Friday, 27th May, 1949

Volume VIII

16-5-1949
to
16-6-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, NEW DELHI-110 005

THE CONSTITUENT ASSEMBLY OF INDIA

President:

THE HON'BLE DR. RAJENDRA PRASAD.

Vice-President:

DR. H.C. MOOKHERJEE.

Constitutional Adviser:

SIR B.N. RAU, C.I.E.

Secretary:

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

Joint Secretary:

MR. S.N. MUKERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

CONTENTS

VOLUME VIII—16th May to 16th June 1949

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 27*th May,* 1949

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

Pandit Balkrishna Sharma (United Provinces: General): Mr. President, Sir, may I with your permission draw your attention to one of the important matters in regard to the issue of new coins in our country? Our trouble is that the Indian Parliament as such is not sitting these days and the Constituent Assembly is the only supreme body which is in session. Now, the whole question regarding the issue of new coins is being discussed, I believe, in the Finance Department and I have been informed that certain decisions also have been taken in this regard. The question of the issue of coins is of great importance and I have been informed that not even the Finance Committee so far has been taken into confidence in regard to the design of the new coins. Particularly, I have been informed that the English alphabets find a prominent place in the new coins even though there is one Asoka Stambha and though the effigy of king has been done away with. I would, therefore, request you, Sir, to be pleased to give an opportunity to this House to consider this question, and if necessary, to call in the Honourable the Finance Minister for this purpose.

Mr. President : I am afraid we cannot take up this question in this House. We are here for the purpose of preparing the Constitution and the question which is raised by the honourable Member really belongs to the legislative side of the House and I would suggest that he might take it up there or, as the Assembly is not sitting, he might take it up with the Government.

ADDITION OF PARA. 4-A TO CONSTITUENT ASSEMBLY RULES (SCHEDULE)

The Honourable Shri N. Gopalaswami Ayyangar : (Madras: General): Mr. President, Sir, I rise to move :

"That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:—

'4-A. Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.' "

Sir, very few words are really needed from me to commend this motion to the House. Kashmir is one of the States which under the rules framed for the composition of this Assembly have to be represented in the House. Rules have been framed as to how this representation could be secured. But though Kashmir acceded to the Indian Dominion so far back as the end of October 1947, this representation has not materialised. Honourable Members will remember that the conditions in Kashmir have been in a fluid state all these months. The accession itself was asked for by the Ruler of Kashmir; it was supported by the largest political party in the State, and the Governor-General accepted the accession. As I said, that acceptance was somewhere about the end of October 1947.

[The Honourable Shri N. Gopalaswami Ayyangar]

Before I go to the Rules, I must point out that all States which have acceded to the Indian Dominion have been included in the Schedule to the Constituent Assembly Rules. One of these States is Kashmir. Again, in the Draft Constitution that has been placed before the House, in Part III of Schedule I, honourable Members will find Kashmir as one of the States which would be put into that Schedule. But, so far as representation goes, the procedure has undergone changes from time to time on account of the difficulties that cropped up in respect of implementing the rules that were originally framed for the return of State's representatives to this House. The lost of such rules is contained in Rule 4 of the Constituent Assembly Rules that are now in force. In this rule, the seats allotted to the States have to be filled up, not less than half by the elected members of the legislatures of the States concerned, and the remainder to be nominated by the Ruler himself.

So far as Kashmir is concerned, the number of seats allotted under these rules to this State is four, that is to say, one for every million of the population. If this rule is to be followed, not less than half of this number would have to be elected by the legislature. There is, under the Constitution of Kashmir, a legislative Assembly which is called the Praja Sabha. Elections to this Assembly took place about the months of December 1946 and January 1947 and this Assembly came into existence soon after these elections were over. There was one meeting held within two or three months thereafter, which was convened for the purpose of passing the budget of the State. All this happened before the transfer of power and the change in the status of Indian States that took place after the transfer of power. After the 15th of August 1947, Kashmir stood by itself till, somewhere about the end of October 1947, it acceded to India. There has been no meeting of this Praja Sabha since about April 1947. From October 1947, honourable Members are aware that there was a great deal of disturbance owing to the raids that were made on the western portion of Kashmir State and all that followed. The conditions have been very difficult.

Now, this Assembly has not been in existence since then. It exists perhaps on paper; but it is dead. In October 1947 accession took place. Soon after that took place, the Maharaja set up an emergency administration the head of which was Sheikh Mohammed Abdulla, the leader of the most popular party in Kashmir. In March 1948, he substituted for this emergency administration what he called a popular interim Government, consisting of a Council of Ministers. He called Sheikh Mohammed Abdulla to accept the office of Prime Minister and left it to him to choose his colleagues. This Government was to work on the principle of joint responsibility. In the Proclamation that he issued setting up this new Government, he made no reference to Praja Sabha, but called upon this new Government, as soon as peace had been restored, to convoke a National Assembly which should proceed to frame a Constitution for the State. At present, the old Praja Sabha is dead; the new National Assembly has not come into existence, because of conditions not having settled down to that level of peace and tranquillity, and also of economic and political equilibrium which alone can justify the convoking of the National Assembly.

In these circumstances, we have to choose a method by which we could get representatives into this Assembly taking the present facts into consideration. I take it honourable Members will concede that it is very important that Kashmir, which is now a part of India, should be represented in this Assembly. I wish that representation had been brought about much earlier than now; but various things have conspired to prevent that, but we are today in a position to bring to this House four persons who could be said to be fairly representatives of the

population of Kashmir. The point that I wish to urge is that, while two of these representatives would in any case under the present rules be persons who could be nominated by the Ruler, we are suggesting that all the four persons should be nominated by the Ruler on the advice of his Prime Minister. The Prime Minister happens to represent the largest political party in the State. Apart from that, we have got to remember that the Prime Minister and his Government are not based upon the Praja Sabha which is dead, but based rather upon the fact that they represent the largest political party in the State. Therefore, it is only appropriate that the head of this Party who is also the Prime Minister should have the privilege of advising the Ruler as to who would be the proper representatives of Kashmir in the Constituent Assembly. That is why we have made this suggestion. Under the circumstances, that is about the best that could be done. It would produce a certain amount of intimate relationship between this Constituent Assembly and the Government and people of Kashmir. Those representatives would come here and take part in the further proceedings of this House. As honourable Members are aware, most of the articles relating to the provinces and States are yet to come up for consideration and it is only right that Kashmir should have the opportunity to participate in the discussions which will finalise those articles.

I do not wish to say much more now. However, one small point I should like to clear up in view of one of the amendments of which notice has been given. It has been suggested that instead of Kashmir, we should substitute Jammu and Kashmir. Jammu and Kashmir no doubt describes the State better. But the reason why in this particular motion I have used the word Kashmir is that that word has been used in all statutory enactments and rules that have so far been framed in which this particular State has had to be mentioned.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I would like to know Sir, if the word "Kashmir" includes or means both Jammu and Kashmir?

The Honourable Shri N. Gopalaswami Ayyangar : Kashmir means Jammu and Kashmir. In the Government of India Act, for instance, if you will look at the Schedule giving the names of the States, it will be found that this State is described as Kashmir. In the Draft Constitution, the Schedule mentions the State as Kashmir. In the list that is attached to the Constituent Assembly Rules, it is already described as Kashmir. So I think it would be best in these circumstances to use only the word "Kashmir" and both the amendment and the word that I have used mean exactly the same thing. I would therefore, request honourable Members to let this description of the State as Kashmir stand, because if you change it, we shall have to change other things which are already in our Statutes and Rules.

Pandit Lakshmi Kanta Maitra : May I interrupt the honourable Member? The motion contemplates that four seats will be allotted to Kashmir and that they will be returned to this Constituent Assembly. The honourable Member explained just now that the word "Kashmir" means, as in all other Statutes and Acts, Jammu and Kashmir. It is contemplated to have four representatives. I want to know whether it is contemplated to have these representatives in such a way that Jammu and Ladakh are also represented by these nominees?

The Honourable Shri N. Gopalaswami Ayyangar: "Kashmir" in this motion means the whole of Jammu and Kashmir, the sovereignty over the whole of which still remains with the Government of that State. The idea is that four persons should be chosen who can be trusted to represent the interests of the whole State, not only Jammu and Ladakh, but I believe a person who can represent the interests of even the Mirpur-Jammu area— if the Prime Minister

[The Honourable Shri N. Gopalaswami Ayyangar]

chooses to nominate him as being a person who can represent the interests of the State as a whole—it would not bar such a person being recommended by him. So really what we are contemplating to do is this. We do not recognise anything that might have happened as a result of the military operations which have recently been suspended. But what we really want is to bring into the Assembly persons who will represent the State as a whole. And the Prime Minister, the person who represents the Government as also the largest political party, he is in our opinion, the best person to make recommendations the Ruler who will nominate on such recommendation. Sir, at this stage, I do not wish to say anything more. I move.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to oppose the motion and for good reasons, if you will allow me.

Mr. President : You can oppose it after the amendments have been moved. There are certain amendments of which notice has been received, and.....

Maulana Hasrat Mohani : Sir, will you allow me to express my opposition here and now? I do not want to wait for the amendments, because my opposition has nothing to do with the amendments.

Mr. President : I think we shall take the amendments to the motion, and then after the amendments have been moved, when the whole question is discussed, Maulana may take his chance.

Mr. Kamath may move his amendment.

Shri H. V. Kamath (C. P. & Berar: General): My amendment being of a verbal nature, in view of what Mr. Ayyangar has said just now, I do not move the amendment, but I hope you will be so good as to let me catch your eye later on, as I wish to speak on the motion.

Mr. President : I make no promise. Prof. Shah may move his amendment.

Maulana Hasrat Mohani : I have to point out that I want to oppose this motion in the sense that I do not want that you should allow the opportunity to move things at this stage.

Mr. President : You can oppose the motion at that stage. But at this stage, we shall take up the amendments first. They will be moved and after that, you can have your say.

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

"That in the proposed paragraph 4-A, the word 'all' be deleted."

"That in the proposed paragraph 4-A, before the word 'Kashmir' wherever it occurs, the words 'Jammu and' be inserted."

"That in the proposed paragraph 4-A, for the words 'may be' where they occur for the first time, the words 'may pending the holding of a plebiscite, under the auspices of the United Nations' Organisation, and without prejudice to the result of that plebiscite, be' be substituted."

"That in the proposed paragraph 4-A, for the words 'by nomination' the words 'by election by the Praja Sabha of the State of Jammu and Kashmir' be substituted."

"That in the proposed paragraph 4-A, for the word 'nominated' the word 'elected' be substituted."

"That in the proposed paragraph 4-A, the words 'by the Ruler of the Kashmir on the advice of his Prime Minister' be deleted."

Mr. President, Sir, I am fully conscious of the seriousness and delicacy of the task I have taken upon myself in.....

Pandit Balkrishna Sharma : May I request the honourable Mover of the amendment to read out to the House how the motion would read, after his amendments?

Prof. K. T. Shah : Yes, it will read thus:

"Notwithstanding anything contained in para. 4, the seats in the Assembly allotted to the State of Jammu and Kashmir may, pending the holding of a plebiscite under the auspices of the United Nations Organisation, and without prejudice to the results of that plebiscite, be filled by election by the Praja Sabha of Jammu and Kashmir and the representatives of the State to be chosen to fill such seats may be elected."

I was saying Sir, that no one can be more aware of the seriousness and delicacy of the task I have taken upon myself in tabling this amendment, and in advancing arguments that I have to place before this House to convert it to my view-point. Being so aware of the gravity of this task and its delicateness, I assure, you, Sir, that I shall not use a single phrase or expression, nor gesture, nor tone which would, in any way in the least import passion or prejudice in the arguments. I am aware that this subject is coloured very deeply by lone-standing prejudice. I am aware, Sir, that there will be deep feeling on the matter, and therefore, so far as it lies in me, I assure you again, Sir, that I shall not use a single expression, nor one gesture which might give rise to any feeling unbecoming this House and unwarranted by the seriousness of the case.

Before I proceed to develop my arguments, Sir, may I in all humility, place before this House something like my credentials to speak on this subject.

Sir, I have been acquainted with Kashmir State and its governance for now something like fifteen or more years. I have known the principal parties concerned in this matter by first-hand knowledge and working with them. I have helped—in however small a way it may be,—to shape what is called the 'new Kashmir' from the day that it was in draft form, when the present Prime Minister was good enough to come down to Bombay and consult me on the matter for fifteen days. I had also the honour to be invited to be a Planning Adviser to the preceding Government of Kashmir, in connection with which I had to visit Kashmir State, study the situation and know its people, know its administration, from not merely the superficial tourist's stand-point, but from the stand-point of a close student of affairs. A bookworm as I may be. I had some opportunity to know these first hand.

I have, perhaps to my own misfortune, been associated with this matter even after the developments of the last few years; and in the course of this argument, I shall try and place before you, Sir, certain considerations which I trust will show you, that if I say anything on the subject I am not saying it from merely superficial newspaper headline knowledge of the matter, but from some close study, close observation and personal knowledge of the subject with which we are dealing.

Sir, after this Preface let me now proceed to the amendment that I have suggested. I have, Sir, in the first place, suggested, that the word "all" be omitted. After all the definite article would remain; and that would include all, even without our using that expression. It, is however, not a merely drafting change that I am suggesting. There is, as you will perhaps see when I go on with the further development of my theme, there is some significance attached to the idea that the word "all" at any rate be omitted.

Sir, I have next suggested that the nomenclature be changed, and the State be described more correctly as the "State of Jammu and Kashmir." That is the

[Prof. K. T. Shah]

official title of the State; and in an official document like this I do not see any reason why we should not give the correct description, the proper title of the State. It is once more, I assure you, Sir, not a mere matter of terminology, or nomenclature, or mere verbal emendation. As I shall show you, there is some significance in this matter, which makes it more then ever necessary that you should not omit the other part, and, if one may say so, the first part of the title of that ancient State.

By calling it the State of Kashmir only you are perpetrating or perpetuating an error, which according to the honourable the Mover, has apparently happened in all our documents. May I ask, Sir, if we have made a mistake in the first instance if we have been carried away by the importance of one section of the State, by the importance of the personages connected with that part of the State, is that any reason why we should forget the other and no less important part of the State, and in this formal document continue to perpetuate that mistake, and speak only of " Kashmir", when we really mean " Jammu and Kashmir"?

It is admitted, Sir, it is common knowledge, it is a fact not denied by the honourable the Mover of this resolution, that that is the correct name of the State. And those at any rate who remember the campaign of the present Prime Minister of the State in connection with 'Quit Kashmir' will realise that in the sequence of events that have happened, it is liable, if you describe it in this manner, to be gravely misunderstood wherever such nomenclature is allowed to be used; and our public records will be disfigured to that extent.

Sir, as you will see later on here is a matter which is not, as my honourable Friend Mr. Kamath suggested, merely a matter of verbal change, There is a significance attached to it which I hope this House will realise as we go on. The State of Jammu and Kashmir is correctly described as Jammu and Kashmir because, so to say, there are two States in one Kingdom, just as Scotland and England were two States under the First of the Stuarts. The King was King James the Sixth of Scotland and King James the First of England. There were two Crowns worn by one person. In regard to the State of Jammu and Kashmir until about the communal rising of 1933, it was for all practical administrative purposes actually divided into two provinces more or less distinct, though under the same Ruler.

I trust I have said enough to demonstrate to the House that the matter of nomenclature is not merely a matter of verbal emendation; that it has behind it a significance, a significance, in the sequence of events, not confined only to this House or to this country. It has repercussions outside this country, as I will try to show later on; and, therefore, we must be very careful in every word that we use, so that our expression, our nomenclature, our whole wording is in conformity with the situation and the correct facts.

Next, Sir, I come to a very difficult and delicate matter, namely the suggestion that the election be, pending the holding of a plebiscite under the auspices of the United Nations Organisation and without prejudice.....

Dr. B. Pattabhi Sitaramayya (Madras: General): I wish to raise a point of order, Sir, at this stage. The reference to the plebiscite and to the United Nations Organisation has nothing whatever to do with the representation proposed to be given to the Kashmir State in this motion. I think this amendment should be ruled out of order.

Mr. President : What has the honourable Member to say on the point of order?

Prof. K. T. Shah : It has been the declaration of the highest authority in India also that the accession of the State made by the Maharaja, who was the complete constitutional head on the day that that accession was agreed to, was subject to confirmation by the result of the plebiscite.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): That is absolutely incorrect— cent per cent incorrect. I am amazed, surprised and astounded that such a statement is made by Professor Shah.

Prof. K. T. Shah : If I am wrong I am open to correction. We ourselves have accepted the United Nations decision to hold this plebiscite and an Administrator has been appointed. If I am wrong I am in your hands.

Mr. President : The point is whether the accession was conditional. The accession, so far as I understand from the Prime Minister was unconditional and complete. The result of that accession may be altered as a result of the plebiscite, but the accession as such was complete and final. Therefore the question of the accession does not arise.

Prof. K. T. Shah : I am not for a moment suggesting that the representatives of Jammu and Kashmir should not come here; nothing of the kind.

Pandit Balkrishna Sharma : The point of order that has been raised by Dr. Pattabhi Sitaramayya seems to by very pertinent, inasmuch as this resolution is the Constituent of the act of accession which the Government of India and the Constituent Assembly have accepted; and, therefore it is only in relation to that that we are here making provision for the representatives of Jammu and Kashmir to sit in our Assembly. It has absolutely nothing to do with the plebiscite. As the Prime Minister has pointed out, the accession was complete and without any reservation on the part of the Maharaja. That the result of the accession may probably be upset by plebiscite has nothing whatever to do with the proposition we are considering now.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): I entirely agree that this part of the amendment is out of order. We have to see whether it has any bearing on the proposition. If it has no bearing on the main proposition the amendment must be ruled out of order. From the information that has been given by the Honourable the Prime Minister and from the information that you, Sir, were pleased to convey, it is clear that the accession of Kashmir was unconditional. Now when the accession was unconditional, the question of plebiscite has no bearing. The main proposition says that the seats in the Assembly allotted to the State of Kashmir shall be filled by nomination and the representative of the State to be chosen to fill such seats may be nominated by the Ruler. It places no time-limit; it places no condition. Such a condition cannot be placed because the accession was unconditional as we were just informed. By presuming a thing which is not in existence and which is not warranted by facts now brought to the notice of the House, I humbly submit that this amendment is surely out of order.

Mr. President : I am inclined to agree that the point raised by Dr. Pattabhi Sitaramayya is a solid and valid one. The accession of Kashmir was unconditional and what we are concerned with here is the representation of that State in this Assembly. When the plebiscite will take place and what the result of the plebiscite will be, we are not concerned with here. We are only concerned with the representation of the State in this House. The method suggested has found favour with the Mover. The honourable Member may move his amendment with regard to the method, but he cannot put

[Mr. President]

down any condition with regard to the status of the Members who will be returned to this House. Those members will sit as any other Members without any condition being attached to their status or tenure. So that part of the amendment is ruled out of order.

Prof. K. T. Shah : I bow to your ruling, Sir, and therefore shall confine myself to the other part of the amendment, which naturally would suffer in asmuchas it was an integral part of my argument. I shall nevertheless try and make the argument as much self-contained as I possibly can, notwithstanding the lopping off of a very integral part of my amendment.

The next amendment, Sir, suggests that the representatives be elected by the Praja Sabha of Jammu and Kashmir. Sir, it is an admitted fact that representation of the States is secured, as the honourable the Mover himself was pleased to declare, partly by election and partly by nomination by the Ruler. Moreover we have allowed nineteen months or more to elapse between the date of the accession and the present suggestion that the representatives may be chosen. I am aware, Sir, that there have been circumstances, there have been developments which have made it difficult, if not impossible, to secure the representation of Kashmir in this Assembly.

Wherever there were popular legislatures, they were allowed to elect half the number of representatives, the other half being nominated by the Ruler. Why should that salutary principle be departed from in this case? As the honourable the Mover himself said the Praja Sabha of Kashmir was elected in 1946-47 and, therefore, it is still within its normal life.

Shri R. K. Sidhwa (C. P & Berar: General): Does it exist? What is its strength?

Prof. K. T. Shah : It may be that not all the members may be within the jurisdiction where the King's writ runs. That, however, does not upset the technical position that the legislative body of Jammu and Kashmir exists, and that body has a right, according to the precedent which we have followed in these matters in the past, to elect at least half the number of representatives. I do not know why a departure should be made in the case of Kashmir alone.

Now in the original motion, the whole of the representatives of Kashmir are required to be nominated and that too nominated on the advice of the Prime Minister. We have taken it for granted that that Government or that authority represents the majority of the Kashmir population. That would have been of course evident had any new elections taken place. But circumstances have changed and the Nationalist party has come to power. The fact must be remembered by the House that the population of Jammu and Kashmir, put together, is something like 76 per cent Muslims and 24 per cent Hindus, including Dogras and other non-Muslims. It is for the House in its wisdom to decide whether, given this composition of the population given this course of events that have happened in the meanwhile, whether it is possible that the election could take place on a fair basis even while the frontier itself is in danger; and even while, though the "cease-fire" has been declared, truce has not yet been signed and peace has not yet returned to the State. The danger to Kashmir, or rather the danger to India from any untoward happening in Kashmir is left more to the imagination of the House then any words of mine can describe.

While I am unwilling at this moment to complicate the issues in this manner, I should explain to the House the gravity of the consequences that may occur. I am bound to place before this House this question that if we depart from the

practice of election, partly of election and partly of nomination by the ruler at his own will and not as is here required wholly by the ruler, on the advice of his Prime Minister, it is a matter for the House to say.

I realise, and I am prepared to say frankly to the House, that my amendment suggests not the same practice as was followed in the past with regard to the other States. I have been driven to suggest that it should be wholly election because of the extraordinary circumstances of the situation. Had the situation been in the State as normal and peaceful as in other cases, had the situation been uncomplicated by any third party intrusion in the matter, I would have certainly followed the same precedent; and required that at least part of the representatives should be representatives of the people chosen by their representatives in a proper form. But as the situation is there today, with all the complications that have arisen, all the representatives of the people must be elected. That is my submission. I am not asking too much when I say that we shall not be departing from democratic principles, or idea or justice, or prudence or wisdom in this matter if we say that the people of Kashmir, and the people of Kashmir alone, shall elect all the representatives to this House. If this party claims to represent the entire or at least a large majority of the people of Kashmir, then there is no reason to fear that they cannot send their representatives according to their wishes. They need not, therefore, shrink the suggestion I am making of calling upon the representatives to be elected and not nominated.

In this matter I am constrained to point but that the developments all along in the history of Jammu and Kashmir in the last three and a half years should not be overlooked. You must not overlook the agitation that was started in February 1946 whereby a responsible party or the leader if the responsible party had started a campaign of 'Quit Kashmir' and in consequence thereof events developed and created all the difficulties that have since ensued. I do not like this House to be a party to anything that might look as if it was a surrender to one man's wishes, that nothing can be done until the Maharaja is removed or complete power is handed over to him. Whether or not he holds the complete confidence of all the people of Kashmir has yet to be proved. I am aware that he may have a large following; but at the same time, if you want proof beyond the possibility of doubt, there is no reason why you should not send invitations for an election even under the limited franchise that is prevailing. If you have adult franchise that would be better. But even under the limited franchise of 1946, if you hold an election you will get the true representatives of the people.

You must also not forget that the events that have happened have invested the other countries and the sister Dominion and those outside with interest in the matter. That being so they will not take any decision unilaterally made by us, without demur. If you want to have peace restored, if you want to live in peace with your neighbours, you should not give needless occasion for them to say that here you are purchasing a design and committing an act and taking steps whereby your own declarations, and, what is more, whatever interests the others may have, are being jeopardised. If that is going to be a slur on the good name of this country, and its claim to stand always for the people or for those who are oppressed, then I think it is not too much to demand that the representatives in this case should be wholly elected, and should be the true reflex of the people of Kashmir in all that they may be pleased to say in this House as regards the interest of that State whenever that portion of the Constitution is reached.

Mr. President : Your amendment is that there should be a fresh election and that the Sabha should elect the representatives.

Prof. K. T. Shah : I only say that they should be elected.

Mr. President : You also say that the Sabha should send representatives. If so, how does the question of general election arise?

Prof. K. T. Shah : I say that they should be elected by the Sabha.

Mr. President : If it is the rump of the Sabha, what is the change?

Prof. K. T. Shah : I suggest that it would be better if they were elected by adult franchise. But that is not to be. If you want to get the true reflex of the popular opinion in Kashmir, then you should have that through the Praja Sabha which is the legislature of the State though it may be very unpleasant for us to do so.

Sir, in this connection I feel it my duty to place before the House one or two considerations. We only recorded last week the ratification of our closer association with the British Commonwealth. And if we now complete this act, the two events together carry their own significance.

Secondly I would like the people in this House to realise that the position of Kashmir as it is.....

Pandit Balkrishna Sharma : May I know from the honourable Mover of the amendment when the elections to the Sabha took place?

Prof. K. T. Shah : In November or December 1946.

Pandit Balkrishna Sharma : Was there snowfall in Kashmir at that time?

Prof. K. T. Shah : I do not know that. The elections are held in winter.

Pandit Balkrishna Sharma : The present Prime Minister was then in prison.

Prof. K. T. Shah : He was not the Prime Minister then. He was in prison.

Pandit Balkrishna Sharma : Where are the present members of the Sabha?

Prof. K. T. Shah : I do not know that. You must ask the post-office in Kashmir.

Shri R. K. Sidhva : Does the honourable Member know whether the Praja Sabha exists now, where it exists, what its strength is, where the members are?

Prof. K. T. Shah : The Praja Sabha should know the addresses of its members. Whether the members can collect together or not I do not know. The members may be available or may not be available. As least a quorum may be available to constitute a meeting of the Praja Sabha, if you want to consult the Praja Sabha, if you want to know the opinion of the people of Kashmir. If you do not want, then this motion may be passed.

Pandit Balkrishna Sharma : Is the honourable Member aware that some or most of the members of the Praja Sabha have gone over to Pakistan and those that remain are working for Pakistan? Is he aware of it?

Prof. K. T. Shah : I am not aware. Some have gone.

Mr. President : It will save time if there is no interruption.

Prof. K. T. Shah : I thought I should answer questions put by honourable Members, but I will ignore questions in future.

Two or three more points I would like to place before the House. First, I would like the House to remember the composition of the population of Kashmir, its geographical position, its connection and the possibilities that may happen there. I think the House is aware that we have spent so far something like one hundred crores on Kashmir. What are we getting in return? We have spent—I do not know—how many lives in Kashmir. We are still not out of the wood to the extent that normal conditions, and perfect peace have been restored and normal constitutional progress may be resumed.

The Honourable Shri Jawaharlal Nehru : I strongly protest against the remarks made by the honourable Member. Here we are not discussing the future of Kashmir.

Mr. President : We are discussing only the resolution. The honourable Member is not justified in making remarks on subjects which are not covered by the resolution.

Prof. K. T. Shah : I submit, Sir, that I would not go into those questions. I will not make even those remarks. I will only conclude by saying that this is a very serious matter. The House must bear in mind....

An Honourable Member : What do you mean by serious?

Prof. K. T. Shah : I cannot tell you what is serious, how it is serious.

Shri Jaspat Roy Kapoor (United Provinces: General): The serious thing is that the honourable Member is so ignorant about Kashmir that he even does not know who and where the members of the Praja Sabha are.

Prof. K. T. Shah : The matter is of sufficient importance for the House to take all the aspects of it into consideration and then come to a decision on it. Sir, I move.

Mr. President : Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): I am not moving my amendment, Sir.

Mr. President : We may now take up the discussion of the motion and the amendments.

Shri H. V. Kamath : Mr. President, Sir, there can be no two opinions in this House that we are all jubilant that very shortly representatives from what is in the words of our Prime Minister the Lovely land of Kashmir, the beauty of which persists in the midst of much spoilation and desecration, will take their seats in this august House. The importance of the subject that we are discussing today cannot be over-estimated. My Friend, Professor Shah, first moved his amendment seeking to substitute. "Jammu and Kashmir" for "Kashmir". May I point out to him that after what was said about this matter by the Honourable Shri Gopalaswami Ayyangar, the amendment reduces itself to merely one of a drafting character. The Honourable Shri Gopalaswami Ayyangar assured us that though the word "Kashmir" only was used, what was meant was the whole State. If Professor Shah takes the trouble of turning to Part III of the First Schedule of the Draft Constitution, he will find that this State is referred to as merely Kashmir. After this, there is no scope, there is no justification for the amendment moved by Professor Shah. To my mind, some points arise in connection with the motion moved by the Honourable Shri Gopalaswami Ayyangar and I would request that in his reply he may kindly throw some light on them. Firstly, we have not been told—at any rate I did not hear—how many members or representatives from this State will be nominated by the Ruler on the advice of the Premier to take their seats in this House.

The Honourable Shri N. Gopalaswami Ayyangar : I mentioned four.

Shri H. V. Kamath : I am sorry I did not hear that. The number of members is four. I hope we will stick to the population figures that were returned at the last census. In this connection the point arises whether not merely Jammu and Kashmir but also Ladakh—I mean the entire territory including Mirpur and Poonch, will be represented. The Honourable Shri Gopalaswami Ayyangar said that till a few months ago the situation in Kashmir was somewhat fluid, but now it is being stabilised. It is very happy news for us, very welcome news. There is every reason for gratification that the situation is getting fast stabilised. There have been divergent rumours and reports in the press about certain areas in Kashmir formerly held by Pakistan and what was wrongly called the Azad Kashmir forces. The resolution of the U.N.C.I.P.....

Pandit Balkrishna Sharma : Sir, may I draw your attention to the fact that this sort of remarks may be considered as out of order. We are not discussing the whole gamut of Kashmir.

Mr. President : I was just going to draw his attention to the fact that this sort of remarks is wholly irrelevant. We are now only concerned with the sending of four representatives of this House from Kashmir.

Shri H. V. Kamath : I bow to your ruling. I will not dilate on that point any further. I will take the next point and that is the composition of the representation from Kashmir to this Assembly. I was never at any time in my life for separate electorates. I never supported at any time separate electorates which have been the basis on which elections in this country and even to this House were held. We are all very well aware that under the Cabinet Mission Scheme members were elected to this House on the basis of separate electorates. I was very unhappy when that took place. I hoped at that time that that situation would come to an end very soon. Only yesterday we completed the task which we began sometime last year or a few months before that, that is to say the work which we began eighteen or twenty-one months ago, by reason of which we did away with separate electorates.

Mr. President : There is no question of separate electorate in this.

Shri H. V. Kamath : I am coming to that point. The point was referred to by Prof. Shah about the population in Kashmir, about how many Hindus are there, how many Muslims and how many Sikhs. From every province they elected members to this House in July 1946, The basis of representation was one member per million of the population, of the province or state, that is to say for a province like C. P. and Berar which had 160 lakhs of non-Muslims and about 10 or 12 lakhs of Muslims there were 16 non-Muslims of Hindus sent to this House and one Muslim. Here the population of this State which will shortly be represented in this House, is, I believe about 10 lakhs or thereabout of Hindus and the rest Muslims. In conformity with the decision which we have adopted only yesterday and during the last few months, I for one, would be happy if for this new nomination we did away with the separate outlook. I would welcome if the whole of Jammu and Kashmir were represented by all Hindus, if necessary, or all Muslims, provided you get the best men available on the spot. I hope that considerations of communal representation will not guide or affect the matter of nomination of these representatives from Kashmir to this House. That would be completely in conformity with the stand that we have taken, the decision we have taken in this House on this matter of separate electorates.

Mr. President : May I point out that so far as the representation of the States in this House is concerned, there has never been any question of representation by communities. So far as the States are concerned, all the members who have come here irrespective of the community to which they belong, unlike the members of the provinces. Therefore, that question does not arise here.

Shri H. V. Kamath : As we were elected under the Cabinet Mission Scheme, I hope there would be one policy, one method adopted for representation of all the States and I hope that in the case of Kashmir, there would not be departure from the method adopted for the States, in contradistinction to the provinces.

Then, Sir, there is one other point, which I would like the honourable Mover of the motion to clarify when the time comes. In the last November—December session of this Assembly, I raised a point when the rules were being amended, as to whether and when all the States that are still unrepresented in this House will be duly and suitably represented. This is the last session, to my mind, of the Constituent Assembly and the most important one for that reason: and we would have been very happy indeed if the whole of India with all the States who have integrated with it or acceded to it, were represented in this Assembly.

Dr. P. K. Sen (Bihar: General): On a point of order, Sir, the honourable Member is again disgressing and his remarks do not bear upon the motion at all.

Mr. President : I am inclined to think that reference to other States is unnecessary and irrelevant.

Shri H. V. Kamath : I thought that Kashmir as a State which has acceded to the Indian Union was on a par with other States which have acceded to the Indian Union, and in that light I was going to.....

Mr. President : So far as I am aware all the States which have acceded have already come in except Bhopal and Kashmir. As far as Hyderabad is concerned, I do not know in what stage of accession it is, but so far as the other States, about whose accession there is no doubt, they have all come in except Kashmir and Bhopal and steps are being taken today to bring in Kashmir.

Shri H. V. Kamath : As far as Hyderabad is concerned.....

Mr. President : That question does not arise now. It is not necessary; I shall inform myself later on.

Shri H. V. Kamath : The Home Minister, Sardar Patel, told us last Budget session about the position as regards Hyderabad, and as Kashmir is naturally on a par with other States that have acceded to the Indian Union. I only hoped—I do not insist— that all the States that have acceded to the Indian Union would be represented in this House.

Shri R. K. Sidhwa : The matter of sending representatives to this Assembly is a simple one. Why extraneous matter is brought in by the honourable Member, I fail to understand.

The Honourable Shri Jawaharlal Nehru : The honourable Member is a master of irrelevancy. He does not quite understand what has happened. Nearly all the States which have acceded are represented here except Kashmir.

Shri H. V. Kamath : Mr. President, You yourself said that Bhopal has acceded and still is not represented here. I do not know whether I am irrelevant or somebody is forgetful. Here, Sir, I have got a tabular statement where the total number of members present in this House at present is given.

Mr. President : What is the point?

Shri H. V. Kamath : Sir, I only wanted to say that still there are twenty-one members to take their seats in this House and I hope that steps would be taken early to see that all these 21 members including those from the States of Jammu and Kashmir will take their seats in this House during this very important session. I wonder whether the interruptions were at all necessary. I was not going to dilate any further, and I am sorry if the Prime Minister misunderstood the trend of my argument, and thought fit to interrupt me. There is one last point, Sir, and I have done. I do not know why the Prime Minister is getting impatient.

The Honourable Shri Jawaharlal Nehru : Depressed.

Shri H. V. Kamath : I would try to cheer him before I end my little speech. The last point is this. (Interruption). Mr. Balkrishna Sharma will have his chance, I hope.

Mr. President : What is the point?

Shri H. V. Kamath : The last point is this. In yesterday's issue of an important Daily of this city, there was a report that the Maharaja of Kashmir was going on a short holiday and somebody else would act as Regent. I hope, Sir, that this resolution which we are going to pass today will be implemented before such a rumoured change takes place, and the members will be nominated by the Ruler of Kashmir on the advice of his Prime Minister before he leaves the State on a short holiday.

Lastly, I would have been happy if the person referred to as the Prime Minister here has been designated otherwise. There is only one Prime Minister in India. I am told there was a recent circular issued to all provinces—I do not know about the States—that the Chief Ministers there should be designated either as Chief Ministers or as Premiers and that the title Prime Minister should be reserved only for the Prime Minister of the Indian Union. Therefore, I would have been happy if the Honourable Mr. Gopalaswami Ayyangar, who moved this motion, had used the term "Premier" in place of "Prime Minister", because I feel that it conflicts with circular issued by the Government of India to all the provinces quite lately.

These are the points which I hope the mover of the motion would clarify in his reply to the debate. I hope we will be able to welcome our friends from Kashmir in this House at a very early date.

Maulana Hasrat Mohani : Sir, I am not opposing this motion of Mr. Ayyangar on the ground that it wants the Kashmir representatives to be nominated, nor on the ground that some of my honourable Friends have tabled amendments, some wanting that 50 per cent. should be elected and 50 per cent nominated. I do not care whether cent. per cent. are elected or nominated. But what I object to is this. I do not know, of course; but I do not see any necessity for sending any Kashmir representatives to this Constituent Assembly at this stage. Pandit Nehru got angry because he says that this accession has been complete and there is no doubt about that. He says that Kashmir has acceded to India and therefore they have every right to ask for their representatives to be sent here to this Constituent Assembly. While I need not quarrel on that subject, I have to ask a question from my Friend, Mr. Ayyangar. I accept this contention of the Prime Minister that this accession has been complete although I am doubtful whether he is absolutely right in this. Because, he himself not once or twice, but many times, has said that this accession depends on the final decision of the plebiscite, of

the votes of the Kashmir people. Of course, now, he has made up his mind; he has created difficulties and his move is that this plebiscite will never take place and therefore he says that this accession is complete and there is no doubt about it. Even admitting that, I ask Mr. Gopalaswami Ayyangar why he should anticipate the decision of the Government of India and why should he come forward at this stage to propose this thing. I say, why at this stage. Because, generally we find that in all those States which have acceded to India, invariably the Rulers of those States, have been pensioned off and the administration has been taken over by the Indian Government or some provincial Government. I do not know what is in the mind of the Prime Minister or the Government of India, as to what will be that status of the Kashmir Government. After accession, will he also be pensioned off and the administration of Kashmir taken over by the Government of India? Is that so? Then, I say that this thing has not yet been decided and if this has not yet been decided, then, I think that there is no status for the Maharaja of Kashmir for the present and therefore this question of his nominating representatives for the Constituent Assembly does not arise. I say that the whole thing is premature. Unless and until you decide the status of the Kashmir Government and the status of the Maharaja, it is hopelessly absurd to set down any proposal of this kind. It is on this ground that I totally object to this motion. I think he should not be allowed to move such a motion at this stage.

The Honourable Shri Jawaharlal Nehru : Sir, this very simple motion of my honourable colleague has led some members to refer to almost all connected matters, not with this motion, but in regard to Kashmir, and so we have been led to think of this vast and intricate and difficult problem of Kashmir. It is a little difficult in this context to confine oneself to the simple proposition that has been placed before the House. Nevertheless, I do not intend to go beyond that proposition; nor do I think need this House go beyond it although several members may be tempted to do so.

The proposition before the House is a very simple one. Now, I say that I have a vast admiration for the erudition and learning of Professor Shah. Nevertheless, I have followed with some surprise not only what he has said today, but what he has said and done in regard to Kashmir for a number of years. I have been also connected with Kashmir in many ways and, in a sense, I belong to Kashmir more particularly than to any part of India. I have been connected with the fight for freedom in Kashmir and I know about the various groups, various people, various individuals from the Maharaja down to humbler folk there. And so, if I venture to say anything in this House, I do so with far greater authority than Prof. Shah can presume to have on the subject. I speak not as the Prime Minister, but as a Kashmiri and an Indian who has been connected with these matter. It amazed me to hear Prof. Shah propose that the so-called Praja Sabha of Kashmir should send representatives to this House. If Prof. Shah knows anything about Kashmir, he should know that there is nothing more bogus than the Praja Sabha in Kashmir. He ought to know that the whole circumstances under which the last elections were held were fantastic and farcical. He ought to know that it was boycotted by all decent people in Kashmir. It was held in the depth of winter, to avoid people going to the polling booths. And winter in Kashmir is something of which probably Members in this House have no conception of. An honourable Member asked me about winter, and whether it was snowing. But when it snows in a cold country, it is called warm weather. In winter it is 20 to 30 degrees below snowing weather. The election was held when the roads were impassable, when the passes could not be crossed; in fact, it was just not possible for the voters to go. But apart from that, when the National Conference of Kashmir, in spite of difficulties, difficulties including that of their leaders being in prison, including Sheikh Abdullah and others, in spite of

[The Honourable Shri Jawaharlal Nehru]

all that, when they decided to contest these elections, then their candidates were arrested, many of them, and all kinds of obstacles were put in; and it was quite clear that they would not be allowed to stand. So they decided to boycott it and they did boycott it, with the result that the whole national movement of Kashmir boycotted those elections, just as the national movement in 1920 boycotted elections in India. And it was and amazingly successful boycott. Of course people got in. By boycotting you cannot keep another man out; but the percentage of voting was so very small—I forget the exact fraction—it was almost negligible; and the type of people who got in were the type who had opposed the freedom movement throughout, who had done every injury possible to the idea of the freedom of Kashmir till then. And subsequently some of them, when Kashmir adopted this new status and became much freer than it ever was, they subsequently sought refuge in Pakistan. Now that is the kind of body referred to; it is a bogus body; it is really no body at all. It is a disembodied spirit. It does not meet. It does not do anything and many of its members are not just traceable. And now Prof. Shah calmly, tells that the Praja Sabha can elect Members to this honourable House; it is a monstrous proposition.

I admit that it is not desirable for any Member of this House to come by nomination or be selected by some narrow process; but unfortunately many of us here, from the States I mean, have not come exactly as we should have liked them to come. They have been sent, partly by nomination, partly by election, by election again, by bodies which are not often properly constituted; but we had to take things as they were, and we wanted them here to help us in this work of constitution-making. So though the process suggested for Kashmir is not ideal, yet I do think that it is a better process than has been adopted in regard to many States in India. It is a process where you get a popular government with the representative of the popular party at the head of it, recommending to the Ruler that certain names should go. Even from the point of view of democracy, that is not an incorrect process. It is not 100 per cent. correct; but the House should see what better method you can suggest. I can understand Maulana Hasrat Mohani, and I am inclined to agree with him that it would have been—if I heard him correctly—it would have been better and more graceful for us to have had the representatives of Kashmir here much earlier. But we did not do it. It was our fault, may be it was other people's fault; but whatever the reason, we did not do it. But is that a reason why we should continue the error in the future? During the next two or three months, or however long this House meets, when we are going to finalise this Constitution, it is desirable for us to give every opportunity to the representatives of the Kashmir State and of any other State, to come here and participate, even though they have not done so up to this stage. So I submit that the motion moved by Mr. Ayyangar is the only way out of this difficulty.

I would suggest to him and beg of him to accept a small change in the wording of the motion. What he has put down is perfectly correct, he has put down "Kashmir", as it occurs in the various Acts, etc. He has taken it naturally from these enactments. But because there is a slight confusion in people's minds, it would be better to describe it a little more fully as "Kashmir State" and then putting within brackets, the words "otherwise known as the State of Kashmir and Jammu". No doubt, so far as the proposition that people should be entitled to come from Jammu and Kashmir is concerned, I think it is up to us to give them every opportunity to do so. And secondly, so far as the method is concerned, I can think of no other, and no fairer method than what has been proposed in this motion.

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, the question may now be put.

Mr. President : The question is:

"That the question be now put."

I take it that that is the wish of the House.

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I have really very little to say. But I think a few words have to be said about one or two observations that were made by my honourable Friend, Maulana Hasrat Mohani. He doubted whether the Prime Minister's description of this accession as being complete is altogether correct. I maintain that it is perfectly correct. The accession was offered by the Maharaja and it was accepted by the Governor General of the time. I have a copy of that document before me. It is an absolutely unconditional offer. But my honourable Friend referred to what has happened since and I know my other honourable Friend Prof. Shah also seemed to imply what the Maulana contended. Now the correct position is this. The accession is complete. No doubt, we have offered to have a plebiscite taken when the conditions are created for the holding of a proper, fair and impartial plebiscite. But that plebiscite is merely for the purpose of giving the people of the State the opportunity of expressing their will, and the expression of their will, will be only in the direction of whether they would ratify the accession that has already taken place—not ratify in the sense that that act of ratification is necessary for the completion of the accession, but if the plebiscite produces a verdict which is against the continuance of accession to India of the Kashmir State, then that we are committed to is simply this, that we shall not stand in the way of Kashmir separating herself away from India. In this connection, I should like to draw the attention of the House to the Provisions of the Indian Independence Act under which, when a State accedes and subsequently wishes to get out of the act of accession, thus separating itself from the main Dominion, it cannot do so except with the consent of the Dominion. Our commitment is simply this, that if and when a plebiscite comes to be taken and if the verdict of that plebiscite is against India, then we shall not stand in the way of the wishes of the people of Kashmir being given effect to, if they want to go away from us. That is all that it means. So I maintain that the statement that the accession at present is complete is a perfectly correct description of the existing state of things.

Then he asked why should representatives be brought in at this stage. We are not bringing them into this House for the purpose of placing there seal on the act of accession. We are giving them an opportunity for the exercise of the rights which they have obtained by virtue of the fact then accession has already taken place. We are making a new constitution which affects not merely the Union as a whole but affects the units of the Union and Kashmir, on account of the fact of accession, is at present a unit of that Union. In fashioning the constitution for the whole Union it is only right that representatives of all units should find seats in this Assembly.

I think I need not to reply at length to my honourable Friend Prof. Shah's objections. They have been dealt with already by the Honourable the Prime Minister. I would only say this. There has been a delay no doubts. Prof. Shah seemed to suggest that the cease fire took place some months ago and he could not understand why this step was not taken immediately after. A cease fire only suspends military operations and takes some time before things settle down

[The Honourable Shri N. Gopalaswami Ayyangar]

sufficiently for us to see our way through. I believe I am correct in saying that the first meeting of this Constituent Assembly as a constitution-making body after the cease fire suspended military operations and things began to settle down is the present one. I do not think we can be convicted of delay in bringing this proposition forward at this meeting.

I do not think I need reply to the other points in his speech but there is one amendment of which he has given notice and has pressed which I should deal with. He wants the omission of the word "all" in paragraph 4-A. The word "all" was put in deliberately, because in the present rules there is provision for a certain proportion of the number of seats being nominated to by the Ruler himself without reference to anybody else. Now what we are suggesting is that not merely a proportion but all the seats should be nominated by the Ruler and in doing so he should be guided by the advice of his Prime Minister. That is the only reason why the word "all" has been put in there. I think there is no harm in retaining the word.

As to the other amendment which he has proposed to the word "Kashmir" the Prime Minister has already suggested that we might perhaps make this clear. I would, with your permission, Sir, be willing to propose an amendment to the effect that after the words "State-of Kashmir" the following words shall be inserted within brackets "otherwise known as the State of Jammu and Kashmir". If that is acceptable to the House my motion may be passed in that amended form.

There is only one other point to which I need make any reference at all and that is the one raised by my honourable Friend Mr. Kamath. He seemed rather perturbed by the use of the expression "Prime Minister" in this connection. He would rather like the word "Premier" to be substituted. Unfortunately here I am unable to comply with his suggestion, because the head of the Council of Ministers in Kashmir is by the Constitutional Statute of the State itself known as Prime Minister and so long as that is there we have got to respect the expression that is used in the Kashmir Constitution.

Perhaps I might also refer to the other point, namely election by the people, which my honourable Friend Prof. Shah suggested. General elections directly by the people are not possible in the present conditions of Kashmir. But if his suggestion was that, even on the limited franchise that was in force before, we could do something in this direction, that also would mean a general election for the purpose of getting together a Praja Sabha and such elections are not possible today. So, my contention is that there can be no direct election of these representatives of the people under the present conditions of Kashmir and those elections will have to be held even if you have to find a new Praja Sabha. The best course in the circumstances is the one I have suggested.

I hope the House will carry this motion.

Mr. President : The suggestion which has been made by the Honourable Prime Minister has been accepted by the mover, *viz.,* that after the words "State of Kashmir" within brackets the words "otherwise known as the State of Jammu and Kashmir" be inserted in the original proposition. If that is accepted by the House, then I shall take up the other amendments.

The question is:

"That after the words 'State of Kashmir' in the proposed paragraph 4-A, the following words within brackets be inserted, *viz.,* 'otherwise known as the State of Jammu and Kashmir'."

The amendment was adopted.

Mr. President : The question is:

"That in the proposed paragraph 4-A, the word 'all' be deleted."

"That in the proposed paragraph 4-A, before the word 'Kashmir' wherever it occurs, the words 'Jammu and' be inserted."

"That in the proposed paragraph 4-A, for the words 'by nomination' the words 'by election by the Praja Sabha of the State of Jammu and Kashmir' be substituted."

"That in the proposed paragraph 4-A, for the word 'nominated' the word 'elected' be substituted."

"That in the proposed paragraph 4-A, the words 'by the Ruler of Kashmir on the advice of his Prime Minister' be deleted."

The amendments were negatived.

Mr. President : The question is:

"That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:—

'4-A, Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir (otherwise known as the State of Jammu and Kashmir) may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.' "

The motion was adopted.

DRAFT CONSTITUTION—(*Contd.*)

Article 104

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I would request that article 104 be postponed.

Article 105

Mr. President : Then I shall proceed to article 105.

(Amendments Nos. 1879 and 1880 were not moved.)

Mr. President : The question is:

"That article 105 stand part of the Constitution."

The motion was adopted.

Article 105 was added to the Constitution.

Article 106

Mr. President : Article 106

(Amendments Nos. 1881 and 1882 were not moved.)

Mr. President : There is an amendment to this amendment. Since the main amendment is not moved I suppose this amendment drops.

Shri T. T. Krishnamachari (Madras: General): It is covered by amendment No. 1883 to which I shall move my amendment.

Mr. President : So much the better.

Mr. Tajamul Husain (Bihar: Muslim): Sir, may I with your permission move this amendment for Mr. Naziruddin Ahmad?

Mr. President : Yes.

Mr. Tajamul Husain : Sir, I move:

"That in clause (1) of article 106 after the words 'High Court' where they occur for the second time, the words 'duly qualified for appointment as a judge of the Supreme Court' be inserted."

If at any time there is no quorum of the Judge of the Supreme Court to hold a Session, the Chief Justice may consult the Chief Justice of the High Court concerned and ask him to attend the sitting of the High Court as an *ad hoc* Judge for such period as may be found necessary for the Judge of the High Court to be nominated by the Chief Justice of India. No argument is necessary. The Judge who sits as an *ad hoc* Judge in the Supreme Court must be duly qualified for appointment as a Judge of the Supreme Court: otherwise he cannot sit.

Shri T. T. Krishnamachari : Sir, I shall with your leave move amendment No. 124 in List VI. Sir, I move:

"That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words 'Chief Justice may' the words 'with the previous consent of the President and' be inserted."

The wording of this amendment is fairly simple as the House will understand that article 106 provides for the appointment of *ad hoc* Judges by the Chief Justice; that is, a Judge of any High Court may be requested to cooperate with the Chief Justice of the Supreme Court and sit in any of the Benches constituted by him to decide any particular case. Well, the article as it now stands means that the Chief Justice can do it without any reference to the Government of the day. I think, Sir, that the position is not quite as it ought to be for the reason that while the appointment of any of the Judges of the Supreme Court, including the Chief Justice, is done by the Executive, any addition to the Court should not be made without any reference to the Executive whatever. Of course, there are administrative and financial problems that might arise by the Chief Justice making a request to any of the High Court Judges of any State to co-operate with him in this manner, and even the propriety of the occasion demands that the Chief Justice should not act except in consultation with the head of the Executive. Therefore, Sir, I have moved that the words "with the consent of the President" should be put in. Actually, it will not be a very difficult matter to obtain his consent, as in most cases it will be a formal matter. Also, there is this safeguard, namely, there are occasions when the Supreme Court has decided matters which have a political flavour. The possibility of any political bias being exercised by the Chief Justice in the matter of the selection of an *ad hoc* Judge to help to decide any particular case can also be partly obviated by this safeguard. The history of the Judiciary in America has been almost a history of how politics has influenced the attitude of the judiciary. Any student of the American Constitution would know that politics has influenced to a very large extent the decisions in constitutional cases by the Supreme Court of America. There is undoubtedly need for a safeguard for providing that the Executive shall have some say in a matter like this and if they really feel that the selection of a particular Judge is not proper, it is probable that the attention of the Chief Justice might be invited to that particular aspect of the matter.

It is not merely to provide against a contingency like the one I have mentioned but also to conform to the proprieties involved in a matter like this that I have moved this amendment. I hope the House will have no difficulty in accepting it. Sir, I move:

The Honourable Dr. B. R. Ambedkar : I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

Mr. President : There have been two amendments moved. Both have been accepted by Dr. Ambedkar. I will now put them to the vote.

Mr. President : The question is:

"That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words 'Chief Justice may' the words 'with the previous consent of the President and' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (1) of article 106, after the words 'High Court where they occur for the second time, the words 'duty qualified for appointment as a judge of the Supreme Court' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 106, as amended, stand part of the Constitution."

The motion was adopted.

Article 106, as amended, was added to the Constitution.

Article 107

Mr. President : Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

Shri Jaspat Roy Kapoor : I am not moving amendment No. 1886 as there is another amendment on the same lines.

Mr. President : Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

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

"That in article 107 the words 'subject to the provisions of this article' be deleted."

Those words are quite unnecessary.

Shri T. T. Krishnamachari : I move:

"That in article 107, in line 3, after the words 'at any time'. the words 'with the previous consent of the President' be inserted."

Sir, the purpose of this amendment is much the same as that of the amendment moved by me to the earlier article and accepted by the house. This article deals with the attendance of retired judges in the sittings of the Supreme Court. For the reasons mentioned by me earlier it will be necessary for the Chief Justice to obtain the previous consent of the President, before inviting any such person to act as a Judge of the Supreme Court.

(Amendment Nos. 1889 and 1890 were not moved.)

Mr. President : We have now the amendments and the article for discussion.

The Honourable Dr. B. R. Ambedkar : I accept amendment 125 moved by Shri T. T. Krishnamachari.

Mr. President : The question is:

"That in article 107, in line 3, after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in article 107 the words 'subject to the provisions of this article' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 107, as amended, stand part of the Constitution."

The motion was adopted.

Article 107, as amended, was added to the Constitution.

Article 108

Mr. President : Article 108 is for the consideration of the House.

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

"That for article 108, the following be substituted:—

'108. The Supreme Court shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint.' "

The article as it stands is in my humble judgment, not happily worded. For the first time since we commenced the article by article consideration of the Constitution we have come across an article which lays down that a particular organ of the State shall meet at a particular place. We have passed already important and articles such as article 69 fixing the venue of meetings of the Houses of Parliament and article 48(4) fixing the official residence of the President. I am sure there are other articles concerning the place where certain bodies or organs of State are supposed to meet. But none of these articles specifies the mane of any particular place where that organ of the State should meet. Why, may I ask Dr, Ambedkar, does he feel it necessary to specify in this article that the Supreme Court shall meet in Delhi? The entire Constitution is silent on the point of India's capital. There is nowhere any mention of the capital of our country in the Constitution. There was even an amendment in this House, which however was not moved, but I am told that my friends are pursuing that matter in another way. There have been frequent references to the necessity of desirability of a change in the capital of India. Anyway, without prejudice to that, notwithstanding any attempt that may be made in this direction, I propose to deal with this question here purely on merit. When the whole Constitution is silent on this point, why should we import this mention of the capital, of Delhi, in this article? Is it not far more desirable or happier to leave the choice of the venue of the Supreme Court to the Chief Justice and the President of the Indian Union? Certainly they are best fitted to judge this matter and I am sure that under the Constitution where we are going to elect a President of the Indian Union and have an eminent legal and juristic authority for the Chief Justiceship, I see no reason why we should specify in the Constitution that the Supreme Court should meet at a particular place. There is no valid reason at all for specifying Delhi in this article for that purpose. It may be that the Supreme Court might meet in another place; even if Delhi is to be the capital, they may decide for various reasons that they should meet in another place, I therefore think that the mention of Delhi in this article is unnecessary.

Just another point, Sir, The article as it stands reads as follows: "The Supreme Court shall be a court of record". What the Supreme Court will be and will not be are matters which have been exhaustively dealt with in the preceding and succeeding articles. The term "court of record" is a borrowed

phrase and we need not use it here. Therefore my amendment lays down that the Supreme Court, shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint. Sir, I move my amendment and commend it for the acceptance of the House.

Mr. President : There is an amendment to this article, No. 3 of List No. 1, notice of which has been given by Mr. Gadgil.

(The amendment was not moved.)

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

"That for amendment No. 1891 of the List of Amendments, the following be substituted:—

"That for article 108, the following articles be substituted:

'108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.' "

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

(Amendment Nos. 1892, 1893 and 1894 were not moved.)

Shri Jaspat Roy Kapoor : Mr. President, Sir, I beg to move:

"That in amendment No. 126 of List VI which has just been moved by Dr. Ambedkar, in the proposed article 108-A for the words 'shall sit in Delhi or at such other place or places' the words 'shall sit at Delhi and/or such other place or places' be substituted."

Should, however, this amendment not meet with the approval of the House, I would like to move, in the alternative,—

"That in amendment No. 126 of List VI in the proposed article 108-A after the word 'places' the following words be inserted 'or in Delhi and at such other place or places'."

If my first amendment is accepted, the amended article would read thus:

"The Supreme Court shall sit in Delhi and/or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint."

Shri T. T. Krishnamachari : Will the honourable Member please make it clear whether there should be a stroke or a hyphen after 'and'.

Shri Jaspat Roy Kapoor : There should be a line between the two. If my second amendment is accepted, the article would read thus:

"The Supreme Court shall sit in Delhi or at such other place *or places in Delhi at such other place or places* as the Chief Justice of India, with the approval of the President, from time to time appoint."

Sir, my reason for moving this amendment is that I believe that the proposed article 108-A does not really convey the meaning which it is intended to convey, and if it does, then I think it is obvious that an anomalous position is created thereby and the capital city of Delhi is being treated in a very unfair manner. The proposed article, as it stands, means that the Supreme Court shall sit in Delhi or at any other place in the alternative, which of course implies that it shall not then sit in Delhi at all. It means further that even if the Supreme Court holds its sittings in half a dozen places in the country, Delhi shall not be one of those places. Delhi and other places would, therefore, be mutually exclusive for the purposes of the sittings of the Supreme Court. I believe it is not the intention of the Honourable Dr. Ambedkar or even of Mr. T. T. Krishnamachari who appears to be the joint author of this amendment, that this article should be capable of this interpretation. Then, Sir, as regards the anomaly that arises out of it, I have to submit that it means that so long as the Supreme Court

[Shri Jaspat Roy Kapoor]

sits in Delhi, it will not have the right or the privilege to hold a circuit court anywhere else in the country. The Chief Justice may consider it necessary in the interests of his work or in order to give necessary facilities to the litigant public to hold circuit courts in different parts of the country. Even if the Chief Justice thinks that in view of the fact that large number of cases have accummulated, say from Madras or Bombay and in order to dispose of those cases or in order to give necessary facilities to the litigants so that they may not be put to the inconvenience of coming all the way to Delhi, it is necessary to hold circuit courts in Madras or Bombay, it will not be open to the Chief Justice to do so. Of course, if he is so disposed he can resort to a little device but then it will be so inconvenient and even ridiculous. He can shift the Supreme Court to a place very near Delhi, say Shahdra or some other new refugee township if the honourable the Minister for Rehabilitation is so disposed to accommodate the Chief Justice, and after shifting the Supreme Court to a place nearby, he can of course hold circuit courts in Bombay, Madras, or Calcutta as necessity may arise. Now, Sir, I submit that this anomalous position should not be allowed to stand. With regard to the injustice to Delhi itself, I submit that the present draft implies that even if the Supreme Court holds its sittings in half a dozen places it shall not be open to the Supreme Court to have even a circuit court in unfortunate Delhi. It means that either Delhi will have the privilege of having the sittings of the Supreme Court exclusively within itself, or it will not have even the facility of having a circuit court there. Either Delhi will be the monarch of all it surveys or it shall be thrown into oblivion. Sir, I cannot understand the logic of it, and, may I say, I cannot understand even the absurdity of this position. If behind this article there is the intention of anybody to remove the seat of Supreme Court from Delhi to some other place, I submit it should be said so in a straightforward and frank manner and that proposal should not be allowed to be brought in this rather back-door manner. But I believe, it is perhaps not the intention of the authors of this amendment, and I should not, therefore dilate on that aspect of it; and since it is perhaps not the intention of the authors, I would submit that it is necessary that this amendment should be amended in the manner in which I have suggested, so that it should be open to the Chief Justice of the Supreme Court to arrange for the holding of the sittings of the court either at Delhi or at some other place or places or both at Delhi and at other place or places. I hope, Sir, that this necessary amendment would be acceptable to the Honourable Dr. Ambedkar and also to the House.

Shri T. T. Krishnamachari : Mr. President, Sir, not being a lawyer, I am rather nervous to contradict my honourable Friend Mr. Jaspat Roy Kapoor, who has moved an amendment to the amendment moved by Dr. Ambedkar. But I think Sir, I do understand this foreign language to the extent that it is possible for a foreigner to understand, and I am afraid that I am unable to appreciate the necessity for making a simple clause, such as 108 happens to be now, into a very complex and difficult clause such as it would be if the amendment of Mr. Jaspat Roy Kapoor is accepted.

Sir, I quite agree with the need for a certain amount of elasticity in regard to the place at which the Supreme Court will have to operate in the future; it may be, it would operate in Delhi or at some other place, or it would operate in Delhi and at some other place, that is precisely what my honourable Friend, Mr. Jaspat Roy Kapoor wants. If the court is to be fixed at Delhi it must also be possible for the Chief Justice to arrange for sittings elsewhere to make it a sort of peripatetic court, if it is necessary and he thinks that if in the event of the headquarters of the court being changed, it must be possible for the Court

to sit at Delhi in the same manner as it would sit in some other place, if the headquarters were Delhi itself. I think that is quite covered by the position of the words at the end of article 108-A as it now stands. It reads: "The Supreme Court shall sit in Delhi and at such other place or places." It certainly does not mean that the Supreme Court shall sit at either Delhi or at such other place; it does not preclude the possibility of the Supreme Court sitting at Delhi and at some other place, and so far as the construction of the wording is concerned, I do not think it is much of a legal technicality, but it is really a matter of language and the fears that are expressed by my honourable Friend, Mr. Jaspat Roy Kapoor are, I think, entirely unfounded and all the contingencies that he wants to import into a situation that might arise by a construction of article 108-A is provided for as the clause stands today. Sir, I think there is no point in putting "and/or" with which I am very familiar in any contract form or in a bill of lading or some such document covering a commercial transaction, where the possibility of an alternative being provided is very necessary, but it has no legal sanction whatever and I think, we cannot put in "and" and "or" and we cannot put a stroke in between "and" and "or" as an alternative one for the other and we cannot have both "and" and "or" simultaneously as the language would again be defective. I think the House may rest assured that the framers of this amendment had in view the contingencies which Mr. Jaspat Roy Kapoor has in mind and they felt convinced and they are also assured by persons competent to assure them that the article 108-A as if now stands will cover all possible contingencies. There will be difficulties if the amendment as envisaged by Mr., Jaspat Roy Kapoor is accepted. Sir, I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I have listened to the argument of Mr. Jaspat Roy Kapoor as well as the argument of Mr. Krishnamachari. As the words stand, I am of the opinion they are certainly ambiguous and they are not clear. Certainly one could argue that the word "other" qualifies both 'place' and 'places'. This amendment, as it stands can be construed in to saying that the Court shall either sit at Delhi and if it sits at any other place except Delhi, then there can be no circuit court at Delhi. If the word "other" qualifies the word "places" then the court can sit at other places except Delhi. I thought that Mr. Krishnamachari would clear away this ambiguity but after hearing him, I am of the opinion that this amendment is certainly ambiguous. I do not think that the authors of this amendment meant to convey that Delhi shall be a place, which in the words of Mr. Jaspat Roy Kapoor, will either be a monarchical or a forbidden place. My humble submission as I understand the position today is the Government has not decided to leave Delhi. Delhi is the Capital and today we should make it sure that Delhi will be the place where the Supreme Court shall sit, I do not know if in any other country the Supreme Court of country sits at any place other than the Capital. As long as Delhi is the Capital, the proper place for a Supreme Court is at Delhi. Moreover, it is a court of record; it is a court which must have some permanent seat and Delhi is the proper place where it can have its permanent seat; there can be no doubt about it, but if at any other time the Capital is going to be changed, there will be no difficulty in amending this part of the Constitution or if it is to be provided, even today then it will be better provided if you adopt this amendment along with the second amendment of Mr. Jaspat Roy Kapoor, because then if will be open to the authorities to see that the place of the capital is changed, and while it is changed, Delhi is not deprived of its right of having a circuit Court, if it is so necessary. I for one do not understand how the Supreme Court will at one and the same time sit at Delhi and in any other place or places. In my

[Pandit Thakur Das Bhargava]

humble opinion a court can be said to sit at a place where it has got a permanent seat. There is no reason to think that if a Supreme Court sits in a bench or as a circuit at some other place, it can be said that that court is sitting at that place alone. A court should be deemed to have a permanent seat and to sit at the place where it has got a permanent seat. It is necessary to avoid this ambiguity. If Mr. Krishnamachari thinks that the words 'and/or' can only be used in a conveyance or a contract and he has not seen it in a treaty or a legal document, then, the amendment of Mr. Jaspat Roy Kapoor is quite clear, and that amendment should be accepted.

The Honourable Dr. B. R. Ambedkar : Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the high Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words 'a court of record' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where to court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, "or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint" then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent words are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor, I think the answer given by my Friend Mr. Krishnamachari is adequate and I do not propose to say any more.

Shri H. V. Kamath : May I ask one question, Sir? In the view just now enunciated by Dr. Ambedkar that the litigants should know the place where the Supreme Court will sit, and that the question of capital has not yet been settled and the court may have to sit in some other place or places, what is the point in specifying Delhi at all?

Mr. President : I think the question was put by the speaker in his first speech and it has been answered. Whether he is satisfied with the answer or not is a different question. The question has been answered.

Shri Jaspat Roy Kapoor : May I seek a small clarification from Dr. Ambedkar? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. A circuit court is only a Bench.

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

Shri Jaspat Roy Kapoor : I beg leave of the House to withdraw my amendment, Sir.

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

Mr. President : Amendment No. 126.

Shri T. T. Krishnamachari : May I suggest, Sir, that as it relates to two articles, it will be better to put them separately?

Mr. President : Yes. I put the first part of amendment No. 126.

The question is:

"That for article 108, the following article be substituted:

'108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.' "

The amendment was adopted.

Mr. President : I am putting the second part.

The question is:

"108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint."

The amendment was adopted.

Mr. President : I think that covers the amendment of Mr. Kamath. I need not put that.

Shri T. T. Krishnamachari : That covers the entire proceedings so far as this article is concerned.

Mr. President : So, I shall put the article, as amended by Dr. Ambedkar's amendment.

The question is:

"That article 108, as amended, stand part of the Constitution."

The motion was adopted.

Articles 108 and 108-A were added to the Constitution.

Articles 109 to 114

Mr. President : The motion is:

"That article 109 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because

[The Honourable Dr. B. R. Ambedkar]

these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule I. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part I. If that happens, then, there will be no necessity to introduce these reservations in these articles 109—114. I suggest these may be held over.

Mr. President : We will pass them over for the present.

Article 115

Mr. President : The motion is:

"That article 115 form part of the Constitution."

The first amendment is No. 1937 of Mr. Kamath. That is negative and it is ruled out as an amendment. Amendment No. 1938. Dr. Bakshi Tek Chand, you have given notice of an amendment to this amendment. You move your amendment first?

Dr. Bakshi Tek Chand (East Punjab: General): Mr. President, Sir, the amendment which I am going to move is an amendment to amendment No. 1938 in the List of Amendment Vol. I. According to that amendment to amendment No. 1938...

Mr. President : You may first move the original amendment and then the amendment to the amendment.

Dr. Bakshi Tek Chand : Very well, Sir, I will first move amendment No. 1938 as printed at page 197:

"That in article 115, before the words 'in the nature of' the words 'including those' be inserted."

To this amendment a verbal alteration is suggested, and that is:

"That in article 115, for the words 'or orders in the nature of the writs' the words 'orders or writs, including writs in the nature' be substituted".

This amendment will bring the phraseology of article 115 in line with article 25 which has already been passed by this House in the last session. Article 115, as drafted by the Drafting Committee, reads as follows:

> "Parliament may, by law, confer on the Supreme Court power to issue directions or orders *in the* nature of the writs of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari,* or any of them for any purposes other than those mentioned in clause (2) of article 25 (which relates to the enforcement of fundamental rights) of this Constitution."

It will be seen that the article as drafted limits the power of Parliament to invest the Supreme Court with power to issue writs in the nature of those specifically mentioned and to none other. The amendment seeks to make the article more comprehensive so as to enable Parliament to enact laws empowering the Supreme Court to issue writs, directions, orders or writs including those mentioned in the drafted article 115. Hereafter it may be considered necessary to empower the Supreme Court to issue writs other than those which are mentioned in the article. The House will agree that it is not desirable to place such restrictions on the power of Parliament. Moreover as I have already said, in article

25, which deals with the power of the Supreme Court to issue writs, with regard to justiciable fundamental rights, this phraseology has already been adopted. Clause (2) of article 25, as passed by this House reads:

"The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*, whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

To bring the phraseology of article 115 in line with that of article 25, I move this amendment, and commend it for the acceptance of the House.

Mr. President : Amendment No. 1939, in the name of Dr. Ambedkar.

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

"That in article 115, the words and brackets '(which relates to the enforcement of fundamental rights)' be deleted."

The words are superfluous.

Mr. President : No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr. Naziruddin Ahmad is also of a drafting nature and need not be moved. No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything?

We shall now put the amendments.

I will first take Dr. Ambedkar's amendment No. 1939.

The question is:

"That in article 115, the words and brackets '(which relates to the enforcement of fundamental rights)' be deleted."

The amendment was adopted.

Mr. President : Then I put Dr. Bakshi Tek Chand's amendment to amendment No. 1938.

The question is:

"That in article 115, for the words 'or orders in the nature of the writs' the words 'orders or writs, including writs in the nature' be substituted."

The amendment was adopted.

Mr. President : That becomes the original amendment now. I put the amendment as amended to the House.

The amendment, as amended, was adopted.

Mr. President : Then I put the article, as amended by the two amendments one of Dr. Ambedkar, and the other of Dr. Tek Chand to vote.

The question is:

"That article 115, as amended, stand part of the Constitution."

The motion was adopted.

Article 115, as amended, was added to the Constitution.

Article 116

Mr. President : Now, we take up article 116. The first amendment is No. 1943, standing in the name of Mr. Kamath. It is ruled out, being a negative one.

No. 1944 is not even of a drafting nature, being only regarding punctuation.

[Mr. President]

There is no other amendment to article 116. I shall put the article to the vote of the House :

The question is:

"That article 116 stand part of the Constitution."

The motion was adopted.

Article 116 was added to the Constitution.

Article 117

Mr. President : We then come to article 117.

(Amendment No. 1945, was not moved.)

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

"That in article 117, for the words 'all courts' the words 'all other courts' be substituted."

So if this is accepted, the article will read thus:

"That law declared by the Supreme Court shall be binding on all other courts within the territory of India."

I have no doubt in my own mind that this article does not seek to bind the Supreme Court by its own judgments. What is intended by the article is, I am sure, that other courts subordinate to the Supreme Court in this land shall be bound by the judgments and the law declared by the Supreme Court from time to time. It will be unwise to bind the Supreme Court itself, because in order to ensure elasticity, in order to enable mistakes and errors to be rectified, and to leave room for growth, the Supreme Court will have to be excluded from the purview of this article. The Supreme Court may amend its own judgments, or its own interpretation of the law which it might have made on a previous occasion and rectify the errors it has committed earlier. Therefore I feel that the intention of this article would be correctly and precisely conveyed by saying that the law of the Supreme Court shall be binding on "all other courts" within the territory of India.

Sir, I move.

(Amendments Nos. 1947 and 1948 were not moved).

The Honourable Dr. B. R. Ambedkar : Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court sould be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

Shri H. V. Kamath : Then why not say "all other courts"?

The Honourable Dr. B. R. Ambedkar : "All courts" means "all other courts."

Mr. President : The question is:

"That in article 117, for the words 'all courts' the words 'all other courts' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That article 117 stand part of the Constitution."

The motion was adopted.

Article 117 was added to the Constitution.

Article 118

Mr. President : Article 118.

(Amendments No. 1949 and 1950 were not moved.)

Mr. President : The question is:

"That article 118 stand part of the Constitution."

The motion was adopted.

Article 118, was added to the Constitution.

Article 119

Mr. President : Amendment No. 1951 is ruled out.

Shri H. V. Kamath : Sir, the point which I wish to raise in my amendment No. 1952 is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may withhold its opinion. I believe what is meant is that when once the President refers the matters to the Supreme Court for its opinion there is no option for the Supreme Court. If that is not meant then the language is right. But if it is meant that once the President refers a matter to the Supreme Court, it must report its opinion thereon to the President, then the word "shall" must come in. I wanted a clarification on that point.

The Honourable Dr. B. R. Ambedkar : The Supreme Court is not bound.

Shri H. V. Kamath : Then I do not move my amendment.

Mr. President : Amendment No. 1953 is ruled out and 1954 is verbal.

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

"That in clause (2) of article 119, for the word 'decision' the word 'opinion' and for the words 'decide the same and report the fact to the President', the words 'submit its opinion and report to the President' be substituted respectively."

Sir, I originally sent this as two separate amendments but they have been listed as one. If this is accepted by the House the relevant clause of this article would read as follows:—

"The President, may notwithstanding anything contained in clause (i) of the proviso to article 109 of this constitution refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion, and the Supreme Court shall thereupon, after giving the parties and opportunity of being heard, submit its opinion and report to the President."

If we read carefully clause (i) it will be found that what is referred to is the "opinion of the Supreme Court" on any matter which the President may deem it necessary or fit to refer to that court.....

The Honourable Dr. B. R. Ambedkar : May I request you, Sir, to hold over this article 119, because it has also reference to articles 109 to 114 which we have decided to hold over.

Shri H. V. Kamath : Then, Sir, I shall reserve my right to move the amendment later on.

Article 120

(Amendments Nos. 1956 and 1957 were not moved.)

Mr. President : The question is:

"That article 120 stand part of the Constitution."

The motion was adopted.

Article 120 was added to the Constitution.

Article 121

The Honourable Dr. B. R. Ambedkar : I would request Sir, that this article be allowed to stand over.

Article 122

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

"That for the existing article 122, the following be substituted:—

'122 *Officers and servants and the expenses of the Supreme Court*. (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of services of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in constitution with the President.

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

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage:

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:—

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President."

Mr. President : There is an amendment of Mr. Kapoor to this amendment.

Shri Jaspat Roy Kapoor : It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendments Nos. 1968 and 1969 were not moved.)

Mr. President : So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

Shri T. T. Krishnamachari : Sir, I would like to say a word. There is one particular point in Dr. Ambedkar's amendment to which I would like to invite the special attention of this House. I refer to clause (3) which makes the administrative expenses of the Supreme Court, including salaries, allowances and pensions payable to or in respect of the officers and servants of the court a charge on the revenues of India. Sir, I want to draw the attention of the House to this particular clause, because it has been the intention of some of us that all items chargeable to the revenues of India should be brought in under one particular article, namely, article 92 if I remember aright. The only reason why this particular clause has been allowed to come in here is the fact that article 92 has been passed over—it has not been considered

by the House. So I would like to say that the House might perhaps at the appropriate time, when article 92 is being considered, permit a transposition at that stage of all clauses similar to this one—clause (3)—wherever it occurs, whether here, or in the matter of the Speaker's establishment or in the matter of the Auditor-General's establishment or in the matter of the Public Service Commission, should be brought under one head, so that people will know, at any rate the future legislators will know, what are the items which are sacrosanct and which are a charge on the revenues of India.

The second point is this. While I undoubtedly support the amendment moved by Dr. Ambedkar, I think it should be understood by the Members of this House, and I do hope by those people who will be administering justice and also administering the country in the future that this is a safeguard rather than an operative provision. The only thing about it is that a matter like the employment of staff by the Judges should be placed ordinarily outside the purview of the Executive which would otherwise have to take the initiative to include these items in the budget for the reason that the independence of the Judiciary should be maintained and that the Judiciary should not feel that they are subject to favours that the Executive might grant to them from time to time and which would naturally influence their decision in any matter they have to take where the interests of the Executive of the time being happens to be concerned. At the same time, Sir, I think it should be made clear that it is not the intention of this House or of the framers of this Constitution that they want to create specially favoured bodies which in themselves becomes an *Imperium in Imperio*, completely independent of the Executive and the legislature and operating as a sort of superior body to the general body politic. If that were so, I think we should be rather chary of introducing a provision of this nature, not merely in regard to the Supreme Court but also in regard to the Auditor-General, in regard to the Union Public Service Commission, in regard to the Speaker and the President of the two Houses of Parliament and so on, as we will thereby be creating a number of bodies which are placed in such a position that they are bound to come into conflict with the Executive in every attempt they make to display their superiority. In actual practice, it is better for all these bodies to more or less fall in line with the regulations that obtain in matters of recruitment to the public services, conditions of promotion and salaries paid to their staff. My own little experience of what is happening in regard to bodies of a similar nature, though not fortified by a constitutional provision of this kind, is that it does not do any good to have separate compartments in public service. What happens usually in this. If promotions and all matters of the nation are confined within the small area or the small ambit of a particular body, it often happens that the person who comes to the top of the Executive position in that body stays put for all time if that particular post is not brought into the cadre of the general services of the State, whether Central or Provincial; there will be a lot of inconvenience in having a sort of bottleneck into which a particular person who rises to the top of this narrow cadre finds that he will not be able to get out of it except by dismissal or removal; whereas, if the establishment of these particular bodies forms part of the general service and person employed therein who is found unsuitable in any one department can be transferred to another sphere of activity. It would stand to reason that it would be better to make it clear in passing that this article would not really operate as a bar to exercising full freedom by the authorities concerned of the powers given under this section. Nevertheless, it should be made clear that it is not the intention of the framers of the Constitution and this House that these bottlenecks should be created and that these bodies should function irrespective of the needs of the time and irrespective of the conditions that operate in the other services. It might happen that in the general service there may be a reduction of salaries, and if the Chief

[Shri T. T. Krishnamachari]

Justice says 'no' to a request of the Executive to fall in line on the ground that what happens to the executive departments is none of his concern, that so far as his department is concerned he will not permit a reduction of salaries, it will mean that we are helping to keep this body apart from the general services and it will be a source of conflict. So as the Executive and the services are much concerned, I do hope that the more fact of putting these special officers like the Chief Justice and the Auditor-General in a privileged position will not mean that they will have to exercise their right in entirety but that such a position is a safeguard against a possible misuse of the power that is given to the Executive when there is need for them to expand their services, or in the matter of recruitment and so on. With these remarks, I think the proposition moved by my honourable Friend, Dr. Ambedkar, might go through.

Shri K. M. Munshi (Bombay : General): Mr. President, I heartily support the amendment (No. 1967) moved by my Friend Dr. Ambedkar and take this opportunity once again to emphasise what I said while opposing Professor Shah's amendment the other day, that this Constitution, though it has not accepted the doctrine of the separation of powers, has maintained the independence of the judiciary to the utmost possible extent. Any fear therefore that this independence will not be maintained because we have not accepted the doctrine of separation of powers is an entirely unfounded one. It must be and I hope it will be the duty of the House at all times to maintain the independence of the judiciary.

My friend who spoke last supported the amendment which I also support. But he will forgive me if I do not associate myself with some of the remarks that fell from him. A judiciary is an independent organ of the State. I entirely agree with him that we cannot have kingdoms within kingdoms. The legislature, the executive and the judiciary are all organs of the State which must be maintained in their proper and respective places in a wholesome Constitution and therefore it is necessary, as stated in the clause, that the appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct. Those officers are doing work in connection with the administration of justice. They are not officers who can be transferred to the executive side or to other Departments and it is essential that the cadre of such officers who are associated with the administration of justice should have its undiluted loyalty to the judiciary which it serves. The qualifications also are likely to be different. In this respect the provision with regard to reference to the Public Service Commission is wholesome. It will mean that there will be no favouritism in the matter of appointments. Once a person is appointed to the staff of the judiciary he must continue to be associated with the department. Therefore clause (1) is very important.

The amendment moved by Shri T. T. Krishnamachari is necessary, because so far as the financial burden is concerned, it can only be decided by the legislature. After all, the Parliament is responsible for the finances of the country and therefore the salaries, allowances and pensions must receive the approval of the President, *viz*., the party in power. But we must safeguard the matter in this respect in a way that the independence of the judiciary will always be maintained.

In this connection I may draw the attention of the House to the comments made in a Memorandum submitted by the Federal Court and the

Chief Justice of the provincial High Courts. What they have stated is this:

> "Thanks to the system of administration of justice established by the British in this country, the judiciary until now has in all matters played an independent role in protecting the rights of individual citizens against encroachment and invasion by the executive power. Unfortunately, however, a tendency has of late been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, right and authority which, it unchecked, will be most unsatisfactory."

Well, the whole provision in this amendment is intended to prevent any whittling down of the status or dignity and the powers that they posses. It is essential that in a democracy the judiciary must be there to adjust the differences between citizen and citizen, between State and State and even between the Government of India and the State. If that independence is not secured, I am sure we would soon drift towards totalitarianism. I know that the country is passing through a crisis and naturally large powers have to be taken by the executive to preserve our national existence. But, at the same time the line of demarcation between a democratic method of preserving national existence and a totalitarian method should not be lost sight of. In that connection the independence of the judiciary demarcates the line between the democratic method and the totalitarian method. I am sure the provision of this Constitution will sufficiently guarantee the independence of the judiciary. With these words I support the amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after the speeches of my Friends Messrs. Krishnamachari and Munshi which the House heard just now, very few words are necessary to commend both the parts for the acceptance of the House.

There are two principles involved: One is that you must be able to maintain the independence of the judiciary and unless the judiciary has sufficient control over its own establishment its independence may become illusory. If the establishment looks for preferment or for promotion to other quarters, it is likely to sap the independence of the judiciary. But at the same time, it has to be recognised that the judiciary and its establishment would have to draw their allowances and their salaries from the public exchequer. The ultimate person who will be affected is the taxpayer. Therefore, while on the one hand you must secure the independence of the judiciary, the interests of the taxpayer on the other hand will have to be safeguarded in a democracy. That can only be done by giving sufficient control to the Government of the country which is responsible to the House of the People in the matter of finance. The effect of the present provision is that every time the expenses are not subject to the vote of the House. That is a good thing. It is made a primary charge on the public exchequer. The second effect is that the court concerned will have complete control over its appointments. At the same time this provision safeguards the interests of the public and of the Government in so far as the Government is representative of the public for the purpose of securing the finance of the country. That is, if there is to be an increase in the salary, the Chief Justice or other Judicial authority cannot take a line of his own. The problem actually arose in Madras at the time of the First Congress Ministry. The Chief Justice of the Madras High Court took up the position that the High Court stood on a different footing from the other establishments under the control of the provincial Government. The Cabinet differed from him and decided and he could have complete control over his establishment, but that in regard to the general scale of salaries, etc., he should fall in line with the others. This is a very fundamental principle. Whenever you are dealing with a question of salary or emoluments of a particular functionary you must adjust it to the general financial system of the country.

[Shri Alladi Krishnaswami Ayyar]

You cannot secure special privileges for any particular class of the government servants or government officers or even sometimes of judges, without considering the general public economy and finances of the country. All the three principles have been secured by the original proposition as well as by the amendment which has been placed before the House. Under those circumstances I submit that both amendments may be accepted by the House as being consistent with the maintenance of the dignity and independence of the judiciary and at the same time securing the interests of the common taxpayer.

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. President, Sir, it is sometimes said that all the arguments were in favour of the plaintiff but the decree has gone against him. That is what I felt when I read the amendments and also heard the arguments of my Friend Mr. Alladi Krishnaswami Ayyar and the others who spoke before him. They want that the Supreme Court should be absolutely independent of the Executive and that the salaries of the judges ought not to be left to the vote of the legislature from time to time. This article 122 gives the jurisdiction to the Chief Justice for fixing of the salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court. This is sought to be modified by this amendment. Here in the clause as it stands, the Chief Justice need not take the approval of the President. It says "in consultation with the President". Therefore the Chief Justice is at liberty, consistent with his own independence and the independence of his officers to fix their salaries and allowances. The word "consultation" is deliberately used here. Now they have given this amendment to remove the word "consultation" and put in the word "approval". "Approval" is quite different from "consultation". It is now open to the President to block it. But who is the President to do it? Under the Government of India Act the Governor-General need not consult anybody and it was absolutely in his discretion to do anything he liked. Here in this Constitution the President means "in consultation with his Ministers". Therefore what really will happen is the Chief Justice will have to dance to the tune of the Minister for the time being. It may be said that the Cabinet as a whole will advise the President. In the Cabinet the Minister of charge of Law or Law and Order will have the controlling voice. The voice of the Minister of normally the voice of his Secretary. Therefore the Chief Justice of the Supreme Court will have to dance to the tune of a mere Secretary in the Home Department or the Law Department. What this amendment means is that he will be at the beck and call of the Ministry and so-called independence of the judiciary will be taken away. Therefore I do not see how this amendment is consistent at all with the principle of the independence of the judiciary and I do not see the wisdom of it. After this clause was originally framed, the framers have changed their opinion and they want to bring this clause into line with the provision in the Government of India Act. Section 216 of the Government of India Act as adapted refers to this matter.

> "The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the revenues of the Dominion, and any fees or other moneys taken by the court shall form part of those revenues."

Section 242(4) proviso (b) reads:

> "Rules made under the said provision (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the Governor-General."

They want to copy that provision. The Governor-General as representing the King, wanted to have absolute jurisdiction over all departments in this country.

including judges of the High Courts and the Federal Court. Why should we copy that provision? I am not in favour of this amendment. This amendment is not consistent with the principle of the separation of the judiciary from the executive, to which we are all committed and by which all of us stand.

Then, Sir, as regards clause (2) making the expenses of the Supreme Court including all salaries, etc., chargeable on the revenues of the Union, there was some doubt raised in some quarters whether it should be chargeable only in respect of the salaries of the judges or in respect of the salaries, etc., of other officers and servants also. It was claimed that if this is done, there will be many islands, various autonomous authorities created. The Supreme Court is an autonomous body, regulating its own affairs, including the salaries and pension of its officers. This is one set. The Auditor-General is the second set. The Public Service Commission is the third set. Therefore some people who wanted that Parliament should have control from time to time wanted to remove this clause also. I do not agree with that view. This clause ought to stand, for this reason that when with the one hand you have allowed the Chief Justice to regulate the salaries and pensions, with the other hand you cannot allow Parliament to interfere with these from time to time. If you do that, the whole thing will become nugatory. Even now, it is not too late and I would urge the honourable the Mover to reconsider this decision. If, however, he thinks that it should stand, I am not opposing this amendment. I am agreeable to this amendment.

Pandit Thakur Das Bhargava : *[Mr. President, Sir, I oppose the amendment regarding the approval by the President.

Every constitution provides for three basic requirements, viz., firstly, an independent judiciary; secondly, a legislature, and thirdly an executive. It would be a mistake for one to ask as to which of the three is of greater or lesser importance, because all the three, though independent in their respective spheres are component parts of the body politic of the State. A constitution, wherein a fully independent judiciary is not provided for, can never guarantee individual liberty to the people. However, we should examine the powers we have provided for the judiciary in our constitution and this would enable us to know whether it is proper or not to give such power to it. If you refer to article 109 which has not been taken into consideration as yet, you will find its wording to be rather significant. It confirms the provision that the Government of India will itself appear before the judiciary either as plaintiff or as defendant. Naturally it is clear from the words of that article that the Federal Government and the States would be appearing as parties to suits before the Supreme Court. Besides, if we refer to the other articles in the constitution, if we read the articles 7-20 dealing with Fundamental Rights or go through various other articles, it will be clear to us that the Supreme Court is the foundation stone of our liberty. It would never be right and proper to subordinate the powers of the Supreme Court to an individual entrusted with the powers of an executive nature. The previous article 102 has stated in plain words "The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President." I would respectfully submit Sir, if the words 'approval of the President' are added here, it will destroy the independence of the judiciary. It can never be desirable to do so. The demand for the addition of these words betrays a fear that the judiciary might increase to such an extent the salaries of its employees as may not be acceptable to the Government. But I can say that similar apprehensions may be expressed by the officers of the judiciary with regard to the use of his powers by the President. Again it may be suspected with equal force that the legislature would arbitrarily increase the number of

*[ ] Translation of Hindustani speech.

[Pandit Thakur Das Bhargava]

Ministers. To entertain such doubts about the President or the Chief Justice indicates that we do not have complete confidence in them. I beg therefore, to submit that it is not proper to trifle with the powers of the Chief Justice in this way. I appeal Sir, that the judiciary must be given the same status that the Legislature and Executive have got. On their co-ordination depends our future, our liberty and every other thing which we want to develop in our hand. If we trifle with the powers of any of them it may land us in a number of difficulties. The judiciary might negative all our liberty; the legislature might enact laws which might cripple the judiciary and similar apprehensions might arise in respect of the executive. Our welfare, therefore, lies in their co-ordination. There is no cause for suspicion in this respect which can justify the addition of the words 'with the approval of the President'. As regards the provision in Section 242 of the Government of India Act, I would submit that we are not concerned with what the old Government wanted to do. What we are concerned with today is that our judiciary should be entirely independent so that we can rely on it. For that it is essential that it should work independently and the President or the Legislature may not be able to interfere with it. It is, therefore, essential that its rights should not be reduced. As we are providing that the salary of the President would be a charge on the Government revenue, so also the salary of the Chief Justice should be a charge on the revenues of India. Similarly the expenses incurred on all the officers, whose independence is essential for the proper working of this Constitution, should also be charged on the revenues. Once you have provided a sum for them, the Chief Justice should have power to spend it as he likes, and the Legislature and Executive should not be able to interfere in that.

You have just passed the Directive Principles in which you have laid down that you want the separation of judiciary and the executive. I want to ask as to how you can effect it, if you do not allow the Chief Justice and his Department full liberty to spend. Do you want that for every petty post the Chief Justice will have to say it is essential and then send the proposal to the President, who ultimately means the Prime Minister and his Chief Secretary in that ministry and the Secretary etc. will comment as to whether the posts are necessary or not? Will it be proper that the Chief Justice should write for every post like this? There is no reason for you suspect that the one person in whose hands you would place the duty of maintaining the independence of India would not be duly discharging his duties. I respectfully submit that the underlying idea of these amendments is that we are apprehensive that the Chief Justice may spend too much money or contravene the constitution. There is no cause for such suspicion. We have seen in India that even under the British rule when the Judiciary was their own, it did not care for the executive. Do we not know that our Federal Court had invalidated section 26 of the Public Safety Act? If you wish that in this country we should have the same freedom as we have has hitherto, or rather that we should have more independence it is essential that the status of the judiciary should not be lower than that of the Executive or Legislature.

The Members of the Assembly might remember that at the time of discussion on article 15, the question had arisen whether the judiciary would have the right to say, once a law has been enacted by the Legislature, that it is in accordance with justice or not, as is the convention in America where the judiciary can express its opinion whether a law of the Legislature is legal or not so far as the life and personal liberty of an individual is concerned. At that time the question under consideration was whether the judiciary should be given

so much power that it can even declare that any law enacted by the Legislature is not proper and valid. As such questions arise before you and as the House was, in a way, in favour of the proposal, I hope that in future too when any question arises, in this connection, the House would support the rights of the judiciary. When we want to give so many rights to the judiciary, I respectfully submit, that we should also not, owing to any fear, provide that for the posts of petty servants, the Chief Justice will have to depend on the Executive. This amendment is not proper and I oppose it.]

Shri Jaspat Roy Kapoor : Mr. President, Sir, I must confess that I do not feel happy either at the phraseology of this article 122, or at the idea underlying it. Sir, I yield to none in my desire that the judiciary of the country should be absolutely independent of the executive, but I think the independence of the judiciary must be confined only in respect of the administration of justice and under the garb of the independence of the judiciary, we should not go on empowering the judiciary to do things which fall ordinarily within the jurisdiction of the Executive or the Parliament. According to article 122, we are going to invest the Supreme Court, the Chief Justice and such of its other judges as may be nominated by the Chief Justice, as also some subordinate officers of the Supreme Court as may be nominated by the Chief Justice, with the right and authority of appointing many important persons, of filling up many important posts in the Supreme Court. I do not think Sir, there is any necessity for investing the Supreme Court with powers in respect of all these appointments. Then, Sir, we are not only going to invest the judiciary with this power, but we are going to give this power in an absolutely unfettered manner. Let us see what clause (1) says: "Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judges or officer of the court as he may direct," and then it goes on: "Provided that the President may be rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission."

Now, Sir, it is well and good that this proviso is being incorporated herein, but I feel, that in the place of the word 'may', there should have been the word 'shall'. The proviso should have definitely provided for consultation with the Union Public Service Commission. As I interpret it, it is liable to mean that the President may or may not make rule providing for consulting the Union Public Service Commission. For, it says, 'Provided that the President may by rule require.....'. It does not mean that in all cases the Public Service Commission must necessarily be consulted. I would, therefore, have very much wished that it should have been made obligatory that the views of the Public Service Commission shall always be taken into consideration.

Coming to clause (2), we find that in the proviso it is laid down that the salaries, allowances and pensions payable or in respect of such officers, etc., shall be fixed by the Chief Justice of India in consultation with the President. Of course, wisely enough I should say, Sir, the Honourable Dr. Ambedkar has today moved an amendment to the effect that in place of the words "in consultation with", we should have the words 'with the approval of' the President. This after-thought of course is a welcome thing. But, I submit that it would have been much better if all these appointments were originally to be made by the President himself. The proviso, as it stands, means that at the outset it is the Chief Justice or some other person nominated by him, who shall apply his mind to this subject. He will select some persons, fix their salaries and allowances and he shall, thereafter, simply put the whole thing before the President for his approval. Now, Sir, this is placing the President in a rather awkward and embarrassing position. If a proposal comes from such a high dignitary as the Chief Justice, the President will feel great

[Shri Jaspat Roy Kapoor]

delicacy in not readily accepting those suggestions. Ordinarily therefore, he will think, "why should I come in conflict with the Chief Justice in these matters? Let him have his own way", though, if it were originally left to the President, his decision may have been probably very much different. I think, therefore, that it would have been much better that in this provision we should have had it laid down that all these things shall be decided by the President himself, and not by the Chief Justice with the approval of the President.

Then I come to clause (3) of this article. According to this clause, the rights and privileges of the Parliament are being encroached upon. The clause lays down: "The administrative expenses of the Supreme Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India and any fees or other moneys taken by the court shall form part of those revenues." I specifically draw the attention of the honourable Members of the House to the words, 'shall be charged upon the revenues of India'. The implication of this clause is very serious, and of a far reaching character. It means that Parliament shall have absolutely no voice in this matter, and whatever the monetary proposals in respect of these appointments they shall not at all come before Parliament, and they shall stand accepted by the Government automatically, and the Parliament shall have absolutely no voice in the matter, and that this will not be subject to the vote of the Parliament at all. I see absolutely no justification why these salaries and allowances, etc., should not be subject to the vote of Parliament. I can quite understand that we should have such a provision with regard to the salaries and allowances of the Judges. That we have already provided when we passed the relevant articles in respect thereto. But, so far as even the ordinary chaprasi of the supreme court is concerned, even so far as the ordinary punka-pullar of the Supreme Court is concerned, his salary shall not be subject to the vote of Parliament. Why? We should not suspect others; but we should trust ourselves too. If we are asked to trust others, let us not be told that we should not trust ourselves. We trust the Judges of the Supreme Court in many important respects; let us trust the Parliament also to do the right thing in the matters of fixing salaries etc. If a power is not necessary to be conferred on the Judges of the Supreme Court, why should we thrust it upon them and divest ourselves of our own rights and privileges? The salaries of its subordinate officers should certainly be subject to the vote of Parliament and should not be out of the jurisdiction of Parliament. Take for instance, the chief Justice of the Supreme Court places before Parliament.....

Mr. President : The honourable Member has taken much time. I do not think it is necessary to prolong the discussion. We are nearing twelve o'clock.

Shri Jaspat Roy Kapoor : I am finishing, Sir, Supporting the Supreme Court places a huge budget extending over a crore of rupees or more. If Clause (3) stands as it is, Parliament shall have absolutely no control over that and the whole amount would have to be granted to the Supreme Court. It is said that we should not expect the Supreme Court to make such absurd proposals. I admit they will not indulge in absurdity. But, there are certain things which are within the special knowledge of Parliament which may not be within the knowledge of the Supreme Court. The financial position of the country is within the special knowledge of the Parliament. The Supreme Court Judges being ignorant of the actual financial position of the country may draw up budgets involving very huge expenses. For these reasons, I submit that this article is not very well conceived, nor properly worded.

Shri Krishna Chandra Sharma : (United Provinces: General): Sir.....

Mr. President : I hope the honourable Member will not take more than five minutes. I want to close the discussion of this article today.

Shri Krishna Chandra Sharma : Much has been talked about the independence of the judiciary. I do not quite understand where that question arises. There is nothing to restrict the independence of the judiciary so far as the article of the amendments are concerned. The original article 122 was that the Chief Justice of India will fix the salaries and allowances, etc., in consultation with the President. The amendment seeks only to substitute the word 'approval' for consultation. As my honourable Friend Mr. Jaspat Roy Kapoor said, it is not a question of independence or dignity of the Chief Justice of India. It is simply a question of the finances of the country. The President knows much better about the finances of the country and in accordance with the finances of the country, he will fix the salaries and allowances. There are other people in the administration of the country who would be putting in almost the same amount of labour, with the same capacity and qualification. Necessarily the same type of work with the same capacity, ability and qualification should carry similar salaries, allowances, pensions and other emoluments. So the question of independence of or the question of having any restriction or restrained whatsoever on the independence of the Judiciary does not arise at all. The appointment of the officers of the Court is entirely in the hands of the Supreme Court Judges and that should be so, because they have got to get work from these officers. In certain cases, when the President shall think fit, he is empowered to lay down rules that in certain classes of services, the Public Service Commission would be consulted, and there is no question here also of doing anything derogatory to the dignity and prestige of the Chief Justice. It is a question of State Policy, for the administration of the whole country. And so I commend both the amendments, for the acceptance of the House.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T. T. Krishnamachari very aptly called an "*Imperium in Imperio*". We do not want to create an *Imperium in Imperio*, and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, if they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Imperium in Imperio*, and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers, who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on the proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the

[The Honourable Dr. B. R. Ambedkar]

approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "consultation with the President," left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—I am sorry it is section 242 sub-clause (4)-—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—I do not say that it will happen—but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal

legislature. So that if the executive differed from the Chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the Chief Justice an adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

Mr. President : I shall first put to the House Dr. Ambedkar's subsequent amendment to his original amendment.

The question is:

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:—

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.' "

The amendment was adopted.

Mr. President : Now I shall put Dr. Ambedkar's amendment No. 1967 as amended. The question is:

"That for the existing article 122, the following be substituted:—

'122. *Officers and servants and the expenses of the Supreme Court.*—(1) Appointments of officers and servants of the Supreme Court shall be made by Chief Justice of India or such other judge or officer of the court as he may direct.

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Union Public Service Commission.

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

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the President.

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

The amendment was adopted.

Mr. President : The question is:

"That article 122, as amended, stand part of the Constitution."

The motion was adopted.

Article 122, as amended, was added to the Constitution.

Article 123

Mr. President : The consideration of article 123 will stand over for the reason for which Article 109 to 114 have been held over.

The Assembly then adjourned till Eight of the Clock on Monday, the 30th May, 1949.
