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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

President:

THE HON'BLE DR. RAJENDRA PRASAD.

Vice-President:

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 20th May 1949

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

Maulana Hasrat Mohani (United Provinces: Muslim): Mr. President, Sir, I beg to bring to your notice a very serious matter about the suppression of a major portion of the proceedings of this House as published in the Constituent Assembly Debates of the 5th January 1949 (page 1267). The proceedings say that the Honourable Sardar Vallabhbhai Patel moved that the Bill to amend the Government of India Act be taken in to consideration. As a matter of fact, he moved for leave to introduce the Bill I wanted to oppose that motion and urged that I had a right to do so at that stage. But the Vice-President did not allow me to speak. He declared that if I wanted to say anything he would put it to the vote; it was rejected. None of these is in the printed Report. Who is responsible for suppressing these things? I want that all these things should be placed in the printed proceedings, so that people may know that the Vice-President did not wish to hear anybody whom he did not like.

This is a very serious matter and I would invite your attention to it.

Mr. President : I understand the honourable Member's point to be that certain things happened in the last Assembly which do not appear in the printed proceedings, and his complaint is that a correct report should have been given of all that happened there. I am not aware of what happened at that stage and I cannot say anything without looking into the matter. If the honourable Member has got any complaint he may kindly give it to me in writing so that I may have it investigated.

DRAFT CONSTITUTION—(*Contd.*)

Article 86

Mr. President : Article 86.

(Amendments Nos. 1632 and 1633 were not moved.)

Mr. Z. H. Lari (United Provinces: Muslim): Sir, I move :

“That in article 86 the words ‘and until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the legislature of the ‘Dominion of India’ be deleted and the following new proviso be inserted:—

‘Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister:

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.’ ”

Sir, this amendment consists of three parts, but it is the third part which is the soul of the amendment and I will take it first. It is that a salary be fixed for the Leader of the Opposition. The House knows well, and it may take it

[Mr. Z. H. Lari]

from me as gospel truth, that I have not in me the germs of a future Leader of the Opposition. But I move it for four weighty reasons. Firstly, I feel that it is necessary to promote parliamentary opposition which along with the rule of law and a strong press constitutes the bulwark of democracy. Secondly, I want to give statutory recognition to the institution of parliamentary opposition, which unfortunately has come to be regarded in certain circles as tantamount to sedition, and thereby dispel a misconception. Thirdly, I want to create conditions in which a dead chamber may revive into a lively legislature. And lastly, I want to complete the edifice of parliamentary democracy which is being transplanted from the surroundings of England to Indian environments. With your permission, Sir, I will elucidate these four points I have mentioned.

In spite of strenuous efforts made by some Members, this House rejected the conception of Presidential Cabinet that prevails in America. Even the solution of a coalition cabinet that is in vogue in Switzerland did not find favour with the House which has approved the system of party government as obtains in England. This Party government means that the powers of the state for the time being are vested in a party and through that party in a number of individuals. Every one knows that power corrupts and absolute power corrupts absolutely. It is also a truism to say that every party that comes into power tries to make its hold permanent. The only check on degeneration of party government into a despotism is the existence of another party which keeps a strict eye on the doings of the cabinet and the party and thereby prevents degeneration of a party government into a dictatorship. Besides, there cannot be a proper functioning of any party government unless there is constant criticism of the doings of that party. There is always discussion and at least correction of various policies that are pursued by that party. Apart from that I feel that in the absence of an alternative party the very party which is in power begins to disrupt and cliques grow thereunder. If you look, not beyond the seas, but within all the party governments as they obtained in India during the last ten years, in all those legislatures where there was no effective opposition, not only have Cabinet members begun to resent criticism but in the parties themselves there have grown factions which have led to the downfall of one ministry after another. There have been challenges, counter-challenges, and there have been attacks even on the ground of misappropriation of public money and the like. The reason is that the party government is not brought face to face with a strong opposition to make them feel that they have to face public opinion. And who is to create public opinion? Who is to make the public aware and take interest in the doings of Government, unless there is opposition in the House to bring all the actions of Government into the lime-light? Everyone knows that in these days the functions of Government have grown and any party which wants to be wide-awake and effective must be a whole-time opposition. You can not have a whole-time opposition unless there is a leader who devotes all his time and energy to fostering responsible opposition throughout the country. It is not necessary only to have an opposition in the House, but that opposition must be broad-based; it must have public opinion throughout the country to back it. I therefore feel that you can not have a vigorous and wide-awake opposition working in the legislature and outside unless it has a leader who is a whole-time worker and is paid, as is done in England and other countries.

You know that so long as the conservatives or the other rich people were one party or the other in Opposition in England, there was no necessity of paying the Leader of the Opposition. But, the moment Labour formed the Opposition in England—I dare say that in India it is only either the Socialists or the Communists that can form the opposition—they fixed salaries for the Leader. In India, as I said, you can have Opposition of only middle class people. You can not expect that class to throw up a man who will devote all his time and all his

energy to create a party unless he paid. Therefore I feel that in the interests of creating an effective opposition as soon as possible it is necessary that we should have a provision like that which I have placed before you.

But, besides this, as I suggested at the outset, during the last ten years there has not been any effective Opposition at all either in the Dominion Parliament or in the Provincial Assemblies. The result is that there have been utterances from certain responsible persons which have gone to suggest as if the party and the State are same. I know of them, but I do not want to place before the House those utterances and create misunderstandings. But everybody must be aware that there have been utterances by responsible Prime Ministers, not of the Dominion, but of the Provinces, which have given rise to misgivings as if to criticise the Government in power is something like sedition. But the moment you accept the amendment I have placed before you, you give statutory recognition to the existence of the Opposition, this misconception that has grown in the country, that if you criticise the Government it means you want to create disaffection, will disappear.

There is second reason why I want that this provision should find a place in our Constitution and it is that that at the very outset of parliamentary democracy, we must not create a condition in the country wherein one-party Government becomes permanent and a party thinks that it has come into power and it has to remain in power for all time to come. It is necessary to create a psychological change. I can not point to so many utterances which have made the public at large feel that the Party and the State are convertible terms, that if you criticise the Party you necessarily try to weaken the foundations of the State. In England that is why the Opposition is called His Majesty's Opposition. Those words are enough to create the impression in the minds of the electorate that the Leader of the Opposition has also a role to play and function to discharge and that therefore when he does anything in his capacity as Leader of the Opposition he is doing nothing but his duty. The same impression I want to create here by having this amendment inserted. If this is inserted the public at large and everybody will feel that the Constitution itself recognises the existence of the Leader of the Opposition and that when he criticises or attacks the Government and carries on agitation in the countryside and rouses public opinion against the party's misdeeds, really he is doing a duty assigned to him by the Constitution. This is my second reason.

My third reason, as I said, is that if there is no effective Opposition we will have dull Chambers; not only dull Chambers but, as is said in some papers, the legislature becomes 'docile, meek and submissive'. Does that not create a bad impression in the public mind that the legislature is a mere sham, that it does not do any work, that members get up to criticise simply for the sake of appearing in print, that the amendments are all withdrawn and that whatever comes from the Treasury Benches is accepted without the change of a comma or a full-stop. It is not an interesting, but a dull Chamber. The result is that the public loses interest in all parliamentary work. Democracy cannot function unless the public evinces interest therein. What is the way to create interest in the public? How is it possible to make the public feel that its destiny is being moulded in the legislature by means of frank and open criticism and after due deliberation? Who is to create that interest? I find that in all the legislatures in the Provinces the Opposition has been dwindling. In our own Dominion legislature there is no Opposition whatsoever and the result has been only tall talk somewhere at some places by certain individuals. There has been no well-informed criticism. Neither has there been any effective Opposition.

Therefore the third reason which I placed before you for consideration is that if you want to avoid becoming a dead Chamber, if you want to avoid loss of all

[Mr. Z. H. Lari]

interest by the public in parliamentary activities, and ultimately in democracy itself, it is necessary to have an institution like the one which is there in other countries.

At every stage you say you prefer British Institutions. You say at every stage the everything that is good is to be found in British institutions, in party Government. If that is so,—and I feel there is a great deal of truth in that—then it is necessary that you should have all the component parts of that parliamentary democracy so that it may not fail in India. The moment the British people felt that they must pay the Leader of the Opposition so as to keep the Opposition going, they accepted such an amendment as the one I have placed before you. The latest to accept this principle is South Africa. For all these reasons I feel that this amendment deserves consideration at your hands.

I have heard of two criticisms: one is, where is the Opposition party—where is the Leader of the Opposition, whom you are going to pay? My submission is this: you have to create conditions. The dangerous part in India is that we have begun this democracy by having one party and one party alone and that party is determined to keep others out. There is the case in the United Provinces where a man of the stature of Acharya Narendra Deo was not allowed to come in. The party in power did not think it necessary to have an Opposition. Therefore I say it is your duty as Constitution-making Body to create conditions in which a party may grow into an Opposition. If you say “let the party grow and then I will fix the salary,” it means that you do not want an Opposition. You have to create conditions so that the public may feel that the Opposition has also a duty and is of service to the country. Unless that feeling is created, you cannot have a proper Opposition.

The second criticism is that, what will happen if there is more than one party, what will happen if there are three parties? Whom are you going to pay? It is a curious criticism. Everybody knows that in parliamentary practice the biggest party constitutes the Opposition. All other parties, if there are more than two, are mere parties. The privilege of the Opposition goes to the largest party after the party occupying the Treasury Benches which is the biggest party. Therefore these two criticisms are absolutely unfounded.

As I said before, this amendment is the soul of all these amendments. But there are two other parts which I will take up now. Article 86 says that the members of Parliament shall receive such salary as may be determined by Parliament from time to time. It goes on to say that until other provisions are made, they will be paid according to the rules previously prevailing. Sir, you are framing a Constitution. Why encumber it with provisions like this? Is it not possible for Parliament, the moment it meets, to pass a Salary Bill? When in 1936 responsible legislatures came into existence was there any difficulty in enacting an Act for that purpose? When the Constituent Assembly came into existence was it difficult to decide what will be our remuneration?

The second thing is that in many new Constitutions the pay is laid down in the Constitution itself. It is not desirable to leave it to the Parliament to determine the pay from time to time, but if you are doing this, then you must fix the proportion between the member's salary and the pay of the Ministers. Why? For two reasons. In India unfortunately the gap between the classes is very wide. On the one side you find multi-millionaires, on the other side you find the poorest of the poor. The same disparity should not be there between the pay of the Members of the legislature and of the Ministers. I do not want that there should be a great disparity between the of a Member of Parliament and the Minister, so that the member of Parliament may feel that he will always have to please the honourable Ministers to get

some more remuneration. There must be some relation between the pay of the members of Parliament and the Ministers' salary for another reason. Once you have determined the pay of the Members of Parliament in relation to the pay of the Ministers, naturally you have to be careful what salary you fix for the Ministers so that the burden on the exchequer may not be very heavy. Therefore this serves two purposes. Firstly, it serves as a check on the great disparity between the salaries of the Members of Parliament and of the Ministers. No doubt it is true that the Minister work for twelve months and the members of Parliament work only for about four or five months. Even if you take that into consideration, the proportion comes to the same proportion that I have indicated. It is this proportion which is to be found in Australia and New Zealand. Therefore, what I want is this, that there must be some relation between the pay of the Members of Parliament and Ministers so that no inferiority complex may develop. The first two amendments are of very great significance, but you may or may not accept them. But the third raises a point of vital importance. I hope that the House will, irrespective of party decisions, take into consideration the reasons which I have placed before the House and consider how far it is desirable that they should recognise the principle of party opposition. It is very easy to say that we accept the principle, and say that when the Parliament comes into being, it will fix the salaries of members of Parliament. When you have such a voluminous Constitution running into hundreds of pages and sections, when you are not leaving even minor things to be determined afterwards, why leave such a provision to be determined afterwards, a provision which is really of vital importance, in the interests of democracy and in the interests of the proper functioning of party governments in this country? In India during the last several centuries we had despotism. We are just beginning with democracy. It is necessary that we must create conditions in which democracy may not prove a failure. We must take steps to ensure its success and one of the essential things is that we must ensure that when the new legislatures meet after the enactment of the present Constitution there is a full-fledged and vigorous opposition to make party governments a success.

(Amendment No. 1635 was not moved.)

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

“That in article 86, for the words ‘Legislature of the Dominion of India’ the words ‘Constituent Assembly’ be substituted.”

Sir, the present words are inappropriate. There is no body existing today which may be called the Legislature of the Dominion of India. Under the adapted Government of India Act as well as under the Parliament Act, the Constituent Assembly functions as the legislature of the Dominion of India for certain purposes. The only body that exists today is the Constituent Assembly, and the new Members of the Parliament of India would prefer to derive their succession from the Constituent Assembly rather than from the non-existing Legislature of the Dominion of India. At one time there was some difference between the allowances between the members of the Constituent Assembly sitting as a Constitution-making body and the members of the Constituent Assembly in the legislative section, but now all have been brought on the same scale. Therefore there is no practical difficulty whatsoever. I commend the amendment for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in Mr. Santhanam's amendment the wording should be “Constituent Assembly of India” and not merely the “Constituent Assembly”.

The Honourable Shri K. Santhanam : I have no objection.

Mr. President : Amendment No. 1637 is the same as 1636. All amendments have been moved, and now the amendments and the original proposition are open for discussion.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, the object of my standing before the House is to say a few words on the amendment of Mr. Lari. Mr. Lari's complaint about the omission of any mention of the salaries of members in the constitution and also his suggestion that the Leader of the Opposition should be paid a salary are suggestions which are intrinsically worth considering, but I do not think it is necessary that we should enumerate in the Constitution details such as these so long as there is no embargo in the Constitution on the payment of a salary to the Leader of the Opposition, and salaries to members of Parliament. At the same time I am afraid Mr. Lari used the occasion for riding a hobby horse by projecting into the discussion those matters which perhaps concern him immediately, *viz.*, those relating to the United Provinces politics. I wonder whether in considering the Draft Constitution it is possible for us to devise ways and means of creating an opposition such as he wants by, putting the provision in the Constitution which Mr. Lari desires. After all we are not placing any embargo on any opposition party coming into power. I am afraid, Sir, that for a long time I have been hearing, almost from 1937, ever since the 1935 Act came into operation in the provinces, of the cry made by people who unfortunately are without any chance of coming into office or power that there is no opposition, that the Congress Party is doing its best to see that an opposition does not arise, and that where an opposition exists it does not function. In fact I wonder how Congress Party or any other party that might take its place in the future can create an opposition as such. How can an opposition be created by paying salaries to the members of the opposition party or the Leader of the Opposition? Are you going to insert in the Constitution a Provision by means of which we set apart a particular amount in the budget for the purpose of creating an opposition? I would like members here who are not satisfied with the type of government obtaining in this country to tell us exactly what they want. Do they want that in the Central budget a sum should be set apart in order to create an opposition? Sir, a cry like, this in a House which is functioning in a business-like manner is something of a diversion and my honourable Friend Mr. Lari has provided such a diversion so that the proceedings of the House need not be considered very dull by people who read the papers. So far Mr. Lari has done a service by his speech but I think somebody has to say that this is hardly the time and the place to make complaints the existence of which cannot be helped by the party who is in power. Nor is it the place to provide anything statutorily because I do not think that an Opposition can be created merely by accepting the amendment of Mr. Lari. Supposing this amendment of Mr. Lari is accepted, which I think we should not, will an opposition be created? Will a Leader of the Opposition who is paid a salary be able to organise a party? Even granting that the Leader of the Opposition is paid the same salary, allowances and emoluments as the Prime Minister of India, does that mean that he would be able to create a party? I think the very eloquent arguments put forward by Mr. Lari are likely to mislead the House into believing that there is something lacking in the state of affairs at present, conditions which are not existing by means of accepting Mr. Lari's amendment, an amendment which ordinarily could have no place in the Constitution.

Reference was made by the honourable Member to the Opposition in the House of Commons, and in regard to British practice. Yes: I have followed the progress of payment of salaries to Members in the British Parliament

and also the creation of a status to the Leader of the Opposition and the payment of the salary to the Leader of the Opposition. All these have developed over several decades. I do not think there is anything to prevent the Indian Parliament of the future to provide for a salary for the Leader of the Opposition if it so chooses and if it is thought desirable and wise. I do not see the need to put in a provision like this in the Constitution here in respect of an article which merely is a permissive article; it merely gives permission for Parliament to legislate in future in regard to salaries and allowances of members and, between the time that the Parliament does legislate and the time that it meets, to allow the *status quo* to continue.

He also objected to the provision for *status quo* to be prolonged. I do not see what sense there is in objecting to a thing which is very reasonable. After all the Parliament of the future will have such a lot of work to do in the initial months of its existence and the payment of salaries to members or allowances to members will be, in comparison to the other important matters that it will have to face, comparatively unimportant and in fact, I would rather that the House had enable Mr. Ananthasayanam Ayyangar to moved his amendment which gives power to the President to vary salaries and allowances, if it is necessary, until the time, Parliament enacts a legislation, which would have made the *status quo*, the position as it is in the Government of India Act as adapted to remain in operation. Sir, I think the charge that Mr. Lari made that a provision for continuance of the *status quo* is wrong is absolutely baseless, because it would not be possible for Parliament of the future to attend to all and sundry and the hundred and one matters immediately and it might probably take two or three years before it might settle down to do something on the lines that Mr. Lari wants. I have no doubt the future Parliament and those who are going to be in charge of the destinies of this country would bear in mind the suggestion of Mr. Lari to pay a salary to the Leader of the Opposition, if that would encourage the creation of an Opposition, of a healthy Opposition Party. By all means let it, but to put a provision of the nature that he has suggested in the Constitution, I think is wrong, and the arguments he has adduced in favour of his amendment are far beside the point and completely beyond the knowledge and concern of this particular House. Sir, I oppose Mr. Lari's amendment and support the amendment moved by Mr. Santhanam and the article as it would be amended by that amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I oppose the amendment of Mr. Lari, not that I am against having a healthy Opposition. The Article, as it stands, is sufficiently wide to make a provision and it makes a provision for giving salaries to members of Parliament and also when providing for a salary for members of the Parliament, it does not say it must be uniform. It may take into note if there is a healthy Opposition and there is a Leader of the Opposition, and make a provision for giving him a special salary or a salary in a higher degree than the salary that is given to the other members. As I said the provision is wide, and there is no similar provision in any Act, in any Constitution in any part of the world saying that you must make provision for the Leader of the Opposition in the body of the Constitution itself. Rules and regulations have to be made by Parliament and there is nothing to prevent Parliament from making a law giving a salary to the Leader of the Opposition. Now, let us read the amendment that has been tabled by Mr. Lari. It says: "Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister". His Assessment of the worth of his members is that a Cabinet Minister is equal to three or four members of the House and it will be very wholesome incentive in the hands of the members of the House, for constantly agitating for increasing their allowances, so that the Ministers'

[Shri M. Ananthasayanam Ayyangar]

allowances also may go on increasing. If the member's allowance must not be less than one-fourth and if it is Rs. 500, the Minister's salary must be four times that is, Rs. 2000 and if they claim Rs. 1000, the Minister's salary must be Rs. 4000 and so on. I do not see why it ought to be not less than one-fourth or more than one third; it becomes too rigid; you can say one-fourth or one-third or one-half, but there is a no meaning in fixing a proportion here, and I do not see there ought to be a definite proportion between a member's salary and the Minister's salary.

The amendment further says: "And provided further that the Leader of the Opposition shall be entitled to get salary payable to minister without Cabinet rank." If Government recommend that we may abolish ministers with cabinet rank, then the amendment of Mr. Lari goes to the wall. The moment our minister are made ministers without cabinet rank, than there is absolutely no provision for what Mr. Lari suggests, in so far as the wording in concerned. As regards the substance, since the 15th August 1947 the Constituent Assembly has been functioning as a Legislature to this day for nearly two years, but is there a healthy Opposition? I have noticed some keen opposition was there when a debate took place with respect to Hyderabad. On no other occasion was there an Opposition at all. Is there a policy, is there a programme? If there was an Opposition on communal matters, do we want to perpetuate that? If there is any section strongly opposed to Government which want to make this country an absolutely Socialist State here and now, I can understand it. You have no policy or programme. Are you therefore to go on as the Irishman said when he was ship-wrecked? He landed on an island and the first question he put was "Is there a Government"? And somebody said that there was and he promptly said that he was in the Opposition. Mr. Lari wants to create an Opposition. May I ask him whether there is an Opposition and what kind of Opposition, communal or healthy Opposition? I agree there ought to be a healthy Opposition. Perhaps they are wanting communal factions. Is there a communal party which will go as an Opposition? Are we to pander to communal bickerings and say to those who create them "You can carry on in the manner in which you have been carrying on, vertically, horizontally and diametrically and them I will pay in addition a salary"? I am really surprised to see this day the very protagonist of this healthy Opposition had an ample opportunity and I do not know why he did not start an Opposition. What is their policy or programme? Are they interested in the welfare of the country? Are their action calculated to improve the welfare of the country much better than what the Congress Party has stated in its manifesto? I therefore think that to say in the Constitution itself that there must be an Opposition is not necessary. You may leave this matter to the Parliament. If there is a healthy Opposition and for want of separate provision for his maintenance the Leader of the Opposition is not able to devote all the time and attention that is necessary in the interests of public welfare and democracy, in the interests of parliamentary administration and in the interest of bringing to the notice of the public the defects in the administration, then there is time enough to make such a provision. The article as it is does not prevent any such provision being made. But, from now on just to dangle an opportunity or temptation in the way of a number of members is not proper. Four or five members may join and say, "we will have an opposition and an opposition leader, let him be paid a salary of Rs. 4,000 and let us divide it among ourselves". If a healthy opposition grows, certainly, there will be provision made. So long as there is no healthy opposition, a salary ought not to be placed on the Statute Book by way of temptation. I oppose Mr. Lari's amendment both in its form as impracticable and in substance, because there is no opposition and it not intended to create an opposition willy-nilly.

My honourable Friend Mr. T.T. Krishnamachari said that he approved of my amendment. I only wanted to say that during the transitional period, the question of salary may be modified by the President as there is a similar provision in the Government of India act giving power to the Governor-General to modify the rules regarding the allowances from time to time until provision is made by Parliament. Mr. Santhanam thinks that it is not necessary to clothe the President with such a power. I also agree that the President ought not to override the legislature. But, I think so far as allowances are concerned, nothing prevents Parliament from bringing an enactment to remedy any defects and we need not clothe the President with any extraordinary powers of this kind. I therefore advisedly did not move the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, article 86 says that Members shall get salaries fixed by Parliament and that till Parliament meets and fixes the salary, they should be paid the amount as members of the Dominion Legislature or the Constituent Assembly are paid at present. An amendment had been moved by my honourable Friend Mr. Lari to the effect (i) that members should get their salaries which should be one-fourth of what a Minister of Cabinet rank would get, that is, he had fixed that whatever salary is fixed for a Cabinet Minister, one-fourth of that should be the salary of each individual members, and (ii) that there should be a Leader of the Opposition and that Leader of the Opposition should get the same salary as a Minister of State, that is not of Cabinet rank. I have very carefully listened to the speeches of my honourable Friend Mr. Lari and of the two preceding speakers. The argument of Mr. Lari appears to be very sound that a salary has to be fixed. There has to be a Leader of the Opposition. The argument of Mr. Ananthasayanam Ayyangar is that there should be no Leader of Opposition at present on account of communal groups. But, there will be no communal groups in the future, because, there is not going to be any reservation of seats and even if there is going to be reservation of seats, there are not going to be separate electorates. Everybody feels that there should be a Leader of the Opposition.

On the other hand, there is a flaw in the argument of Mr. Lari and it is this. You will find that wherever there is a Parliament on democratic lines, there are leaders of the opposition and there are members of Parliament and all of them get their salaries. But, their salaries were never fixed by the Constitution. The salary of the Leader of the Opposition and of the members in every country has been fixed by an act of Parliament. Whether it is the Dominion of South Africa, Canada, Australia or New Zealand or any other Dominion, you will find that this is the case. While this is the case everywhere, why should we create a new thing and include this in our Constitution? After all, in a Constitution, we need not go into the details. We must fix the principle. There is the article which says that salary shall be paid to the members. What that amount will be, will be decided by Parliament and not by this House. For this reason, I am not in agreement with the amendment. If you will permit me, Sir, I would make the task of Mr. Lari easy and obviate all difficulties by proposing an oral amendment. I would suggest that instead of putting it as one-fourth of the salary of a Minister, the salary of the members and the Ministers should be equal. Then, I think everybody would be happy.

With these words, I oppose the amendment.

Shri Biswanath Das (Orissa: General): Sir, I believe that Mr. Lari has proposed an amendment which is unfair to the country and unfortunate in itself.

Let me first take the provision in article 86 of the Draft Constitution. It lays down that Parliament shall provide for such allowances as were being

[Shri Biswanath Das]

given to the members before the operation of the Constitution and afterwards that the Parliament will determine, by law, the salary and allowances that are to be given to members. If Mr. Lari had wanted to agitate in the way he has proposed to do, the proper course for him was to come before the Assembly when a law was proposed to be enacted after the elections in terms of the Constitution that we are going to pass.

Sir, the Constitution provides for salaries and allowances for myself, I do not believe nor do I go with those who profess to advocate Parliamentary democracy that members should be paid salaries for the work that they have to do in their constituencies or in the Assembly here. I believe, Sir, that allowances, without pay, is the desirable course. However, we have to submit to the joint wisdom of the honourable Members of this House and we agree to the scale of pay and allowances to be fixed hereafter by law by Parliament. That being the position, I for myself and some friends like me feel that no pay is called for under the circumstances but we have to submit to the joint wisdom of the Members. However, that does not make one feel to say that parliamentary democracy that is going to be installed in this country should give a statutory recognition to the Opposition, not only give recognition to the Opposition, but also provide a scale of pay for the Leader of the Opposition. I plead with Mr. Lari to point me out any Constitution in the world which is in operation today wherein a fixed salary has been provided for in the Constitution for the Leader of the Opposition. True it is that the Leader of Opposition in British Parliament gets his scale of pay and status equal to that of a Minister but that has nothing to do with a specific provision in the Constitution. Sir, parliamentary democracy needs the existence of two parties *viz.*, the majority party in charge of office and the minority party to play the functions of Opposition so as to give it full work. Therefore Opposition is a necessary evil. An Opposition party is also a necessary evil in the operation of Parliamentary democracy that is however in itself and by itself no justification why a specific provision should be made as it is sought in the amendment in the Constitution of this country. After all, many things have to be done by precedents for course of events that have to come in the future. I do not find any justification whatsoever for giving a statutory recognition to the Opposition and to the Leader and also to his status and pay.

Having said so much about the Opposition Leader, I come to his proposals regarding the scale of salary he proposes for the members of the House. I feel it is unfair to the country, a country wherein the differences in the earning capacity of the top man and the people who are down trodden is so wide that the scale of pay that he proposes for members merely perpetuates the existing order and is therefore far beyond my conception. The scale of pay that he proposes is to range between one-fourth and one-third of the pay of a Minister. If the existing pay of Ministers is going to be Rs. 3,000 as has been fixed by Statute by the honourable Members of this House, then his one-third and one fourth fixes the scale of pay of members is to range from Rs. 750 to Rs. 1,000/- a month. I put it straight to him whether it is fair to himself and to his country to propose to fix a scale of salary to range between Rs. 750 and Rs. 1,000/- for each member of the House.

Mr. Z. H. Lari : We are getting Rs. 1,300 a month now.

Shri Biswanath Das : He may be getting Rs.1,300 if he is a member of too many committees and if he is a member who attends the Assembly regularly. Even then I would plead with him that his facts are far from being correct. Because no member to my knowledge draws Rs. 1,300 a month as allowance.

I am one of those members who choose to draw only Rs. 30 feeling that Rs. 45 a day is too much for a member and I for myself, an ordinary worker. I do not need Rs. 45. I know there are members in my province who draw their monthly salaries as members of the Assembly and straightaway hand over to the Secretary of their District Congress Committee and receive a scale as fixed by the Congress Committee in preference to the pay that they draw and they go on as whole-time workers. That being the position I think he has been very unfair to his constituents and to his country in bringing a proposal such as this before the House.

Sir, for myself I feel that I can have absolutely no truck with any point covered in his amendment and I feel that it is unnecessary, unfortunate and undesirable. Therefore I support clause 86 as it is, however much I would desire that there should be no scale of salary fixed for the honourable Members of this House who ought to agree to work and serve the country being satisfied with the allowances that the Assembly would fix for themselves.

Kazi Syed Karimuddin (C.P. & Berar: Muslim) : Mr. President, the amendment moved by Mr. Lari is a very important amendment and all those speakers who have spoken in opposition to Mr. Lari have given two grounds: Firstly, that in no Constitution in the world there is such a mention or provision: Secondly, that such a salary of the Opposition Leader is based on conventions. I have heard with great interest the speech of Mr. Das who thinks that opposition is a necessary evil. If there were any doubts as to the importance of the amendment, after listening to his speech I am now convinced that in this country there are people who think that it is a necessary evil and it is very necessary that such a thing should be embodied in the Constitution itself. Sir, Mr. Krishnamachari said that this is not a question of principle but it is a question of detail. My submission is that in this country when we find that Opposition is not tolerated, it is neglected and generally it is punished, it is very necessary that the Constitution should create a Statutory Opposition. There is no democracy in the world which can function efficiently without opposition. The mistakes and failures of the Party have to be pointed out by the Opposition and the party in power has to be vigilant because of the Opposition in the House. India is a new-born democracy, where we find in every province, even in the Centre in this Dominion Parliament, the Opposition is not tolerated and is treated with scant courtesy. What is happening in the provinces? Because of the Public Safety Act, because of other measures, the Opposition Leaders or those who are in opposition are threatened, not only threatened but the Opposition parties in the provinces are dwindling. The only reason is that if a Muslim opposes, the Government says that he was a believer in the two-nation theory and that he does not give up his opposition and his opposition is not to be tolerated at all. If a socialist opposes, it is said that he is an enemy of the Government and if a Communist-opposes, he is of course a dangerous character. This is the state of affairs that is prevailing in the provinces and in the Dominion Parliament. Therefore this is the greatest occasion to create a Statutory Opposition. Mr. Lari has said that this is a question of principle. This is not a question of salary, My submission is that if the Leader of the Opposition is granted a salary, he will be able to devote all his time in criticising the Government and in carrying on campaign against Government in power if there are mistake and failures. Therefore, my submission is that this is an occasion when there should be Statutory opposition and by accepting the amendment of Mr. Lari you will be accepting that a healthy Opposition in the country is very necessary. Mr. Ayyangar has said that a healthy Opposition is to be tolerated. In my opinion, if it is to be left to the party in power to decide what is healthy criticism, and what is unhealthy criticism, then, in my opinion, every criticism of the party in power

[Kazi Syed Karimuddin]

will be treated as unhealthy, and every opposition against the party in power will be treated with scant courtesy. Therefore, I support Mr. Lari's amendment and I commend it to the House for its acceptance.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I beg to support Mr. Lari's amendment so far as the second proviso is concerned. I support the amendment on principle; but I should request the House also to consider the amount of the pay. I support the amendment as it has raised a very important constitutional principle. I should, first of all, ask the House to consider the principle itself. It is not the pay that matters. It is rather a statutory recognition of an opposition. It is rather giving the Opposition a recognised place in the Constitution. It is this important principle that is involved in the amendment. The question of pay and other things dwindles into insignificance in the face to this important consideration. I would there, draw the attention of the House to this important aspect of the question.

Three very important and sober Members of the House, namely, Mr. T.T. Krishnamachari, Mr. Ananthasayanam Ayyanagar and Mr. Biswanath Das were at great pains to oppose the amendment. They were labouring under a great difficulty in explaining away this important proposition. Mr. Krishnamachari who is a great economist tried to play the part of a lawyer, in finding out legal argument against this proposition. Mr. Ayyanagar, of course, is a great lawyer, but I am sorry to find that he did not rise above a mere lawyer. Sir, opposition in a democratic House is a great necessity. It is an indispensable condition of all democratic institutions. We propose to call ourselves, and we propose to make our country, a "democratic sovereign republic". If we cannot ensure any opposition, we should rather call the constitution that of an "undemocratic, sovereign republic". It is the essence of democracy that there should be effective Opposition. Mr. Krishnamachari has said that pay "does not create" an opposition, and he is of opinion that the opposition must "grow up" and it is something that cannot be "created". But he failed to notice that pay gives the opposition a status and it also recognises the Opposition. The difficulties which are felt by Members of the Constituent Assembly sitting in the Legislative side and who want to oppose Government measures are very great. For the absence of an effective Opposition, I submit, the House gets spoilt. The very tolerance which an effective Opposition will engender among the majority Party, is lost. As soon as some criticism is made, some Members of the majority Party get impatient. As soon as arguments are advanced, the so-called prestige of the Government is supposed to be at stake, and therefore those arguments are opposed, resented, and sometimes treated with indifference and contempt, Yesterday I made a motion which was, to my mind, a very logical one, but it was characterised as absolutely illogical and absurd by Dr. Ambedkar. I do not blame him for that. It is the result of a situation of having a huge majority party, in the face of a tiny, microscopic opposition. It is the absence of an effective opposition that creates this situation. It is the result of huge confidence backed by a huge party-it is that which creates this indifference, and also intolerance of Opposition. I submit, Sir, that the want of an effective opposition induces the Government to proceed in a careless fashion, regardless of public opinion. And what has been the result? People outside lose all interest in the proceedings. They believe that in the Assembly, the Members have nothing to do beyond crying "ditto" to what is said by the Government. I submit that this is not good or healthy for the growth of a real democracy. There has already been very unhealthy Opposition to governments in the Provinces. There has been in the Provinces a very unhealthy growth. I should like that the Congress should resign. There is now no alternative Government that I can think of. Therefore, I feel that the Congress should be in power for some time to

come. But I would put in this condition, that it should try its very best to create and encourage some amount of opposition. Opposition can thus be and should be created. I would submit that the Leader of the Opposition should not only be given pay, but ample secretariat facilities. Those members who had the unfortunate, and unpalatable duty of opposing the Government felt the difficulty of the absence of secretariat help, and in those circumstances opposition has not grown very much. It is therefore the patriotic duty of every Member of this House to see that an effective opposition grows. If you want to be a stable government if you want to be in the good books of the people, if you are not desirous of creating anti-Congress feeling in the country which is growing very fast, if you think that you should keep the people from joining the forces of disorder and chaos, it is very necessary to consider this matter very seriously. It is very necessary for you to create an opposition, if necessary be some members volunteering to go to the opposition and making it healthy and strong. It is by such recognition and encouragement that you can create a healthy opposition. Then, Mr. Krishnamachari has said that the provision should find no place in the Constitution. He further says that opposition should grow convention. That has certainly been the case in England where everything has grown by convention. There the Leader of the Opposition gets a pay of £ 2,000 and secretariat facilities. But so far as our Constitution is concerned, it is a written constitution, and when we have made a special mention about the pay of Ministers and the pay and allowances of members in our Constitution and when you make no mention of the pay of the Leader of the Opposition, then the acknowledged, rule of interpretation would be that the Constitution does not desire to give the Leader of the Opposition any pay. I should, therefore, think that this should have a special place in the Constitution, though the question of the amount of pay and other things may be open for consideration.

I, therefore, ask this honourable House to consider the important principle first of all and make up their minds as to whether they should agree to the principle of creating and fostering opposition for the safety of the country, and secondly decided what pay should be given to the Leader of the Opposition. If the principle is agreed to, the fixation of pay should be a minor matter.

I submit, Sir, that one of the arguments of Mr. Ananthasayanam Ayyangar struck me as somewhat surprising. He points out that the amendment links the pay of the Leader of the Opposition with that of a Minister without Cabinet rank and he has posed a question: Suppose we abolish the post of minister without Cabinet rank, what will happen to the Leader of the Opposition? This looks like the quibbling of a lawyer. He overlooked the fact that we may create the post of a Minister without Cabinet rank, though we may not appoint one, or we may even remove him. As I have already said the exact amount of pay, or the exact provision relating thereto is not a matter of great importance. At any rate, I feel that his argument is without foundation.

During the debate the three distinguished honourable Members of the House said nothing about the status of the Leader of the Opposition. I am glad that none of them questioned the need of an organised opposition.

Another argument used by Mr. Ananthasayanam Ayyangar is that the present Opposition has no definite programme. I quite admit, in all humility, that there is now no opposition at all and, therefore, no recognised programme. It is this very situation which this amendment seeks to remedy. I agree that the opposition is not organised; it has no Secretariat; it has no money, it has not enough strength to meet an organised Government like that of the Congress. I say that it is the desire of many members of the opposition to support the Government, when they agree with its policy and oppose it when

[Mr. Naziruddin Ahmad]

they feel that the Government is wrong. They support it while they may, and oppose it when they must. Mr. Ayyangar again suggested that the only opposition was in regard to the Hyderabad issue. Somehow or other, in one form or another, the communal bogey is raised now and then in this House. I think, Sir, that is a very weak and unsubstantial argument. In fact, the opposition—if there is one—the very feeble opposition which you find in the House has never been confined to the Hyderabad issue. There have been great controversies, of course, carried on by humble individuals in their individual capacity, but that is not confined to the Hyderabad issue. Take the well-known question of the Hindu Code Bill. On this issue the Muslims of India have shown that they are not communal in their outlook. The Muslims have been wholeheartedly supporting the Government in all their constructive measures. So, I submit, that the communal argument should be brushed aside, killed and buried once and for all.

I therefore reiterate that if you want to exist as a Government, respected and loved by the people, you should, for your very existence, create an opposition. Now there is a feeling in the country that the party in power is all too powerful. In fact, there is a feeling even amongst the Members of that Party that the party is all-too powerful and that individual members have no liberty. Even the Press of late has not been very articulate. In fact, the debates in the House which put the Government in an inconvenient light are hardly reported in the Press and it is hinted that this is due to some unofficial pressure on the part of Government.

This, Sir, is not a healthy state of affairs. Where are you leading the country to? China is already engulfed in the Communist menace; Burma is in the grip of Communism; the Communist activities have already reached the gates of Bengal. Would you place the country under the Communists? If you want to save the country from the Communist menace, you should create a healthy opposition, and thereby rally the country in your support. If you have no opposition, the people will lose their confidence in the Government and the country will go to the dogs.

In Bengal—I speak with personal knowledge—there is widespread antipathy against the Congress Government. Allegations of a very serious type are levelled against the Ministry. I believe the country should be saved from chaos and disorder towards which we are heading. We want to strengthen the hands of Government; we do not want to join the forces of disorder, chaos and the like. It is by creating a healthy opposition that you will be saving the India of the future.

Sir, I think I have wasted the time of the House for a few minutes longer than I had desired to, but I feel the subject is extremely important and deserves more care and attention than it has so far received. Sir, I beg to support the principle of the last part of the amendment.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I think this simple article has taken an unreasonably long time to get through the house and Members on both sides—I beg to be excused for saying so—have brought in issues which are, strictly speaking, not at all relevant to this article. Sir, the article is a very simple one. It provides that the future Parliament should decide the salaries and allowances of the Members from time to time by law. By law is meant by a Bill of Parliament. There will be ample opportunity in that Bill to provide for the salary of the Leader of the Opposition—if there is one—as well as to correlate the salaries of the Members of the House with any functionaries of the State if the Parliament

so desires. All those things are naturally left for the Parliament of the future to decide. I think the provision in the article is so appropriate that there should be no quarrel so far as its inclusion in the Constitution is concerned.

Many Members have said that the party in power should create an opposition, as if the creation of an opposition is like the planting of a tree. Nor is it appropriate to bring in the present state of affairs either in the provinces or at the Centre. This is not also I think an opportunity for ventilating individual or group grievances, so far as the present state of affairs is concerned. We are discussing the future Constitution of India. So in this article there is hardly room for controversy. It is open to the next Parliament to have a Leader of the Opposition and pay him if necessary even more than the Prime Minister. The post may be deliberately and substantively created, if that is thought necessary. I do not think this was the proper place to bring in the matters which have been brought up. If the Honourable mover of the amendment attached such importance to the existence of an opposition and statutory provision for the Leader of the Opposition he should have taken up matter independently and in any case on some other occasion where a discussion could have been said to be appropriate. So I feel that the article is thoroughly unobjectionable and should be adopted.

There is one thing I must say and that is that the members' salaries must be adequate. I feel very apprehensive that there should be many members of Parliament who are needy. It is a dangerous thing which will vitiate the proper working of democracy in any country, more so in a poor country like India. So although certain people are nervous about talking of their own allowances, etc., and some people feel patriotic about sacrificing them partly or wholly, I should insist there should be no temptation in the way of these members so as to make them deviate from the path of strictest duty and honesty. I am constrained to say this because of the conduct of many members of the legislatures all over India, central and provincial. I would ask any Government to face the bitterest criticism from an understanding public, but pay adequate salaries and allowances to the members so that they may not be tempted to derive any benefit from any other source whatever.

Sir, I oppose the amendment and support the article.

Shri R.K. Sidhwa (C.P. & Berar: General): Sir, I am always in favour of opposition but it must be a healthy opposition. But we have heard today that there must be opposition just for the sake of opposition and the supporters of the amendment went to the length of saying that there must be a regular campaign carried on against Government. My Friend Syed Karimuddin said that for opposing the Government you must pay the Leader of the Opposition. I strongly oppose that.

Kazi Syed Karimuddin : On a point of personal explanation, I said there should be a campaign against the mistakes of Government.

Shri R.K. Sidhwa : Yes. That is, exactly what I say. You stated there should be a campaign. Sir, healthy opposition to bring Government to their senses is surely commendable, but to say there should be a campaign to discredit government is another thing. My Friend Syed Karimuddin mentioned Communists and Socialists and said whatever they stated we disliked. That is not so. What I object to is the kind of campaign, which is neither healthy nor in public interest. There is a class of people who believe in throwing acid on innocent people, burn tram-cars and buses, throw bombs. Supposing their leader happens to be in the legislature and he advocates this kind of policy, could it be called healthy opposition? I would call that class of people enemies

[Shri R.K. Sidhva]

of the country, and surely their leader you expect to be paid from the public exchequer? It is of course true that the Leader of the Opposition in England is paid out of State funds. I do not know the history of that. But there the Leader of the Opposition not only opposes but sometimes also supports the Government. But whatever may be the case in England I am opposed to the principle of paying the Leader of Opposition out of the State funds. Every party has its own funds and if the party desires that he should be a whole-time worker let their party pay him; the State should not pay him for its being attacked in and out of season. It is a very wrong principle and I strongly oppose it.

Shri Ramnarayan Singh (Bihar: General) : Sir, although I do not support Mr. Lari's amendment I think he has raised an important constitutional issue which the House should consider. I am not an admirer of the British constitution. They have got the party system which I think strikes at the very root of democracy. We are told that in that country there is opposition and the Leader of the Opposition is paid. It is a sound principle. In this country we have just got freedom, and our own party *i.e.*, the Congress Party, has got no opposition to it. I have seen how things have been going on here and I feel that there must be a strong opposition to criticise our actions and review them. In the Mahabharata we find Bhishma and Arjuna fighting in opposition to each other and there Bhishma tells Arjuna how to kill Bhishma himself. In the same way I think that Government is good which creates and encourages opposition and which is always ready to retire. A Government which does not like opposition and always wants to be in power is not a patriotic but a traitor Government. In several provinces, in my own province of Bihar, I know what is happening. There is no opposition to the Congress Government and all sorts of scandals are going on. I therefore feel that there should be an opposition to criticise Government and this opposition should be encouraged. This need not be in the constitution itself but we must consider it as soon as the constitution is passed.

The Honourable Dr. B.R. Ambedkar : (Bombay: General): Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said. Their reply I find is quite complete.

I however, accept the amendment of Mr. Santhanam for the substitution, of the words, 'Constituent Assembly', for the words 'Legislature of the Dominion of India.'

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

The question is:

"That in article 86 the words 'and until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the legislature of the Dominion of India' be deleted and the following new proviso be inserted:—

'Provided that salary payable to member of the Parliament shall not be less than one fourth or more than one-third payable to a Cabinet Minister.

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.' "

The amendment was negatived.

Mr. President : The question is:

“That in article 86, for the words ‘Legislature of the Dominion of India’ the words ‘Constituent Assembly of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 86, as amended, stand part of the Constitution.”

The motion was adopted.

Article 86, as amended was added to the Constitution.

Article 87

Mr. President : The House will take up article 87 for consideration. I find that amendment No. 1638 of Professor Shah is covered by article 98 which comes a little later.

Prof. K.T. Shah (Bihar : General): Sir, the second part is not covered. I shall move the second part only. Sir, I beg to move:

“That the following new clause be inserted before clause (1) of article 87:—

‘Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

Sir, I consider this a very important right of the people, and a privilege of Parliament, if I may say so, that the people whom the Parliament is supposed to represent should have the right to approach directly the sovereign legislature, and place before it grievances, or cases which require Parliament’s attention as the body concerned in any legislation pending before it.

Such petitions may also be in regard to any financial matter or administrative acts. In all such cases, in the ordinary way, unless some privilege of this kind is provided, the people, who theoretically are supposed to be sovereign will have actually no right of presenting their grievances, or views on any given matter to the sovereign legislature.

It may be—it frequently happens—that given the life of Parliament extending over five years, the House of the People elected four or five years before such an occasion arises, may have ceased to be in real contact, and therefore any real response to the wishes of the people, which in the period during which it has been in sessions has changed and is changing considerably, may be impossible.

Nor, is there any regular machinery by which Parliament may from time to time be able to test popular opinion, except in so far as the Ministry or Government chooses to place these matters before it. I suggest that the people should have the right of direct access for placing before Parliament on any given subject their views, and getting the Parliament’s reactions thereon. It is in this country an old privilege of the poorest, that fancying themselves aggrieved, or any individual fancying himself aggrieved, had a direct right of access to the Sovereign, even in the days of the old absolute emperors. In modern times, when we profess so much regard to the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people, I think it is not asking too much at all to suggest that this which forms admittedly the right of the people and the privilege of Parliament in Britain on which our Constitution is modelled, should also be included in our Constitution, namely that the people should have the right of direct access to Parliament and present petitions for that purpose.

I do not quite like the word ‘petition’ myself; but, as it has been used and as it is of popular use, in this matter I have adopted the word in presenting

[Prof. K. T. Shah]

this part of my amendment. Another amendment had been tabled by me, which I have however not moved, in which I was seeking to reverse the process, namely that Parliament should also, on given issues, ask or try to ascertain the opinion of the people, so to say by a parliamentary referendum, rather than by a Governmental referendum. I felt, however, that given the present tendency, given the accepted traditions, it might sound too novel or too radical to suggest that Parliament should ask the people their opinion, though in the strict theory of our democracy, in my opinion at any rate, it would be nothing unusual if some such procedure had been included. I repeat that that particular amendment I have decided not to move. But I think this one, its counterpart, is perfectly orthodox, and correct, and there ought to be no objection to it from any quarter, because it is a recognised thing. It is being frequently done, and there is no reason to believe that in this country it would either be unwanted or abused. I commend the motion to the House.

(Amendment Nos. 1639, 1640 and 1641 were not moved.)

Prof. K. T. Shah : Amendments Nos. 1642 and 1643 are on a similar subject. May I move them together, Sir? It will save time.

Mr. President : Professor Shah may move amendment Nos. 1642 and 1643 together.

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

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be brought back to the House of the People but shall be deemed to have been passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

and

“That after clause (5) of article 87, the following new clauses be inserted :—

‘(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the people is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.’ ”

Sir, these are intended to economise the time of the House, and simplify its procedure in enacting legislative proposals coming before Parliament. It may be that a Bill after it has been duly passed by the Council of States, in all its stages in that House, and before it is sent up to the House of the People, the contingency may arise that the Lower House is dissolved before it takes up

the Bill. I suggest that such a Bill should not be deemed to have lapsed altogether; and that if it is agreed to by the new House of the People in the same form in which the Council of States had passed it, it should be deemed to have been passed by both Houses of Parliament, and be sent up to the President for assent. That is to say, it would not be returned a second time to the Council of States after being passed through all stages by the new House of the People as a new Bill brought in for the first time before the House, and then once again go through all the stages in the Upper House.

I think this stands to reason, especially having regard to the fact that both Houses are equally competent to initiate and deal with all Bills except money Bills. It may be in practice that the most important legislative proposals will originate in the Lower House. If not passed in the Lower House before dissolution, then automatically all such legislation pending there at any stage would be deemed to have lapsed, if the House is dissolved. But in the event of the Lower House passing any legislation in all its stages before its dissolution, and having so passed, sending up the proposal to the Upper House before it itself is dissolved, there should be no need to regard that Bill as having lapsed, because it has already been duly passed by the House of the People. The Upper House may then take it up and carry it through in all its stages, and if the Upper House agrees to it in the same form in which the Bill was sent up by the House of the People, there ought to be no need to send it back to the new Lower House elected after the dissolution.

I can conceive of a contingency in which this position may be abused; *i.e.* when controversial legislation may have been hurried through almost in the last days when the House of the People is likely to be dissolved, and the Upper House also being in sympathy with it might pass through all stages such Bills before the new Lower House can take up the matter. Difficulties of this nature might arise, especially if the newly elected House is dominated by a different party from that which preceded it. In that contingency, however there is no need to fear that the will of the people will not prevail, because either the Council of States may not pass the legislation passed by the previous House of the People, or if passed by it, it may not be assented to by the President. There is also nothing to prevent the new Lower House from enacting any other Bill contravening or rejecting the measure passed by its predecessor at the last moment. I think that by this amendment time would be saved, simplification of procedure would be assured, and duplication of work avoided.

No doubt these are merely procedural matters, which can be regulated primarily by each House or Parliament by rules. But if injunctions of this kind are incorporated in the Constitution itself, my amendment is necessary, as it will help to economise time. I commend it for the acceptance of the House.

Mr. President : I have received notice of certain amendments by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : (United Provinces: General): There are two amendments. One is to article 87 and the other is to article 88. I am not moving the amendment to article 87.

Mr. President : These are all the amendments that we have got. Now the amendments and the original proposition are open to discussion.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I am opposed to clause (2) of article 87 wherein it is stated that no Bill shall be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses. I do not see why in a democratic state, the representatives of the people should be placed on a par with the nominated representatives of the provincial governments. The supremacy of the Lower House must be recognised if democratic institutions are to function efficiently. It has been said

[Shri Brajeshwar Prasad]

that this clause is in conformity with the federal principles which have been agreed to in the beginning. I for one, Sir, do not see why anyone should trot out such an argument now. I do not consider this Draft Constitution to be purely Federal in character. It is partly federal and partly unitary and more unitary than federal in character. When we accepted federation the position prevailing in India was quite different. We did not accept the principle of federalism to accommodate the provinces. The provinces were never in our minds when we accepted the federal principle. We accepted federalism in order to meet the challenge of the Two-Nations theory of the late lamented Mr. Jinnah. We accepted federalism in order to persuade the Indian Princes to surrender a part of their sovereignty. Now the position is entirely changed. This country, Sir, has been unfortunately partitioned. The Princes today have been liquidated. The States today are in a far worse position than the Indian Provinces. Last time when the Constituent Assembly met I had spoken in this House in favour of a unitary State. Sir, I do not know what is in the mind of our Constitutional Pandits. Federation tends towards a unitary form of Government. I do not know of a single instance in history where a unitary form of Government has degenerated into federalism. As far as federalism is concerned, Sir, almost in all federal countries the constitution has tended towards a unitary form of Government. I visualize the role of a second chamber at the Centre merely as an advisory body. It should be a check upon hasty legislation, but to emphasize the federal character of the Constitution will be a retrograde step and those persons who talk and emphasize this aspect of our Constitution do a great disservice to the country. The Provinces were always subordinate to the Government of India and to say now that they have got autonomous and federal powers is really to turn the hands of the clock back. We are reversing, Sir, the process of history: we are emphasizing federalism, which is conservative in character and is full of weakness. Sir, I oppose clause (2) of article 87.

Mr. President : The question is:

“That the following new clause be inserted before clause (1) of article 87 :—

‘(1) Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘in the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States, the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any, amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That after clause (5) of article 87, the following new clauses be inserted :—

‘(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by

the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.' "

The amendment was negatived.

Mr. President : The question is:

"That article 87 stand part of the Constitution."

The motion was adopted.

Article 87 was added to the Constitution.

Article 88

Mr. President : The motion is:

"That article 88 form part of the Constitution."

(Amendment No. 1644 was not moved.)

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

"That in clause (1) of article 88, after the words 'If after a Bill' the words 'other than a Money Bill or other financial Bill' be inserted."

Shri M. Ananthasayanam Ayyangar : May I ask the honourable Member to see the proviso to article 88 which says: "Provided that nothing in this clause shall apply to a Money Bill." What is the advantage in transposing this clause?

Shri H. V. Kamath : Then the proviso itself must be altered. Sir, it is more or less a formal amendment, but it makes for clarity. I am all for brevity, but not at the expense of clarity and precision. Articles 89 and 97 deal with Money Bills and other financial Bills. Therefore, when we refer to a Bill in article 88, it would have been far happier and far clearer if we had laid it down specifically that the Bill referred to in this article was something different from or something other than a Money Bill or other financial Bill. My honourable Friend, Mr. Ananthasayanam Ayyangar, has rightly pointed out, and I am grateful to him for having done so, that there is a proviso here at the foot of clause (1) to this article referring to the exception made in regard to Money Bills. But, Sir, the language used in article 87 reads: "Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills." So if we want to be consistent in our language and in our phraseology, I think Mr. Ayyangar would agree that even the proviso should have been drafted in consonance with the language used in article 87, article 87 refers to not merely Money Bills; but Money Bills and other financial Bills, and therefore, I would accept an amendment if moved by Mr. Ayyangar modifying the proviso in the light of my amendment and including other financial Bills along with the Money Bills referred to in this proviso.

Mr. President : What will be the effect, supposing your amendment is accepted and the proviso is not deleted? There is no amendment to delete the proviso.

Shri H. V. Kamath : That is unfortunate, I realize. But unless the proviso is modified suitably a sort of lacuna will remain. If you would permit Mr. Ayyangar or anyone else to move a suitable amendment to the proviso itself including financial Bills with Money Bills referred to in this proviso, then it would meet my objection completely; otherwise, I fear there would be a lacuna which might do violence to the consistency of language used in the two articles.

Shri Prabhudayal Himatsingka (West Bengal: General): There is amendment No. 1649 to delete the proviso to clause (1) of article 88.

Shri H. V. Kamath : If that is accepted and mine is also accepted, that suits the situation admirably. I therefore move my amendment.

(Amendments Nos. 1646, 1647, 1648 and 1649 were not moved.)

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

“That in clause (2) of article 88, for the words ‘both Houses are’ the words ‘the House referred to in sub-clause (c) of that clause is’ be substituted.”

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

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

“That in clause (2) of article 88, before the last word ‘days’ the word ‘consecutive’ be inserted.”

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam : Sir, I move:

“That in clause (4) of article 88, the words ‘total number of’, be deleted.”

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent.

The point here is simple. What is intended is that the decision of the joint sittings should be taken by a simple majority. In all such cases, the usual wording is majority of the Members of both the Houses present and voting. The wording, ‘total number’ is generally used only in connection with absolute majority.

The Honourable Dr. B. R. Ambedkar : I shall be grateful if my honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards?

The Honourable Shri K. Santhanam : I agree, Sir.

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

“That in clause (4) of article 88, the words ‘for the purposes of this Constitution’ be deleted.”

Sir, this, to my mind, is an instance where these words could be omitted without sacrificing precision or clarity of meaning intended by this article. Whatever is drafted here, whatever article comes before the House is for the purposes of this Constitution. We are dealing with the Constitution. Nobody I am sure, would presume to say that anything which is embodied in this Constitution is for purposes other than this Constitution. Therefore, it is to my mind redundant, needless and superfluous to state in any article, or in this article for the matter of that, that the result of the voting shall be deemed to be for the purposes of this Constitution. I therefore move that these words which are to my mind unnecessary may be deleted. I move my amendment.

Mr. President : Amendment No. 1657. I think it is a drafting amendment.

(Amendment Nos. 1658 and 1659 were not moved.)

Shri T. T. Krishnamachari : I am afraid the amendment is of a drafting nature, seeking to omit certain words which are redundant.

Mr. President : Amendment No. 1660 is of a drafting nature.

(Amendment No. 1661 was not moved.)

Mr. President : I have received notice of an amendment from Prof. Shibban Lal Saksena, that for article 88, the following be substituted. I am afraid that it is not an amendment to any amendment. To which amendment is this an amendment?

Prof. Shibban Lal Saksena : To any of these.

Mr. President : How will you put it? It is an amendment to the original article and not an amendment to any amendment. You cannot circumvent the rule about time by merely saying that these are amendments to amendments. This is really not an amendment to any amendment. Notice of this should have been given before.

Prof. Shibban Lal Saksena : It is an amendment to amendment No. 1650.

Mr. President : How will you substitute the whole of article 88 in the place of these words?

Prof. Shibban Lal Saksena : What I am suggesting is that a joint sitting should be avoided.

Mr. President : That is a different matter. I entirely see that point that you want to avoid joint sittings. But you should have given notice of this in due time. You want to bring in this amendment which goes to the root of the whole matter in the shape of an amendment to an amendment, with which it does not fit in at all.

Prof. Shibban Lal Saksena : This procedure has been adopted throughout in bringing such amendments.

Mr. President : I do not think I can allow this kind of amendment which is really not an amendment to an amendment.

Prof. Shibban Lal Saksena : Then, may I speak on the clause, Sir ?

Mr. President : Yes, I shall see if all the amendments have been moved.

The article as well as the amendments are now open for discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, in this article a provision has been made by which in the case of disagreement over Bills between the Lower House and the Upper House, there shall be a joint sitting to solve the dispute. I had given notice of an amendment which you have thought fit to rule out; but I hope that the purpose of that amendment is worth consideration by this House.

Firstly, I do not think that an Upper Chamber is a very good institution. I am opposed to that itself. But as the House has accepted that, I do not want to say anything more about it. What I do want to say is that the Upper House should not have an authority out of all proportion to its importance. We have based our Constitution on the model of the British Parliament. There we have got the House of Lords and the House of Commons; but, authority of the House of Lord is very much restricted. What I want is that here too, the Upper House should have limited authority and this should not be almost equal in power with the Lower House, as it becomes if there are joint sittings. According to the present draft, a Bill which is passed in the House of the People will go to the Upper House and if rejected there, then there will be a joint session in which the members of both Houses will sit and decide the matter, by simple majority. Thus the Upper House may succeed in rejecting a Bill passed by the House of the People which will not have sufficient authority to give effect to that legislation by its own simple majority. I think the Upper House, even though it will be elected by the Provincial Legislatures, will not be as representative of the people as the Lower House. The Lower House will be directly elected. The Upper House will be elected by the Lower House and will have also some

[Prof. Shibban Lal Saksena]

element which will be nominated by the President. Secondly, it will be a House one third of whose members will be elected every second year so that at least 2/3rds of the members will not represent the new spirit but will be persons who shall have been elected 2 years and 4 years before. I therefore, think that the Upper House will not represent the feelings of the people of the time and to give the members of that House the same status as the members of the Lower House is, I think reactionary. Even if we want to give the Upper House some status, we must give it only that authority which the House of Lords has got in England by the Act of 1911. When the House of Lords does not agree to a Bill passed by the House of Commons it automatically becomes law after the lapse of a particular period. In our Constitution if the Upper House rejects a Bill, there will be a joint sitting and the fate of the Bill will be decided by the Joint Sitting. I think the British model which we have adopted should also be adopted in the present case as well, and if a Bill is rejected by the Council of States, then the will of the House of the People should prevail, and the Bill must become law, irrespective of the fact that the Council of States has rejected it. If the Council of States delays the consideration of the Bill and the delay is longer than a specific period, then the Bill should be taken as passed. The Upper House should not be in a position to stultify a Bill passed by the Lower House. That is a very salutary principle and even in England where the institution of Upper House began they thought it fit to limit the powers of the Upper House and it is not allowed to stultify the voice of the people expressed by the House of Commons. By providing for a Joint session we are giving the Upper House a vital power, the power to act as a check on the progress and the wishes of the people who may like legislation passed at a rapid speed to bring our country abreast of the great nations of the world. In our country when we are so much backward, we shall need to go quickly and we do not need such brakes from the Upper House as the clause provides. I, therefore, feel that the practice in Britain should be adopted. The provision of the British Parliament has been copied by other Commonwealth countries as well. In Australia if in six months the Bill is not considered by the Upper House, then the House of People passes a Resolution that the Bill should be passed. In England even that is not required; so the purpose in both places is the same, that the House of Commons should have the final say and its voice should not be stultified by the Upper House. I therefore hope that in considering this clause, members will bear in mind that they are laying down a principle which may act as a brake on our progress. I do not want that this provision should disgrace the Constitution which we are passing for our new Free Independent Democratic Republic. I therefore hope that this provision for a Joint Sitting of both the Houses should not be accepted by the House and I hope that my words will be borne in mind by the House.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, I oppose the amendment moved by Mr. Saksena.

Mr. President : I did not allow him to move the amendment. He spoke opposing the article.

Shri Chimanlal Chakubhai Shah : I speak in support of the article. Under article 87 we have provided that a Bill shall not become an Act unless assented to by both the Houses. That is a thing which we are perfectly clear about. Then the question arises as to what to do when there is a difference of opinion between the two Houses. It is possible that we may say that where there is difference of opinion we will leave the matter at that stage and allow the Bill to lapse and not make it an Act. That would be following the American model but there are some who feel that it should not be left at that stage and we should provide some machinery by which the difference of opinion between the two

Houses can be resolved. There are three or four ways in which that machinery can be provided. One is the British model under which after a certain lapse of time the Bill passed by the Lower House automatically becomes an Act if certified by the Speaker. Then there is the Irish model under which the Lower House should again pass a Resolution accepting the Bill once more on which it will become an Act. But the analogy between these two models and our model has no application at all because both those are unitary constitutions whereas ours is a federal constitution. In a Federal Constitution, the Upper House is composed of the representatives of the various units or states. It is not like the House of Lords which is hereditary or which by its very character is conservative. Our Upper House is elected by the representatives of the various States and therefore it is as representative as the Lower House itself in a particular manner. The object of providing an Upper House in the Centre is to see that the States' voice or the voice of the units is adequately represented. Therefore the third way of providing to resolve the deadlock is by Joint session. Now that is not a very ideal solution no doubt but it is a solution which is as good as possibly can be conceived of. When both the Houses meet together it is possible that either by compromise they resolve their differences or the majority of the Lower House will carry the day. But it is not right to say that the Lower House alone will be the sole judge of a particular Bill and that after a particular lapse of time the Upper House will have no voice, because the Upper House is intended to represent in a Federal Constitution the voice of the Units and they are as much elected representatives of the people as the members of the Lower House. I, therefore, submit that the solution embodied in Section 88, if not ideal, is as good as can be conceived of in a Federal Constitution and to copy the British Model is not proper because the composition of the House of Lords is entirely different from the one which we have conceived of under our Constitution and secondly it is a unitary Constitution whose model can have no application to a Federal Constitution. I, therefore, support article 88.

Shri M. Ananthasayanam Ayyangar : Sir, I am only trying to answer the point raised by my Friend, Mr. Kamath, by pointing out to him that there is a proviso under article 88 that—

“Provided that nothing in this clause shall apply to a Money Bill.”

But he thinks this is not exhaustive and therefore wants to put in the words “or other financial Bill”. With all respect to him, Sir, I submit that these words ought not to be there and I say this for these reasons, In this article a difference has been made between Money Bills and other Financial Bills. Money Bills come under article 90 which says—

“For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters.....”

It is only in cases where these matters alone are dealt with in a particular Bill that a procedure is prescribed, as distinct from other financial Bills where not finance matters exclusively, but other matters also are incidentally raised. It is only a Bill which relates only to those matters provided in article 90 that can be introduced only in the House of the People. So far as the Upper House is concerned it has no jurisdiction in these matters except in the matter of recommendations which should be sent to the House of the People. The House of the People may or may not accept the recommendation. In either case the Bill will be considered to have been passed by both the Houses. So far as other financial Bills are concerned, another procedure is prescribed; and if any question arises as to whether a Bill is exclusively a Money Bill or not, the decision of the Speaker of the House of the People is to be final. So far as

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other matters are concerned, they can be introduced in both Houses of Parliament and both Houses have jurisdiction to go into them. Under article 88 they have exempted Money Bills alone. With respect to any other financial Bill, other than money Bills, which deals with other matters also, both Houses have got jurisdiction. In the case of Money Bills, they have to be introduced only in the Lower House; the Upper House can only recommend. I would therefore, submit that this amendment is unnecessary and contrary to the scheme of the Act. So Mr. Kamath's amendment is out of order.

Shri S. Nagappa (Madras: General): Mr. President, Sir, it was not my intention to speak on this article, but coming as I do from Madras I have been experiencing how the two Chambers have been working, and how the Upper Chamber retards the work of the legislature. So far as the Congress Legislative Party is concerned, it is meeting more or less as a joint sitting, for everything that has to be passed in the Legislature is being discussed there. As is well-known, it is in the Lower House that all Bills originate, but its number happens to be 215 and in a joint sitting with the Upper House, it is not a deciding factor. So the Upper House restrains legislation that is passed by the Lower Chamber. If the Upper Chamber does not agree with anything, it can suggest amendments, and send back the Bill to the Lower Chamber, and, it is the duty of the Lower Chambers to rectify any defects. If the Lower Chamber does not agree and there is a dispute, then there is a suggestion in the clause for joint sittings. If there is a clear division, say of 100 on one side and 150 on the other, then practically the Lower Chamber will become the deciding factors in the joint sitting. But the Upper Chamber does not represent the people directly. The Upper Chamber as constituted today happen to be representatives of the petty bourgeoisie and bureaucrats, and wherever there is any trend towards progressive legislation, they try to delay matters and even to torpedo legislation passed by the Lower Chamber. As a common man, as a layman, that is how I feel about this matter. Whether there should be an Upper Chamber or not was considered by the Provincial Legislature and I was against it for a very long time. But we are now going to have adult suffrage and all sorts of people will be getting into our legislatures, may be people of experience and also people of little experience. So it is better to have experienced politicians nominated in the Upper Chamber so that we may have their experienced politicians nominated in the Upper Chamber so that we may have their experience and guidance. That was the reason which made me support the proposal to have an Upper Chamber. I do not think there was such a provision in the 1935 Act; but after all we did not work that Act fully. We had experience of it only for about a year and a half from 1937 to 1939. Within this period I do not think we ever had occasion to have a joint sitting. But as I said, in the Congress Legislative Party, we members who belongs to both Chambers assemble and discuss and decide, and so we were practically having joint sittings. We also found that progressive legislations brought in by members of the Lower Chamber were more or less retarded or delayed by the Members of the Upper Chamber. But anyhow, the Honourable Dr. Ambedkar has explained that as it is constituted, the Upper Chamber will not act as a check or rather that it will not stand in the way of progressive legislation. The people to be elected to the Upper House will not be elected from the landlords or zamindars, but by the people of the Lower Chamber; so I agree to this. The members of the Lower Chamber will understand what sort of people are to be elected to the Upper House. That does not mean, however, that once elected it will be the will of the people who elected them that will prevail. It is the will of the people who are elected that will prevail in the House. That is the point to be considered to see that progressive legislations are not checked. In my opinion, in order to have a kind of check over the hasty legislations of the Lower Chamber, it would be better to have a time-limit during which the Upper Chamber must deal with a particular question.

During that period the Upper Chamber must either accept the legislation passed by the Lower Chamber or send it back to the Lower Chamber for rectifying any defects. If the Lower Chamber sticks to its own guns, and says that it will not yield, then by the sheer lapse of time it would become the law. That, I think would have been better than having joint sittings. But anyhow there is provision in this Constitution that after ten years, if the people feel the necessity for it, they can change any clause or article in it, and they say, "practice makes a man perfect." After some time, as in the future legislature there will be the real representatives of the people, they will be in a position to know actually the difficulties they have to face because of this clause, and they may effect the necessary change. Sir, with these words, I conclude.

The Honourable Dr. B. R. Ambedkar : Sir, there is only one amendment moved by my friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words "for the purposes of this Constitution". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words "for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification, for the fear they have expressed, but as other Members have pointed out this is not any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it and see what happens in course of time. If there fears come true I have no doubt that some honourable Members will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

Shri H. V. Kamath : In view of the light shed on my amendment (No. 1645) by Mr. Ananthasayanam Ayyangar, I beg leave of the House to withdraw the amendment.

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

Mr. President : The question is:

"That in clause (2) of article 88, for the words 'both Houses are' the words 'the Houses referred to in sub-clause (c) of that clause is' be substituted."

The motion was adopted.

Mr. President : The question is:

"That in clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

The motion was adopted.

Shri H. V. Kamath : In view of the clarification made by the Honourable Dr. Ambedkar I beg leave of the House to withdraw my amendment No. 1656.

The amendment was by leave of the Assembly withdrawn.

Mr. President : There have been two amendments which have been adopted to this article 88. I shall now put the amendment article to the House.

The question is:

“That article 88, as amended, stand part of the Constitution.”

The motion was adopted.

Article 88, as amended, was added to the Constitution.

Article 89

Mr. President : I think amendment No. 1662 is a verbal amendment and it is covered by the other provisions in the Draft Constitution.

Prof. K.T. Shah : It is a much more strong assertion of an undoubted privilege or right of the lower House. I do not see why it should be put negatively.

Mr. President : That right is there. It is not taken away by the provisions of the constitution.

Shri H.V. Kamath : Sir, at the outset I have to reiterate what I had to point out yesterday that I sent these as two separate amendments but unfortunately they have been lumped up in one. I have no desire to find fault with the office which is working at high pressure. I ask your permission to move the second part of the amendment only.

I move:

“That in clause (1) of article 89, for the words ‘not be introduced in the Council of States’ the words ‘be introduced in the House of the People’ be substituted.”

Mr. President : Is it not an amendment of a formal nature?

Shri H. V. Kamath : I freely admit Sir that it is an amendment of a formal nature and so I shall leave it to the Drafting Committee for consideration.

(Amendment No. 1664, was not moved.)

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

“That in article 89, for the words ‘thirty days’ wherever they occur the words ‘twenty one days’ be substituted.”

The idea is that after a money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations. In actual practice the period of time involved might not be even more than a week. Thirty days is intended as an outside limit. At the time some of us framed this amendment, we were a little chary of suggesting a lower time-limit, than twenty-one days but I believe that a fortnight or fourteen days would be more than enough to cover all contingencies. If Dr. Ambedkar would agree and the House would give me leave I would like to substitute fourteen days instead of twenty-one days, as the former period would be more than adequate for the purpose. Sir, I move.

Mr. President : There are two amendments in the name of Mr. Naziruddin Ahmad (Nos. 1666 and 1667). They are amendments of a drafting nature.

So there is only one amendment to the article by Mr. T.T. Krishnamachari. The article is now open for discussion.

The Honourable Dr. B.R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. T.T. Krishnamachari. I would also agree to the further

reduction of the period to fourteen days. If the House will permit me to make such an amendment I should like to move that the period of twenty-one days as mentioned in the amendment be further reduced to fourteen days. I shall give my reasons for this change. In the British Parliament the House of Lords merely concurs in the financial provisions passed by the House of Commons; it has completely abrogated itself so far as finance is concerned. We are here making a departure from that position and are allowing the upper chamber to have some voice in the formulation of the taxation and financial proposals which have been initiated by the Lower House. As I said, we are conferring a privilege which ordinarily the upper chamber does not possess. At the same time we must bear in mind that the budget is a very urgent matter. Even now, as Members know, we do not give the Lower House more than six or eight days for the Finance Bill. It seems to me that to allow such a long period of thirty or even twenty-one days would result in hanging up such an important matter for a considerable length of time. If the Upper House wants to express an opinion fourteen days is a more than enough period.

Mr. President : The original question was:

“That in article 89 for the words ‘thirty days’ wherever they occur the words ‘twenty-one days’ be substituted.”

To that a further amendment has been moved that for ‘twenty-one days’ the words ‘fourteen days’ be substituted.”

“That in the amendment for the words ‘twenty-one days’ the words ‘fourteen days’ be substituted.”

The question is:

“That the amendment to the amendment be adopted.”

The amendment was adopted.

Mr. President : The question is:

“That the amended amendment be adopted.”

The amendment was adopted.

Mr. President : The question is:

“That article 89, as amended, be adopted.”

The motion was adopted.

Article 89, as amended, was added to the Constitution.

Article 90

Mr. President : Article 90.

(Amendment No. 1668 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Sir, I beg to move:

“That in clause (1) of article 90, the word ‘only’ be deleted.”

This article is a prototype of Section 37 of the Government of India Act which says that a Bill or amendment providing for imposing or increasing a tax or borrowing money, etc. shall not be introduced or moved except on the recommendation of the Governor-General. This means that the whole Bill need not be a money Bill: it may contain other provisions, but if there is any provision about taxation or borrowing, etc. It will come under this Section 37, and the recommendation of the Governor General

[The Honourable Shri Ghanshyam Singh Gupta]

is necessary. Now article 90 says that a Bill shall be deemed to be a money Bill if it contains only provisions dealing with the imposition, regulation, etc., of any tax or the borrowing of money, etc. This can mean that if there is a Bill which has other provisions and also a provision about taxation or borrowing etc., it will not become a money Bill. If that is the intention I have nothing to say; but that if that is not the intention I must say the word “only” is dangerous, because if the Bill does all these things and at the same time does something else also it will not be a money Bill. I do not know what the intention of the Drafting Committee is but I think this aspect of the article should be borne in mind.

(Amendment Nos. 1670 and 1671 were not moved.)

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

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

(b) That in sub-clause (b) of clause (1) of article 90, after the words ‘or the amendment of law’ the words ‘or existing contract’ be inserted.”

This amendment is intended to amplify, in clause (a), the items mentioned as characterising or included in the definition of Money Bill, namely the imposition, abolition, remission, alternation or regulation of any tax, duty, charge, levy, rate, or any other form of revenue, receipt, or any other form of expenditure. This Draft Constitution has not yet included any article giving definition of important terms used in it, and hence this attempt to elucidate a crucial term in this article.

If it is intended that the word ‘tax’, as included in this clause, is to include all those other forms of public revenue or income, which I have particularised and separately included, then I am afraid, in the absence of clear definition clause, this is liable to mislead. It is quite possible that the ingenuity of lawyers may lead to the connotation of the word ‘tax’ to be so narrowed down, as to exclude many of the other items or categories of public revenues I have mentioned; and a Bill which would be substantially a Money Bill, but not include a “tax” by way of imposition, modification alteration, or regulation of “tax”, narrowly construed, may not be regarded as a Money Bill. I think that would seriously increase the powers of the Council of States; and so it is of the utmost necessity that these other forms, also, of public revenue, income or receipt should be included, so that there could be no room for dispute in this matter.

After all, any student of Constitutional history would be aware that the struggles for supremacy between the House of Commons and the House of Lords in England almost invariably centered round the definition or scope of a Money Bill. The powers of the House of Lords to deal with money bills have been successively curtailed by including many matters, which, perhaps, previously were not part of the budget. By that means the supreme power of the House of Commons on financial matters has been now made almost unchallengable.

The wording of this article as it is here leaves, according to me, considerable room for apprehension that the powers of the House of the People over matters financial will not be as wide and as complete as I had thought ought to be the correct position in representative democracy with responsible ministry.

It is for that purpose that I have inserted all those items which have in the past, in one way or another, cause some difference in other countries, and therefore should be clearly specified.

As regards the second part of my amendment, namely variation of any law or of any contract, that is still more important. The contracts of Government relate very often to borrowed money, and for the interest contracted to be

paid on such borrowed money, there may be variations and there have been variations. These variations are one-sided modification of a contract, which a sovereign Legislature is, of course, entitled to make; but that power should be in the House of the People, as part of its sole authority over money Bills and financial administration. For instance, the rate of interest on the Funded Public Debt has been frequently reduced in England. Now that is an act of sovereign authority, which no doubt belongs to the Legislature under the Constitution we are drafting. But it is part of a financial legislation; and, as such, should be within the competence only of the Lower House.

I also remember other instances. About fifteen years ago in the United States, contracts of even private individuals, in which the so-called "Gold Clause" had been inserted, were modified by an Act of the Congress. That is to say if a contract between an American citizen and his customer abroad required payment for goods or services to be made in gold, no matter in what currency the contract was expressed, that clause in the contract could be disregarded. If such contracts had remained unaffected, all measures taken by the Administration and the Congress touching the exchange value to the Dollar would have been of no effect, for no matter what happened to the local currency, the international contract was made in terms to be liquidated only in gold, or currency equivalent to gold, or bullion as the case may be. Now, the American legislature did enact that this kind of clause would be invalid. If it was allowed to stand, it would defeat the legislation that the administration had then got enacted. If you do not permit any such power to be included in the powers to the House of the People as analogous to a Money Bill, then I am afraid, in the age in which we are living you will leave out a very considerable margin of power to legislate to authorise attempt at modification of economic dealings, either between the State and the citizen or between citizen and citizen, which, in my opinion, ought to be included. If the principle is accepted very clearly that the supreme financial authority and control is in the Lower House only, there can be no objection to this suggestion.

It was with that view that I had suggested an earlier amendment, making in categorically clear that a Money Bill can only be introduced in the Lower House. The negative way, in which that clause has been framed, is open to some misconstruction and abuse. However, that amendment has not been moved. I am, therefore, now seeking to make clear what ought to be beyond doubt even in the basic Constitution, and should not be left to be elaborated either by rules of the House or standing orders or precedents. We have no precedents of our own, but have to create precedents. We cannot every time refer to the analogy to British Constitutional History. We need not leave room for legal ingenuity to be exercised at the expense of liberal institutions. On an earlier occasion it was stated in this House that this Constitution will provide a paradise for lawyers. I hope that would not be true. We must not leave our fundamental Constitution vague, uncertain, unclear by any words or phraseology, open to distortion by legal ingenuity. It is for this purpose that I have suggested this amendment, and I hope it will be acceptable to the House.

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

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

It is not necessary for me to expatiate upon the need for an amendment of this nature, because it is common knowledge that when items of expenditure are charged to the revenues of India circumstances may so change that the need for incurring that expenditure may not be felt and the expenditure may cease to be incurred or it may be decreased or even increased. I visualise the possibility of

[Shri H. V. Kamath]

increase. But here this sub-clause visualises only one possibility and that is increase. Why, I ask, was 'decrease or abolition of such expenditure' not visualised? The question will arise, what are the various items expenditure to be charged on the revenues of India? For an answer to that we turn to article 92(3) which lays down that the following shall be expenditure charged on the revenues of India. I shall not read out the whole list. I shall content myself with bringing it on the notice of the House. There are six items, (a) to (f). If you examine them closely you will find that where as the Constitution provides in the case of the salary and emoluments of the President,—let us turn to article 48(4) which provides that the emoluments and allowances of the President shall not be diminished during his term of office. Well and good. But if we turn to the provision for the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States, or the Speaker or the Deputy Speaker of the House of the People, the relevant article does not state explicitly that the emoluments of the Chairman of the Deputy Chairman, or the Speaker or the Deputy Speaker of the House of the People shall not be diminished during their term of office, as is laid down in the case of President. I do not suppose that they will be diminished, but the Parliament being sovereign can diminish the emoluments of the Speaker or the Deputy Speaker or the Chairman or the Deputy Chairman. Comprehending this possibility, I have suggested the use of the word "vary". The word "vary" connotes to my mind both reduction as well as enhancement, increase as well as decrease. Therefore I appeal to Dr. Ambedkar and the House to accept the word "vary" as being more comprehensive and as being able to embrace in its scope both an increase and a decrease.

As regards abolition, that too is not beyond the bounds of possibility. If we turn to clause (3) of article 92 to which I have just referred, we will find that it refers to various items of expenditure which shall be expenditure charged to the revenues of India. Sub-clause (f) of this clause provides that any other expenditure declared by this Constitution or by Parliament by law to be so charged shall be charged to the revenues of India. I need not point out all the various items of expenditure which Parliament might decide to be chargeable to the revenues of India. There may be grants to various institutions, educational, cultural or social or otherwise which Parliament by law may decide to be chargeable to the revenues of India and then it may subsequently decide by law to do away with these. Therefore, Sir, this article as it stands does not include or visualise the possibility of a decrease or abolition of the items of expenditure which are charged to the revenues of India. To rectify this position and to embrace in its scope the various contingencies that may arise, I am moving my amendment, No. 1674, and I commend it for the acceptance of the House.

Mr. President : Amendments Nos. 1675, 1676, 1677 and 1678 are all verbal. All the amendments to this article having been moved, anyone who wishes to speak on the amendments and the article may do so now.

Shri M. Ananthasayanam Ayyangar : I will confine my remarks to the amendment moved by my Friend, Mr. Kamath. He referred to article 90, clause (1) sub-clause (e) which says "the declaring of any expenditure to be expenditure charged on the revenues of India or the increasing of the amount of any such expenditure." Now, it is only in case an expenditure is increased, then it becomes a Money Bill. He wants the substitution of the word "varying" for the word "increasing". Now I would only ask him to refer to the scheme and then if after understanding what the scheme of the framers is, he still wants this

change, that is another matter, but let us understand what the scheme is. If we turn to article 97, it says, "Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President.....". Even for a Money Bill, for increasing, the recommendation of the President is necessary. The proviso to this article says that "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax". Now it has been the usual procedure even under the existing law that when an amendment is moved to a Money Bill or a financial measure for the reduction or of any tax, the recommendation of the Governor-General is not necessary. Likewise, the same thing is copied here. But the imposition of a tax is a burden imposed upon the community. When you seek to reduce or abolish a tax, no such recommendation is necessary. It is left to the House, and the previous enquiry by the President whether it is in the interests of the community or not is not necessary. That is the scheme. The earlier part of article 97 refers both to a Bill and an amendment, whereas the proviso refers only to an amendment. Therefore a Bill for the purpose of reducing or abolishing a particular tax has to be recommended by the President otherwise it cannot be introduced. A Bill which seeks to increase an existing tax or increasing the expenditure also requires the sanction of the President, but the difference between a Bill, seeking to increase the amount of expenditure and a Bill seeking to reduce or abolish it is this: In one case where increase is sought, it can be introduced in the lower House only, whereas in the case where a reduction or abolition is sought, it can be introduced in any House, both the Houses having jurisdiction. In the case of reduction or abolition, the Bill can be initiated in either House, whereas my Friend wants to confine that power to the Lower House only. Increase stands on a different footing because it has to be considered whether India is in a position to bear that. Whether any expenditure should be chargeable to the revenues of India is a matter which requires investigation, since any expenditure chargeable to the revenues of the country is not subject of the vote of the House, even though the House can generally debate on it or discuss it. But it is taken out from the purview of its vote. In that case, should we not restrict the limitation imposed upon the right of the House by confining it only to increase? You want to take away the jurisdiction of the House in the matter of decrease as in the case of increase. I would respectfully submit that he has misunderstood the scope of this clause and is trying to restrict unnecessarily the authority of the jurisdiction of both Houses in a matter where only in respect of money matters and in respect of increase only the jurisdiction is confined to the Lower House. I am therefore not in agreement with the amendment moved by Mr. Kamath.

Shri H. V. Kamath : On a point of clarification, may I ask my honourable Friend to point out the article which provides that any Bill which relates to reduction or abolition can be introduced in either House, because proviso to article 97 relates to reduction or abolition of any tax, and not to other items of revenue and expenditure. The whole scheme is not very clear and I do not know how it is clear to Mr. Ayyangar. If he convinces me, I shall certainly reconsider my amendment.

Shri M. Ananthasayanam Ayyangar : So far as the amendment is concerned, an amendment to a Bill can be moved even without the recommendation of the President in so far as it relates to the reduction or abolition of a tax, but if it is a Bill specifically for the purpose of reducing, then the recommendation is necessary, but in the case of increasing, it must be in the form of a Money Bill. Let us refer to article 97. It is not a Money Bill at all.

Shri H. V. Kamath : Where is the provision?

Shri M. Ananthasayanam Ayyangar : It is a Money Bill only when it relates to increase. It is not a Money Bill when it does not relate to increase, and, therefore, it may come under article 97 and then require a recommendation or may not require a recommendation at all. My honourable Friend wants that there should be a recommendation and in addition it must be a Money Bill. As it is, when it is a Money Bill, only one House has got jurisdiction.

Shri H. V. Kamath : May I interrupt? I am sorry, but I want to have it cleared up. May I invite my honourable Friend's attention to the proviso to article 97(1) to which he has referred, which says that no recommendation shall be required where reduction or abolition of the tax is contemplated. What about other expenditure, about reduction and abolition of other items of expenditure. There is nothing in the whole scheme.

Shri M. Ananthasayanam Ayyangar : Then it would not be either a Money Bill or a financial Bill. Money Bill is one which comes under clauses (a) to (f) of subsection (1) of article 90. Now a Bill relating to increase of the amount of any expenditure alone is a Money Bill or a financial measure; if it does not relate to increase, that is, either reduction or abolition, it is not a Money Bill. That is why we want a recommendation. If this proviso relates only to a tax as I understood it, then tax means not all the matter provided for from (a) to (f). Now I find the word 'tax' has been used separately from the other provisions. Therefore that proviso does not necessarily mean a tax in any Bill or amendment relating to reduction or abolition of any of the expenditure provided in clause (1) (a). It is neither a Money Bill nor even a financial Bill. Therefore, it can be introduced freely in either House and without any recommendation whatsoever. Now the only question, therefore, is whether we should like to make it also in an exclusive category along with the measure for increasing. I would submit that we ought not to limit the scope or restrict the jurisdiction of either House even in a matter relating to reduction or abolition of any tax. A Bill to increase is given to the Lower House as an exclusive jurisdiction. The other Bills may be introduced freely without any restriction or limitation in either of these Houses. I am not in favour of this restriction, Sir.

Prof. Shibban Lal Saksena : Mr. President, in clause (2) of this article, it is said: "A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes." Now, Sir, a Bill providing of the imposition, abolition, or alteration of any tax by any local authority would not be a Money Bill. I personally feel, as Mr. Ayyangar just now pointed out, that if a Bill provides for an increase of taxation, or of a new imposition, the Bill will be a Money Bill, but here in this clause it is intended that it shall not be a Money Bill.

Mr. President : I think you are under a misapprehension. It can only provide authority to a local body to impose a tax, not the tax itself, but only gives authority.

Prof. Shibban Lal Saksena : I know that, Sir. I feel when any Bill authorises any body to impose taxes, that should also be a Money Bill. In fact, I think Prof. Shah's amendment which wants to add at the end of sub-clause (a) of clause(1) of article 90 the words, namely: "duty, charge, rate, levy or may other form of revenue, income, or receipt by Governments or of expenditure by Government", would be a much better provision. Sub-clause (a) only says "the imposition, abolition, remission, alteration or regulation of

any tax." It has not included "duty, charge, rate, levy or any other form of revenue, income or receipt." I would request the Honourable Law Minister who is in charge of this Bill to see that this sub-clause (a) is suitable amended. I feel that clause (2) takes away some power from the Lower House and makes it obligatory on the Government to place such bills which are properly money Bills before the Upper House. I do not think that in regard to such matters this should be so. I personally feel that many of the local bodies are today starved of revenue. They are partially without any funds today to do the huge work that they have got to do. I myself am in one of the Boards of a big district and I feel that unless the local bodies have got more revenues, they cannot carry out their programmes at all. In our Parliament we pass expenditure of crores of rupees in two or three hours time, but these local bodies are not able to raise in the whole year even a few lakhs for their most essential needs such as school buildings which have to be built and village roads which have to be repaired and similar other amenities of every day life. But here is a provision that such Bills which authorise local bodies to impose taxation shall not be Money Bills. They may thus be delayed. I think there should be some amendment to this section so that at least local bodies should not be handicapped by this dilatory process.

The Honourable Dr. B. R. Ambedkar : Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. Naziruddin Ahmad : I should also like to suggest that the position of the word "only", in connection with amendment No. 1669 should be specially considered. It is a word which is absolutely misplaced.

Mr. President : There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word "only" be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

Article 91

Mr. President : We shall take up the next article, 91

That motion is:

"That article 91 form of the Constitution."

(Amendment No. 1679 was not moved.)

Shri Lokanath Misra (Orissa: General): Sir, I move:

"That in article 91, for the words 'either that he assents to the Bill, or that he withholds assent therefrom' the words 'that he assents to the Bill' be substituted, and the following words be added at the end of the proviso to the article:-

'and if the Bill is passed again by the House with or without amendment and presented to the President, the President shall not withhold assent therefrom.'"

Sir, in moving this amendment, I am in the beat of company in so far as the Drafting Committee itself has suggested the same in a subsequent amendment. I beg to submit that when I move this amendment to take away the power from the President to dissent from any Bills passed by Parliament, I mean nothing more than saying that since our President is analogous to the King in England and as the King has no power of dissenting from any Bill passed by President this amendment is appropriate.

As regards the second amendment, without that amendment the proviso seems to be incomplete. Supposing the President sends back a certain Bill for

[Shri Lok Nath Misra]

reconsideration and Parliament comes to a certain decision, without this amendment, the whole action becomes incomplete and inconclusive and since this is also the view taken by the Drafting Committee, this amendment too should be accepted.

(Amendments Nos. 1681, 1682, 1683 and 1684, were not moved.)

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

“That in the proviso to article 91, for the words ‘not later than six weeks’ the words ‘as soon as possible’ be substituted.”

Mr. Naziruddin Ahmad : I have an amendment to this amendment, No. 94.

Mr. President : I think that is of a drafting nature.

Mr. Naziruddin Ahmad : There would be a difference in actual practice.

Mr. President : So, you consider it to be substantial?

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

“That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word ‘possible’, the words ‘may be’ be substituted.”

I beg to submit that this amendment will make some substantial change. The Proviso is to the effect that “the President may, as soon as possible, after the presentation of the Bill, return the Bill,” and so on. I want to make it “as soon as *may be*”. If we leave it exactly as Dr. Ambedkar would have it, it leaves no margin. ‘As soon as possible’ means immediately. Possibility which means physical possibility is the only test. It may leave on breathing time to the President. The words ‘may be’ give him a reasonable latitude. It would mean, “reasonably practicable”. This is the obvious implication. That is the only reason why I have suggested amendment.

(Amendment No. 1686 was not moved.)

Mr. President : Amendment No. 1687, I think, is merely verbal. Amendment No. 1688, I think, is the same as the amendment already moved by Mr. Lok Nath Misra.

Shri T. T. Krishnamachari : There is a slight difference in language. I think Dr. Ambedkar’s proposal will be the better one.

Mr. President : I shall put this to the vote. It need not be moved.

Amendment No. 1689: this is also the same as amendment No. 1688 of Dr. Ambedkar, We have taken it as having been moved. Is it necessary to move this? You can move it if there is some slight difference.

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

“That in article 91, after the first proviso the following second proviso be added:-

‘Provided further that if after the President has declared that he withholds assent from the Bill or has returned the Bill with a request for reconsideration of the Bill or of a specified provision thereof, or of any amendment by him, the Houses of Parliament should, after reconsideration of his recommendations pass the Bill again with or without an amendment and return it to him for his assent, he shall not withhold his assent therefrom.’ ”

Sir, the present provision in article 91 provides for the action that the President has to take presumably on the first presentation of a Bill. But it does not make it clear what should be the procedure if a Bill is returned to the President without accepting any of the amendments suggested by him. Does it mean that he can again return the Bill to Parliament for reconsideration of his amendments? This will mean unnecessary delay and will mean that the Bill can be returned to Parliament more than once. My object in moving this amendment is to do away with this ambiguity and to make it clear that the President can return the Bill to Parliament with his suggestions once only, but if Parliament does not agree to the amendments that are suggested by him and returns the

Bill to him, he should not in that case return the Bill a second time for the re-consideration of Parliament. In the House of Commons any Bill which has been passed twice by the House of Commons automatically becomes law even if the House of Lords disagrees. In the same manner in the U.S.A. a Bill becomes an Act even if the President vetoes it, provided it is passed by two-thirds majority of the Congress. Some such provision should be made here in this article also so that unnecessary delay may not take place. With these words I move my amendment.

(Amendment No. 1690 was not moved.)

Mr. President : Amendment No. 1691 is covered by other amendments already moved Amendment No. 1692.

Mr. Tajamul Husain : Sir, I beg to move:

“That the following new clause be added to article 91:—

‘(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the Party that was in power at the time of the dissolution is returned in majority, the President shall vacate office and the Bill becomes an Act of Parliament.’ ”

Now, Sir, with your permission I will first, before I begin my submissions, read article 91 and the proviso to it. The article reads:

“When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President, shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the House with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.”

Article 91 says that when a Bill is passed, it is presented to the President, and the President’s power is that he either assents or does not give his assent. The proviso says that if the President does not give the assent, he returns the Bill for reconsideration. Then the House shall reconsider the Bill. My point is suppose the House does not reconsider the Bill or does not accept the suggestion made by the President, what will happen? no provision has been made in this article as regards this. Therefore I have moved this amendment. My amendment amounts to this. If the House does not reconsider or accept his amendment, then the Bill shall go back to the President. Then the President shall accept what has been sent by the houses and if he does not accept, then according to the English Constitution as I understand it, the House should dissolve itself. There should be re-election and if the party that is in power is returned again—according to the English Constitution the King must abdicate—then I want the President either to accept or he must be considered to have resigned his office and the Bill will become law by itself. This is my amendment. I think I am moving this in accordance with the English Constitution which we have been following in this House to a great extent. I commend to the House that my amendment may be accepted.

Mr. President : All the amendments have been moved. The original article and the amendments are now open for discussion.

Dr. P. S. Deshmukh : Mr. President, Sir, Obviously the article it was worded in the beginning was found to be defective in at least two particulars, as is clear from the fact that Dr. Ambedkar himself has moved one amendment

[Dr. P. S. Deshmukh]

suggesting the substitution of the words 'not later than six weeks' by the words 'as soon as possible'. The second difficulty which has been visualized and which is tried to be removed is by making a provision in case the President withholds the assent. The Provision intended is that when a Bill is presented for a second time, it shall be incumbent upon him *i.e.*, the President to give his assent and he shall not have the option to withhold the assent. So far as the first amendment of Dr. Ambedkar is concerned, I do not know if it is very necessary that the amendment should be accepted. The question for consideration is whether we should merely say that the President should give his assent as soon as possible or whether we should state any period within which he should do it. I think if the words 'not later than six weeks' are to be left as they are, then it is the duty of the President to indicate his decision as early as possible and in no case later than six weeks. So I am not fully convinced of the propriety of changing the wording as proposed.

So far as the other amendment is concerned, I think it is very necessary that there should be a proper provision in cases where the President withholds his assent. It is to be presumed that the President will always act according to the advice tendered to him by Prime Minister and unless any Bill passed in the House has the support of the Party in power, there is no possibility of any Bill being passed. So that question of withholding assent is not likely to arise unless the President finds himself under circumstances where he actually differs from and disagrees with the recommendations of the party and the Government in power. Under those circumstances, it is correct to presume that there is a conflict between the views taken by the Prime Minister of the Government of the day and the President, and when such a conflict arises there must be some solution of which the present House must think of and must make a clear provision with regard to this question so as to solve the difficulty of disagreement between the President and the Prime Minister. I think that so far as this question is concerned, the amendment that has been suggested does meet the contingency that is likely to arise, and I therefore, support it.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment moved by my Friend Mr. Misra, No. 1680, and to oppose the amendment moved by my learned Friend Dr. Ambedkar, No. 1685. My friend Dr. Deshmukh has ably supported the amendment of Mr. Misra and I do not propose to dilate further upon that. As regards the amendment moved by my learned Friend Dr. Ambedkar, I venture to state that he has not acted wisely in bringing this amendment before this House, and I am reminded of the saying that even Homer nods. And I think Dr. Ambedkar has tripped on this occasion. That such an experienced man, not only an experienced public man, but an experienced Minister of the State cannot recognise the distinction between a definite period of time and the word "as soon as possible" rather appears to me strange, to say the least. In human nature, if you will permit me to say so, unless there is a compelling sense of duty or service, there is always a tendency to procrastinate. Our wisemen have recognised this by saying:

आलस्यम् हि मनुष्याणाम्।
शरीरस्यो महा रिपुः॥

*Alasyam hi manushyanam,
Sharirasyo maharipuh.*

This tendency to inertia, this inclination to procrastinate has to be rooted out, by infusing the ideal of duty or service. We cannot be sure that every President

of the Union of India will always be guided by this ideal, by this compelling ideal of duty and service. Of course we hope and pray that it may be so, but there is no guarantee. Therefore, it is very necessary, to my mind, that the Constitution should provide specifically a time limit for a contingency of this nature. As a minister, Dr. Ambedkar, I am sure, must be aware that in the Secretariat various files are knocking about with tags or labels attached to them, some being "Immediate", "some urgent," some "early" and so on. Files marked "Immediate" reach the honourable Minister in a day, those marked "urgent" reach him in a couple of days and those marked "early" have been known to sleep in the Secretariat for two or three months. Further latterly, Government has devised new forms such as "consideration" and "active consideration". I therefore wish to obviate any difficulty arising from substitution of the words "as soon as possible". Nobody knows what they mean, what "as soon as" means. We know in the Legislative Assembly Ministers are in the habit of answering questions by saying "as soon as possible". When we ask, "When will this thing be done?" the answer is "As soon as possibly or very soon." But six months later, the same question is put, and the answer is again, "As soon as possible," or "very soon". This phrase is vague, purposeless and meaningless and it should not find a place in the Constitution, especially in an article of this nature where we specify that the President must do a thing within a certain period of time. Why do we do it? We do it in order to see that Bills are not left hanging fire in the President's Secretariat—and I know his secretariat is not going to be different in any way from other secretariats. And so I request Dr. Ambedkar to withdraw his amendment. It serves no purpose whatsoever, and I request that the article which is quite clear as it stands may be passed. I oppose the amendment of Dr. Ambedkar and support that moved by Mr. Misra.

Mr. President : I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think any reply is necessary.

Mr. President : Amendments Nos. 1680 and 1688, the substance is the same, but the wording of 1688 is slightly better, and I first put No. 1688 to vote.

The question is:

"That to the proviso to article 91, the following be added at the end:

'and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.'"

The amendment was adopted.

Mr. President : I think that blocks amendment No. 1698 which has the same substance and so need not be put.

Then I come to No. 1692, that of Mr. Tajamul Husain.

The question is:

"That the following new clause added to article 91:—

'(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the party that was in power at the time of the dissolution is again returned in majority, the President shall vacate office and the Bill becomes an Act of Parliament.'"

The amendment was negatived.

Mr. President : There is one amendment left over, i.e., No. 1685 moved by Dr. Ambedkar. There is an amendment to it, moved by Mr. Naziruddin Ahmad. I would first put Mr. Naziruddin Ahmad's amendment to vote.

[Mr. President]

The question is:

“That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word ‘possible’, the words ‘may be’ be substitution.”

The amendment was negatived.

Mr. President : Now I put Amendment No. 1685.

The question is:

“That in the proviso to article 91, for the words ‘not later then six weeks’ the words ‘as soon as possible’ be substituted.”

The amendment was adopted.

Mr. President : Then I put the article as amended by these two amendments namely, Nos. 1685 and 1688.

The question is:

“That article 91, as amended, stand part of the Constitution.”

The motion was adopted.

Article 91, as amended, was added, to the Constitution.

Mr. President : We shall adjourn now, and meet on Monday at 5 P.M.

The Assembly then adjourned till Five P.M. on Monday, the 23rd May, 1949.
