Friday, 3rd June, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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VOLUME VIII—16th May to 16th June 1949

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 3*rd June* 1949

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

DRAFT CONSTITUTION—(*Contd.*)

Article 168

Mr. President : We shall take up article 168.

Shri T. T. Krishnamachari (Madras: General): Before taking up article 168, Sir, I would like to draw the Chair's attention to the fact that there is an amendment seeking the introduction of new article 167-A. This arises out of the issue raised by two amendments to article 168, amendments Nos. 2440 and 2441. It is felt that it would be appropriate to have those issues put in a separate article 167-A. I feel, however, the House has not had the time to consider this proposed article and I would therefore suggest with the Chair's permission that this may be held over to a later date, so that the House may have enough time to digest the contents of this new article.

Mr. President : I was thinking of taking it up with amendment No. 2441. If it is to be held over, then it is all right.

Shri T. T. Krishnamachari : The point is, it more or less covers the purpose of amendment No. 2441; but the procedure outlined is different. I think it would be better to give the Members some time to digest it. Therefore, I suggest that it may be held over so that we can take it up on a later occasion.

Mr. President : If the Members have no objection, I shall hold it over.

There is notice of a fresh amendment that a new article should be added, article 167-A, which deals with the question of disqualification of members and suggests that the question whether a Member has incurred a disqualification or not will be dealt with in a particular way. The suggestion is that it should be held over. The notice is in respect of amendment No. 2441 which is to article 168; but it comes more properly here. In any case, the idea is that it should be held over for the present so that the Members may consider it.

We shall take up article 168 now.

The motion is:

"That article 168 form part of the Constitution."

The first three amendments 2434, 2435 and 2436 I think are of a drafting nature.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Yes, they are of a drafting nature.

Mr. President : Amendment 2437 : This is covered by this new article which is proposed, 167-A. We may leave that over.

(Amendments Nos. 2438 and 2439 were not moved.)

Mr. President : Amendments 2440 and 2441: these arise in connection with the new article proposed. We may leave these over.

There is no amendment moved to article 168. Does any one wish to say anything about the article?

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I do not think there is any particular necessity for retaining article 168 in our Constitution. There is already enough provision in the Constitution to deal with such persons as are not members or do not possess the necessary qualifications but enter the House and sit there as members. We can turn them out of the House, or can prosecute them for trespassing and thereby they would be awarded due punishment. Therefore, it does not appear proper to me, Sir, to have an exclusive article for this purpose. I do not think there is any advantage in providing for an additional article like the present one. My submission is that they should be treated as trespassers and punished accordingly.]

Mr. President : The question is:

"That article 168 stand part of the Constitution."

The motion was adopted.

Article 168 was added to the Constitution.

Article 169

Mr. President : We take up article 169.

(Amendments Nos. 2442, 2443, amendment to amendment, No. 141, and 2444 were not moved.)

No. 2445.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I beg to move:

"That in clause (4) of article 169, after words 'a House of the Legislature of a State' the words 'or any committee thereof' be inserted."

Sir, after my amendment is incorporated in clause (4) of 169 it will read thus:

"The provisions of clause (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature."

The object of this amendment is that any person, though not a member of the Legislative Assembly, if he is called upon to appear before or act in a committee set up by the Legislature, he shall have in respect of whatever he says or does there the same privileges as have been extended to members of the Legislature. Without such immunity being extended to persons who are invited to appear before or act on a Committee set up by the Legislature it would be very difficult for such persons to act freely, with absolute freedom and without any reservation. A similar amendment of mine in relation to the privileges of such persons when they were to appear before a Committee

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*[ ] Translation of Hindustani Speech.

set up by the Central Parliament has already been accepted by this House and for the same reason I would submit that this amendment also should be accepted.

Mr. President : Nos. 2446 and 2447 are not moved. The amendments and the article are open for discussion.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I shall, by your leave, say a few words with respect to clause (3) of this article. I do not propose to repeat what I said on an earlier occasion when we were discussing the corresponding clause relating to the privileges of members of the Central Parliament. But I should like to invite the attention of Dr. Ambedkar and also of the House to the reaction among the people as well as in the Press to the clause that we adopted on that occasion. I have no doubt in my own mind that Dr. Ambedkar keeps his eyes and ears open, and cares to read some of the important papers daily or at least has them read to him daily. Soon after this clause relating to the privileges of members of Parliament was adopted in this House, most of the Press was critical of the way in which we had dealt with the matter. Even a Conservative Paper such as the *Hindustan Times* remarked that it was highly undesirable for us, drafting a written Constitution for our country, to legislate or to insert something in our constitution by reference to something in the unwritten Constitution of another country. Britain, as the House is aware, has an unwritten Constitution though this particular measure may be written down in some document. I believe that when that clause was adopted, our Constitutional pandits here, our experts, Dr. Ambedkar, Mr. Alladi and others of their way of thinking laid the flattering unaction to their souls that, the House of Commons being the Mother of Parliaments, we were doing the wisest thing in the world by stating something with reference to that body, the House of Commons, about which however most of us here are blissfully ignorant. Many of the Members here who spoke on that occasion remarked that they did not know what the privileges of the Members of the House of Commons were, and some of the papers and some of the comments on this particular aspect of our work was that the Drafting Committee more or less shirked, "scamped", its work. They could have at least drafted a schedule and incorporated it at the end of the Constitution to show what the privileges of the members of the House of Commons were. That was not done, and simply a clause was inserted that the privileges obtaining there will obtain here as well. Nobody knows what those are, and *a fortiori* nobody knows what privileges we will have. Our Parliament presided over by Mr. Mavalankar has adopted certain rules of business and procedure tentatively, and has also appointment or is shortly going to appoint a Committee of Privileges. I wonder why we could not have very usefully and wisely adopted in our Constitution something to this effect, that whatever privileges we enjoy as members of the Central Parliament will be enjoyed by members of the Legislature in the States. If at all there was a need for reference to any other Constitution, I think it was very unwise on the part of the Drafting Committee to refer to an unwritten Constitution, *viz.,* the Constitution of Great Britain. There is the written Constitution of the U.S.A., and some of us are proud of the fact that we have borrowed very much from the American Constitution. May I ask Dr. Ambedkar whether the Privileges of the Members of the House of Commons in the United Kingdom are in any way superior to or better than the privileges of the members of the House of Representatives of the United States? If they are, I should like to have enlightenment on that point. If they are not, I think the reference to an unwritten constitution is not at all desirable. I am of course against any reference to another constitution. If necessary let us put in a schedule to our constitution, and say here in this article that the privileges and rights are as specified in the Schedule at the

[Shri H. V. Kamath]

end. There is probably a desire to simplify matters, but to simplify matters is not always the proper way. If they wanted to simplify it for the sake of brevity, they should have thought of this alternative—a reference to a written constitution of some country in the world. That would not have been absolutely repugnant to me. But I would any day prefer a definite schedule in the Constitution showing what privileges shall be enjoyed by members of the Legislatures and of Parliament. This particular clause, to my mind, should be recast. We have passed one clause on an earlier occasion, but that is no reason why we should perpetrate the same mistake over and over again. I would, therefore beg of Dr. Ambedkar and his wise team of the Drafting Committee and the House to revise this clause, and if necessary, to go back to the other clause, if they are convinced of the wisdom of this course, and revise that also accordingly and proceed in a saner and a wiser manner.

Mr. Naziruddin Ahmad : Mr. President, Sir, I also desire to offer a few remarks on clause (3) of the present article. It was I who tabled an amendment to article 85, clause (3), and that was amendment No. 1624. There is another amendment which was tabled by me to the present article, namely, No. 2443. Each of these clauses deals with the privileges of members by reference to those of the House of Commons. But I did not move the earlier amendment, nor this amendment, because I found that it would involve the Drafting Committee in tremendous labour. The greatest objection to these clauses is that they attempt to define our privileges to be co-extensive with those of the Members of the House of Commons in the United Kingdom. These clauses have been copied from the Government of India Act, 1935. This clause has been bodily lifted from that Act and there has been no attempt to clarify the situation. As Mr. Kamath pointed out, this shows some amount of indolence on the part of the Drafting Committee. The difficulty is that the privileges of the Members of the House of Commons are nowhere collected in any systematic form. It is therefore, difficult for us, for any Member to be sure of our privileges. And it is also necessary and highly desirable not to postpone the matter any further. My feeling is that honourable Members should suggest the incorporation of a Schedule showing the list of privileges which, as far as they could be found out and decided upon today, may be incorporated in the Schedule, with a slight amendment of this clause, referring to that Schedule. I have a draft ready and I shall submit it for consideration of the House at a suitable stage, if requested. I think it highly desirable that the privileges which we are so anxious to protect, should be clearly known. I think they should be systematised and for the time being incorporated in the Schedule of the Constitution, to be further revised and elaborated by Parliament, if necessary.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, on the last occasion too, I had supported Mr. Kamath and I do not want to repeat a single syllable of what I then said. So far as this clause is concerned, I have one concrete suggestion to make. I would be happy if reference to the House of Commons could be omitted. But if that is not possible, there is a second suggestion that I would like to make. Of course, I have not seen much consideration given to suggestions that I make, but still I hope this particular suggestion of mine will not fall on deaf ears. I would say rather say that this subject of privileges was dealt with by a reference to article 85 that we have already passed. That would not only save an additional reference to the House of Commons, but it will also do away with a variety of privileges which may

come to prevail as a result of this clause. The clause reads like this:

"In other respects the privileges and immunities of member of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law....."

Instead of leaving it to each State Legislature to define these for itself, I would much rather have the privileges co-extensive to those enjoyed by Parliament, so that so long as the reference to the House of Commons remains, it may exist; but when we define various privileges it should be done only by the Central Parliament and not by each particular State differently, because they are likely to vary. I hope this suggestion of mine will be accepted, by which we will be saved reference in another place to the House of Commons. We will also be basing our Constitution on our own decision, by reference to article 85—so that even if the reference to the House of Commons of the United Kingdom remains there in article 85, the privileges enjoyed by the members of all the legislatures in all the States will be co-terminous and co-extensive and will not vary in any way. I feel this is a very sensible suggestion and I hope it will find favour with the Drafting Committee and the Honourable Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in relation to this article 169, I tabled an amendment which is amendment No. 2444, but I have not thought fit to move it. In regard to this section, apart from the general tendency of our Assembly to shelve inconvenient questions, which I deprecate very much, I find this reference to the privileges and immunities enjoyed by the members of Parliament of the House of Commons is undesirable. Not that I am ashamed of a reference to the House of Commons, but in a matter like this, if we do that, it will be again shelving the very important question which is within the scope of the activities of this Constituent Assembly. After all, if we cannot find a solution of this difficult question, may I know when the solution will be found? If today our jurists and our leaders cannot define the privileges of the members of a Legislature, I do not see at what point of time this would be possible. I know that the Members of this House have been enjoying certain privileges. Even if we cannot define them all, let us define such of them as we know. I know that the Members of this House and the Members of provincial legislatures, in some cases, have been enjoying the right of holding arms without licenses. I know the right of freedom of speech has been enjoyed, which is referred to in article 69. The question about liability to arrest was mooted in the Punjab Assembly at one time, when the question arose as to whether a Member could be arrested while coming to or going from a Session of the Assembly. These similar things are not written down anywhere, so far as the House of Commons is concerned. They are part of the unwritten constitution, and are among the privileges which cannot perhaps be reduced to writing. Be that as it may, I think still that a reference to the House of Commons is humiliating to an extent. Why should we refer to it? Our Parliaments have been in existence for a very long time. There is no reason why we should not attempt to put in writing whatever our privileges are. If they are to be enlarged or restricted subsequently, that could be done, but this reference to the House of Commons to find our immunities and privileges is not justified.

Moreover, I have seen a tendency whenever any inconvenient question crops up, such as for instance the constitution of the Council of State or any such similar body, we want to keep it in abeyance and leave it to the Parliament to decide. When we are framing the Constitution we must take up questions which are of fundamental importance and decide them here and now.

Sir, I think it would be much better if the reference to the House of Commons is deleted. If we are not able to decide the question now we should leave it to our own legislatures. But if that is not possible, Mr. Jaspat Roy

[Pandit Thakur Das Bhargava]

Kapoor's amendment must be accepted. He wants that the privileges and immunities enjoyed by the members of the provincial Legislature may be the same as those enjoyed by the members of the Central Legislature, whenever these privileges come to be defined.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges which we think of fall into two different classes. There are, first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh: We do not want any enumeration of the privileges nor any lecture on how they are exercised. What we want to know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President: He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than to the two privileges, mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters—e.g., to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava: We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar: Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating, these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, That Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advance against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh: The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar: As I said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages.....

Mr. President : Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State Legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar: That is only a drafting suggestion. For instance, it can be said that most of the articles we are adopting for the State Legislatures are more or less the same articles which we have adopted for the Parliament at the Centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular case.

Mr. President: I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House:

The question is:

"That in clause (4) of article 169 after the words 'a House of the Legislature of a State' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That article 169, as amended, stand part of the Constitution."

The motion was adopted.

Article 169, as amended, was added to the Constitution.

Article 170

Mr. President: To article 170 there are no substantial amendments except Nos. 2450 and 2451.

(Amendment Nos. 2448 and 2449 were not moved.)

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

"That in article 170, after the words 'so made' the words 'salaries and' be inserted."

Sir, this is only to fill in an inadvertant omission in this article. Article 170 relates to salaries and allowances of members of the Assembly and the Legislative Council. This has two parts as the House will see. The first part makes provision for Parliament to determine salaries and allowances etc. and then the next part says that till such provision is made the existing conditions shall continue. But in the actual wording it is only said "allowances at such rates" shall be continued. The House will know that in the provinces members of the legislature are receiving salaries at present. Unless this word "salaries" is added the members of the provincial legislatures would get no salary till provision is made in that regard. The article is in similar terms to article 86 which relates to members of Parliament. Members of the Constituent Assembly are not receiving salaries and hence provision is made only for allowances, whereas in the provincial legislatures the members receive salaries. It is therefore necessary that you must have the word 'salary', and I hope the House will accept the amendment.

Mr. President: The other amendment is 2451 in the name of Mr. Z.H. Lari. A similar amendment was discussed and rejected in regard to the Central Parliament. I find that Mr. Lari is also not here and so the amendment is not moved.

The Honourable Dr. B. R. Ambedkar: Sir, I accept Mr. Bharathi's amendment.

Mr. President: The question is:

"That in article 170, after the words 'so made' the words 'salaries and' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That article 170, as amended, stand part of the Constitution."

The motion was adopted.

Article 170, as amended, was added to the Constitution.

Mr. President: There is notice of a new article 170-A in the name of Mr. Bharathi.

Shri L. Krishnaswami Bharathi: Sir, I am not moving it.

Mr. President: There is another in the name of Prof. K. T. Shah.

New Article 170-A

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

'That after article 170, the following new article 170-A, be inserted:—

'170-A. It shall be open to the Legislature of any State to move the Supreme Court to restrain any other State from ill-treating or discriminating against or denying the Fundamental Rights of citizens to the individuals originating from the former State but who are settled or carrying on any trade, profession, occupation or business in the latter on the ground only of their not being original inhabitants of that State.' "

Sir, this is a very difficult matter which is already agitating the minds of many public men; and unless we find a remedy for it in a constitutional manner, it would raise its ugly head to very unpleasant proportions.

Generally speaking Sir, I think it is of the same character and fraught with the same consequences as the communal evil which has resulted in the partition of the country. Inter-provincial jealousies and rivalries, which are already showing themselves in variety of ways, would mean a menace to the country's integrity and the maintenance of proper friendly feelings between the various parts of the country which require urgent attention. And if we desire a constitutional solution, if we desire a peaceful amicable settlement of such problems, a provision of the kind I am suggesting is of the utmost importance. The manifestation of this sentiment in some form of discriminating taxation, if not legislation, and in the form of discriminating appointments in services and other advantages in trade, occupation or business to the persons originating from one part of the country and carrying on business trade or profession in another, are already known to us. One solution which is suggested is the reconstitution of several parts of the country on some form of internal homogeneity, like language. But that creates new difficulties. I am afraid the sentiment is such that, unless a harmonious and amicable arrangement is provided within the Constitution itself, these dangers will not be obviated.

It is possible that you may have entrusted powers of this kind to the Central Government of Legislature. On that basis, you may have a feeling of some kind of justice being given to the parties complaining. For my part, I am afraid that, by their very nature, the Central Government or the Central Legislature may be suspected of being actuated by political rather than purely judicial motives; and that is why I suggest that the power be vested in the legislature collectively of a State to move the Supreme Court, which will always give, presumably, decisions on purely judicial lines so that any grievance of the kind implied in the amendment may be solved by unimpeachable and unexceptionable judicial authority on lines exclusively of justice.

[Prof. K. T. Shah]

Sir, such collective grievances no doubt may be difficult to take to a court of law, in as much as they may not manifest themselves in specific injury or specific harm to any particular individual, who would then have a cause of action and would be able to take the matter to a court of law. I am fully aware of that difficulty; and so I suggest the remedy that you make a provision of the kind suggested so as to provide a check, on sectional basis which would help to prevent and to a great extent minimise at any rate the grievances that may otherwise crop up.

The possibility of the country completely solidifying and the sense of oneness prevailing and prevading all over the country is not to be undreamt of. But at the same time it will take some time. And before that sense of single homogenous nationality runs through every corner of the country, I think a salutary provision of this kind will be very helpful to avoid difficulties the magnitude of which I for one am afraid to contemplate. Hence my suggestion which I hope will be accepted.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I only wish to draw the attention of Professor Shah to the fact that under articles 9 and 10 we have already provided that there shall be no discrimination against any citizen on the ground of race, caste, place of birth etc., and that no citizen shall, on grounds only of religion, place of residence or birth etc. be ineligible or discriminated against for any employment or office under the State. As there are these provisions against discrimination on the basis of provincialism there seems to be no necessity to make this provision in a separate article as is here contemplated. My Friend wants that the Legislature of the State should move the Supreme Court. I think it is not proper to overdo the fear of provincial feelings and jealousies. Individuals can get their remedy in civil courts. I think that by making this provision we shall be increasing provincial jealousy rather than diminishing it.

Shri H. V. Kamath : Sir, I feel that there is no valid reason for the insertion of an article of this nature at this stage. Professor Shah has drawn the attention of the House to the increasing inter-provincial or inter-State jealousies based on various considerations such a language, caste, etc. But, as Professor Shibban Lal Saksena has pointed out, the Chapter on Fundamental Rights has guaranteed these rights and their enforcement under articles 25 and 13. It may be argued that article 25 confers the right on an individual and not on a corporate body to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. I do not know how the juristic, legal and constitutional experts will at a later date interpret this article 25. To my mind it confers the right on the individual only and not on a corporate body such as a legislature or some other organisation. But the suggestion of Professor Shah is a remedy which in fact may be worse than the disease. He wants to prevent or alleviate as far as lies in human power the rousing of inter-provincial jealousies and rivalries leading to discrimination of various kinds. But to cure that disease, investing the legislature of a State with the right to move the Supreme Court to restrain another State, is not the proper treatment. Such an action on the part of one State is liable to be seriously misunderstood by the other State as an attempt to meddle in the affairs of that State. This would be a fatal consequence. Therefore, if at all there is a remedy, we should follow the provisions of Part III, article 25. If the citizen of any State, who has not originated in that State but has settled there, has a grievance against the Government of that State, Part III has given him the right to move the Supreme Court. That should be adequate. There is no need for insertion of an article of this nature.

Dr. P.S. Deshmukh : Sir, I am not, like my Friends Professor Shibban Lal and Shri Kamath, content merely by saying that there is no need for the addition of a fresh article and that we should be content with the provisions regarding Fundamental Rights.

I wish to oppose very strongly the very suggestion that it should be competent for any State to complain against any other State on a matter like what is embodied in this article. I was really surprised that a man like Professor Shah should come forward and should try to protect the interests of the people for whom I never expected that he will have much sympathy. In making his speech he has referred to communal considerations also. It is of course the fashion to dub anybody as communalist, however much the critic himself is steeped in communalism and does, nothing else but help the people of his community, if not his own relatives only. This is the fashion of the day. Those who sponsor the cause of ninety per cent. of the people are dubbed as communalists, while those who never look beyond the small coterie of their own relatives and caste pose themselves as the most noble-minded and cosmopolitan-spirited persons. I would not have wished to refer to all this but I was really amazed that when there is nothing in this article about communalism, my learned Friend, Professor Shah, thought fit to refer to it. Actually he wants to protect the interests of the businessmen and the traders, the merchants and so on. Here I want to say with all the emphasis at my command that the trading and merchant profession in India has not proved an honest profession at all. It is a profession based essentially on cheating. If you see from day to day the way in which our food articles are sold, you will be amazed to see how they are adulterated, and he will be a bold man who says that he gets his food articles pure and unadulterated with something or the other. Irrespective of the profit they can make by legitimate means, the merchant class is not content with it. If under such circumstances, for instance, a State wants to bring a legislation against this sort of adulteration of foodstuffs on a large scale, my Friend Professor Shah wants that some State which only consists of traders and businessmen should be in a position to move the Supreme Court so that the Supreme Court may take steps against all the States or any State which passes such legislation.

There is another fact which should be taken into consideration and that is the kind of usury which has been going on in India. In times to come, States. *e.g.* the Samyukta Maharashtra when it comes into being, will have to take steps against usurers who have taken possession of thousands and lakhs of acres of land by no other process except by cheating and usury. I am sure that it is the apprehensions and fears of these people that my Friend Professor Shah was talking about. And I would not blame them if they feel apprehensive. But if they have apprehensions and fears, the remedy lies in reforming themselves and behaving justly and fairly with the other members of the society and not to base their existence and their prosperity on cheating others. That would be a better remedy than to empower any State to go to the Supreme Court for their protection so that their nefarious actions could go unchallenged and unnoticed. From that point of view I do not even like the fundamental right by which anybody could go anywhere and acquire any land or property, because the acquisition of property on a large scale itself means that it has not been done by fair means and if any State comes forward to stop these unfair means, it should be entirely free to do so and not be debarred from punishing these enemies of society.

Sir, for all these reasons I think that an article like this would give a charter to dishonesty, a charter to all sorts of anti-social activities that some of our people are accustomed to. I hope, Sir, this sort of thing will not be permitted. Again, Sir, the word 'minorities' is mis-interpreted. We understood minority and majority as between Muslims and Hindus. Later on the Sikhs came in and

[Dr. P.S. Deshmukh]

the Schedule Castes also were considered a minority. Now the term is sought to be applied to even small castes and communities amongst the Hindus themselves. The Hindu community as a whole is exploited from day to day by some of these minor Hindu castes and if there is a strong feeling against these castes, it is not based on communal feelings at all. It is based on the dislike of the exploitation of the masses which that caste has been carrying on. It is this exploitation that a State may well want to put a stop to, and a provision like this should not be allowed to come in the way of any State acting in this direction.

Prof. K.T. Shah : In view of the arguments advanced, I would request the House to give me permission to withdraw the amendment.

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

Mr. President : Then we come to article 171.

Shri T.T. Krishnamachari : Since the provisions following the Chapter which begins with article 171 are more or less similar to the provisions which earlier the House has not yet decided relating to financial matters as well as the Supreme Court, we can now go back to those provisions and take up 109 again. Once we pass the financial provisions and the Supreme Court provisions, the provisions following the chapter which begins with article 171 will be easy to deal with as *mutatis mutandis* they are much the same.

Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B.R. Ambedkar : What does it matter?

Mr. President : Articles 171 and 172 relate only to procedure.

Shri T.T. Krishnamachari : Article 172 relates to joint sittings and unless the composition of the Upper House is decided, we will not be able to decide on the question of joint sittings. The articles following article 172 are much the same as those we have held over. But it is entirely left to the Chair to do what the Chair thinks fit.

Mr. President : There is notice, Mr. Naziruddin Ahmad, if you look at the Orders of the Day. Item No. 2 there refers to the remaining articles of Chapters II and IV of Part V and Part VI. So there is notice that article 109 may be taken up today. Shall we go back to article 109?

Honourable Members : Yes.

Mr. President : We shall take up article 109.

Article 109

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

"That in article 109, for the words 'if in so far as' the words 'if and in so far as' be substituted."

(Amendments Nos. 1896 and 1897 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move amendment No. 1898 standing in my name, and in amendment thereof, I move amendment No. 147 of List III, Third Week, which reads as follows:

"That with reference to amendment No. 1898 of the List of Amendments for the proviso of article 109, the following be substituted :—

'Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.' "

Sir, amendment No. 1898 and the amendment that I have now moved are more or less the same except that the amendment that I have moved states the whole proviso as it would stand if proviso (i) is deleted. The reason why proviso (i) is to be deleted is, for one thing, it refers to disputes in which the State for the time being specified in Part III of the First Schedule is a party which opens out a vista of agreements and disputes which are to be prohibited from coming within the scope of this article by this particular proviso. The House will remember that right through our deliberations we have been trying to avoid a specific reference to States in Part III of the First Schedule. As I have stated before—and it has also been stated by Mr. K.M. Munshi and Dr. Ambedkar—where it is necessary to provide specifically for these States, if the need still exists at such time as we come to the end of the discussions of the articles in the Draft Constitution, it will be provided for in a separate chapter, and, therefore, this proviso No. (i) is entirely unnecessary, and it is only to avoid this particular provision, which will put these States on a different footing from other States which now form the provinces of India, that I have moved this amendment. Sir, it does not present any complications as it is merely an elimination of proviso (i). I hope the House will accept it.

(Amendment Nos. 1899, 1900 and 1901 were not moved.)

Shri Brajeshwar Prasad : (Bihar: General): Mr. President, Sir, I rise to oppose article 109. I am never tired of repeating the same argument because I feel that repetition may have some effect and may bring about a change in favour of a unitary system of Government. I am not in favour of vesting the power that has been vested under this article into the hands of the Supreme Court. The Government of India has always enjoyed the power of adjudicating in a dispute between two States. I fully understand the role of the Supreme Court in federalism, but I am opposed to both federalism and the Supreme Court. I feel that if there is a conflict between two States, the Government of India should adjudicate. If there is a conflict between the Government of India and a State, the decision of the Government of India should be final. The provincial Governments are subordinate Governments. I have nothing more to add.

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, I am very happy to accord my full support to the amendment moved by Mr. T.T. Krishnamachari. We find that in the Draft a distinction was sought to be made between States in Part III of the First Schedule and States in Part I, evidently on the ground of the difference in the political relations between the States in Part III and the Centre and between the States in Part I and the Centre. Sir, after this Draft was prepared, a good many changes have taken place. We find that in this Draft nineteen States are mentioned by name in Part III and the others were not mentioned because they were expected to be merged in large units. Now all the minor States have disappeared. Even of the nineteen units which were probably expected to remain, we now find only four or five and they are also fast coming into line with the other States, namely those that are known as the provinces. If there is any benefit that the people of the States in Part III should receive from the new Constitution that is to come into being, in my view it is a right of approach to the Supreme Court. In these States till now, we have had no right of appeal to the Privy Council. Our courts are supreme. The High Court of Travancore exercises the same extensive powers in respect of that State as the Privy Council in relation to the provinces of India. Now conditions are changing and they must change. Mr. T.T. Krishnamachari said that provisions will now be made on the basis that the Supreme Court will have the same Jurisdiction over the States in Part I and in Part III : but that if the necessary agreement of the States in Part III be not secured in time, they will be excluded from the operation of these provisions. I fully hope, Sir, that

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such a contingency will not arise. Everybody concerned in this matter including those that are responsible for running the Government of India and those that have a right to speak on behalf of the States in Part III will I hope appreciate that the people of these States should have the right to approach the Supreme Court in the same way as the people of the provinces. There should be absolutely no distinction in regard to this right. With that hope I fully support the amendment moved by Mr. T.T. Krishnamachari. I wish to refer to another point in this connection. Constitution-making in the States in Part III has now been held up by an order or direction from the Central Government. The Government of India are preparing a model Constitution for the States. I do not know at what stage that work is now. The question is has to be decided, and that promptly, whether the Constitution for the States should be framed here in this Constituent Assembly or in the States themselves by their respective Constituent Assemblies. In any case, delay should be avoided and this Constitution that we pass here will not be capable of being put into force fully until the Constitution of the States in Part III is also framed and passed. Therefore, no time should be lost and necessary steps should be immediately taken in that regard. I do not think this Constituent Assembly will be out of order in seeing to it that the Constitution-making in the States in Part III is taken up soon and completed because this Constitution will not be capable of being put into force until that Constitution is also passed. I hope that that matter would also receive the earnest consideration of this House and the Government of India.

(Amendment Nos. 1899 to 1901 were not moved.)

The Honourable Dr. B.R. Ambedkar : I do not think it is necessary to say anything. I accept Mr. T.T. Krishnamachari's amendment.

Mr. President : The question is:

"That for the proviso to article 109, the following be substituted :—

'Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.' "

The amendment was adopted.

Mr. President : The question is:

"That in article 109 for the words 'if in so far as' the words 'if and in so far as' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 109, as amended, stand part of the Constitution."

The motion was adopted.

Article 109, as amended, was added to the Constitution.

Mr. President : We may go to article 110.

Pandit Thakur Das Bhargava : Sir, I have given notice of Amendments Nos. 182 and 183 to add a new article 109-A. I would request you, Sir, kindly to allow them to stand over.

Mr. President : They may stand over. But, if as a result of any other articles being accepted, these amendments become infructuous, then you take that risk.

Shri T.T. Krishnamachari : May I clarify the position, Sir? The position is that this article 109-A stands on its own. It is entirely unrelated to any article that comes thereafter. Therefore, the danger that the Chair visualises will not happen and it will not become infructuous by reason of later articles being passed; the subject covered is a new subject. If the Chair wishes, it may be allowed to stand over.

Mr. President : If it does not become infructuous, it will be taken up later. These two amendments will remain for the present.

Article 110

Mr. President : The motion is:

"That article 110 form part of the Constitution."

Shri Raj Bahadur (United States of Matsya): Mr. President, Sir, I beg to move:

"That in clause (1) of article 110, for the words 'a State' the word 'the territory of India' be substituted."

There are two principal reasons for which I wish to move this amendment. The term 'a State' is definitely one which restricts and limits the interpretation and meaning of this article. We can very easily contemplate the possibility of acquiring by conquest or otherwise new territories for India. So far as the definition of "the territories of India" is concerned, at present article 1 clause (3) says:

"The territory of India shall comprise—

(a) the territories of the States;

(b) the territories for the time being specified in Part IV of the First Schedule; and

(c) such other territories as may be acquired."

If we retain the term 'a State' in article 110, territories that may be acquired hereafter, or that may of their own free will come to be included in the territory of India will not fall within the purview of this article and as such, it is necessary, in my humble opinion, that this change should be made.

Again, if we turn to article 111, it would be found that the term used there is not 'a State', but 'territory of India.' Article 111, for instance, runs as follows:

"An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India....."

Again in article 112, the same words "territory of India" are used. It is therefore necessary that in article 110 also, the same term 'territory of India' should be used and not 'a state'. For these reasons, I commend this amendment for the acceptance of the House.

(Amendment No. 1903 was not moved.)

Mr. Naziruddin Ahmad: Sir, with your permission, I shall move amendments 1904 and 1907 together, as they are related.

Sir, I beg to move:

"That in clause (1) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

[Mr. Naziruddin Ahmad]

I also move:

"That in clause (3) of article 110, the words 'as to the interpretation of the Constitution' be omitted."

I think these are consequential amendments, consequential upon certain enactments that we have already passed in the Legislative Assembly. I submit, Sir, that these two amendments have a great constitutional importance.

In clause (1) of article, 110, it is provided:

"An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution."

I want to delete the last few words '*as to the interpretation of this Constitution*'. The effect of this deletion would be that an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in civil or criminal or other proceedings if the High Court certifies that the case involves a substantial question of law. If we keep the words objected to, the result would be to confine the power to grant certificate to errors as to the interpretation of the Constitution, and it will therefore automatically prevent the High Court from granting certificate if there is an error of law which does not involve the interpretation of the Constitution. The effect would be the grossest violations of law laid down in the Criminal Procedure Code, Evidence Act, the Indian Penal Code etc., will go unchallenged. Even if there is the grossest error in the decision of a High Court, then the High Court will have no power to grant certificate in order to enable party affected to come to the Supreme Court.

The second amendment relates to clause (2). It provides that where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law *as to the interpretation of the Constitution,* grant special leave from such judgment. We are therefore reduced to this that the High Court can grant certificate for appeal if there is an error affecting the interpretation of constitution and under clause (2) the Supreme Court will grant leave if there is a substantial question of law as to the interpretation of the Constitution. I submit that this Draft was made at a time when the Privy Council was functioning. In the meantime we have passed a law in the Legislative Assembly empowering the Federal Court to deal with matters which were pending before the Privy Council relating to civil matters. At that time these two clauses were fully justified. There was a division of labour between the Federal Court and the Privy Council. The Federal Court had jurisdiction to entertain appeals on other matters which involved interpretation of the Constitution—the Government of India Act. So far as the Privy Council was concerned it entertained direct appeals involving question of law but which did not involve a question of interpretation of the Constitution. If any interpretation of the Constitution was involved, there was an appeal from the Federal Court to the Privy Council. Now that power of the Privy Council is gone. The powers of the Privy Council and the Federal Court are to be united in the Supreme Court. The power to restrict the right of the High Court to grant a certificate for an appeal to the Supreme Court only when the interpretation of the Constitution is involved is now obsolete, and the Federal Court has been partly enjoying and the Supreme Court will enjoy of powers of the Privy Council also. In these circumstances the powers of the Privy Council and the powers of the Federal Court as hitherto enjoyed should be combined and should be given to the Supreme Court. In fact whether the question relates to interpretation of Constitution or otherwise, the High Court

should be enabled to grant a certificate, and the Supreme Court should be enabled to grant special leave, irrespective of the question whether there is a question of interpretation of Constitution or not. There may be grave errors of law affecting numerous Acts other than the constitution, and obviously appeal should be allowed on certificate by High Court on those grounds too. Then there is a article 112 which tries to save the situation to a certain extent "that the Supreme Court may in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply." Therefore wherever the High Court did not grant leave or could not grant under clause (1) of article 110 or wherever the Supreme Court could not grant special leave under clause (2) of that article, then the Supreme Court has a residuary power to grant special leave. The result would be that if there is a grave failure of law in the decision of a case not involving an interpretation of Constitution, the High Court would be precluded from granting any certificate. But under article 112 the Supreme Court alone would be enabled to grant special leave. In fact a grave error of law will not empower the High Court to grant any certificate but it would enable the Supreme Court to grant special leave. To this extent there is a clash between clause (2) of 110 empowering the Federal Court to grant leave where the question of law involves the interpretation of the Constitution and article 112 allowing the Supreme Court to grant special leave in other cases. So by combining clause (2) of article 110 and article 112 the Supreme Court has been given power to grant special leave in any case involving a question of law. While this power is given to Supreme Court the High Court's power to grant a certificate is confined only to error of law affecting the interpretation of the Constitution. If an error of law is considered to be a serious matter which requires correction by Supreme Court, then the High Court should be enabled to grant certificate in order to make an appeal possible in the Supreme Court. Of course the Supreme Court is authorised to grant special leave but this would be highly inconvenient and expensive. A party may more easily apply to the High Court for a certificate, and a special leave matter before the Supreme Court will involve delay and expenditure which many persons may not be able to avail of. In these circumstances the net effect of the amendment suggested would be to allow the High Court to give a certificate of appeal to Supreme Court in case there is a substantial question of law.

Dr. Bakshi Tek Chand (East Punjab: General): In ordinary cases?

Mr. Naziruddin Ahmad : Yes.

Dr. Bakshi Tek Chand : That is covered by article 111 (1) (a) (b) and (c).

Mr. Naziruddin Ahmad : The difficulty is that these were drafted in conditions existing before we passed the Act depriving the Privy Council of its jurisdiction of appeal. Articles 110, 111 and 112 should be combined and redrafted. In fact there is plenty of duplication as well as of gaps. The simple thing is to say that where there is a question of law the High Court should be enabled to grant certificate and also the Supreme Court should be enabled to grant leave in cases involving question of law.

Mr. President : Does No. 111 cover cases of criminal nature also?

Mr. Naziruddin Ahmad : No.

The Honourable Dr. B. R. Ambedkar : We are making provision for that by a separate article.

Mr. Naziruddin Ahmad : I am very grateful to you, Sir, for pointing out that article 111 does not make any provision for criminal cases. In fact this is one of the difficulties felt, and it is an anomaly that while we are enabled to go to the Federal Court for ordinary civil appeals, for criminal cases involving the life and property of a citizen we have to go direct to the Supreme Court. I suggest that a simple test would be instead of making a distinction between a question involving the interpretation of Constitution and other question of law, the test should be a question involving a substantial question of law, whether of interpretation of Constitution or otherwise. The distinction between the question of law involving interpretation of Constitution and other questions of law was justified under old conditions where there was a division of jurisdiction between the Federal Court and Privy Council and the question turned upon the law involving interpretation of constitution or other questions of law. Now, as the functions of the Privy Council and the functions of the Supreme Court will unite, this nice distinction which was very much justified in old circumstances is no longer necessary. Therefore this distinction should be entirely wiped out.

Sir, as you have pointed out, there is a lacuna so far as criminal cases are concerned and article 111 does not deal with them, and we are told that something else is coming up. We would like to know when this kind of a new infiltration of important provisions will stop. In fact, for poor Members like us, it is impossible to keep pace with the great amount of laxity with which serious amendments are showered upon the Members. It is difficult for us, without sufficient time to take count of all the implications of these sections. The Members should have an overall and complete picture of the whole thing. Now criminal matters are omitted, and we are informed that another provision is to be made. I respectfully suggest that articles 110, 111 and 112 should be reconsidered. Article 112, according to me, would be absolutely unnecessary. If we give power to the High Court to give certificates in questions of law, and when we give special leave to the Supreme Court where the High Court refuses to give it, then the entire matter would be covered. Instead of making a distinction between interpretation of the Constitution and other question of law, instead of making a distinction between civil and criminal cases, the sole question will be a substantial question of law—one provision for the High Court and another provision for special leave to the Supreme Court. I think matters would be greatly simplified in the way I suggest and I think a fresh draft would be necessary.

Mr. President : There are certain other amendments to this article.

(Amendment Nos. 1905 and 1906 were not moved.)

Mr. President : There are two amendments arising out of amendment No. 1906, but I think they are covered by the amendment just now moved by Mr. Naziruddin Ahmed. It is in the same words, practically. Nos. 148 and 149.

Pandit Thakur Das Bhargava : I do not propose to move it.

Mr. President: Then No. 149 also goes.

(Amendment No. 1908 was not moved.)

Mr. President : No. 1909 in the name of Dr. Ambedkar.

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

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also,' the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :—

"Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground."

(Amendment No. 1910 was not moved.)

Mr. President : These are all the amendments to this article. If anyone wants to speak, he may do so now.

Shri Alladi Krishnaswami Ayyar : (Madras: General): Mr. President, Sir, I would like to make a few remarks in regard to certain observations made by Mr. Naziruddin Ahmad. The scheme of the different article is as follows. So far as article 110 is concerned, irrespective of any value, if a substantial question as to the interpretation of the constitution arises, an appeal lies to the Supreme Court. That has no relation to the value of the subject-matter. It has relation only to the nature of the question raised. The question may be raised in any proceeding; it may be raised in a criminal proceeding, it may be raised in a civil proceeding. It may be raised in an action in which the amount or value of the subject-matter is lakhs of rupees or a few hundred rupees. Though it has no bearing directly on article 110, it is necessary to bear in mind the scheme of the different articles. Article 111 deals with the general right of appeal to the Supreme Court. But if in the course of a general appeal to the Supreme Court in which civil rights are involved between two parties, it will be open to a litigant to raise a constitutional question, though he has not availed himself of the remedy under article 110, because the theory is that when the whole appeal is before the Supreme Court, it will be open for the aggrieved litigant to raise a constitutional question as incidental to the determination of the whole case. Now, the point has been raised that in every case of a wrong interpretation of law, irrespective of the valuation of the subject-matter, there must be a right of appeal to the Supreme Court. I believe that was the main substance of the argument raised by Mr. Naziruddin Ahmad. Now, such cases are provided for article 111 (c). There are Acts and Acts, regulations, orders and so on. Some immaterial point may be raised in the different courts in this great continent. It does not mean that every case, irrespective of the nature of the subject-matter must come up before the Supreme Court. Though the valuation may be a small one, still the point may be so important, may affect other cases, and may affect other litigants that it is as well that the Supreme Court is invested with jurisdiction to entertain an appeal. That is why in article 111, clause (c) the general provision is made "That the case is a fit one for appeal to the Supreme Court". It has no relation to the value. It may be of any value. But if it is a matter affecting the general community, or if it is of such special importance, the litigant will have the right to appeal to the Supreme Court, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Even apart from article 111, you have article 112, which gives the Supreme Court the right to grant special leave "to appeal from any judgment, decree, or final order in any cause or matter passed or made by any court or tribunal in the territory of India." That gives a very wide power to the Supreme Court. There again it will to some extent depend upon the discretion that is exercised by the Supreme

[Shri Alladi Krishnaswami Ayyar]

Court. It may be a civil case, a criminal case, a small subject-matter or a large subject-matter. But still under article 112, the litigant will have the right to appeal to the Supreme Court. There is absolutely no reason why the Supreme Court should not grant special leave if the case is of sufficient importance. Besides this, the Court has original jurisdiction in all cases involving fundamental rights. What other safeguard is necessary? Unless the courts are to be the sporting field of litigants there is absolutely no point in multiplying the right of appeal. You have a right of appeal, a right to seek the intervention of the Supreme Court when fundamental rights are involved. You have the right to seek intervention by way of special leave. Later on, I believe there will be an amendment even in regard to criminal cases to enable Parliament to invest the Supreme Court with criminal jurisdiction. I submit, Sir, that this much may be said of the Supreme Court. It has wider jurisdiction than any superior court in any part of the world, if only you survey the Constitution of other countries. Therefore under those circumstances, all the cases that can possibly arise, cases which involve constitutional questions, cases which do not involve constitutional questions, can come up before the Supreme Court and the litigant can have his wrong redressed before the Supreme Court.

So far as article 110 is concerned, it deals only with constitutional questions. It must raise a substantial question of law as to the interpretation of the Constitution. That is all that is necessary for the particular purpose: and if and when the appeal is lodged on a constitutional question, it will be open to the Court, not merely to deal with the constitutional question, but to go into the whole appeal and re-hear, so to speak, the whole case on merits, if the interests of justice demand it: and as a matter of fact, from my experience of the Federal Court, I can say that in several cases where an appeal has been lodged on a purely constitutional question, the Court has gone into the merits of the case and decided really on other points. Sometimes the constitutional point is like a peg on which the litigant wants to hang his own appeal. He merely starts a constitutional question. The High Court grants the leave. The matter comes up before the Supreme Court. Then the Counsel feels that there is not much force in the constitutional point and then he practically concentrates his attention on the other points in the case. That is good enough. But we need not go further and say that in every case in which a question of law arises in the whole of India in any court an appeal must lie to the Federal Court. It will certainly be in the interest of lawyers and it may be in the interest of rich litigants but certainly, it will not be in the larger interest of this country.

Shri Rohini Kumar Chaudhuri (Assam: General): Sir, I hope I am not rushing in where angels fear to tread ! But confusion was created in my mind by the speech of my honourable Friend, Mr. Naziruddin Ahmad. That was further enhanced by an amendment which was moved by my honourable Friend Dr. Ambedkar.

The plain question which I want to ask is whether, as in the past, a man convicted in a criminal case will have a right of appeal or of revision or anything of that kind to the Supreme Court or not. I think the lawyer Members of this House remember very well that Privy Council judgments were passed in at least two important cases where the persons accused had been

ultimately saved from the gallows. I want to know whether the provisions which have been laid down in articles 110, 111, 112 and so forth have left any room for such a remedy being sought in the Supreme Court or not. We find, Sir, that we can get a certificate only if we infringe the Constitution. But if otherwise a serious case of miscarriage of justice arises there is no room for getting a certificate from the High Court or leave from the Supreme Court. It is only when it has been proved that this Constitution has been infringed that you can file an appeal and then you can raise other points if you are allowed. As the article originally stood, once you can show that the Constitution has been infringed, and once you get a certificate on that ground either from the High Court or the Supreme Court, then you are entitled to appeal or raise other points not relating to the infringement of the Constitution at all.

Now the gate is closed in the very first instance. It is very difficult to find out cases where the Constitution has been infringed. It is only when some legislation or some ordinance is passed in direct contravention of the Constitution do we find that there has been an infringement of the Constitution. But in most cases there will be no such instances to complain of. Would it, then, in those circumstances be possible for any person, who is convicted and sentenced to death, or has received any other sentence, to go to the Supreme Court by any pretext or not?

I do not understand why we say here that the moment the Constitution is infringed you can raise any point before the tribunal. It may be that the Constitution has been only slightly infringed. As a matter of fact the ordinary law has been violated. Even in those cases the Supreme Court is competent to give you relief. But if you cannot show that the Constitution has been infringed, no matter how serious the injustice might have been, you are not entitled to go to the Supreme Court at all. I find, Sir, that article 111 allows you to move the Supreme Court even in civil matters. After all, the loss of property and the loss of money cannot be as important as the loss of life and liberty ! You have given ample scope to those who are aggrieved by the judgment of a Civil Court to go the Supreme Court. But you have left no door open for persons convicted or punished for loss of liberty or life by a Criminal Court. That, I think, is taking away the rights which we today possess in going to the Privy Council.

Thirdly, I find that there is a reference in article 112 where it is stated that the Supreme Court may interfere or allow an appeal on other grounds if they are affected by any judgment. Article 112 says:

> "The Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any court or tribunal in the territory of India....."

I want to know whether the word 'judgment' here covers also 'judgment' in criminal cases.

Here in article 110 you specifically mention 'criminal courts'. You say here that an appeal shall lie to the Supreme Court, from a judgment, decree or ordinary order of the High Court of a State, whether in civil, criminal or other proceedings. In article 111 you mention only about civil courts; you do not mention criminal courts at all. In article 112 you mention about judgment and you do not say whether it is a judgment in a civil court or a criminal court. In article 113 you clearly state that if there is any doubt about interpretation of any law or any proceeding in a High Court then a reference will be made to the Supreme Court. There also you expressly state about civil, criminal or other proceedings. So that, one can interpret, from a reading of these articles, that you expressly bar the Supreme Court from exercising jurisdiction in a decision of a criminal court, unless the party

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aggrieved can show that the matter relates to the interpretation of the Constitution. You put no such restriction with regard to article 111; you put no such restriction with regard to article 113. Therefore, Sir, the question I would ask is a very simple one. As at present, the Privy Council can interfere in criminal cases where mandatory provisions of the law are violated. We have no such provision in these articles and I shall be glad if a similar provision is made.

Further, more, Sir, I have a grievance, so far as the amendment moved by the Honourable Dr. Ambedkar is concerned. Clause (3) of article 110 as it stood reads, as follows:

> "(3) where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court not only on the ground that any such question as aforesaid has been wrongly decided, but also on any other ground."

I submit, Sir, that the clause as it stands is much more liberal than the amendment which has been moved to this clause by Dr. Ambedkar.

Pandit Thakur Das Bhargava : Sir, I join the complaint of Mr. Naziruddin Ahmad that the provisions relating to the Supreme Court are so complex that they pass the understanding of an ordinary person like myself. The amendments that are coming in are not so clear as to give us an over-all, a clear picture of what the persons who are in charge of making the Constitution really mean.

Now, Sir, my honourable Friend, Mr. Naziruddin Ahmad has moved that the words relating to the interpretation of the Constitution appearing in clauses (1) and (2) of article 110 may be deleted. Exception has been taken on the ground that if these words are deleted, the door will be left very much wide open that there will be such a flood of litigation that the courts will not be able to cope with it. Sir, my humble complaint in this respect is that we have been proclaiming day in and day out that we want to give equality of status and opportunity to all people, that in the eyes of law all people would be equal. Now, Sir, I beg to point out that in cases where the amount of property involved is Rs. 20,000 and above, there will be direct appeal to the Supreme Court and in cases which are fit ones in which substantial questions of law arise in regard to civil matters, even then, if the High Court, certifies, there will be appeal to the Supreme Court. What about the poor people who do not possess so much valuable property? Why should not a man, say possessing in all property worth Rs. 5,000 which is involved in litigation have the right of appeal? The words relating to the interpretation of the Constitution, in my humble opinion, will so narrow down the beneficient effect of article 110, that in very few cases will appeals be allowed.

Then, so far as the criminal jurisdiction is concerned, my humble complaint is that it so appears that this Assembly is full of civil lawyers and they do not care about the criminal aspect of the jurisdiction of the Supreme Court. In article 110 the word "criminal" does occur, but there will not be many cases in which the question of interpretation of the Constitution will be involved so far as criminal jurisdiction is concerned. Substantial questions of law affecting the personal liberty and lives of individuals may arise, but those cases will be outside the purview of article 110, unless and until they relate to the interpretation of the Constitution. Similarly, article 111 also confines itself to civil cases. It will be pointed out, and it has been pointed out that article 112 to a certain extent concerns itself with the criminal jurisdiction of the Supreme Court and further we have an amendment by Dr. Ambedkar that Parliament may frame laws in regard to the criminal jurisdiction of the

Supreme Court. My fear is that it may take years and years to do so. What is then to happen between now when we are taking away the powers of the Privy Council and the time by when the law will be passed by Parliament? Many persons who would want to appeal to the Supreme Court will not be able to avail themselves of that opportunity. I want that any person who loses his life or loses his liberty should have an absolute right of appeal and not seek special leave to appeal. We know that the Privy Council does not interfere in ordinary cases, but there are many cases on record in which as soon as the conscience of the Judges of the Privy Council was touched, they transformed ordinary questions into questions of law.

My contention, Sir, is that when we are making a New Constitution for this country we should liberalise the jurisdiction, we should see that in all cases, in all fit and proper cases, the ordinary man gets full justice. It may be that there may be special leave to appeal. But such leave may or may not be granted. It is a matter of discretion. I want that in such cases when a person has been sentenced to death, or there is conviction by the High Court after acquittal order is set aside on Government appeal, there should be an absolute provision for every person to have the right of appeal.

It has been stated by Shri Alladi Krishnaswami Ayyar that if the scope of article 110 is widened many cases will arise in respect of wrong interpretation of law and that there will be a flood of litigation. But may I submit that the words are 'substantial question of law'? May I ask why should the Supreme Court be given these powers at all, unless the intention is to secure uniformity in the territories of India with regard to law as the declaration of law by way of judgments and decisions will have the effect of law itself? Therefore my submission is that when a question of law is concerned, it is not that you are opening the flood-gates of litigation; on the contrary if such a question is decided once for all you will be closing the gates of litigation.

It has been said also that in the case of a death sentence if such opportunity is allowed, the amount of appeal work would be so large that you will require many judges. It may be so. I do not want to deny that the amount of work will be very great. But it does not matter to the country at large if A holds Rs. 20,000 worth property or B does it, if the High Court decides once for all as to who is to hold it. This is enough for protection of civil rights. But the question of life and personal liberty is different. Those persons who are condemned to death cannot be recalled to life it the wrong sentence is carried out. Life is much more important than any amount of civil rights. Therefore, I submit that whereas you provide two or three appeals in civil suits involving Rs. 20,000 or so, in these cases of sentence of death you provide only one appeal. It is a long-standing complaint, and all legal practitioners know it, that in many cases in courts injustice is done. If we look at the number of appeals accepted as compared with the convictions, it will be apparent in a large number of cases appeals are accepted. It is quite true that a person does not get justice in the original court. I am not complaining of district courts. In very many cases of riots in which more than five persons are involved, a number of innocent persons are implicated. I can speak with authority on this point. I am a legal practitioner and have been having criminal practice for a large number of years. If we want to do justice to the people, we must make it a rule that in all questions of death an appeal as of right should be given to persons sentenced to death. When we proceed to consider the other articles we shall have to remember that if this article is not changed such appeals as I have mentioned will never come under its purview.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I rise to oppose the amendment of Mr. Naziruddin Ahmed. The whole scheme of this article has been taken from section 205 of the Government of India Act. The language used there is: 'if the High court certifies that the case, in-

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volves a substantial question of law as to the interpretation of this Act.' Here in this article we have substituted the word 'Act' by the word 'Constitution'. Article 111 is a reproduction of section 206 of the Government of India Act. The cases mentioned by Mr. Naziruddin Ahmad are covered by article 111(c) 'that the case is a fit one for appeal to the Supreme Court'.

Then I may point out that criminal cases are covered by article 112. Those cases that are fit to go to the Supreme Court will be taken up by the Supreme Court for its final judgment. I submit that it is an impossible proposition that every case of murder or capital sentence should be sent to the Supreme Court, because in that event no less than a hundred judges would be required in the Supreme Court. Our judicial system has been modelled on that of the British. In England, before 1908, there was no appeal in criminal cases. It was only in 1908 that a provision for appeal was made. The argument against the appeal was that a jury and a judge decided the cases, the jury gave the verdict and the judge confirmed it; therefore, there is hardly any room for doubt as to the correctness or the validity of the judgment concerned. In India instead of the jury, in murder cases, there are the assessors and there is the judge. They decide the cases. There is a provision for the confirmation of death sentences by the High Court and an appeal lies to the High Court. I do not think that any further remedy in every case is necessary. As I said before under the circumstances, taking the facts as they are, it is impossible for the Supreme Court to deal with so many appeals coming from the different High Courts. Therefore, the provisions made in the Constitution are ample to meet the ends of justice and no further provision is necessary.

Prof. Shibban Lal Saksena : I wish to oppose this article, not from the point of view of a lawyer but from the point of view of a person who values the civil liberties of the people. My Friends, Messrs. Naziruddin Ahmad and Bhargava, have made out a strong case for the deletion of the words 'as to the interpretation of this Constitution'. It is difficult to disagree with Sir Alladi when he warned us just now against too much litigation. One should always wish that the habit of litigation should be given up. I fervently hope that the present system of justice will be soon changed, so that justice pure and simple should be guaranteed to the people, cheaply and quickly. I have carefully studied the provisions regarding the powers of the Supreme Court and listened to the speeches made here. I am not able to find any provision which guarantees to the citizen who has been condemned to death or whose civil liberty has been taken away that he shall have an inherent right of going in appeal to the highest tribunal—the Supreme Court. I have seen many cases where people were condemned to death. I had the misfortune during the 1942 movement to live in a condemned cell for about twenty-six months and about thirty-seven men were hanged in my presence. There were eight cells for condemned prisoners in one block and I occupied one of them. So I was privileged to be with the condemned prisoners, to meet them and to talk and to live with them. Out of the thirty-seven men, seven were acquitted, ten had their sentences reduced to transportation for life and the rest twenty were hanged. I am sure Sir, that many who were acquitted were real murderers, many who were sentenced to transportation for life were real murderers and many who were hanged were innocent. At least I was convinced in the case of seven persons that they were perfectly innocent. Still they were hanged. I do not say that the Supreme Court will always know by some divine inspiration what is true. That is why I stand for our abolition of Capital punishment altogether. But so long as we do not abolish the death penalty, I feel that the man who is condemned to death must have the right

of appeal to the highest Tribunal. This must be an inherent right and not limited by any conditions. I am fully prepared to accept the advice of Shri Alladi on other subjects. I am prepared to limit the functions of the Supreme Court in hearing appeals in Civil Cases, but I do wish that the men who are condemned to death should have the inherent right of appeal to the Supreme Court and no man should be hanged unless the Supreme Court has confirmed the death sentence. The other day I was hearing at another place my learned Friend, Dr. Bakshi Tek Chand, when he told us that when he was a judge of the Lahore High Court about three hundred cases of murder went to him in appeal every year. Probably the combined Punjab was very turbulent, considering the number of murders there, but the East Punjab and the other provinces are not so violent. I do not think that in the whole of India, the number of murder appeals will exceed seven or eight hundred. I do feel that the people who are condemned to death should have the inherent right of appeal to the Supreme Court and must have the satisfaction that their cases have been heard by the highest tribunal in the country. I have seen people who are very poor not being able to appeal as they cannot afford to pay the counsel. I see that article 112 says that the Supreme Court may grant special leave to appeal from any judgment, but it will be open only to people who are wealthy who can move heaven and earth, but the common people who have no money and who are poor will not be able to avail themselves of the benefits of this section. Therefore in the name of those persons who were condemned to death and who though innocent were hanged in my presence, I appeal to the House that either in this article or in any subsequent article there must be made a provision that those who are condemned to death shall have an inherent right of appeal to the Supreme Court.

Mr. Frank Anthony : (C.P. & Berar : General): Sir, I had no intention to participate in this debate until I heard my colleague, Pandit Thakur Das Bhargava, place his point of view before the House. I think that his point of view is an unexceptionable one and one which we, if we are earned about these provisions, are bound to accept. I have just looked at the provisions of articles 110 to 112 and I found that ample security has been given to the civil litigants. I cannot help feeling that the people outside are bound to say that these provisions have been conceived in the spirit of civil litigation, conceived by those who are interested as civil lawyers in continuing litigation. We have made no restrictions in the matter of civil appeals. Article 111 gives an absolute and automatic right of appeal to the Supreme Court in all suits involving twenty thousand rupees or more. I think this is an absolutely absurd limit. If we set the limit at one lakh or two lakhs, where is the hardship involved to the civil litigant? I confess I cannot understand why the Law Minister and those who think like him feel that this kind of justice must be done to the civil litigant in cases involving property of twenty thousand rupees and more, while on the other hand they say that where a man has been sentenced to death or has been given transportation for life it does not involve a denial of liberty or justice sufficient to give him an automatic right of appeal. My friends may say that article 112 gives a certain amount of discretion to the Supreme Court to allow any appeals in respect of criminal matters, but it is a matter of discretion and it is also qualified by the condition that it must involve a substantial question of law. I feel, Sir, as one who has had a lot to do with criminal cases and murder cases that we cannot give overdue or more than ample guarantees in criminal cases, particularly where a sentence of death or a sentence involving transportation for life has been imposed. As my Friend, Pandit Thakurdas Bhargava, has pointed out, any person who has handled criminal cases, particularly murder cases, will be able to testify from his personal knowledge to serious miscarriages of justice on account of misinterpretation of facts, tremendous diversity of conflict in the matter of legal interpretation. In India, in one High Court, in the case of two people where one inflicts a fatal injury while the

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other holds the deceased, both might be sentenced to death, while in another High Court, one might be sentenced for murder while the other may only be fined for having committed simple hurt. And yet my Friend says that where we have this diversity of judicial decisions, when a man has been sentenced to death or transportation for life, it does not involve sufficient reason or sufficient justification to give him an absolute right of appeal. The argument is made that if we give an absolute right of appeal in each case where a sentence of death has been passed, we will have to have scores of judges. This, Sir, is a tenuous and untenable argument. It is axiomatic that the volume of civil litigation in this country is probably ten to fifteen times the volume of criminal cases. Yet there is an absolute right of appeal in civil cases involving twenty thousand rupees or more. They have set greater sanctity on property than on human life. If we really want to restrict the number of judges, if we really want to restrict the volume of cases going to the Supreme Court, we must restrict the property value in the case of civil appeals. What real hardship will it cause to a bloated capitalist, to blackmarketeers if for cases involving less than three lakhs or four lakhs they are not given any kind of right of appeal to the Supreme Court? Can it be said that there is anything more than the merest justice in providing that a man who has been sentenced to death should have the absolute and unqualified right of appeal to the Supreme Court irrespective of whether the case involves a substantial question of law or not? Any other decision by this House, to my mind, will involve a perversion of what should be a fundamental juristic principle. My honourable Friends sitting on the back benches say that other countries of the world do not recognise an absolute right of appeal when a death sentence has been passed. Are we to be guided by precedents from other countries? If conditions in our own country are such as Pandit Thakur Das Bhargava pointed out, what criminal lawyer is not able to testify that in nine out of ten riot cases, two, three, four, five or six innocent people, as a matter of course, are involved? Innocent people have very often been sentenced to death after having been falsely involved in riot cases read with murder. I cannot understand the argument of my honourable Friends who say that article 112 which gives discretion to the Supreme Court to call a case before it when any substantial question of law is involved, gives more than ample protection to people whose liberty may be taken away from them, and I also concur in the fear expressed by my honourable Friend, Pandit Thakur Das Bhargava when he says that to leave it within the discretion of Parliament is to practise escapism of the worst type. It is more likely that the effect of such a clause will be still-born especially with persons exercising a powerful influence such as the Law Minister. Parliament may do nothing in order to ensure that persons who have been sentenced or have been deprived of their liberty will get any substantial rights of appeal to the Supreme Court. For this reason, Sir, I feel that this is a vital matter, and it is a matter on which I would request the Law Minister should defer consideration, if necessary, so that the matter can be reconsidered more fully by the House at a later stage.

Dr. P. K. Sen : (Bihar: General): Sir, the intention seems to be clear that article 110 provides for a special set of cases where an interpretation of the Constitution is called for. Article 111 again provides for all civil cases which have not this special characteristic. I have no quarrel whatsoever with the wording or the spirit of either of these two sections. What I am concerned with is to place a few humble observations before this House in respect of article 112. I have very great sympathy with the point of view which has been expressed in this House by my honourable Friend, Pandit Thakur Das Bhargava. Although there is some provision with regard to special leave in article 112, it hardly gives that particular emphasis to the question of appeals against death sentence that it should. I do not know nor do I suggest in

what manner it should be done. It may be that it will rest with the Parliament to make provisions with regard to the acceptance of appeals in regard to cases that involve death sentence only or acceptance of appeals in regard to not only death sentence matters but also other important criminal matters. But one thing I am perfectly clear about in my mind and that is this, that in this question we should not by any means follow the British convention as a model one. In matters of punishment, in matters of penal legislation, Great Britain has been the most backward and the most conservative of all countries. Whereas we find that in most countries of the West and in several big States, at any rate, the death sentence has been abolished, Great Britain is still talking about it and the greatest of efforts has not succeeded in persuading public opinion that there should be some other way of dealing with criminals of that kind than by death sentence; it may be by incapacitation; it may be by segregation from ordinary society, so that they may no longer indulge in their anti-social acts; it may be anything, but it should not be met by capital sentence. That is the view which has been taken by most countries. Now, I am not here, Sir, to ventilate those views, but what I am referring to is the tardy recognition by Great Britain that many of the offences should be excluded from the list of capital offences. This tardiness has been most apparent from the time of Henary VIII, when there were 263 cases of crime to be met by capital sentence. When we come to 1797, even then there were 160 offences which used to be capitally punished. Then in 1833, there was a more for removing certain offences from the list of Capital offences. Take for instance, shop-lifting, petty cases of theft, etc. The offenders used to be sentenced to death—there is a recorded case of a boy sixteen who had not been able to resist the temptation to lift a little doll from the shop-window and he was hanged for it. British opinion was so obdurate that it refused to recognise that in these cases there was any other way possible—either punishment or correction or segregation. In 1833, when this question again arose of removing certain of these offences from the capital sentence list, Lord Ellenborough in the House of Lords gave a solemn warning : "Your Lordships", said he, "will pause before giving assent to a Bill of this character which will endanger private property for all time". I am only citing these instances to show why up to this time the Privy Council has been so chary in admitting criminal appeals against decisions by the High Court. Only in a very few cases where 'natural justice' was being violated—an expression which it is very difficult to define or explain, the Privy Council was prepared to entertain appeals. I submit that under the new set-up in India, surely, we should not follow that as a model precedent. On the contrary, we should give all consideration to the appeal which has been made today, to include cases of death sentences in the list of those cases which should go up in appeal before the Supreme Court. I do not suggest here and now in what manner it should be provided. Before you put it in the Constitution, it will call for careful thought and deliberation and it would rest with Parliament, perhaps to provide for details of procedure. But I do wish that some provision be made in the Constitution which would lead the Parliament to attach to it the importance that it deserves.

A point has been raised about funds. A number of judges would be needed in a vast country like India, if such appeals are allowed.....

Pandit Lakshmi Kanta Maitra (West Bengal: General): We have absolutely no statistics of such cases from the different High Courts. We cannot say whether the number will be enormously large.

Mr. Frank Anthony : A small fraction of your civil litigation.

Pandit Lakshmi Kanta Maitra : We have not got any statistics of murder cases that come before the High Courts.

Dr. P. K. Sen : That is a very easy matter; it could be ascertained with very little difficulty. What I submit is this. The sanctity of human life is being recognised more and more in recent times. There is no question that in the past there was no such sanctity attached to human life. Really the world was in a state of war and during war who cares whether lives are lost or not? But, now, there is no question whatever that in the West as well as in the East there is a great deal of sanctity attached to each individual human life. Are we not to recognise that in the new Constitution of India? Indeed, we have recognised that in the chapter on Fundamental Rights in several aspects. But, here, when it comes to a question of an appeal to the Supreme Court against death sentences, we say, "No money, we cannot afford to have so many judges"! Are we to be guided by these utilitarian considerations? Are we not to be guided by the extreme moral necessity of the case? Having been impressed with that moral necessity, we have got to find out ways and means in order that moral necessity may be met.

I have already submitted, Sir, that I am not moving any amendment or supporting any amendment. But, in the general discussion of this matter, I am expressing my individual views and I believe in those views intensely, with all the conviction that I can command. Therefore, I have no hesitation whatsoever in asking this House to lend its serious consideration to this matter, and not to shove it aside as a matter which is of no consequence whatsoever. I am not at all broaching the question now as to whether death sentence is right or wrong. That question requires careful reflection and deliberation. We cannot possibly go into that matter now, at any rate. But I do submit that we ought to provide in a handsome manner in the Constitution itself for a right of appeal to the Supreme Court in all cases of death sentence.

I thank you, Sir, for the opportunity you have given me to express my views.

Dr. P. S. Deshmukh : Sir, I had no intention of taking part in this debate. But, there is one aspect of this question which seems not to have been emphasised sufficiently and that is my excuse for intervening in this debate.

The point of view propounded by my honourable Friend Pandit Thakur Das Bhargava has been very ably supported by my honourable Friend Mr. Anthony as well as by Dr. P. K. Sen. I lend that proposition my wholehearted support not only from the point of view of important criminal cases, but also from the point of view of personal liberty in India. There is of course a provision . . . .

Shri B. Das : It is also a source of gain to the lawyer profession.

Dr. P. S. Deshmukh : If my honourable Friend feels concerned merely because of the gains to the lawyers' profession; and if that is his only grievance, it may be laid down that in certain categories of cases, lawyers shall not be permitted to appear. If he thinks that we are interesting ourselves simply for that reason and possibility of increased income to lawyers is the only reason why we want to support this, I am prepared for my part to say that in some of these cases, lawyers may not be permitted to appear, as in the case of the Gram Panchayat courts, where lawyers are prohibited from appearing .

We have in India at the present time the spectacle of personal liberties being very largely encroached upon in various places. If we take for instance the way in which provincial Governments are governing, the number of places

where section 144 Cr. P. C. is promulgated, the length of time for which it is in existence, we shall be aghast; if we were to compare these figures with any other period even in the British regime the result would be staggering. So far at least as the Bombay province is concerned, I have received many complaints where the Bombay Government have taken to wholesale externment of persons from one district to another. This is a very good way of avoiding or stopping a person from applying under the *habeas corpus*. It is not thus inconceivable that even apart from any encroachment on the constitutional provisions, there can be an encroachment on the civil liberties of the people in cases which cannot be covered by the Fundamental Rights or where the assistance of the Fundamental Rights could not be invoked. The ingenuity of the law Minister of the future Indian States being unlimited, I feel that there is every necessity to protect the liberties of the people by providing for reference to the Supreme Court in cases other than those involving interpretation of the Constitution or a violation of the Fundamental Rights. Even from this point of view, therefore, the suggestion that there should be equal facility of approach to the Supreme Court in criminal cases as we have provided for in civil cases should also be considered. I hope this point of view will be appreciated and adequate provision made.

Pandit Lakshmi Kanta Maitra : Mr. President, Sir, this part of the Constitution raises certain very important issues which the House would do well very carefully to consider.

Article 110 and 111 are there and in them we have provided for appeals in civil matters. The question is, what are we going to do with regard to criminal matters. As a member of the legal profession, I think I would be failing in my duty if I were not to tell the House that there is a considerable volume of opinion in the profession itself that whereas in civil matters, we have given the benefit of appeal as of right, in criminal matters, the accused has no real right of appeal as such. The question is whether or not in the body of the Constitution itself we should provide for it. It has been suggested in an amendment to add article 112-B, that Parliament should be invested with power to legislate in this matter,—to confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law. I maintain. Sir, that this article really raises a first-class issue whether or not we are going to place human life much below the value of property. If for property you would give a constitutional right of appeal, would you deny that in cases where death sentence is imposed? Such cases arise in one of two ways; either the Judge, agreeing with the Jury or Assessors whatever it may be, passes a death sentence; or a man has been acquitted by the Sessions Court, but an appeal is taken out by the Government against the order of acquittal and eventually the High Court reverses the judgment of the lower court and sentences him to capital punishment.

When the letter contingency arises-this conviction after acquittal, where is the forum where he can find redress against the judgment? There is no provision here. Perhaps that can be done under exceptional circumstances under special leave but there is no right as such. Perhaps it would be argued that if the volume of opinion in the country is strong, Parliament will take notice of that and will make the necessary law. I will join straight issue with those who hold that view, for what is going to happen in the interval? The Parliament may not be taking any action in this respect in the next five or six or even ten years. We do not know the future composition of the Parliament. Hence we want that this right should be embodied in the body of the Constitution itself. I would therefore suggest that article 112-B should be

[Pandit Lakshmi Kanta Maitra]

held over for the present. We should make another effort to get round our friends to the view that sanctity of human lives should be recognized. It has been argued and it will be argued always from the executive point of view that if capital sentences were allowed to be appealed against as a matter of course or as a matter of right, then what would happen is that we will have to employ a large number of judges for disposing of cases of Capital sentences. I do not know the real position-I do not know and I have no statistics before me, neither has the Drafting Committee any with them to show province by province the number of murder cases culminating in death sentences which have had to be disposed of by the High Courts. No figure is there. We have only been given a vague indefinite idea that in all the High Courts of India so many number of cases would come and that a large number of judges would have to be appointed. It that is so, I would assume for the moment that argument is correct that there would be larger volume of work, I would say that would be justified in view of the dangers involved in it. Sir, we have been nurtured in the British Criminal Law of Jurisprudence. We have been reared up in its spirit, which had always taught us that a dozen scoundrels may go scot-free but one innocent man must not be sacrificed.

Shri Mahavir Tyagi (United Provinces: General) : Sir, 'Scoundrel is unparliamentary.

Pandit Lakshmi Kanta Maitra : My Friend must know that these words by themselves are not unparliamentary but when they are used in relation to a Member, they are unparliamentary. The whole conception of the law of benefit of doubt is based on that. When the circumstances are evenly balanced, and the case for and against the accused is evenly balanced, then we give him the benefit of doubt. When the scales of justice hang anything like even, they should be titled in favour of accused; the Judge should throw a few grains of mercy. That has been the cardinal principle of Criminal Jurisprudence which has held the field for one hundred years in the country. Who knows how many judicial murders we have not been committing by not giving the accused the final right of appeal on judgments which condemned them to death? Is this such a matter which should be lightly disposed of, simply because it might necessitate a few more Judges? We have provided for all manners of things in this Constitution but on this vital matter should we shirk our responsibility? Are the Constitution-makers going to shirk their responsibility, scared away by the prospect of having to employ more Judges? I do not think that is a consideration which should weight with them. Let me respectfully submit to them and I would respectfully suggest to my honourable Friend Dr. Ambedkar to hold his hands for a day or two more. Let us again meet and let us finally see if we can get something done for those classes of people who will be condemned to death and who will go practically at the final stage unheard. This is a very important matter; and personally speaking, I am definitely of the opinion that the right of appeal should be embodied in the body of the Constitution itself and not left to Parliament. With this point of view I agree entirely because that has been the view of the vast body of men in the legal profession. I have not known yet one single criminal lawyer of repute who does not hold the view that in this respect State legislation has been defective inasmuch as the State attaches more importance to property than to human life. I do not think this is a kind of argument which can be lightly brushed aside. I appeal to the House to consider this aspect.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, my honourable friend Mr. Anthony told the House that this section was moved in the interest of those who have been practising on the civil side. I cannot be guilty of being is interested because both criminal and civil litigants have treated me with complete impartiality. We have to consider this question from not only abstract theoretical principles but from the practical point of view. Now, if the House is pleased to turn to article 112 whereby appeals can be entertained by the Supreme Court by special leave, the House will see that the present jurisdiction of the Privy Council, to intervene where there is miscarriage of justice in criminal matters, has been retained to the fullest extent. So far as that approach is concerned, it is there.

The next question is whether there should be criminal appeals and if so, under what conditions. For that purpose there is an amendment of the Drafting Committee which is going to be moved by my Friend Dr. Ambedkar—Amendment No. 154—New Section 112-B. It runs thus—

"Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.

A further amendment is also going to be moved to this clause saying that there can be a criminal appeal even from final orders. So the scope of this amendment is going to be widened. The question therefore is whether we should put a provision of this kind in the Constitution or we should leave it to Parliament to enact a law which would consider the whole thing from all points of view. Conceding a right of criminal appeal to the Supreme Court would mean not less than one hundred judges of the Supreme Court. Even if it is a question of death sentences, it would require a very large number.

Pandit Lakshmi Kanta Maitra : Have you statistics?

Shri K. M. Munshi : Yes, we have. At least in one province it could not be less than 100 or 150 and we will have something like fifteen provinces in the future. It must mean that in cases of death sentences there would not be less than a thousand appeals per year. The further question is whether the appeals are to be first appeals or on questions of law, whether they are from death sentence or from sentence of any particular rigour. The other question has also to be considered whether there should be appeals in cases where conviction has been one secured in the High Court in appeals by the Government from acquittal. These cases have to be considered in their fulness. Not only that, we have also to consider the conditions under which such appeals should be allowed. All these require a number of well-considered provisions of law which can only be enacted by Parliament. No member so far as I could see is opposed to criminal appeals in appropriate cases. What is necessary is that the appeal should be entertained under certain restrictions and conditions, and it would be better to lay them down by provisions of an Act than by the Constitution.

I may point out one defect. It is only in cases of miscarriage of justice, on matters relating to the nature of evidence or procedure that the Privy Council gives special leave. Article 112 embodies this jurisdiction. On question of law in criminal matters however, there is no right of appeal. But the matter is sure to be considered by Parliament. If an appeal lie in civil matters from a substantial question of law, or where the case is considered a fit one for appeal, why these considerations, I think, should be left to Parliament to consider, rather than to impose a liability on the Supreme Court to hear all criminal appeals irrespective of limitations or restrictions.

[Shri K. M. Munshi]

I further submit that this matter does not fall within article 110 or 111, and the discussion at this stage is premature. The proper time is when amendment to 112-B is considered. Article 110 relates purely to constitutional matters, and article 111 to civil matters. when we come to 112 then the question may be considered whether it is to be modified in some manner or whether it should go through as has been put forward by the Drafting Committee. I therefore, submit that this matter should not be debated in a hurry. That is my submission.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I want to associate myself with what has been said by many a previous speaker, with regard to conferring of the right of hearing criminal appeals on the Supreme Court. A very strong, convincing and un-rebuttable case has been made out by so many honourable Members of this House. It should convince everybody, excepting those who are bent upon not being convinced. I submit, Sir, that articles 110, 111 and 112 must, therefore, be amended suitably so as to cover the point of view urged so very ably by so many eminent lawyers who are Members of this House.

The one main ground which has been urged by the opponents of this view is that it will create a very large amount of work for the Supreme Court and a very large number of judges will be required to deal with those cases. I do not know whether we have in our possession any definite or even any approximate figures on the basis of which it could be said that the volume of work would increase to such an extent, even if the right of appeal is restricted to cases involving sentences of death. Sir, even if there be force in this contention of the opponents of this view that the volume of work would be very large, I submit that let them meet it, meet this point of view in a restricted manner at least. I would submit that let this right of appeal be limited only to cases which involve sentences of death. It may be said that even then, the number of cases would be very large. One very good suggestion has been thrown out by my honourable Friend Mr. Anthony that if you are afraid of the volume of work, that it would be too large, then some device should be adopted to reduce the number of civil appeals; and there seems to be no reason why, if we cannot afford too many judges, why we should not further limit the value of the civil cases which come up for appeal. We may increase it to Rs. 50,000 or a lakh of rupees. We hear so much about inflation of currency in these days and the value of money having gone down; I see no reason why the value of appealable civil case should not be increased to at least fifty thousand rupees or a lakh of rupees. Certainly the liberty of a person, the life of a person is much more valuable than Rs. 20,000 or Rs. 50,000 or even a lakh of rupees. In fact, the life of a person cannot be estimated in terms of money at all.

Apart from this, there is one very fundamental question involved here, and it is this. Should or should not a person convicted of an offence have at least one single right of appeal? I speak not of two or three, as we are prepared to give in the case of civil cases. The question is, should or should not a convicted person have at least one single right of appeal. I submit, Sir, this is a fundamental right for which provision must be made in the Constitution and the matter should not be left in the hands of Parliament. We know there are cases in which the accused secures an acquittal from the Subordinate Court, and some of the these cases go up in appeal before, the High Court-the local Government putting in an appeal against either the order of acquittal from the Subordinate Court, and some of these cases go up in appeal before the High Court-the local Government putting in an appeal against either the order of acquittal or against an order according to which a light punishment has been inflicted upon the accused-the question to be considered is, when such cases go up in appeal before the High Court and the High Court for the first time convicts

an acquitted person and sets aside the order of acquittal of the lower court, and convicts the person to a sentence of death, the question is, should or should not such a person who has been convicted and sentenced to death for the first time, should he or should not he have the right of appeal? Must he not be heard even once against the order of the High Court sentencing him to death? It is a very fundamental question, and my submission is that even if you cannot accommodate our point of view in entirely, at least you must make some provision to the effect that in cases where a sentence of death has been inflicted for the first time by the High Court, on appeal against the order of acquittal of a subordinate court, in such cases at least an appeal shall lie to the Supreme Court. This is my submission. I think at least this much must be provided for in the Constitution.

Sir, I have nothing more to add, because so many eminent lawyers who are well competent to speak on the subject, so many lawyers who have had personal experience of conducting criminal cases extending over a period of thirty to forty years have almost unanimously urged that such a provision must be made in the Constitution itself. When so many experts are of this view. I see no reason why my honourable Friend Dr. Ambedkar should be so adamant on this question and not be prepared to yield even to this limited extent. Sir, he has always been very reasonable and has been trying to accommodate important points of view, but I am surprised to find that on this occasion, he is so adamant. I hope he does not want us to realise that he can be an exception to his own self on some occasions. I hope, Sir, that he will be prepared to consider this point of view, and I would suggest that he might hold a sort of conference with other eminent lawyers who are Members of this House and try to evolve a formula which would be acceptable to all.

Dr. Bakshi Tek Chand : After this lengthy debate. I have only a few words to say for the consideration of the House. There are three different aspects of the question which, if I may say, with respect, should have been kept distinct and considered separately and at the proper time.

Article 110, to which Mr. Naziruddin Ahmad has moved his amendment, is not concerned with several matters, which have been discussed by the previous speakers. That article seeks to replace section 205 of the present Government of India Act, which deals with appeals in cases in which questions of the interpretation of the Constitution are involved. In such a case, an unrestricted right of appeal is given, whether the case is of civil or criminal nature, or arises in other proceedings and regardless of the value of the subject-matter. This is a very valuable right which, I submit, must be preserved in the Constitution, subject, of course, to the conditions that the High Court certifies that the question of law involved is a substantial one. I would, therefore, ask the House to pass article 110, with the verbal alterations which have been suggested by Dr. Ambedkar. I do not think there can be any two opinions on that point. If honourable Members want to consider whether in ordinary civil cases the right of appeal to the Supreme Court should be cut down, or in ordinary criminal cases (where no appeal lies at present except by special leave), appeals should in certain cases, be allowed as of right, the proper time for discussion on these matters will be when the House will be considering articles 111 and the new article 112-B. It is curious that so far as article 110 is concerned, no criticism has been offered in any of the speeches that have been delivered. Without being disrespectful, I may say, that Pandit Thakur Dass Bhargava and Mr. Naziruddin Ahmad want to bring in questions relating to articles 111 and 112-B, as if through a back-door. I, therefore, ask the consideration of article 110 be not confused by mixing it up with the other questions. I wish to repeat that article 110 confers a very valuable right as the experience of the last twelve years has shown. Honourable

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Members are aware of the cases involving the validity of Ordinances promulgated by the Governor-General or Governors of provinces or of laws passed by the Central Government or the provincial Governments since 1937, when the Government of India Act, 1935, came into force. In each case the matter was taken in appeal to the Federal Court which gave its decision on the questions whether such legislation was or was not *ultra vires* and set at rest very important and substantial questions. These questions arose in civil suits of which the value was much below Rs. 1,000. Similarly, in some criminal matters, the sentences were for imprisonment for small periods. But the constitutional questions involved were of very great importance. I submit, therefore, that this unrestricted right of appeal in cases involving substantial constitutional questions which is now available, should be kept intact in the future Constitution of free India. This is one aspect of the matter, which I will ask the House to keep in view and so far as article 110 is concerned, I would say that Mr. Ahmad's amendment be rejected and the article passed as it is.

Now we come to the second aspect, which relates to ordinary civil cases, for which provision is made in article 111. Mr. Anthony and some other honourable Members have observed that the framers of this Constitution were civil lawyers and that they have, in the interest of civil litigation, enlarged or maintained the jurisdiction of the Supreme Court with regard to civil matters. Fortunately for me, I am not one of the framers of this Constitution and that charge cannot be leveled at me. I may, however, draw the attention of Mr. Anthony and some other speakers, that in ordinary civil matters, the right of appeal to the Supreme Court has been reduced very considerably. The valuation limit under the present Civil Procedure Code is Rs. 10,000, but in the Draft Constitution it has been raised to Rs. 20,000. If you study the figures, you will find that in three-fourths of the cases, appeals in which go to the Privy Council, the value is between Rs. 10,000 and Rs. 20,000 and it is only in 25 per cent cases, the value is over Rs. 20,000. Therefore, article 111, as drafted has reduced appeals in civil cases to the Supreme Court by about 75 per cent. The charge which has been brought against Dr. Ambedkar and his colleagues is not at all correct. On the other hand judging from the amendments of which notice has been given and which have not yet been moved, many honourable Members seem to feel that the limit of Rs. 10,000 should not be raised to Rs. 20,000. Some others have given notice that the limit be fixed at Rs. 15,000. It cannot be said that the Constitution is conceived with a view to increase civil litigation or even to maintain the present volume of civil cases that go to the Privy Council. I submit, therefore, that Mr. Anthony's observation, besides being wholly irrelevant to article 110, which alone is at present before the House, is, if I may say so without any disrespect, completely misconceived.

Article 111 is except for this change in valuation, a mere repetition of section 110 and section 109 of the Civil Procedure Code which have stood on the Statute Book since at least 1861. Some of their provisions you will find even in the Charter (or Rules framed thereunder) of the Supreme Court of Calcutta, which was promulgated by the King in 1773. You will find similar provisions in Charters of the Supreme Courts of Madras and Bombay, which were promulgated in the early part of the 19th Century. But with regard to all the High Courts, when the High Court Act was passed in 1861 and the Letters Patent of the High Courts of Calcutta, Madras, Bombay and Allahabad were issued, you will find similar provisions and they have been incorporated in the Civil Procedure Code from that year up to now. Thus, so far as the type of cases in which the right of appeal in civil cases is concerned, article 111 keeps intact all those rights. But it raises the value and therefore, it indirectly

cuts down the volume of civil litigation by 60, 70 or 75 per cent. The percentage was 75 seven or eight years ago when I studied the figures and I do not think the difference is very much today. In fact, in some cases in smaller provinces like East Punjab, Orissa and the Central Provinces, there will be very few civil cases now coming up to the Supreme Court. In rich provinces like Bombay and West Bengal and Madras there may be more. In the U.P., which supplied a very large volume of civil litigation before the Privy Council, and also in Bihar, as there were big taluqdaris or zamindaris—the value of many cases was over Rs. 20,000. But now that taluqdaris and zamindaris will now be extinct, the number of cases from these provinces will also decrease. Therefore, there is no danger of civil litigation increasing to a large extent.

Now with regard to criminal matters. I will just place before you the present position in regard to appeals to the Privy Council in criminal matters. Under the law, as it stands today, there is no appeal to the Privy Council as of right in any case, whether the sentence is that of death or transportation for life or for a short period, or whether the question of law involved is very substantial. No High Courts has the power to certify any case as a fit one for appeal to the Privy Council.

It is only by special leave of the Privy Council that an appeal in a criminal case can lie. Such leave is not usually granted, even if there is a substantial question of law or there has been miscarriage of justice. But if there is a case in which the principles of natural justice have been violated, then the Privy Council might interfere. What those principles of natural justice are, has not been defined anywhere; they have not been explained with precision even in judgments of the Privy Council. If you examine the various cases which have been decided on appeal by special leave, you will not find—(I am speaking with very great respect)—any consistency; you cannot extract any rule as to when the Privy Council will grant leave and when it will not. I do not wish to take the time of the House of referring to cases in which a particular question was raised but the Privy Council refused leave; but several years later when the identical question was raised again, leave was granted on the ground that principles of natural justice had been violated. The whole thing is very indefinite. I do not know if the Supreme Court will follow the practice of the Privy Council; or lay down a different convention in granting special leave under article 112.

Pandit Thakur Das Bhargava : Does this article 112 of the Constitution give to the Supreme Court the same opportunity of doing justice, according to the principles of natural justice, as the Privy Council had, or are the rights taken away.

Dr. Bakshi Tek Chand : Article 112 says:

"The Supreme Court, may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matte, etc., etc."

This leaves the matter to the discretion of the Supreme Court and we cannot say what tradition the Supreme Court will build up in this matter. If they are going to follow the practice of the Privy Council—which they generally do at present in many civil matters—then the same old case (*Dillet*) will be followed, leaving the whole thing undefined. Ninety-nine per cent of petitions for special appeals will be rejected, resulting in so much waste of time and waste of money.

Sir, I will make one or two observations with regard to Mr. Naziruddin Ahmad's amendment. If this amendment is accepted, the result will be that so far as civil matters are concerned, it will come into conflict

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with article 111. In every civil case, regardless of value, a litigant can go to the Supreme Court, even if he cannot get a certificate from the High Court. I do not think, Mr. Naziruddin Ahmad wants it, or any of the other honourable Members, who have supported his amendment, wants it.

In view of the various amendments which have been moved, the Drafting Committee has thought it advisable that Dr. Ambedkar should move an amendment that Parliament may, by law, confer on the Supreme Court power to entertain and hear appeals from any judgment, or sentence of the High Court in the territory of India in the exercise of its criminal jurisdiction, subject to such conditions and limitations as may be specified in such law. I do not think that this will be sufficient. I think some provisions should be made in the Constitution, giving a limited right of appeal in certain specified circumstances. If you leave the whole matter to Parliament we cannot say when such laws will be passed, and in what form they will be. The result will be that for three years—or may be more—no provision for appeal to the Supreme Court in such cases will exist at all. That is an aspect of the matter which has caused much concern among honourable Members and some of them have suggested that provision for appeal in certain class of criminal cases, should be made in the Constitution itself. I submit that the proper place to discuss this matter is not when article 110 is being considered, but it will be appropriate when article 112-B is moved.

There is a great deal in what many honourable Members have said in regard to cases in which the High Courts have reversed orders of acquittal and condemned accused persons to death. There are two other points. One is whether there should be an unrestricted right of appeal in every case when the accused has been convicted of murder, whether the sentence is death or transportation for life as Pandit Thakur Dass Bhargava and some other honourable Members want, or will the right of appeal be limited to cases when a sentence of death is passed or which involves a substantial question of law. Secondly, there might be other cases in which the sentence is a nominal one, but there is a question of law of very great importance and universal application. Again, there may be a third class of cases in which there is difference of opinion in the High Court as to the interpretation of certain provisions of the law e.g., some sections of the Evidence Act or the Criminal Procedure Code. Take, for instance, section 27 of the Evidence Act on the interpretation of which Full Benches of various High Courts have given conflicting decisions. Though the Evidence Act has been in force since 1872, for more than 75 years the matter is unsettled. It is in the public interest that such points should be finally settled by the Supreme Court. Article 112 will not cover such a case. At present, the Privy Council considers that where this does not involve violation of principles of natural justice, they will not grant special leave. There are obvious reasons, that in such cases, an appeal should be allowed, if the High Court certifies that it is a fit case for appeal. I do not think there is difference of opinion as to the desirability of allowing appeal in such cases. The only question is, whether this should be done in the Constitution or left for legislation by Parliament. The appropriate time to discuss this would be when article 112-B is being considered and, as that is not likely today, my suggestion is that the Drafting Committee may consider the whole matter again and bring it up later.

Article 110 does not deal with this matter and I submit that that article should be passed with the verbal amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmad, in his amendments Nos. 1904 and 1907. All that is before us is amendment

No. 1904. According to that amendment what my Friend Mr. Naziruddin Ahmad wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words 'as to the interpretation of this Constitution' should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase 'as to the interpretation of this Constitution'. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad : I believe I am right.

The Honourable Dr. B. R. Ambedkar : No question of certificate arises.

Mr. Naziruddin Ahmad : You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar : I think my honourable Friend Mr. Naziruddin Ahmad has probably not grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad : That is your stock argument.

The Honourable Dr. B. R. Ambedkar : We have in this Draft Constitution made separate provision for appeal in cases where questions of Constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where constitutional law are not involved are provided for in article 111. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmad. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of constitutional law, the minimum number of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made thereunder. Now, that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will be decided by a number of judges not less than five, while other cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words 'as to the interpretation of this Constitution' does not in anyway debar appeals other than those in which constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But inasmuch as a great deal of debate has taken place, I would like to say a few words. Members will find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of constitutional law. Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

[The Honourable Dr. B. R. Ambedkar]

Again, there is article 112 where the jurisdiction of the Privy Council has been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words 'decree or final order in any case or matter whether civil or criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112. I have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision . . . . . .

Pandit Lakshmi Kanta Maitra : Practising criminal law.

The Honourable Dr. B. R. Ambedkar : I am sorry, 'practising criminal law', that just as article 111 confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done? Should we do it by a specific clause in the Constitution itself that in the following matter there shall be a right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court? I am of the opinion for the moment—I do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although,—if may say so, it is not an empty mind—that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work—I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. (*Hear, hear*.) That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believe in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

Pandit Lakshmi Kanta Maitra : All the criminal courts also.

The Honourable Dr. B. R. Ambedkar : I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend, Mr. Naziruddin Ahmad.

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

The question is:

"That in clause (1) of article 110, for the words 'State' the words 'the territory of India' be substituted.

The amendment was adopted.

Mr. President : The question is:

"That in clause (1) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also', the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 110, as amended, stand part of the Constitution."

The motion was adopted.

Article 110, as amended, was added to the Constitution.

Article 111

Mr. President : The first amendment is No. 1911 by Shrimati Durgabai.

Shrimati G. Durgabai (Madras: General): As the point involved has been covered by Dr. Ambedkar, I do not wish to move it.

Shri Raj Bahadur : Mr. President, Sir, I beg to move:

"That in clause (1) of article 111 the words 'except the States for the time being specified in Part III of the First Schedule' be deleted."

While moving this amendment, I may submit, Sir, that the articles relating to the powers and jurisdiction of the Supreme Court were drafted at a time when the process of integration and democratisation of the Indian States had only commenced and the final shape of things as they have finally emerged was not before the country and before the Drafting Committee. As such we find that the Supreme Court which is the ultimate court of appeal in the land was not vested with jurisdiction in certain cases. Article 109 vests the Supreme Court with jurisdiction in certain matters which relate to disputes between the States *inter se*. But this jurisdiction is limited and restricted to some extent in cases relating to the States mentioned in Part III of the First Schedule. In article 111 a distinction and discrimination has been made between the case of judgments, decrees or final orders in civil proceedings arising from the High Courts in the provinces of India and those arising from the High Courts in Indian States. Similarly a discrimination has again been made against the people living in the Indian States under article 112. It is obvious that the Supreme Court being the final court of appeal should have equal jurisdiction or authority over the entire territory of India. It is only proper that the Indian States where the system of judiciary has not been so well developed and well organised as obtains in the Indian provinces, should be given an opportunity for reorganisation and development of their judiciary under the supervision of the Supreme Court. It is very well known that the administration of justice that the Indian States people have so far been receiving from their judiciaries has yet to come to the level and standard of that available to the people in the Indian

[Shri Raj Bahadur]

provinces. Similarly it is also well-known that we the people of the Indian States have been eagerly looking forward to the day when the Federal Court or the Supreme Court will be empowered to entertain and hear appeals from cases arising from the High Courts situated in the Indian States. When this is the general desire of the people of the Indian States, it is only proper that in articles 111, 112 or for the matter of that in 109, there should be no discrimination against the Indian States. May I submit, Sir, that the inclusion of the words "except the States for the time being specified in Part III of the First Schedule" detracts not only from the jurisdiction and authority of the Supreme Court over the entire territory of India, but also detracts from the fulness of the unity of our country and from the democratic freedom of the Indian States people. To a certain extent it detracts also from the sovereignty of the Sovereign Parliament of the Indian Nation *over* the Indian States. It appears to me that in case we retain these words in the articles concerned, we shall still be keeping alive a sort of lingering and intolerable vestige of the old order in our Constitution. The House and the Government of India stand committed to the principle of fully democratizing the Indian States. We also stand committed to bring the States on a par with the provinces. As such it is only desirable that all distinctions, discriminations and differences should be obliterated. We want no purple patches on the map of India. We want that the process of the integration and unification of our country should be accomplished at as early a date as possible. I may submit further that the Indian States people require greater protection for the vindication of their elementary fundamental rights which are now being secured by the constitution and for other rights than the people living in other parts of the country. It is well-known that feudalism and other forces which react against the fulness of freedom of the States People are still not fully put down in the Indian States and an outlet or opportunity should be there for the people of the Indian States to approach the Supreme Court, if need be, for the vindication of their rights and liberties. I may further mention that "the States specified in Part III of the First Schedule", if we retain the said words, would be invested with a sort of a better or different status, distinct or contrasted from the status given to the rest of the States in the Indian Union. It would place them on a level different from the Indian provinces. The High Court in the Indian States, and not the Supreme Court of the country, would become the final court of appeal for the people of such States. But this position should not be allowed to continue. I commend, therefore, this amendment for the acceptance of the House, in view of the fact that we have accepted the principle of unity and unification of the country, and hence there should be no distinction or discrimination between one part of the country and the other.

(Amendment Nos. 1913 to 1916 were not moved.)

Dr. Bakshi Tek Chand : Sir, I move:

"That in sub-clause (1) of clause (1) of article 111, after the words: 'not less than twenty-thousand rupees' the words' or such amount as may be fixed by law by Parliament' be inserted."

The object of this amendment is very simple. In the article as drafted the value of the cases covered by article 111 (1) (a) and (b), instead of Rs. 10,000 as it is at present for appeals to the Privy Council, is fixed at Rs. 20,000. If the article is passed as it is, and incorporated in the Constitution, this figure will remain as a rigid limit until the Constitution is amended. Conditions in the country may however changed and it may be found that this limit is either too high or that it is too low and that it should be raised or reduced. In that case it will not be possible to make any change unless there is an amendment of the Constitution. That, of course, would be a long and cumbersome

process. The limit is being raised, as the value of property has gone up greatly; what was worth Rs. 10,000 twenty years ago is now worth Rs. 20,000. Circumstances may, however, change. The value may go down again due to various causes and the limit may have to be reduced. Or, the value may rise higher still and it may be necessary to raise the limit from Rs. 20,000 to Rs. 30,000, Rs. 40,000 or more. To meet such a situation power should be given to Parliament by law to make the necessary change in the article. The amendment therefore seeks to introduce in the article the words "or such amount as may be fixed by law by Parliament."

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

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees', the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

(Amendment No. 1918 was not moved.)

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

"That in sub-clause (a) of clause (1) of article 111, for the words "twenty thousand', the words 'fifteen thousand' be substituted."

Sir, the present pecuniary limit is rupees ten thousand, but the Draft Constitution proposes rupees twenty thousand. Mine is a *via media* of rupees fifteen thousand. I want to raise it as the money has become cheap. I submit that the standard of appealability must not be very much. That is a very arbitrary standard of justice and that makes a distinction between the rich and the poor. If you have any distinction at all, I should think that the ordinary valuation should be slightly raised. There is a discretion in the Supreme Court which may in proper cases grant special leave; but I totally disagree with the amendment moved by Dr. Bakshi Tek Chand and Dr. Ambedkar leaving the matter in the hands of Parliament. I submit that as we are framing a Constitution and we are introducing a large number of small details—I would not say that they are irrelevant matters as Dr. Ambedkar is accustomed to say—a large number of small details, making the Constitution almost into departmental manual. In a vital matter like this which gives or takes away the right of appeal we must not shirk our responsibility and leave it to Parliament. The difficulty would be that valuation would fluctuate from day to day according to the temper of the House and according to the Constitution of the House. We cannot assume that the present House or the present strength of the various parties will remain the same for ever. Therefore, instead of allowing the limit to fluctuate with the temper of the moment, it should far better be fixed in the Constitution. You may make it ten thousand, fifteen thousand or twenty thousand; but it should be something fixed in the Constitution so that it may not be changed very frequently except by an amendment of the Constitution itself. This should be put on a more permanent basis. This is my reason for moving this amendment.

(Amendments Nos. 1920 and 1921 were not moved.)

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

"That to clause (1) of article 111 the following proviso be added :—

'Provided that no appeal shall lie to the Supreme Court from the judgment, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.' "

Mr. President : To this, there is an amendment by Pandit Thakur Dass Bhargava No. 151. Are you moving that?

Pandit Thakur Dass Bhargava : Not moving Sir.

Mr. President : We shall stop there and adjourn to Eight of the clock on Monday.

The Assembly then adjourned till Eight of the Clock on Monday the 6th June 1949.