 2259 cannot be moved, but it can be voted on. Does Pandit Thakur Dass Bhargava want that a vote should be taken on this?

Pandit Thakur Dass Bhargava : No, Sir.

(Amendment Nos. 2260 and 2261 were not moved.)

Mr. Vice-President : Amendment No. 2262. Verbal; disallowed.

Pandit Thakur Dass Bhargava : With your permission, Sir, I move an amendment to Mr. Shibban Lal Saksena's amendment number 67, which runs thus:

“That after clause (3) of article 149, the following new clause be inserted:—

“(4) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the fresh census mentioned in clause (3) shall so far as practicable be the same throughout the East Punjab and the West Bengal Province.”

In moving this amendment, Sir, I base my case on article 67 (3) which we have already passed. I have just heard an argument from my honourable Friend Mr. T. T. Krishnamachari who said that they want to arrange the constituencies in such a manner that such constituencies as have not got facilities of communication might be given a less number of electors whereas those constituencies which are developed in point of communication etc., may not have the same number of electors. My humble submission is that this will not be fair. If you do not make all the constituencies equal or so far as practicable equal in the provinces, there will be much confusion and bitterness. I understand the real notion of democracy is one man one vote and not a collection of men and a collection of votes. It is not areas which we are recognising, but

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the number of population which we are recognising for giving a candidate to a particular constituency. Therefore, my humble submission is, that the principle which the House has already accepted in relation to article 67(3) is the sound principle. Otherwise it might happen that in East Punjab and West Bengal such constituencies might be formed as may not be equal for all the communities. This will engender a great amount of bitterness and confusion. Therefore, my humble submission is, so far as East Punjab and West Bengal are concerned, first of all a census must be taken and after that, it will be best to have as far as possible constituencies with equal numbers of population. If the original amendment of Mr. Shibban Lal Saksena is passed by the House, the difficulty in East Punjab and West Bengal would be that the last census is not accurate and does not represent the true percentage of the communities. Therefore, I have moved this amendment to bring it into line with the previous amendment that I have already moved that a census must first be taken and then the constituencies must be so arranged that they represent almost equal number of the population.

Sir, I move.

Mr. Vice-President : The article is now open for general discussion.

Shri R. K. Sidhwa : Mr. Vice-President, Sir, in clause (3) of this article, there was originally a proviso that the total number of Members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty. When this proviso came up for discussion last year, the House will remember, I opposed it very strongly; but, Sir, I did not carry the House with me. I am very glad that on second thought, the Drafting Committee have thought it themselves advisable to make an improvement on this proviso, and remove the words three hundred and increase it to four hundred and fifty. There is an amendment now proposed that the maximum should be five hundred. I am atleast glad that though the fullest latitude and fullest opportunity according to the population,—one member for every seventy five thousand or one lakh of the population—will not be given even under this maximum, this deficiency which would have considerably come in the way of equal representation in the legislature has been removed.

Similarly, Sir, last year, when we were discussing one of the clauses regarding the term of the legislature which was proposed by the House as four years, I moved an amendment to extend it to five years; and the House did not accept it. But when our Constitutional Adviser went to foreign countries, he was advised that in Ireland and other countries, the term of a legislature was five years; and the proposal has come before us and that we have accepted. This shows that our amendments are not considered on merits, but on personalities. However, Sir I do not want that credit to myself; but I am very glad that this amendment has been brought before the House today after mature consideration.

It has been stated, Sir, that the larger the number of members, it will be a cumbersome Assembly. I cannot understand this. If three hundred is not an unwieldy number, I fail to understand how the number five hundred could be regarded as cumbersome. Why should we be apprehensive of a larger number? Are there not in foreign countries legislatures of six hundred and seven hundred? You are copying the Constitution of the Parliament of England. Are there not 600 members in the House of Commons? I want to know where is the harm. If these provinces the United Provinces and Madras, which are the largest, are not going to accommodate and give an equal right of returning members to the legislature, then, they have no business to remain so large. They must be prepared for a partition if they are not going to take in 600 members according to their population. I am of the view, Sir, that if there is to be one member for every 75,000 of the population, the number of seats in the United Provinces

comes to 650, and why should they deny that right to 150 members. If you are afraid of a larger number of members in your province, you must be prepared to increase the limit from 75,000 to 1,25,000. That is a different matter. So long as you accept a certain percentage or proportion, then there must be uniformity and you should not deny the right of returning members because you are a big province. Provinces must be prepared to accommodate everybody; one should not say that he has no accommodation and therefore he is not prepared to increase that number. Similarly is the case of Madras. If there are five crores of population, there must be 500 members. But, with all that, I am really very glad, and I congratulate the Drafting Committee, that they have, though at a late stage, seen the wisdom of increasing the maximum number. Sir, I entirely support the amendment of my friend Mr. Naziruddin Ahmad about census and I go further than that and support my friend Pandit Bhargava. This matter has been repeatedly stated in this House that you cannot ignore the exodus and the number of persons who have migrated from one province to another and without taking a proper census, you cannot be really doing service to that class of people who have unfortunately come out. I know the Constituent Assembly has issued an order to the Provincial Governments that irrespective of residential qualifications, their names should be entered in the electoral rolls; but I know in certain provinces, *e.g.*, in Bombay, it is not being fully followed. It is merely an executive order and the authorities are not going to take that into consideration seriously because they feel that it is a very expensive method and unless they are given sufficient money for the purpose, sufficient enumerators etc. It is not possible to put in the census all those refugees who have come out from Pakistan. I therefore feel, while there has been no official announcement on this matter, Dr. Ambedkar should make an official statement on this matter as to really what would be the position even under the amendment of Mr. Naziruddin which I understand is going to be accepted. It is stated 'latest census'! What is the meaning of that? Will it mean that all those who have come from Pakistan will be really enumerated in the electoral rolls? If that is so, the language is not very clear and some sort of declaration will have to be made, if we are not going to put that in the Constitution, that the provincial Governments should bear that in mind in preparing electoral rolls.

Sir, I am happy that an improvement has been made in the proviso that whatever the number, the members should be elected according to the population basis that we are going to accept, *viz.*, 75,000. With these words I support, Sir, this article.

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, I will confine myself to the amendment moved by Mr. Thakur Dass Bhargava and I fully support that. It is very essential that census must be taken before elections are held. Mr. Thakur Dass Bhargava has confined himself to two provinces and as we know, there has been mass migration from these provinces. If we were to rely on the previous or last census, certainly it would be very unfair to these provinces. I take this opportunity of bringing it to the notice of the Government that besides being unjust and unfair to the provinces, if this last census were to be relied upon, it will be particularly harmful to my community—the Sikhs. As is well known, they have not confined themselves after coming over from the West Punjab by settling in the East Punjab. They have gone further and in large numbers to the Provinces of Delhi and U.P. If we were only to depend upon the previous census, and for the present only fresh electoral rolls were to be prepared, then as we are proposing in the new constitution that seats would be reserved, as is so far provided in the Draft—and we do not know if this will be changed afterwards but so far we can safely say that seats are to be reserved on the population basis—then it will be very unfair. Mere preparation of electoral rolls would not give them sufficient representation because in Delhi and U.P.

[Sardar Hukum Singh]

they would not get any representation if the last census were to be relied upon. My humble request to Government is that census should first be prepared and then elections should be held and particularly of these provinces, Punjab and Bengal because otherwise it would not only be simply unjust and unfair but would be definitely harmful to my community.

Dr. Monomohan Das (West Bengal : General): Mr. Vice-President, Sir, some apprehension appears before our mind about the word last preceding census in article 149. This point was cleared by our Honourable Law Minister during the time of the discussion of some previous articles. Some of our friends have brought amendments to the effect that new census should be taken, at least in the provinces of West Bengal and East Punjab before the elections are fought. I like to add one-point to the arguments that have been put forward for taking a new census before the elections. Sir, vehement propaganda by some political parties was carried on during the last census of 1941 in Bengal. The contention of the propaganda was that Hindus as a nation should not give any caste against their numbers. So about 44 lakhs of Hindus were mentioned with no caste mentioned against them. From the census it cannot be known how much or what part of the 44 lakhs of Hindus are from Scheduled Castes and what part are from Caste Hindus. Now a controversy has arisen between the Scheduled Castes of West Bengal and the Caste Hindus. The Caste Hindus claim that all these 44 lakhs of Hindus belong to Caste Hindus only and the Scheduled Caste people claim that a substantial part of this 44 lakhs are Scheduled Castes.

Shri Mihir Lal Chattopadhyay (West Bengal : General): May I know whether a person is bound to give his caste when the census is taken?

Dr. Monomohan Das : I am not speaking of the question whether he is bound to give his caste or not.

Mr. Vice-President : Will you please allow me to make a few remarks. There is a sense of grievance and as I have said, whatever the technicalities of the case be, let the sense of grievances be ventilated. Very often when a grievance is ventilated, it loses half its rancour or its passion. Remember that you wanted five minutes but you have already spent five minutes.

Dr. Monomohan Das : If a new census is to be taken before the elections, then we have nothing to quarrel but if for some reasons, the new census is not taken before the elections and the records of the 1941 census be taken as our guidance for the new elections, then this point must be solved by the Government. I mean, Sir, what part of this 44 lakhs Hindus are Caste Hindus and what part of them are Scheduled Caste. Sir, I thank you for this opportunity.

Shri Rohini Kumar Chaudhari : Mr. Vice-President, Sir, I hope honourable Members will excuse me if in this discussion I speak only of Assam and nothing but Assam.

Honourable Members will be pleased to recollect that a short while ago I read out an amendment in which I had asked for making an exception in the case of Assam. I wanted such an exception because there was this qualification of one lakh population for a constituency. If that condition had remained, a great mischief would have been done to the people of the province of Assam. But fortunately that condition has been removed by the amendment which the House was pleased to accept and which was moved by Mr. T. T. Krishnamachari. In order to make the position more comprehensible, I would like to draw the attention of the House to page 188 of the Draft Constitution, and Part I of the Table there. There, the autonomous districts have been enumerated. There are the Khasi and Jaintia Hills District, excluding the town of Shillong, the Garo Hills District, the Lushai Hills District, the Naga Hills, the North Cachar, and the Mikir Hills portion of Nowgong and Sibsagar Districts. Now, in the

Khasi and Jaintia Hills District, as also in the Mikir Hills, portion of Nowgong and Sibsagar Districts, there is a large population which does not belong to the tribal denomination; and if article 149 stood as it did originally, great harm would have been caused to these non-tribal people of these areas. If honourable Members will kindly look at sub-clauses (5) and (6) of article 294, they will find this—

“(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district.”

So if the position had stood as it was before, then a portion of the city of Shillong—the Cantonment and Administration of Shillong, will not come under the constituency of the Khasi and Jaintia Hills District at all.

In article 294, clause (6) it is stated—

“(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district.....”

That is to say, if any portion which has a large population of non-tribal people is included in the autonomous district, that large portion of non-tribal people will be entirely disenfranchised. In that case, it is meaningless to have any right or franchise, if it does not take along with it the right to stand for election.

So far as Shillong is concerned, it has been excluded from the Khasi and Jaintia Hills, *vide* Part I of Table on page 188. If the population of Shillong is less than 75,000, then Shillong will not have any separate constituency. But by this amendment which was moved by Mr. Bardoloi, an exception has been made in the case of Shillong. If it stood as it was, in that case, the non-tribal people would not be included in the Khasi and Jaintia Hills, and they will be completely disenfranchised. The same difficulty would be felt in the case of the Mikir Hills also, because if the area which is inhabited by the Mikirs only are taken aside, then the non-tribal population in the Mikir Hills will not come to 75,000.

Now, one difficulty has been removed, by excluding Shillong from the operation of this 75,000 formula. My object in moving the amendment was that in order to remove all the complications Assam might have been made exception altogether. In the past, Assam has been made an exception in various matters, both in favour of and against Assam, mostly against Assam. I think there was at one time exception made in the case of Assam being considered a province—that was recommended by the Cabinet Mission. Similarly, it might have been possible and it might have been better if Assam had been entirely excluded and my amendment accepted. But wiser heads have thought that my amendment had better not be moved, and I thought, Sir, that I had to agree to that.

Mr. Vice-President : But you have not thanked me, Mr. Chaudhari, for making an exception in your case and allowing you to speak, though you have not moved the amendment.

Shri Rohini Kumar Chaudhari: Thank you Sir; but I did not speak on my amendment.

Mr. Vice-President : That is all right. I only wanted to make my position clear to the House. I allowed the honourable Member to speak, in my own unconventional way; he only read out the amendment. The convention was broken because Mr. Chaudhari had something important to talk about areas in Assam which had not been touched upon by Mr. Bardoloi.

Shri Raj Bahadur of Matsya Union.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I regret I have to express my dissent from the provisions prescribing and restricting the maximum number of representatives provided for the Lower House

[Shri Raj Bahadur]

in the Provinces. It has been restricted to a maximum of 500, and it has been provided that for every one lakh or 75,000 there shall be one member. But this provision is bound to lead to a disparity and in equality in the right of representation allowed to the people from province and province. We can easily see that in smaller provinces the people would get better right of representation, and hence a better vote, as compared to people in provinces where the population is bigger. For instance, if we take Bihar and Orissa and compare it with Madras or U.P. the people of Bihar and Orissa will be getting one member for every 75,000 and the people of U.P. will be getting hardly one member for a lakh and 25 thousand or a lakh and 50 thousand. I submit it would have been better if the scale of representation had been universal and uniform for all the provinces. It is obviously desirable that in our Constitution, the scale of representation should not vary from province to province or from State to State. Even the argument that the House would become cumbersome if no maximum is fixed, does not, I think cut at the root of my suggestion. We can see that in the House of Commons in England there are as many as 640 members and during the course of an experience of 300 years that number has not proved cumbersome or unwieldy to the oldest democratic State in the world. Therefore, it cannot be un reasonable to suggest that the people of U.P. or Madras should be allowed the full quota of members which may be calculated on the basis of one member for every one lakh or 75,000, of their population. Sir, I am submitting all this because I am interested in this matter as a representative of a State vitally affected by the proviso. The States which have merged or which are about to merge with the U.P. or other provinces are all interested in this question, because if you restrict the number of seats for example in U.P. or Madras to a maximum of 500, the people of such States which propose to enter these provinces will obviously stand to lose. The people of Bharatpur and Dholpur are eager to merge their identity with the people of U.P. because of their traditions, history, folklore, culture, and language, etc., etc. If the people of Bharatpur and Dholpur are allowed the right of self-determination, which, I am sure, no Member in this House would deny them and if they go to the U.P., it will not be fair if all the 500 seats are already taken up by the present population of the United Provinces and the people of Bharatpur or Dholpur or of any other State which joins U.P., are deprived of their right of representation in the legislature.

Secondly, there is the question of those States which would merge after the first elections. We know that the boundaries of our provinces are still in a ferment. From day to day experience, we might come to realise that certain provincial boundaries have to be changed and consequently the population of certain areas would be affected. There should be some provision by which the population of the affected areas are secured the right of representation. Therefore, I submit that if there had been no maximum fixed it would have been much better. When the power to de-limit the constituencies and to take decisions on other consequential matters have been left to the discretion of provincial Governments under articles 291 and 312, it would be proper if the right of fixing the maximum number of members in the legislatures is also left to the discretion of the provinces or the States concerned.

Next, I wish to submit that the grounds of disqualification of a voter as provided in clause (2) of article 149 have been made exhaustive. We notice that these grounds have been limited to certain conditions only, and I think that the powers and authority of the legislatures of the provinces, also have been restricted, in this respect to the grounds mentioned in the said clause. But it is possible that cases of high treason, sedition, undischarged bankruptcy or illiteracy may have to be included among these grounds. Hence it would

have been better if the list of these grounds is not made exhaustive but only illustrative.

Lastly I have to submit that so far as the amendment moved by Prof. Shah is concerned, I do not see any ground for its acceptance. To disqualify a voter no certificates of unsoundness of mind or body are needed. When the grounds of disqualifications are laid down in the Constitution or in the Provincial Acts, there should be no necessity for such a provision. To revert to my first two points, I may submit again that in view of the changing boundaries of provinces and States, my suggestions may still be considered.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, while we are in the midst of discussion of article 149, I think quite unexpectedly a matter of very great importance has been raised and, fortunately several honourable Members have realised the importance of the subject and given their views on it.

Sir, there are two things in particular which should demand the very serious consideration not only of the Members of the House but also of those who are in authority. In the present case by 'those in authority' I mean my honourable Friend Dr. Ambedkar, the Honourable Minister incharge of the Bill, I mean the Draft Constitution.

Shri H. V. Kamath : This is not a Bill.

Pandit Lakshmi Kanta Maitra : I quite realise that. But Dr. Ambedkar is the one Member who has been piloting this measure in this House and so all the credit and discredit go to him. And I want to warn him that if there are certain matters which are likely to bring discredit to his fair name, he should desist from talking for a moment and listen to me.

Sir, the two points to which I would confine my observations now are, one, the representation in the provincial legislatures based on certain figures of population and, two, the principle of uniformity. What is more important and pertinent to the point is that, besides the quantum of representation, there is the other vital principle involved, namely, that there should be absolute uniformity with regard to the scale of representation based on that population.

Two amendments have been moved in this connection, one by Pandit Thakur Dass Bhargava which seeks to further amend the amendment moved by Prof. Shibban Lal Saksena. When these two amendments are read together, it will be realised that what is sought to be done by these amendments is nothing extraordinary, but bare minimum justice, political justice to all concerned. In a democratic State, the mechanics of representation cannot be based on any haphazard or slipshod foundation. There must be a definite principle or principles on which the whole scheme of representation should be based. It should be based in such a way that the fundamental concept of democracy does not suffer. I think this proposition is beyond challenge.

Now let us see how it is going to affect certain parts of the Indian Dominion and certain States within that Dominion if article 149 is accepted by the House as it is. It is all very well to say that representation will be based on population which has been ascertained at the last preceding census. Theoretically it is absolutely unexceptionable, provided the Government is in the mood to wait for the elections till the normal general census in the country is taken. The decennial census would be due about the year 1950, a year hence. If it is to be held preparations must be set on foot from now on or six months hence if the census is to be taken very seriously and is to be conducted expeditiously before the year 1950 runs out. Now, on a previous occasion in connection with an earlier article, I explained at great length the dangers, the difficulties that certain provinces in India would have to suffer if the previous census figures, which for all practical purposes would mean the census figures of 1941,

[Pandit Lakshmi Kanta Maitra]

are acted upon in the case of West Bengal, East Punjab, Bombay and Delhi. The present amendment no doubt relates only to the two provinces, West Bengal and East Punjab. The House will remember that with regard to these four provinces including West Bengal and East Punjab, I emphatically declared—and I am glad that several members who followed me after that supported me—that it would be practically useless to depend on the census figures of 1941 with regard to representation in the new scheme of things. Who is there in this country, at least in this House, who does not know that the census figures of certain provinces were cooked up in 1941 with the object of getting political advantage in the succeeding stage of political reforms? That is all well-known, and is it necessary for me to repeat it in this House in season and out of season to those who are in authority? There should be a clear realisation of this position. Now, we are going to start on a clean slate. (At this stage the lights failed in the Chamber). It is all darkness. I see nothing but darkness for the province of West Bengal if this political injustice is done to them, as also in the case of East Punjab.

Mr. Vice-President : The needful will be done as far as possible. You please continue, Pandit Maitra.

Pandit Lakshmi Kanta Maitra : The difficulty is that I do not see whom I am addressing.

Honourable Members : You need not see our faces.

Pandit Lakshmi Kanta Maitra: Some times faces give encouragement. Sir, the House is aware that this principle of representation was accepted in the case of the Central Legislature, the Parliament of India, in article 67. The amendments now moved propose to bring the representation in the provincial legislature in line with that which has been provided and accepted by the House for the Parliament. Sir, the arguments I advanced on the last occasion need not be repeated now, but some of them will bear repetition here.

With regard to my ill-fated province of West Bengal and also East Punjab, I want the House to realise that the vast migration that has taken place in these two provinces should be officially recognised. It has been recognised for relief and rehabilitation to some extent, but for political adjustment, for granting political rights and franchise, this recognition is equally necessary. I deem it more necessary than the question of rehabilitation and resettlement. You cannot effectively rehabilitate and resettle people, unless at the same time you give them political rights and privileges for the coming governance of the country. Therefore, Sir, I think that this question should be decided by the authorities under pressure from this House. There should not be any further dilly-dallying or shilly-shallying with this question. The problem is very simple. It is this that the 1941 census figures have not been accepted by us with regard to the province of West Bengal. That is also true of East Punjab. West Punjab has been completely denuded of Hindus and East Punjab has been similarly denuded of Muslims. Therefore the census figures of 1941 are absolutely no guide to the real position of things with regard to East Punjab. With regard to west Bengal, I pointed out—and I point out this once again and, I hope, for the last time—that this migration started not from 1947 only. This migration started since the end of 1941 when Japan entered the war against Great Britain. Vast areas of East Bengal now comprising Eastern Pakistan were evacuated by orders of the military authorities for various military preparations such as the construction of airfields, aerodromes and other military installations. Those areas were completely cleared and the people were driven in quest of their livelihood to the province of West Bengal, particularly to Calcutta and Greater Calcutta, the industrial areas where numerous production centres had been opened. Thousands and thousands of

people came over with their families to West Bengal from areas like Chittagong, Tippera, Chandpur, etc. for personal safety from the Japanese bombs which were dropped on those areas and which was not a pleasant experience to have. Then came the disastrous famine of 1943. My province has the unique distinction of having a number of calamities, one closely following another, and yet the province has survived. Do you want it to survive or do you want to give it a death blow and extinguish it for ever? Are you going to give West Bengal minimum political justice or not? I ask this simple question and want a straight answer. Sir, the famine of 1943 brought lakhs and lakhs of people to West Bengal from East Bengal in quest of food. Even today in West Bengal the price of rice per maund is Rs. 16 or Rs. 17, whereas it is about Rs. 50 in East Bengal, which is supposed to be the granary of Bengal. In those days, there was more chance of getting food in West Bengal and Calcutta than in the desolate corners of East Bengal. We do not know what is the population position now. The Famine Commission put the deaths at thirty lakhs. Every community claims that it is that community who suffered most.

An Honourable Member: It is the Scheduled Castes who suffered most.

Pandit Lakshmi Kanta Maitra: I have heard this statement from responsible quarters that it is the Scheduled Castes who suffered most. It is true. It is the women and the children who were the worst sufferers. The whole point of my contention is that in this province after the last census had taken place the situation had developed from year to year to such an extent that the whole equilibrium— if it existed at all— in the proportions that are given in the census figures, has been completely destroyed. Then came the division of the country and the partition of the Province of Bengal into East and West. The House is aware that the undivided province of Bengal got cut up into three parts—West Bengal, East Bengal and North Bengal: the districts of Jalpaiguri and Darjeeling were allotted to West Bengal. It had a tongue of Pakistan territory in between and migration has been going on both in the northern area from this area of Pakistan and throughout the southern portion.

Mr. Vice-President : What I am afraid of is that both of us coming from the same province, and I being in agreement with your views, Members may say that I am partial. That is an ordeal which I would like to avoid.

Pandit Lakshmi Kanta Maitra: I do not want to create any embarrassment for the Chair. So far as I am concerned, I am not a novice in Parliamentary activities and I get the indulgence of the House. If the House so desires I will stop.

Honourable Members : Go on, go on.

Mr. Vice-President : Now it is all right. You can go on.

Pandit Lakshmi Kanta Maitra: This migration has been going on and it is perfectly open to the authorities, if they want to shirk any responsibility for the unfortunate victims from East Bengal, to quarrel about the figures but the fact is that migration is continuing. Does my honourable Friend, Dr. Ambedkar, the hero of this whole show, know that thousands of Scheduled Castes people are pouring into the Indian Union? I am sure he knows it. I look up to him to take a dispassionate view, because he is the one man whom we can get hold of here quickly, expeditiously and effectively perhaps! He is the one man who has to realise the gravity of this and to tell those who differ from him that this is a matter which must be tackled in right earnest. Some say the migration figures go into 15 lakhs. We have our own figures, but 20 lakhs is the official figure of West Bengal.

Mr. Vice-President : Today it is 20 lakhs !

Pandit Lakshmi Kanta Maitra: I can understand the position of the authorities to put down the figures as low as possible, but the fact is that at least 20 lakhs have been driven into the Indian Dominion by the very kind treatment of our friends in Pakistan, and more will continue to come; I am confident of that. But the whole question is: Are these people going to be left in the lurch? They have left their hearths and homes. They have left behind everything. I am talking of West Bengal, because the Punjab case is well known. They have all become destitutes and they have come over here. But there is less appreciation of what is happening there because the facts about it are being much less dramatised. Are these people not going to have any political justice and any representation, when they have cast in their lot with us in this Dominion and when they have settled down here and when they desire that they should be part and parcel of the Indian Union? They in their own way joined in this struggle for freedom and they made their sacrifices which are by no means negligible. It is all very well to say that if we want to take a census of East Punjab and West Bengal the elections will be deferred by one year. What does it matter? Are you going to deprive lakhs of people of their legitimate right of representation in the legislatures of the country? Do you want to have expedition at the cost of justice? That is a simple question you have to answer. Are we anxious to have expeditious elections at the sacrifice of these people? That is for you to answer. I am told that a rule of thumb has been invented by which the electoral roll will go on being prepared and thereafter it will be multiplied by two and the number of the population will be obtained. But why not go about it in a straight forward way and have a general census? With our resources will it not be possible to finish the census business and at the same time carry on the preliminaries for holding the elections? That Constitution has to be finalised and it cannot be finalised before August in any case: there is the Third Reading and all that: then there is the date for its coming into operation and then a date for the delimitation of constituencies. If you start now, you can hold a census for this province. In case you cannot do that, then some arrangement must be made for these unfortunate provinces of West Bengal and East Punjab. They cannot be made to fit in with your census figures because you demand that elections should be held forthwith.

Sir, the observation from an honourable Friend, who is closely associated with the honourable Member in charge of this Bill created some kind of consternation in our mind. His idea seems to be that the scale of representation could vary according to different parts of the country because some parts are well developed from the point of view of communications and others are not. This means that according to his idea—which, I believe, will catch the official mind, and I do not know whether it is a reflection on the official mind—that where 50,000 people can have representation by one Member, in another area 1,20,000 people will have one seat. This would be the height of injustice. Democracy demands that one man/one vote should have an equal value. There is a differentiation in value if 50,000 people are asked to elect one man and 1,20,000 people are also asked to elect only one man. There is a lot of difference. Therefore that will cause great discontent in the whole of East Punjab and West Bengal. This discontent borders on bitterness and I ask the Honourable the sponsor of this Bill, Dr. Ambedkar, to take steps to see how this can be eliminated so that we can go on in this business with perfect amity, concord and goodwill. Let no sense of rankling injustice be left in the minds of those who are clamouring for this bare modicum of justice. These two amendments provide that not only shall this representation be based on the figures of population but these figures must be the latest figures from a census to be held for the purpose, be it even an *ad hoc* census. In any case the census figures of 1941 will be no index of the real population of these areas. There has been a considerable change. That is one point.

The second point is that the sizes of the constituencies should not be made to vary from place to place in the sense that the population should not be made to vary. If you fix one seat for 75,000 or one seat for one lakh, by all means try to see that in every constituency throughout India the proportion is maintained—one lakh people having one representation or 75,000 people having one representation. But it will be a travesty of justice if 50,000 are given one seat and one lakh of people are also given one seat. There will then be enormous scope for jerrymandering. I think I should sound a final note of warning that this condition must cease. The authorities must make up their mind and make a declaration that so far as these two Provinces are concerned the census figures for 1941 will not be acted upon and that a fresh census will be taken or that a fresh mechanism for ascertaining the real population figure of these two Provinces—West Bengal and East Punjab—is brought into action before this particular article is implemented.

Sir, I support wholeheartedly the amendment of Prof. Saksena as sought to be modified by Pandit Thakur Dass Bhargava. I thank you, Sir, and I thank the House also.

The Assembly then adjourned till Ten of the Clock on Friday, the 7th January 1949.
