Wednesday, 18th May, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 18*th May* 1949

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

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President : The first item on the agenda is a Bill of which notice had been given by the Honourable Sardar Vallabhbhai Patel. On account of his ill-health, Sardar Vallabhbhai Patel had to leave this place and he has asked me to allow the Honourable Mr. Gadgil to take charge of that Bill. Mr. Gadgil.

The Honourable Shri N.V. Gadgil (Bombay: General): Sir, I beg to move for leave to introduce a Bill further to amend the Government of India Act, 1935.

Mr. President : The question is:

"That leave be granted to introduce the Bill further to amend the Government of India Act, 1935."

The motion was adopted.

The Honourable Shri N.V. Gadgil : Sir, I introduce the Bill.

Mr. President : The bill is introduced.

The Honourable Shri N.V. Gadgil : Sir, I beg to move:

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

The object of the Bill is to amend the Government of India Act in regard to two provisions. The first provisions is Section 97 under which only a law of the Constituent Assembly can change the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg. At the time European representation in the Provincial Legislatures was abolished, the point was overlooked that in Coorg that representation would still continue. At present there are two Europeans in the Coorg Legislative Council and it is considered in appropriate that this anomaly should be allowed to continue. At the same time, it is unnecessary to promote a Bill for this specified purpose in the Constituent Assembly. Even otherwise it would be convenient to have powers vested in the Governor-General to make changes in the present constitution of Coorg. Provision in the amending Bill would enable Government to do so by an order.

The second provision relates to certain changes in the Federal and Concurrent Legislative Lists. According to item 1 of List I, the Centre has powers of preventive detention for reasons of State connected with defence, external affairs or relations with acceding States; but executive power to deal with actual detenus rests with the Provinces because 'persons subjected to preventive detention under Dominion authority' is item 34 of the Concurrent List. On the other hand, item 1 of the Provincial Legislative List gives power to Provinces both for preventive detention for reasons connected with the maintenance of public order and for persons subjected to such detention. There is

[The Honourable Shri N. V. Gadgil]

no reason why this differentiation between the powers of the Central Government and of the Provincial Governments to deal with their respective detenus should be maintained. The Bill, therefore, provides for persons subjected to detention under Central authority being subjected also to the executive control of the Centre. This has been done by suitably amending paragraph 1 of the Federal Legislative List.

We have also been experiencing considerable difficulty in inter-Provincial transfer of detenus. The detenus being subject to absolute Provincial control have therefore to be confined within that particular province. Hitherto, wherever in extreme cases of necessity an occasion has arisen for such transfers, the provisions of the Bengal Regulation III of 1818 have been utilise. This is clearly an unsatisfactory procedure. The need for transfer arises from congestion in the particular province or from the desire on the part of the detenu himself to seek transfer to his own Province or, for administrative convenience for the Provincial Government, to transfer him elsewhere. In two recent cases, we had to use Regulation III of 1818. There was a demand from some persons of Punjabi extraction in West Bengal to be transferred to East Punjab. This request cannot be met because there is no power at present vesting in Provinces to transfer their detenus. The amendment to the Concurrent Legislative List, which has been proposed, would, therefore, solve this difficulty in that it would enable the Centre to legislate for such transfers, leaving it to the Provinces to take necessary executive action.

Sir, I move.

Mr. President : There is notice of an amendment to this motion in the name of Mr. Ananthasayanam Ayyangar.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am not moving any of the amendments but I would like to say a few words.

Mr. President : Pandit Thakur Das Bhargava also has given notice of the same amendment.

Pandit Thakur Das Bhargava (East Punjab: General): I am not moving, Sir.

Shri M. Ananthasayanam Ayyangar : Sir, this Bill consists of two portions, one of the provisions relating to Coorg. Under Section 97 of the Government of India Act the existing regulations relating to the Legislative Council, collection of revenues and making of expenditure etc. in relation to Coorg will continue to be in force until laws and regulations are modified by similar rules made by the Constituent Assembly which has been vested with powers under Section 8 of the Independence Act. The amendment that is contemplated is that for 'the Constituent Assembly' the words 'Order of the Governor-General' have to be substituted. My own feeling is that however high a dignitary the Governor-General might be, he represents the Executive and it is not right to vest these powers in the Executive and take them away from the Constituent Assembly. It is said that the Constituent Assembly always retains its power. It may be so but it will have to be done in a circuitous manner when once the powers relating to the Constituent Assembly under Section 97 are taken away from that Section by virtue of this amendment. That is my first objection. But we are passing the Constitution in a couple of months and for the interval of three months we need not object to vesting the Governor-General with this power. If it is a matter of expediency and if it is considered necessary to imme-

diately rectify certain defects like removing the anomaly of having Europeans in the Coorg Legislative Council, an Order-in-council by the Governor-General may be more expeditious than the elaborate procedure of amendment of the Government of India Act. From that point of view no doubt this amendment may be accepted; but it is opposed to the general principle that the executive ought not to have control over or interfere with the Legislature and it must only be the supreme sovereign legislature that must be clothed with the power to interfere with the composition of the Legislature.

The other portion of the amendment relates to giving power to transfer items from the Concurrent List to the Federal List. Today under the Federal List, item No. 1, to detention for purposes of defence, external affairs, or matters relating to acceding States, is exclusively in the Federal List. In the case of persons detained for security purposes, so far as the Provinces are concerned, the power to detain the person is vested exclusively in the Province. The purpose of this Bill is to bring the provisions relating to detention of persons for defence and external affairs purposes also into line with persons detained by Provincial Government for purposes of security. But I have my own doubts as to the propriety or the advisability of this amendment. I say this for the following reasons. There are no special jails maintained or run by the Centre. Whoever is detained whether by the Centre or by a Province, that person has to be detained under orders of the Provincial Government, in a provincial jail. In the case of an emergency, such as an outbreak of cholera or plague in a particular jail, it would not be easy for the Provincial Government to correspond with the Centre, ask for instructions and await orders as to whether a particular prisoner ought to be transferred from one jail in the same unit or province to another jail in that province. This difficulty may arise. So it was considered proper in the Government of India Act, 1935, as also in the Government of India Act, as adapted and continuing in force, and in the Draft Constitution placed before the House which we are considering now, to have provisions for making persons who have been detained by the order of the Dominion Government not an exclusively Federal concern, but a concurrent subject. I do not see the wisdom of transferring the right or transferring this entry from the Concurrent List to the Federal List, and clothe the Federal Government exclusively with this jurisdiction. However, I am not pressing the point. We may consider the matter again when considering the Constitution and when we come to this entry. This Bill is only a temporary measure and I accept it as it has been laid before the House, though I doubt whether this amendment which is sought to be effected by this Bill is at all proper or necessary.

Pandit Thakur Das Bhargava : Mr. President, Sir, though this Bill appears to be harmless and innocuous, yet in my humble opinion, it is not a Bill which should be passed in this House. The first point that emerges for consideration is that as given in the statement of Objects and Reasons, the sole object of clause 2 is that the European representation in Coorg should be taken away. But it appears from clause 3, that this purpose is not achieved by a direct method. I would also rather like that this Bill had been directed to this purpose only. But I feel that this Bill contains more than what is needed for the hour, and the canon of legislation is that you must always bring a Bill to meet the particular situation and it should not be too wide. This Bill, Sir, is too wide.

The second objection that I have to this Bill is that it seeks to substitute the powers of the Governor-General for the powers of the Constituent Assembly. If the Legislature, in its wisdom, has given these powers to the Constituent Assembly, it does not stand to reason that the executive should be armed exclusively with these powers.

[Pandit Thakur Das Bhargava]

About clause 4 also I have my doubts. At present the words in List I are-—

"preventive detention for reasons of State connected with defence, external affairs, or relations with the acceding States."

In List II, the clause reads—

"preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."

In List III, Concurrent List, the words are—

"Removal of prisoners and accused persons from one unit to another unit."

But in clause 34, List III we find the words—

"Persons subjected to preventive detention under the authority of the Union."

If this Bill had been confined to the malady which is sought to be cured, as given in the Statement of Objects and Reasons, no person could take any sort of objection to it. In that statement, we find that because there are difficulties in the transfer of detenus, therefore this Bill is sought to be brought before this House, whereas as a matter of fact the real purpose of this Bill is not expressed in the Statement of Objects and Reasons. The real purpose seems to be that the powers of the Provincial Governments may be taken away in regard to persons who are undergoing preventive detention for reasons of State, connected with defence, external affairs or relations with acceding States. When a Bill of this nature is brought in, it would have been better if the real purpose was expressed expressly. It is different from the one given in the Statement of Objects and Reasons. There seems to be some distrust of Provincial Governments. Their powers are sought to be taken away. I for one would rather like that the present powers which the Dominion Government enjoys and the powers of the Provincial Governments were both enlarged. In my view of things, the Provincial Government also should have powers in regard to persons who are undergoing preventive detention for reasons of State defence, external affairs, etc. and the Dominion Government should be given powers in regard to persons who are undergoing preventive detention in respect of the maintenance of public order, because the Dominion Government has got no jails of its own. All its detenus live in the jails belonging to provincial governments, and if there is distrust of provincial governments when prisoners are sent by the Dominion Government to their jails, they can certainly do whatever they like.

My objection to this is that there should not be any discrimination between detenus of the Central Government and the detenus of the Provincial Governments. I remember in 1942, when certain detenus were sent from Delhi to Lahore, the rules for their interviews and for other matters were quite different. The Delhi detenus were treated in a different manner from the detenus of the Punjab Government. I do not like this discrimination, and I want that the same rules should govern all the detenus, whatever the reasons for their detention may be. After all, the person detained is quite innocent in the eye of law, whatever the reason be, unless brought in for trial in a court of law. Therefore, the same treatment should be accorded to the detenus, whether they belong to the Provincial Governments or to the Dominion Government. If we do not have this provision there is likelihood of discrimination between the detenus of the Dominion Government and the detenus of the Provincial Governments.

Moreover I do not understand the significance of paragraph (b).

It runs :

"Removal from one unit to another unit of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the maintenance of public order."

According to List No. 1, paragraph 1, there is no power in the Dominion Government with regard to people detained for reasons connected with the maintenance of law and order. So I fail to see how this power can be given to the Dominion Government in regard to their removal when originally it has no right to keep them in custody. It is thus logically necessary that you must arm the Dominion Government with powers relating to the persons of such detenus. Moreover, in the centrally administered areas or in a given set of circumstances it may happen that the Central Government may require these powers. I know that it is only a temporary measure for two months and so I think we should not take any time of the House by moving amendments. At the same time I want that in making the constitution we should guard against these discrepancies coming in. If the principle of the Bill is going to be repeated in the new constitution I for one will be bound to oppose it. I beg the House to keep these principles in view in deciding the matter.

The Honourable Shri N.V. Gadgil : Sir, this is a very simple thing and really does not justify so much discussion. Two things are contemplated : one is to remove certain anomalies in the administration of the Act, and for that the procedure laid down in section 97 is rather complicated and a simpler procedure is therefore suggested. The other is the difficulty of removing persons from one province to another who are prisoners of the Central Government. This difficulty is sought to be removed by making suitable provisions. No big principle is involved, and if any principle is at all involved it is only for a very short period.

Mr. President : The question is:

"That the Bill further to amend the Government of India Act, 1935 be taken into consideration by the Assembly at once."

The motion was adopted.

Clauses 1 to 4 were added to the Bill.

The Title and Preamble were aded to the Bill.

The Honourable Shri N.V. Gadgil : Sir, I move :

"That the Bill further to amend the Government of India Act, 1935 as settled by the Assembly be passed."

Mr. President : The question is:

"That the Bill further to amend the Government of India Act, 1935 as settled by the Assembly be passed."

The motion was adopted.

ADDITIONS TO CONSTITUENT ASSEMBLY RULES 38-A (3) AND 61-A

Shrimati G. Durgabai (Madras: General): Sir, I beg to move:

"(i) That the following amendment to the Constituent Assembly Rules be taken into consideration :—

After sub-rule (2) of rule 38-A, the following sub-rule be added :

'(3) In this rule, the reference to the Government of India Act, 1935, includes references to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.'

(ii) that the provision mentioned in the Constituent Assembly Notification No. CA/76/com/RR/48, dated the 2nd August, 1948 be made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :—

In Chapter X of the said rules, after rule 61 the following rule be added:—

'*Execution of orders as to costs.*—61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced

[Shrimati G. Durgabai]

before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit'."

These motions, Sir, are non-controversial and no elaborate explanation is needed. But I feel it is my duty to offer a few words of explanation as to the need for these amendments. With regard to the first motion the object of the proposed amendment is that sub-rule (1) of rule 38-A of the Constituent Assembly rules, as it stands at present enables the Constituent Assembly to make amendments to the Indian Independence Act or any order, rule, regulation or other instruments made thereunder, or to the government of India Act, 1935, as adapted. There are, however, certain other parliamentary enactments supplementing or amending the Government of India Act *e.g.,* the India (Central Government and Legislature) Act, 1946; and it is doubtful if the reference to the Government of India Act, 1935, in that sub-rule will include references to those enactments. Our rules thus may be held as making no provision at all with regard to Bills which seek to make amendments to such enactments. The new sub-rule (3) to rule 38-A now proposed seeks to fill in this lacuna.

This is only a formal provision and therefore requires no further detailed explanation.

With regard to the second motion the necessity for the amendment arose in this way that the rules of the Constituent Assembly did not make any provision for a procedure for recovery of costs in cases of election where such costs are not payable out of the security deposit. Hitherto Section 12 of the Indian Elections and Inquiries Act of 1920 which provided for the execution of order as to costs made by the Central or Provincial Government on the Report of Commissioners appointed to hold an inquiry in respect of an election to a chamber of any legislature has been applied to cases of this kind. But there was one difficulty that the said Act was extended only to provinces and not to any Indian State. So the procedure in Section 12 did not apply to cases where the respondent was a subject of an Indian State. Therefore the Honourable the President considered it necessary to make a provision of this kind and now this is sought to be incorporated in the Constituent Assembly Rules as already indicated in the notification issued.

The effects of this amendment are two: that the Constituent Assembly being a sovereign body, such a provision will apply throughout the territories of India. Also they will have the effect of a law passed by the legislature. It would also be binding on all courts situate whether in a province or in an Indian State in the same way. Sir, this is the only object and these are the effects of the amendments proposed by me in this motion. Sir, I move and I commend my motion for the acceptance of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I feel some difficulty about the insertion of the proposed new rule 61-A. I do not object to the principle of the rule: I rather concede that some such provision is necessary. My difficulty is as to the place where this is to be inserted and as to the exact form it should take. This rule is practically an amendment to the Code of Civil Procedure. The President may order costs; and this rule proposes to enact a machinery by which the costs may be realised. It says that the election costs must be realised from the amount already deposited and in

so far as the cost is not realised from the amount deposited, that amount may be realised by presenting the order before an appropriate Court as if it is a decree for money. I submit that this really is an attempt to amend the Code of Civil Procedure. It provides for execution of an order of the President which is not already provided for in that Code and this rule will practically have the effect of amending that Code. I have, however, my doubts as to the efficacy of a rule of this nature.

The question that I would ask the House to consider is whether an amendment of the Rules of Procedure of this House will have the effect of really vesting the Courts with the jurisdiction of executing orders for costs passed by the President. The Code of Civil Procedure can only be amended by an amending Act. We have already decided in this House that this Constituent Assembly will sit in two different capacities—one as a constitution-making body which it is now, and the other as a legislative body in another chamber. We have decided also that amendments to the Government of India Act and the Indian Independence Act can be made in this House, and we have just now passed a Bill to amend the Government of India Act, 1935, in this House. With regard to the proposed amendment of the Code of Civil Procedure the proper procedure would be a real downright amendment of the Code by means of a Bill, and if that course is considered advisable, the proper venue would be this House in its legislative capacity where a proper Bill is to be introduced. If it is considered so urgent that this provision should find a place on the Statue Book at once, the Governor-General may be approached for an Ordinance and in due course this Ordinance may be replaced by a permanent statutory enactment effecting a proper amendment of the Code of Civil Procedure. The difficulty as I submitted, would be whether an amendment of our Procedural Rule would really vest the Courts with the necessary jurisdiction. I await a clarification of the situation by competent authorities.

There are again certain drafting errors of a very serious nature which would make the rule, even if it is binding, ineffective in certain cases. It is provided that where there is no High Court where a person against whom cost is granted resides, the highest Court of original jurisdiction for the area would execute the order for costs, that is the Court of the District Judge will execute the order for costs. With regard to those who live within the jurisdiction of High Courts, the Small Cause Courts having jurisdiction there will execute the order. There is a little confusion of thought here. There are two kinds of High Courts— High Courts situated in the Presidency Towns and those situated in other places. This fundamental distinction has been lost sight of in drafting this new sub-rule. With regard to the Presidency Towns—Bombay, Madras and Calcutta—there are Presidency Small Cause Courts and there will be no difficulty with regard to persons residing within the original jurisdiction of those High Courts and the orders for costs would be executed by the Small Cause Courts situated there. But there are other High Courts which are not situated in presidency towns like Allahabad in the U.P., Nagpur in the Central Provinces, Patna in Bihar and Simla in East Punjab and Shillong in Assam where the Presidency Small Causes Act does not apply and there are no Presidency Small Cause Courts. There are the usual Civil Courts of District Judges but no Small Cause Courts as there are within the jurisdiction of the original side of the High Court situated in the Presidency towns. In section 5 of the Presidency Small Cause Courts Act (Act XV of 1882) it is provided that there shall be, in each of the towns of Calcutta, Madras and Bombay, a Court which would be Small Cause Court. With regard to the other towns, where there are High Courts, there will be no Small Cause Courts. As it is, with regard to the High Courts which are not situated in Presidency towns, there will be no Small Cause Courts which will execute these orders.

[Mr. Naziruddin Ahmad]

In these High Courts which are not situated in Presidency towns, there are no such Small Cause Courts. With regard to Presidency towns, the Small Cause Courts have also some limit to their pecuniary jurisdiction. It may be that the order for costs may be a sum exceeding the pecuniary jurisdiction of these Courts in the Presidency towns. These are the difficulties which strike me and it is for these reasons that I have submitted a motion for deletion which has been properly rejected on the ground that it contravenes the rules. But I desire to point out these difficulties and ask for clarification, and if necessary abandonment of the rule for the time being and approaching. His Excellency the Governor-General to promulgate an Ordinance, and thereafter to pass an Act in the appropriate House. There are these procedural difficulties which have not apparently been thought of in drafting these rules. These are matters which require consideration at the hands of competent lawyers in the House and a suitable solution found. That is all I wish to submit.

Shrimati G. Durgabai : Sir, the difficulty pointed out by Mr. Naziruddin Ahmad is not any serious difficulty. I may explain that our legislature cannot make any provision which would be applicable to all Indian States. Since the object of my amendment is to see that the order is binding on all courts and also applicable to Indian States, this object could not be achieved if this amendment is not made. The legislature is not really competent to make any provision which could be applied to all Indian States. This is the only sovereign body that could make an amendment to that rule. Also, there is already a provision in the rules of the Constituent Assembly of India, rule 52, which says that no election could be called in question by any court. This has barred the jurisdiction of the courts. Therefore it is perfectly within the competence of this House to make this amendment. I do not think that the difficulty anticipated by Mr. Naziruddin Ahmad would in any way create any obstacle. I hope he will be satisfied with the explanation I have now given.

Mr. President : I shall now put two suggested amendments separately to vote.

The question is:

"(i) After sub-rule (2) of rule 38-A, the following sub-rule be added :—

'(3) In this rule, the reference to the Government of India Act, 1935, includes reference to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.' "

The motion was adopted.

Mr. President : The question is:

"(ii) The provision mentioned in the Constituent Assembly Notification No. CA/76/Com/RR/48, dated the 2nd August, 1948, be made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :—

In Chapter X of the said rules, after rule 61 the following be added :—

'*Execution of orders as to costs*—61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.' "

The motion was adopted.

DRAFT CONSTITUTION—(*contd.*)

Mr. President : We shall now take up the consideration of the Draft Constitution of India.

Seth Govind Das (C.P. & Berar : General) : *[Mr. President, before you proceed with the consideration of the articles of the Constitution, I wish to place before you a matter for your consideration. I do so because during the last session of the Constituent Assembly, you had made the following announcement in this House on the 2nd May, 1947 :—

"I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original constitution. In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, so that our future judges may have to depend upon our own language and not on foreign language."

Since then, I have recently toured all the non-Hindi speaking provinces I visited Bombay, Gujarat, Maharashtra, Assam, Bengal, Orissa, Kerala, Andhra, Tamil Nad, Karnatak, Mysore, Travancore, and Hyderabad. Every where I found that the people were of the opinion that our original constitution should be in our national language. We already known the views of the Hindi speaking people. I am also aware that the Committee appointed by you in this connection recently has translated into Hindi all the articles adopted by us here.

I request you that in order to avoid any difficulty in future, it would be proper that along with draft articles in English, the articles in our national language should also be taken up, so that the Constitution should also be ready in the national language, and that it may be—as stated by you—the original and main document. We should decide this question just now, otherwise there will be a lot of difficulty later on. I therefore request that some decision should be taken on this question.]

Mr. President : It is true that at one stage of the proceedings, I made that statement to which reference has been made. In pursuance of that I appointed Committees to prepare translations of the Draft which was made originally in the English language. Three translations were prepared by certain gentlemen, one in Hindi, another in what is called Hindustani and the third in what is called Urdu. All these three translations were printed and I believe copies have been circulated to the Members. I understood, however, that none of these drafts was acceptable to a large body of Members, and the Steering Committee passed a resolution asking me to appoint a Committee of experts to prepare another translation which would be as accurate as possible but at the same time also intelligible to the public at large. I have appointed that Committee and that Committee is doing the work at the present moment. I am not sure if that Committee has been able to complete in final form the translation even of those article which have been already accepted and adopted by this House. The other day I attended one of the

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*[ ]Translation of Hindustani speech.

[Mr. President]

meetings of that Committee and I found that they were still struggling with one of the articles which come rather early. Some progress must have been made since than but I am not sure how far they have gone upto now. I still stick to my opinion—I do not know if that is shared by all the Members of this House—but I still stick to my opinion that it would be in keeping with our nation dignity and honour if we can pass our Constitution in original form in our own language, (*Cheers*) but I do find that this difficulty has faced us all these months, and I can only hope that the Committee which has been appointed will be able to give us a satisfactory translation in time for being placed before this House and accepted by it. I am not in a position to say that today, but as soon as I can get that translation, I shall place the matter before the House.

Shri M. Thirumala Rao (Madras: General): On a point of clarification, Sir, in the event of a satisfactory translation in Hindi being available, is it proposed to give up the adoption of this constitution in English?

Mr. President : I do not think so, because the original has been prepared in the English language and it has to be adopted, but we can also adopt it in our own language if the translation is satisfactorily prepared.

The Honourable Shri K. Santhanam (Madras: General): I take it that even then it will be duly debated because many of us may have amendments to suggest to the Hindi translation.

Mr. President : Of course, it will be open to any member of the House to move any amendments to the translation, so far as the language is concerned, but not with regard to the substance because the substance will have been accepted in the English language.

We shall now proceed to the consideration of the Draft Constitution. The House dealt with articles upto 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of this House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment. *i.e.,* 67-A. It will be taken up first.

New Article 67-A

The Honourable Dr. B.R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

"That after article 67, the following new article be inserted :—

'67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.

(2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter.' "

Sir, the necessity for this article being inserted in the Constitution is this: The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter, Sir, B.N. Rau, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, *viz.* to endow the President with the authority to nominate fifteen persons the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this Draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, *viz.,* that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution Committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular Bill in relation to which they are nominated by the President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

Pandit Thakur Das Bhargava : Sir, with your permission, I wish to bring to your notice that so far as this new provision is concerned, no notice of it was given before and we did not know if such a provision was going to be brought before the House. In the printed book which has been circulated to us, this does not appear there. This is the first time that we are informed of its existence. I beg of you under these circumstances to kindly hold this section over, so that we may be able to table proper amendments to this article. So far as the provision of article 67-A go, they appear, on a cursory examination, to be extremely wide. We have just heard that the powers of these persons who will be nominated will be co-terminous with the proceedings of a particular Bill, but there is nothing in this section to indicate that. Similarly I understand that the words " In relation to the said Bill" are too wide. I can understand if the House agrees to the appointment of experts and then their powers should be limited to the time when the Bill is on the anvil of the Legislature and only in so far as the Bill is being considered. These words "in relation go to the said Bill" might mean that whenever a provision of this kind is taken up any of those matters in regard to.....

Pandit Hirday Nath Kunzru (United Provinces: General): The honourable Member is not audible.

Mr. President : Does the honourable Member want that the discussion of this article be held over?

Pandit Thakur Das Bhargava : Exactly.

Mr. President : Is that the wish of the House that it should be held over?

Shri T.T. Krishnamachari (Madras: General): We may go on with the discussion now and if the Drafting Committee want to reconsider it, we can do so later on.

Mr. President : The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B.R. Ambedkar : I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President : We shall postpone it today and we shall take it up later.

Article 68

Mr. President : The motion is:

"That article 68 form part of the Constitution."

We shall now take up the amendments to this article.

(Amendment Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

The Honourable Dr. B. R. Ambedkar : The Drafting Committee may be very glad to follow that procedure.

Mr. President : It will save a lot of time and I will leave out all these verbal amendments or amendments which are of a drafting nature, and which do not touch the substance of the article.

Amendment No. 1456 stands in the name of Mr. Naziruddin Ahmad. It is also of a drafting nature.

Mr. Naziruddin Ahmad : No, Sir. It is not of a drafting nature.

Mr. President : The amendment is for substituting the word "third" for the word "second".

Mr. Naziruddin Ahmad : Sir, I do not move it.

(Amendment Nos. 1457, 1458, 1460 and 1461 were not moved.)

Mr. President : Amendment No. 1459 is more or less of a drafting nature. Amendment No. 1462 is verbal. Amendment No. 1463 is of a drafting nature.

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

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

(The amendment to Amendment No. 1460 was not moved.)

Mr. President : Amendment No. 1465: that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

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

"That in the proviso to clause (2) of article 68, the full-stop at the end of the sentence be substituted by a semi-colon and the following be added :—

'provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.' "

In suggesting this amendment, I want to emphasise two principles: one that any Parliament elected after or immediately after a great national emergency is likely to be influenced very much by the very fact of that emergency. If, therefore it is elected for the full period and not for the balance of the period that would then be remaining, it is likely that such a Parliament may be called upon to deal with issues that may never have figured, or figured in a minor key at the general election which elected that Parliament. I think, if Parliament is to represent and reflect the popular sentiments of the issues that come before it from time to time, its length should be not so long that it might cease to be in full harmony with popular sentiment that may be changing under changing circumstances from time to time. It is therefore, of the utmost importance that the life of the Parliament should not be too long.

By a previous amendment, I had tried to make the life four years. That however being merely a matter of relatively small importance, I did not choose to move that amendment. But, here, I should like to emphasise that the fact that Parliament has to be elected after the Proclamation has

[Prof. K. T. Shah]

ceased, but the effect of the emergency has not passed away, is of importance, and that we should elect that Parliament only for the balance of the period for which its predecessor had been elected, and a balance still remains unexpired.

My reason, as I have already stated is that a Parliament elected under the stress of a grave emergency, influenced by the effect of that emergency sufficient to cause a Proclamation or even a suspension of the Constitution, would not be reflecting the normal sentiment of the people. It is, therefore, best that, in order to secure continued representation of the people properly and the popular opinion fully Parliament should be elected only for the balance of the period.

If that principle is accepted, then, I think the next clause follows as a mere corollary. That is to say, in every case, after a Proclamation of a state of emergency, any Parliament elected should be elected only for the balance of the period and not for the full period that would normally be prescribed under the Constitution.

It would also serve, I think, though I do not attach much magic to that, the purpose of maintaining a certain symmetry in our constitutional development, a period of five years being selected as the normal life of a popular legislature, and as such that quinquennial period should go on repeating from time to time in regular series, any interruption caused by the occurrence of an emergency such as has been provided for in this section being guarded against by permitting the new Parliament to be elected only for the balance of the period remaining unexpired at the time of the emergency.

I think this is a very simple matter, and if accepted, it would make Parliament always more fully in accord with the popular sentiment than it would be if you allow it to be elected for a full period even though elected under the stress of a great national emergency which has passed, but whose effects are not over.

I commend the motion to the House.

Mr. President : There is one difficulty. You have not moved the other amendment which stood in your name fixing the period to four years.

Prof. K.T. Shah : I am quite willing to make that five.

Mr. President : Could you do that at this stage!

Prof. K.T. Shah : I am in your hands. I deliberately did not move it.

Mr. President : We shall consider that later. Mr. Mihir Lal Chattopadhyaya.

Mr. Mihir Lal Chattopadhyaya (West Bengal: General): I am not moving my amendment.

Mr. President : Two amendments have been moved, one by Dr. Ambedkar and the other by Prof. K. T. Shah. Both of them and the article are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, I rise to oppose the amendment moved by the Honourable Dr. Ambedkar. My reason for opposing it is this. His amendment is that after the word 'President' the words 'with the consent of the Parliament' be inserted. Article 68 says:

"That the period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year, etc."

Supposing the Parliament is not in session, then what are we to do in that case? After all the President represents the whole of India. He must have some very wide powers and this power should, in my opinion, be left in the hands of the President specially when the Parliament may not be in session and it is a matter of emergency. Therefore I oppose the amendment and I want the proviso to remain as it is in the Draft Constitution.

The next is the amendment of Professor Shah. I have two objections to it. It may be a verbal objection. After, all, this is an amendment and if it is passed, it will go down in the Statute Book. So every word must be correct. Here he uses the words 'People's House.' There is no such thing as 'People's House' in the Draft Constitution. It is the House of the People. Another thing is as you yourself have pointed out to my Friend Mr. K.T. Shah that the period he mentions is 4 years while we have already accepted that the period should be five years. With these two objections to this amendment, I trust the House will agree with me and not accept either of these two amendments and let the words as mentioned in the Draft Constitution remain.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, with regard to my Friend Professor Shah's amendment, he desires that in the event of an emergency when the House is dissolved, the term of the Parliament should be not five years but the remaining period from which the original House was dissolved. To me it seems peculiar. If the House is to be dissolved, it will be dissolved, under extraordinary conditions and the House is not going to be dissolved on a mere petty issue. When there is a deadlock in the House, when the Ministry is not stable or the House is not functioning alright, then somebody would step in to dissolve so that a new House could be formed, and for that purpose surely the electorate has to be told that the members who have been returned have not functioned well and therefore there had been a deadlock and the proceedings of the House could not be carried out and therefore the full period of five years should be given to that new House. Professor Shah has not quoted any instance whereby he could have told the House that in the event of dissolution there have been instances of this nature that he desired that had been introduced. I know of an instance in India when an Assembly was dissolved after the election within one year when there was a deadlock and the electorates returned absolutely 50 percent new members, and the House functioned for the full period. It should be so because if in the past members had not behaved well, it was no reason why the new members should be deprived of the full period. I therefore contend that the full period should be allowed to the new House as is prevalent everywhere in the world and the right of the new members should not be deprived because of the mistake or misbehaviour of the previous members. I therefore oppose this amendment.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am thankful to Dr. Ambedkar for the amendment which he has moved. But I personally felt that the proviso itself should go. It will mean that under some emergencies the House which is elected for five years may last even up to ten years. Suppose a war intervenes and an emergency is declared, and there are no elections. The war may be prolonged one—such a thing occurred in England only recently and the Parliament then continued for nine years. America even in the midst of war had her elections and after four years they had a new House of representatives as well as a New Senate at the very height of war. I feel that the people must have an opportunity of electing their representatives every five years and no emergency should be permitted to take away this right of the people. If in certain circumstances the life of the Parliament has to be extended, some limit should be placed on the period upto which its life may be increased. This limit should not exceed one year.

Mr. President : The honourable Member has given no notice of any amendment for omitting the proviso.

Prof. Shibban Lal Saksena : I am speaking on the motion.

Mr. President : You are opposing the whole proviso. That is your speech. Dr. Ambedkar could not move an amendment to that effect even at this stage. I do not think that question arises.

Prof. Shibban Lal Saksena : This is a lacuna in the Constitution and it will deprive the people of the right to elect their representatives after every five years.

Shri T.T. Krishnamachari : Mr. President, Sir, so far as the amendment No. 1464 is concerned, I think the House will pass it without demur, but in regard to Professor Shah's amendment I must say that I perfectly sympathise with him in that he has taken considerable pains to visualise a contingency that might occur; but there are certain aspects of the matter which defeat the very purpose that he has in mind. Actually his amendment has not been very carefully worded to suit contingencies where the period of emergency might be say for four and a half years. If the period of emergency is for four and a half years, is the new House to be elected only for six months and if the emergency continues for five years, for how long is the new House to be elected? These are the absurdities that arise if the amendment is accepted, because when we meticulously look for contingencies which will arise in the future we are apt to overlook certain other contingencies which will make our ideas perhaps infructuous as we are not able to provide for all possible things that might arise. So while I perfectly sympathise with Professor Shah's idea that elections like a Khaki election should be avoided if possible and the House that has been elected on that basis should not be perpetuated, I think human ingenuity is powerless against such things happening. So I would appeal to him not to press his amendment because it contains in itself germs which defeat the purpose for which he has tabled his amendment. So I think, barring Dr. Ambedkar's amendment which I hope the House will accept, the article can go in as it is.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir I do not think that anything has been said in the course of the debate on my amendment No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties which arise from it have already been pointed out by my Friend Mr. T.T. Krishnamachari. Election after all, is not a simple matter. It involves a tremendous amount of cost, and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I, quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

Mr. President : I will now put the amendment No. 1464.

The question is:

"That in the proviso to clause (2) of article 68, for the words `by the President' the words `by Parliament by law' be substituted."

The amendment was adopted.

Mr. President : Then there is the further proviso suggested by Prof. Shah in his amendment No. 1466.

The question is:

"That in the proviso to clause (2) of article 68, the full-stop at the end be substituted by a semi-colon and the following be added :—

'Provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.' "

The amendment was negatived.

Mr. President : Then I put the whole article as amendment by Dr. Ambedkar's amendment.

The question is :

"That article 68, as amended, stand part of the Constitution."

The motion was adopted.

Article 68 as amended, was added to the Constitution.

Article 68-A

Mr. President : Now I come to the new article sought to be put in article 68-A Dr. Ambedkar.

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

"That the following new article be inserted after article 68 :—

'68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

Mr. President : There are certain amendments to this: No. 80 in the list of amendments to amendments, by Mr. Naziruddin Ahmad. This also seems to be a drafting amendment, and I would leave it to the Drafting Committee to settle it, in consultation with the mover.

Then No. 81 also looks like a drafting amendment. It seeks to add the words "and voter" at the end. I leave it also because it is more or less of a drafting nature.

(Amendments No. 82, No. 83 and No. 84 were not moved.)

Then we come to the other list which has been circulated today. Amendment No. 4 of that list, by Sardar Hukam Singh and Mr. Lakshminarayan Sahu.

(The amendment was not moved.)

(Amendment Nos. 5 and 6 were also not moved.)

I have got notice today of another amendment by Shrimati Durgabai.

Shrimati G. Durgabai : Sir, I beg to move :

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word `thirty-five' the word 'thirty' be substituted.

The object of this is to lower the age to 30 from 35 for a seat in the Council of States. It was held for some time that greater age confers greater wisdom on men and women, but in the new conditions we find our boys and girls more precocious and more alive to their sense of responsibilities. Wisdom does not depend on age. It was also held that the upper House consisted of elders who should be of a higher age as it was a revising chamber which would act as a check on hasty legislation. But that is an old story and the old order has been replaced by the new. As I said our boys and girls are now more precocious and the educational curriculum is now so broad-based that it will educate them very well in respect of their civic rights and duties. I therefore think we should give a chance to these younger people to be trained in the affairs of State. I said wisdom does not depend on age. Our present Prime Minister became President of the Congress before he was 40 and Pitt was 24 when he became Prime Minister of England. Therefore we have no reason to fear that because a man is only 30 he will not be able to perform his functions in relation to the State. I hope the House will accept this amendment. Sir, I move.

Mr. President : The amendment and the original proposition are both open to discussion now.

Shri H.V. Kamath (C.P. & Berar: General): Sir, I was happy to hear my honourable friend Shrimati Durgabai say that wisdom does not depend on age; I hope she will agree that it is irrespective of sex as well. (Several honourable Members: "Question".) Those friends who question this will answer their own question by coming here and convincing this House. This constitution does not discriminate against sex and I hope that with our traditions of philosopher women like Gargi, Maitreyi and Ubhayabharati, wisdom will not discriminate against sex. Our greatest epic, the Mahabharata—has recognised this in a well-known shloka which runs as follow :—

न तेन वृद्धो भवति मेनास्य पलितं शिरः
यो वै युवाप्यधीयानस्तं देवाः स्थिविरं विःदु

Na tena Vriddho bhavati Yenasya palitam shirah
Yo Vai yuvapyadhiyanastam devah sthaviram vidhu.

It means

A person is not old or wise, merely because his hair has turned white.

I have therefore no hesitation in supporting Shrimati Durgabai's amendment lowering the age limit for membership of the Council of States. I would have gone further and made the age limit the same for both Houses and reduced it to 21. It was said that Pitt became Prime Minister of England at an early age. I think he entered Parliament at 21 or a little over 21, and became Prime Minister at 24. These are of course exceptions and we cannot legislate on the basis of exceptions. But on the whole I think it is wise to lower it from 35 to 30. There may, however be one difficulty about this. I shall invite your attention to article 152, under which, in the case of the legislature of a State, the age is 35 for membership of the upper House. I hope that when we come to that article this amendment will be borne in mind, and what we have done for the upper House in the Centre will apply to the upper Houses of the provinces or States, and the age limit there also will be lowered to 30 years. When a person below 35 can fill a seat in the upper House in the Centre there is no reason why he cannot do it in the States. Another difficulty, which perhaps is not of much moment, is article 55(3) which we have passed already and cannot now amend, wherein it is laid down that in order to be Vice-President a person must have completed 35 years. Now the Council of States will be presided over by a person who is a member of the Council. In Shrimati Durgabai's amendment the age limit is proposed to be lowered from 35 to 30. It means that we are reduced to this position, that every member of the Council of State will not be qualified to contest or stand for the election of the Vice-President of the Council of State, because if a person is between 30 and 35 he will not be eligible for election. Merely because he is below 35 he will not be able to fill the office of Vice-President. This is an anomaly which is rather distasteful to me. The person is elected to the Council of State, and the Council of State can elect a Vice-President from among themselves but this age bar comes in the way, which is to my mind unfortunate. If this article is adopted I see no way of getting over this difficulty unless the article already passed is amended suitably. A person who is a member of the House must be *ipso facto* eligible for any election that may be held by the House. But under the amendment of Shrimati Durgabai this is made an impossibility simply because a man happens to be between 30 and 35. If a man is fit to occupy a seat in the upper House. I see no reason why he should not be competent to fill the office of the Vice-President of the Council of State, but should be debarred merely because of age. I hope the wise men of the Drafting Committee will into this anomaly and try to rectify it as far as their wisdom permits them to do so.

Mr. President : I do not think there is any inconsistency or contradiction between the two. This question may be considered by the Drafting Committee.

Prof. Shibban Lal Saksena : Sir, I frankly confess that I am not happy over the amendment of Dr. Ambedkar. I do not think it improves the constitution. As has been pointed out there have been cases in the world where younger men than 25 years of age have occupied the highest positions. The case of the younger Pitt was just cited: Shankaracharya became a world teacher when he was 22 and died when he was only 32. Alexander had become a world conqueror when less than 25 years of age and died when he was 32. Our country of 300 millions may produce precocious young men fit to occupy the highest positions at an age younger than 25 and they should not be deprived of the opportunity.

Part (2) of this amendment unnecessarily restricts young voters from becoming candidates. This clause will disqualify persons for election who state their age as being less than 35. This question of age should have no connection with the qualification of a man to become a candidate for election.

The third part is even more dangerous. A Parliament of today may impose such restrictions as might enable the party in power to defeat its opponents.

[Prof. Shibban Lal Saksena]

The party in power by their majority may pass laws and prescribe qualifications for candidates which might help the party against their opponents. This power which is being given to the parliament to prescribe qualifications for candidates by a simple majority is dangerous. I therefore think that the whole amendment is not very happy and I would urge Dr. Ambedkar to see whether he cannot withdraw it.

Mr. Tajamul Husain : Sir, I rise to support the amendment to the amendment moved by my honourable Friend Shrimati Durgabai. The amendment which Dr. Ambedkar has moved is that the age of a person who wants to be a candidate for a seat in the Council of State must be at least 35. The amendment to that amendment is that the age should be 30. In fact I am of opinion that it should be less than 30. When a person has attained his majority he should be eligible. As there is no amendment to this effect I have no alternative but to support the amendment moved by Shrimati Durgabai.

Sir, I am reminded of a Persian couplet which says:

Bazurgi ba aql ast na ba sal. Kawangri ba dil ast na ba mal.

The first part means that seniority is not according to age but according to wisdom. I shall not translate the second part. If a person is a genius, why prevent him from entering the Council of State though he may be under 30? Mr. Kamath mentioned the example of the younger Pitt. There was the case of Shankaracharya who died at the age of 33 but before that he had attained the position of a world teacher. There were the instances of Rama, Krishna and Buddha, who attained enlightenment when very young. There are many other instances in history. Sir, I strongly support the amendment moved by Shrimati Durgabai.

As regards the amendment of Dr. Ambedkar I do not see eye to eye with it. There are three qualifications mentioned. I am of opinion that the qualification of a person to fill a seat in the Parliament is that he should be a voter on the list. The moment a man's name is on the voters' list you cannot prevent him from either standing for election or voting. The election Officer will be there and after the identification is completed nobody can prevent him from voting. If he is not 35 but 25 why prevent him from standing as a candidate? The ordinary principle of law is that if a person can vote he can also stand for election. This amendment will go against a well recognised principle as it will mean that a voter cannot stand for election. This should be withdrawn by Dr. Ambedkar. Once a man is a voter he should be eligible for election and therefore Sir, I oppose the amendment of Dr. Ambedkar with the request that he should make a suitable change in it.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, the amendment moved by my Friend Dr. Ambedkar is not an innocent one. It is a dangerous one and is opposed to democratic principles.

In the previous article, No. 67, clause (6), the qualification for a person to become a voter are mentioned. It is definitely stated there under what circumstances he can be a voter and under what circumstances he cannot be a voter. You have clearly stated that he must be a man of 21 years of age. Such a person not otherwise disqualified under this constitution or any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practices shall be entitled to be registered as a voter at such elections. So, Sir, in this clause you have definitely laid down the principles on which this Constitution or any Act of Parliament might disqualify a person from becoming a voter. But what do we find in this amendment now? In this amendment, clause (3) is an omnibus clause which gives power to the future Parliament to disqualify a person from becoming a

member of Parliament for any reason whatsoever. You have nor circumscribed the circumstances with regard to which a disqualification may be legislated for, as we have done in the case of a voter. So, a reactionary Parliament, a capitalist Parliament might legislate saying that in order that a person may be enabled to stand for election he must own 5,000 acres of land or pay one lakh of rupees as income-tax. You can imagine, Sir, how a reactionary Parliament in future might restrict the membership of Parliament to such persons as they consider fit in their own view. Sir, what we have provided for in this Parliament, that is adult suffrage, might be taken away later. What is given by one hand might be taken away by the other by prescribing impossible proprietary qualifications, for instance. Thus a citizen may be deprived of his right to stand for election in these circumstances.

Further it is a recognised principle that when you are making a Constitution you should leave the future legislature to lay down the qualifications of persons who want to stand for election. It is surprising that while unnecessary provisions have been introduced in the Constitution, the most important provision which qualifies or disqualifies a man from becoming a member of this Parliament is sought to be left to the future Parliament. That is against principle; as Dr. Ambedkar himself has said, you are now preparing a machinery for qualifying a person to be a citizen and who, under certain circumstances, becomes a voter and a member of Parliament or a Minister or President or Vice-President. While you prescribed qualifications for a voter, while you prescribed qualifications for a man to become a President or Vice-President and so on and so forth, there is no reason why you should, in the case of a person who should be made eligible to stand for election, leave the matter to a future Parliament. It is dangerous and it is opposed to principle. That is the most important and dangerous provision in the first part of this amendment. As for clause (b) I am one with those who consider that when once you have been declared as a voter you must be entitled to stand for election. The very fact that you are broad-basing representation to Parliament by giving suffrage to persons of a certain age with certain qualifications must enable every voter to stand for election. I know there are Constitutions which provide different qualifications for persons to become members of Parliament. That is true. It is true more in the case of the Council of States than in the case of the House of the People. Whatever that might be, I might even consent to raising the age-limit for a member who seeks election, but I am opposed to the future Parliament being given the right to legislate with regard to the qualifications or disqualifications for a man becoming a Member of Parliament. I humbly submit that Dr. Ambedkar will take into consideration this serious objection and withdraw his amendment and bring it forward if necessary with suitable amendments.

Shri T. T. Krishnamachari : Mr. President, Sir, I have only to say a few words, about the amendment of Shrimati Durgabai to the amendment moved by Dr. Ambedkar. Objection has been taken to this amendment by my honourable friend Shri Kamath on the ground that while the qualifying age for a Vice-President who is Chairman of the Council of State happens to be 35, there is no point in reducing the age of the members of that body. I am afraid my honourable Friend has found an inconsistency in this particular amendment without really examining why the age of the Vice-President has been fixed 35. I would ask him to look into article 47 which fixes the age of the President at 35. Naturally, since the Vice-President is expected to take the place of the President when their is a vacancy, article 55 has fixed the age of Vice-President also at 35. This has no relation at all to the age of the members of the Council of State. So there is no anomaly at all, I would point out, in fixing a definite age as qualifying age for membership of the Council of State which is lower than the age fixed for its Chairman. I hope

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the House will appreciate that there is no anomaly and that the age of the Vice-President has been fixed at 35 for altogether different reasons. It has nothing to do with the qualifying age of the members of the Council of State. So far as the other points raised against Dr. Ambedkar's amendment are concerned, I think Dr. Ambedkar will adequately answer them, though I feel that the objections are trifling and beside the mark, for the reason that it does not necessarily mean that the qualifications of a candidate should also be the qualifications of the voter. They have in the past even in our own legislature been different and it is so in very many other countries. So there is no very great sin in having one set of qualifications for candidates and another set of qualifications less rigid for the voters. Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amendment by Shrimati Durgabai's amendment.

The Honourable Dr. B.R. Ambedkar : I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President : Do you wish to reply?

The Honourable Dr. B.R.Ambedkar : I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further it is still open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President : I will now put the amendment to vote, and also the article if the amendment is accepted as amended. Before doing so, I desire to make an observation but not with a view to influencing the vote of the House. In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges are required to possess very high qualifications, for helping the Judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all, and legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is nonsensical and the wisdom of all the lawyers and all the Judges will required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it, would have to put up with it.

The question is:

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 68-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 68-A, as amended, was added to the Constitution.

Article 69

Mr. President : There are certain amendments. No. 1469 by Shri Brajeshwar Prasad.

(The amendment was not moved.)

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

"That in clause (1) of article 69 for words the 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

With this change, the amended article would read :—

"The Houses of Parliament shall be summoned to meet once at least in every year at the beginning thereof, and more than three months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session."

May I point out, Sir, before commending this motion to the House, that there is a later amendment of mine which is complementary to this, and, if read together, might save the time of the House, and also make the point I am going to make more intelligible. So, if you will permit me to move the later one now (No. 1474), it would be better.

Mr. President : Yes.

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

"That after clause (1) of article 69 the following proviso be inserted :—

'Provided that Parliament or either House, thereof, once summoned and in session, shall continue to remain so during the year; and each sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogations.' "

Sir, this clause seems to me to have been provided in conformity with the prevailing practice under which the legislature sits at two sessions during the year, the budget, session, and the legislative session usually held in the autumn. Now, to my mind, this practice has arisen out of the convenience of the then Government, and also because the functions of the Parliament in those days were very limited. The powers and authority, and therefore, the work coming to the share of the then Legislature was of an extremely limited nature, and therefore limited sittings were naturally deemed to be sufficient to cope with the work then coming before Parliament. With the increase in the work of Parliament, and with the greater responsibility following upon that work, with the increase also in the number of members, from about 150 to 500 at least under this Constitution when it comes into operation, it seems to me that the sittings cannot be and should not be interrupted in the manner in which they used to be interrupted by something like six months; and the business of the House should not be allowed to be broken up in the manner that was customary in the past.

It is the practice in England, also, to regard the Parliament's sessions as a continuous one for the whole Parliamentary year, not withstanding holidays for Christmas, Easter and other occasions. The British Parliament works for something like two hundred days in the year, as against less than 100 days' work by our Legislature. Our Parliament does, if I may say so without any disrespect, a very limited amount of work, at least as measured by the hours we put in. We work five days a week of $4^{3}/_{4}$ hours each or less than 24 hours per week, half a normal worker's week. Naturally, therefore, the work of the Parliament, whether in regard to the supervision of administration or in regard to acting as the financial watch-dog, or any matters of policy, let alone all the details of legislation, has to be very hurriedly and sketchily done. It cannot be done within the limited time, and the very short hours during which the Indian legislature had been accustomed to sit all this time.

As illustration of my arguments, may I mention, that is within the experience of most of us, for instance, that during question time, a majority of the questions put down for the day remain unanswered on the floor of the House. This is the one method for criticising, scrutinising supervising,

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controlling and checking the acts of the administration. But under the limited time available to do other business, this duty cannot really be discharged in the manner that it should be discharged. There are numerous restrictions or conditions to guard against the right of interpellation being abused, about notice, the form of the question, and the manner in which supplementaries can be put. The entire province of keeping the general administration of the country under check cannot, by this means of questions, be satisfactorily carried out, simply because the time at our disposal is so limited to get through all the work that comes before the House.

There are other aspects of Parliamentary duties, which suffer similarly and for the same reason. Consider, for instance the Budget. We have now a Budget of some 350 crores; votes for crores upon crores are passed with hardly more than two or three hours discussion, of which the Minister proposing the demand for grant takes away more than half the time, in either proposing or replying. For a total Defence Budget of Rs. 160 crores in round terms we could give only $3^3/_4$ hours, so that the actual suggestions made by the House have to be limited to a very, very small fraction of the time available. Our discussion can hardly get time for constructive, helpful suggestion. I consider this incompatible with the full discharge of parliamentary duties, and with the full working of the democratic machine, if the popular sentiment is to be properly and fully expressed in Parliament on matters of such momentous importance.

When the present practice was laid down, it was quite possible, because more than half the budget of the country was outside our competence to discuss. A good portion of the administrative activities was also barred from discussion or review by the Assembly. The limited time, therefore, may have sufficed at that time. But with the new Constitution, with the new powers and with the increased responsibility as also with the increased membership, I think the restriction of the House by the Constitution to something like 100 days session in the year at most is, to say the least, not allowing sufficient scope for the discharge of parliamentary responsibility.

I am aware that the word "at least" is there. I realise, therefore, that there is nothing to bar parliamentary being called into session for a longer period, and its remaining in session for a longer period. But the very fact that such a term has to be introduced in the Constitution, that such a provision has to be made in so many words, that the maximum permissible interval is six months, and that it is not left to Parliament to regulate its own procedure, its own sittings, its own timings, seem to me indicative that the mind of the draftsman is still obsessed with the practice we have been hitherto following. I consider it objectionable; and if we are to get away from that practice, it is important that an amendment of the kind that I am suggesting should be accepted.

It is all the more important because large issues of policy, large matters, not only of voting funds, but determining the country's future growth, that is to shape the future of this country for years to come, have to be very scantily treated; and the 'Parliament's response to it, the discussion in Parliament about it, becomes, to say the least, perfunctory. Time is an important element in allowing a proper consideration. I am, therefore, suggesting that between any two sessions of Parliament in a year not more than three months should elapse; and that the year's session should be regarded as a continuous single annual session, during which the work of Parliament should be performed, should be carried out with the utmost possible sense of responsibility that the representatives of the people feel they owe to the electors.

The details of the sittings, the details of procedure, etc., should naturally be left to the House, as they are provided for in this Constitution. I have nothing more to say about that. I do think that judging from the experience

we have had so far, and judging from the fact that provision has had to be expressly inserted regarding the number of sittings that the Parliament should make in a year, or the frequency with which Parliament should be called into session during the year, it is imperative that we must amend the provisions by some such manner as I am suggesting. I do hope that the reason I have adduced would commend itself to the House and that my amendments will be accepted.

(Amendment No. 7 in the names of Shri Lakshminarayan Sahu and Sardar Hukum Singh was not moved.)

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

"That in clause (1) or article 69, for the word 'twice' the word 'thrice' be substituted."

I am afraid that when this article 69 was framed by the Drafting Committee, they were not able to shake off the incubus of the Government of India Act. Dr. Ambedkar when he moved the resolution for the consideration of the Draft Constitution admitted that much of this Constitution has been influenced by the Government of India Act, and wisely, too, but here I think that this provision about summoning the Parliament at least twice during the year was more or less copied bodily, copied verbatim from the Government of India Act without any consideration as to what additional duties and responsibilities have devolved or are going to develop upon the Parliament of Free India. It is well-known that the American Congress and the British Parliament meet for nearly 8 or 9 months every year. The business of the State in modern times has become so intricate and elaborate of course, I am talking of Parliament in a democracy and not under dictatorship and I hope we are going to have democracy in this country and not dictatorship—that no Parliament in a democracy can fulfil its obligations to the people and fulfil its duties and responsibilities unless the Parliament sat every year for over six months to say the least. During the last Budget session of the Assembly there was a flagrant instance of a Minister of Government confessing to the Assembly that certain expenditure was incurred in a supplementary manner in anticipation of the approval of sanction of the Assembly. Dr. Matthai, the Finance Minister for the Government, when he presented his supplementary demands got them passed through—I would have said rushed through, but after all we are all members trusting one another, having full confidence in one another—in half a day or perhaps less than two hours. He was constrained to admit to the House "I have no explanation to offer why sufficient time was not given to the Assembly to discuss or why so much expenditure was incurred without the sanction of the House." My honourable Friend Prof. K.T. Shah said that the figure ran into crores of rupees and such a huge amount of expenditure was incurred without the approval or sanction of the Parliament. Dr. Matthai contented himself with saying that it was incurred in anticipation of the approval or the sanction of the House, and the House just tittered, laughed and passed the supplementary demands. This irregularity, Sir, would have been obviated if Parliament had sat and assembled during the year from time to time, not merely during those prescribed period, prescribed during the British regime—Summer session and Autumn session—had Parliament met more often, and various items of expenditure had been presented to the Assembly on various occasions—then this sort of confession by a Minister of a Government, which is to say the least, not very happy, would not have been made and there would have been no cause for Minister of Government to make such a confession. The honourable the Speaker of the Assembly Mr. Mavalankar in an informal talk with some of us during the last session said: "We cannot get through the business if we go on like this. If we want to do justice to ourselves and to the country, it is imperative and obligatory that the Parliament sits for not less than seven or eight months in the year."

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I hope Dr. Ambedkar, on behalf of the Government, visualises such a position and is convinced of the necessity for Parliament meeting more often and for longer periods than it does at present. I would not have pressed this amendment but for the fact that in human affairs the minimum prescribed tends to become the maximum. In economic matters we have the classic instance of the minimum wage; the minimum wage tends in most industries to become the maximum wage. Here, in a similar manner, I am afraid the minimum prescribed will tend to become maximum. We have had the experience during the British regime. The Government of India Act laid down that Parliament shall assemble at least twice every year; there has hardly been any year in which Parliament met more than twice a year. Therefore, I move that the Constitution should lay down that Parliament should meet at least thrice a year: the budget session which is a long session, a session in the middle of the year, say July or August for two months, and again in the autumn or winter, October or November. then only, we shall be able to discharge our responsibility to the people and to the country. I move, Sir.

Mr. President : Amendment No. 1472 is more or less of a drafting nature.

(Amendment No. 1473 was not moved.)

Amendment No. 1475 is also of a drafting nature. Amendment No. 1476 is also of a drafting nature. Prof. Shah, amendment No. 1477 also appears to me to be of a drafting nature. If you agree, we may leave it there.

Prof. K. T. Shah : I think there is a question of substance in it.

Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 69, the words 'the Houses or either House of' be deleted."

The amended clause would read:

"(2) Subject to the provisions of this article, the President may from time to time—

(a) summon Parliament to meet at such time and place as he thinks fit."

That is to say, the authority of the President is not required for summoning either House as I conceive it here. Normally, the Upper House is, according to the theory of this Constitution, a continuous body, not liable to dissolution. Therefore, it is always there: If this provision ever should apply, it would apply only to the House of the People, so far as summoning is concerned.

I am not quite clear myself whether, at the beginning of any year, the Upper House also would have to be summoned; or whether, in continuous existence, it may be taken to be sitting; or its own procedure may regulate its being called into session.

In order to get round that difficulty, I have simply suggested the omission of these words, particularising either House of Parliament, and confining the wording only to the summoning of Parliament. There is a difference, I submit, in using the term Parliament, and particularising either House of Parliament, as it suggests the authority of the President even for the other body which is continuously in session. If it is considered that not withstanding the Upper House being continuously in session, at each occasion it has to be summoned,—at least each year it has to be summoned,—apart from a joint session, of course, I think that is a way of looking at this provision which seems to me to be somewhat anomalous. I am therefore suggesting that

that purpose, whatever that purpose may be, would be served by keeping the term Parliament instead of particularising 'either House of Parliament.' I therefore commend this amendment to the House.

Mr. President : No. 1478.

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

"That at the end of sub-clause (a) of clause (2) of article 69 the following be added :—

'Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People for a period of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.'"

This, Sir, is a serious matter, implying that in case the President does not summon the House of Parliament for a period longer than permitted under the Constitution, we must have some machinery to counteract such an eventuality. Power is, therefore, given, under this amendment, to the Speaker or the Chairman of the Upper House to convene each his own respective House, without waiting for the authority of the President to do so, and without the President doing so himself.

It may be suggested that this is an attitude suspicion; or lack of confidence in the President: and therefore it is a point which ought not to be provided for in this Constitution. Written Constitutions, particularly of the kind that we are drafting for India ought to provide against such contingencies as have either occurred in our own history, or have occurred elsewhere. We must learn from our own as well as from other people's experience. It is necessary for us to guard against their recurrence if you consider such developments undesirable. Presidents there have been in the history of other countries, if not our own, who have taken the law into their own hands; and have by the very power of the Constitution so to say subverted utterly, and undone the intent and purpose of the Constitution. In case such a contingency should occur there must be provision in the Constitution itself to remedy it; and we should not wait for an amendment of the Constitution when such difficulty actually occurs to help us to guard against the consequences of such difficulties.

I am therefore suggesting that if at any time, for any reason, the President does not convene—it may never happen, but it is a possibility which is worthwhile guarding against— either House of Parliament, does not convene the House of the People for more than 90 days after its last adjournment, power must be available to the presiding authority of either House to take action, to call the House into session and continue the work of that House. The feeling of suspicion, if it is so alleged, is an outcome of the knowledge of past history of other countries. There is besides no guarantee that such a thing will not happen at all in this country. If you really are of opinion that there is no reason for us either to anticipate or fear that such a thing should ever occur on this soil, why have any written constitution at all? A few minutes ago, an amendment was moved by the Chairman of the Drafting Committee himself to a previous article which transferred power originally vested in the President, from the President to Parliament itself for extending the life of Parliament in the case of emergency.

Now, if you yourself are aware that such a power may be liable to be abused, and if you want to guard against such an abuse by providing that action may be taken by Parliament only, I see nothing wrong in my suggesting that, in the event of contingencies of the kind I am apprehending occurring, there must be machinery available in the Constitution itself to

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meet the situation. We should not wait for a later change or amendment of the Constitution whereby automatically and with the minimum of friction, we may be able to achieve our objective.

As I said before the history of the world is full of incidents of that character by which Constitutions have been subverted. It is, therefore, only a mark of prudence that we should at this time take heed of such a contingency or possibility and make provision accordingly. I accordingly commend this amendment also to the House.

Mr. President : The next is also yours, 1479.

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

"That in sub-clause (b) of clause (2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

This I think is consequential on my previous suggestions and therefore if the previous one is accepted, I hope this also will be accepted.

(Amendments Nos. 1480 and 1481 were not moved.)

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

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added:—

'on the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing'."

I also move:

"That after clause (2) of article 69, the following be inserted :—

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course:

Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it'."

Sir, this amendment follows the same logic that I tried to put before the House a little while ago. In the first of these amendments I am trying to say, that, in the event of Parliament having to be dissolved earlier than its normal period, i.e. before five years, there must be some special reasons why such a dissolution is deemed necessary. My amendment does not seek to place any bar upon such dissolution being made. I only suggest that it shall be on the advice of the Prime Minister, as it will of course be in the normal course; and not on the authority of the President. I only require that the Prime Minister shall record his reasons in writing. For those reasons may constitute, in my opinion, valuable Constitutional, precedents for future, and may be of immense value in subsequent generations.

On that basis, therefore, the first amendment is, I hope, utterly innocuous, and would be acceptable to the House. It is doing no more than giving constitutional authority and mandate for reasons to be recorded by the Prime Minister every time that he requires the dissolution of the House of the People earlier than its normal term.

In regard to the second amendment the matter is a little more serious. It contemplates the possibility of the President being unable or unwilling to call Parliament together. That is a contingency that cannot be utterly ignored at all. It may not happen frequently—let us hope it will not happen at all. In that contingency I suggest that the Prime Minister should be entitled to request the presiding authority of either House to convene each its own House, and to continue with such business of Parliament as may be impending or may be necessary. In the second proviso I further contemplate the possibility of the Prime Minister refusing or unwilling to make such a request, and the President being also unable or unwilling to convene Parliament together. In that case, on the assumption that the two principal authorities, the two Chief Executive authorities of the country, are either unable or unwilling to make such a request, or to carry out their own constitutional duty, power should be reserved to the presiding authority of the House—of either House—to convene its own body into session, and continue the business of the country as in normal course.

Mr. President : Will you please say how No. 1483 differs from No. 1478?

Prof. K.T. Shah : In the case of No. 1478 it is only the President that is thought of, and the Prime Minister is not interposed with a request to summon either, House. The proviso makes it clear further that if the President and the Prime Minister be both unwilling to do so, then the presiding authority of either House should call the meeting. In No. 1483 power is given to the presiding authority of either House to do so, irrespective of those two conditions which are inserted later on in No. 1483. That I think is the difference between the two amendments.

Mr. President : I thought one was covered by the other.

Prof. K.T. Shah : To some extent. The later one is more specific. The Prime Minister is the moving authority in the first case. But if he is not willing to move, then the power operates. But the power can operate also independently of any question of the ability or willingness of the executive.

Mr. President : Supposing No. 1478 is carried, do you think No. 1483 is necessary?

Prof. K.T. Shah : No. That is the difficulty of moving these together before vote is taken on any. If No. 1478 is carried, then I myself would say it is unnecessary to move these. But I am putting the various things in my name, as I have thought of several contingencies, and if one is not carried another might be acceptable. With my experience of these amendments, I thought perhaps it might be as well to guard against such responsibilities. That is why I am commending these motions to the House. I hope they will be accepted.

Mr. President : The article and the amendments are open for discussion.

Shri R.K. Sidhwa : Mr. President, Sir, article 69 relates to the summoning of the sessions of the Houses of Parliament. It says that the Houses of Parliament shall meet compulsory twice a year, and leaves it to the choice of the President, if he feels it necessary, to summon it from time to time. That proviso exists in the 1935 Act also. I think in the 1935 Act, instead of "twice" it is only "once". From experience I have seen that generally Ministers are reluctant to face the legislature and therefore, they avoid calling the sessions of the legislature, except in some cases when the session is to be held under the law. Under the new set-up, when we are framing our Constitution on the British Parliamentary system, I fail to understand why for the purpose of procedure of our business, we shall also not follow the same

[Shri R.K. Sidhwa]

procedure. I have seen from my experience of the last two years that important official business even has been held over for want of time. Several Ministers have got according to them, other important work to perform and they have no time for legislative business. As an illustration, I may mention that during the last session of the Parliament, eleven important official Bills had to be held over, not to speak of many important non-official Bills and Resolutions. Now, these important Bills could have been disposed of if we had continued sitting, until the beginning of this session of the Constitution making body and thus we would have saved from waste of one full month in between. But the Ministers were busy with their ordinary routine work. I therefore, say that some new procedure has to be found out, as is done in Parliament in England where they do not require their Ministers to come up every time to pilot the business, but entrust the work to their deputies. It cannot be advanced as an excuse by the Minister that they had not the necessary time, and therefore they could not complete the work. There should be a rule, as in England that Parliament should sit continuously throughout the year. Under the rules we have a question-hour and it is a very crucial hour for the honourable Ministers, because that is the hour when the Members are supposed to get information from the Government, and I know in some cases the Ministers wanted to do away with this question-hour on certain days in order to cope with the accumulation of other work. It did actually happen so, although it is compulsory under rules. In the British Parliament also this question-hour is considered very important. There they have night sittings also. Some of our Members here, I know are averse to sitting longer hours. But I humbly submit that the Members themselves, should feel that under the new conditions they will have to give more time to this work. If we cannot devote more time, we certainly will not be discharging our duty towards our constituencies, and we will have no place in the new set-up. In the new set-up, when there will be six hundred members in our Parliament, I want to know how the work will be disposed of if there is going to be only two sittings in a year : I feel more sittings will have to be called, by law. Sir, the argument is advanced that when legislative business has got to be brought before Parliament, the Parliament will be summoned. But I have given you an illustration of important official business being held over, for want of time. It has been held over to the autumn session. I am sure it will not be finished in that session also, and will have to go to the next year's Budget Session. And in the Budget Session, we know crores and crores of rupees and Supplementary Demands up to about Rs. 80 crores were disposed of in three hours, despite protests from members. No more time was given, and the excuse was that we have no other time available. This method we have to change, if we really want to represent the people, and if we really want to scrutinise important items of the budget affecting our finances. And therefore, I contend that the four days that had been allowed to the Budget discussion, which of course by our agitation was increased to five days, is quite insufficient to dispose of a budget of about three hundred crores and also the Railway Budget. In all we took only three weeks as against three to four months in the British Parliament. Of course, under the rules, before 31st March, we have to pass the expenditure. But why not adopt the procedure of the British Parliament where payment to the services is made by a particular date? After that the discussions on various items of the budget can continue. If in the new People's Parliament of ours, we are not allowed full time for discussion of the budget, then. I submit in all humility, that it will be a mockery of democracy. We are told that we follow no other system of government except the British Parliament. But why do not you follow it in all respects, and not merely mistake it up when it suits you and leave it out when it does not? I am very strongly of the opinion that a

House of six hundred members, the real representatives of the people, will have no opportunity to serve the people if you have only two sessions. At present budget session lasts from February to about tenth of April, it is only 53 days, deducting Saturdays and Sundays. The Autumn session is only three weeks, which minus Saturdays and Sundays comes to only about 16 or 17 days. My point, therefore, is that the session should last continuously for the year, except for a month or two months' intervening for recess, as it exists in Parliament. I hope Dr. Ambedkar will examine my arguments and, if he finds they are just, and reasonable see that the necessary provisions are made in the Act. It will smoothen the procedure and disposal will be much quicker. We are complaining of delays in correspondence etc. in the offices. But are we ourselves quick enough in the disposal of legislative business? It is disgraceful for us that during the last few months for want of time important official business had to be held over to the next session. If the Ministers feel that legislative business requires more sittings, then the Members have no business to say "no." But members also have become lukewarm and when they find Ministers unwilling to continue they also agree to the adjournment of the House. I therefore think that for the better disposal of business in future a suitable amendment should be made.

Mr. President : I desire to point out to honourable Members that at the rate at which we are going we may have to follow Mr. Sidhva's advice and sit throughout the year; and I hope Members will consent not only to longer sessions but to longer sittings every day and, instead of one sitting only, have two or three sittings every day if necessary. Personally, I have no objection to that, because I want the Constitution to be finished as soon as possible. I hope honourable Members will bear Mr. Sidhva's remarks in mind whenever the question comes up of increasing the number of sittings or the number of hours.

Mr. Tajamul Husain : Sir, I will first deal with the amendment of Mr. Kamath which wants there should be three sessions of Parliament instead of two as is mentioned in the Draft Constitution. I support this amendment, because it is common experience that in the budget session which is generally for two months we are not able to do anything except pass the budget and a few Bills. Therefore, I support the proposal for three sessions *viz*., the budget session the summer session and the autumn session. There is a similar amendment by Prof. Shah (No. 1470) which wants that Parliament should be called at the beginning of the year and should continue throughout the year with intervals in between. This also appears to be reasonable, and it does not matter to me which one of these two is accepted.

Another amendment has been moved by Prof. Shah with which I agree, that if the President of the Republic is unable to summon the legislature either the Chairman of the Council of States or the Speaker of the lower House should have power to summon it. If they also do not do that the Prime Minister should in writing make a request to these two gentlemen to summon it. But supposing they refuse what will happen? In such case I think the Prime Minister himself should have power to call the Houses of Parliament. This is only to provide for an emergency and the Prime Minister is surely more important than anybody else. If he thinks there is an emergency to justify calling the Parliament, he should have power to do so. Sir, I support this amendment also.

Prof. Shibban Lal Saksena : Sir, this article has been criticised from two points of view,—*viz*., that the sittings of Parliament should be continuous and the President should not have the power to stultify the legislature by refusing

[Prof. Shibban Lal Saksena]

to summon it. On the first point, I agree with Mr. Kamath and Mr. Sidhva. The meetings of our present Parliament are too few and even Ministers complain that they have no time to be able to give an account of their actions throughout the year during the budget discussions. In fact they have resented only one or two hours being given to them for this purpose. I am sure my honourable Friend Dr. Ambedkar himself must have felt that the House has not been sitting long enough. We should follow the House of Commons in this respect and I hope the example left by the foreign rulers who had set up a mock Parliament in India will not be continued any longer, and our Parliament will be a Parliament in the real sense of the term. It will have the opportunity to scrutinise every pie of expenditure and taxation. We should have very much longer sittings of the Parliament to enable it to discharge its duties properly. As regards the amendment of Prof. Shah about the summoning of Parliament by the Speaker etc., I think under our constitution which is modelled on the British system, the President is only a substitute for the King and as such he has not much power. Therefore, I do not think Prof. Shah's fears are justified and therefore these provisions are unnecessary. It would have been proper under the American type of constitution because there the President has very great powers and can defeat the purpose of the legislature, but in our constitution where he is merely a symbolic head he can do no harm. After all there are provisions to remove him by impeachment, though I hope such occasions will not arise. I therefore think Prof. Shah's amendment is not proper. But as regards the sittings of Parliament I agree we should have continuous sessions of the Parliament.

The Honourable Dr. B.R. Ambedkar : Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently, I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the

name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that?

The Honourable Dr. B.R. Ambedkar : As I was going to explain the same, mentality which prevailed in the past of the executed not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it?

The Honourable Dr. B.R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by questions or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason which may compel the executive to summon the legislative more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shah wants to omit the words "either House" from clause 67(2) (a). I could not understand his argument. He seemed to convey the impression—he will correct me if I am wrong—that because the upper chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years : but the summoning of that House for transacting business is a matter that still remains. The House is not going

[The Honourable Dr. B. R. Ambedkar]

to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the legislature where the President has failed to perform his duty must be vested either in the Speaker of the lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if I have understood it correctly, the proposition of Prof. K.T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reasons does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment, No. 1482 moved by Prof. K.T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the House should be dissolved and a case where the Prime Minister writes a letter stating that the House should be dissolved. Professor K.T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K.T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the

advice of the Prime Minister, but at one time, certainly at the time when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this : it was agreed by all politicians that, according to the convention then understood, the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the House may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the House if he has prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be unless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for *bona fide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the House as a whole. Therefore I do not think that this amendment should be accepted.

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

The question is :

"That in clause (1) of article 69, for the words 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 69, for the word 'twice' the word 'thrice' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That after clause (1) of article 69, the following proviso be inserted :—

'Provided that Parliament or either House thereof, once summoned and in session, shall continue to remain so during the year; and such sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogation.' "

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 69, the words 'the Houses or either House of' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That at the end of sub-clause (a) of clause (2) of article 69, the following be added :—

"Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People, or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it."

The amendment was negatived.

Mr. President : The question is :

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :—

'On the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.' "

The amendment was negatived.

Mr. President : The question is :

"That after clause (2) of article 69, the following be inserted :

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course :

'Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.' "

The amendment was negatived.

Mr. President : The question is :

"That is sub-clause (b) of clause (2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

The amendment was negatived.

Mr. President : All the amendments have been rejected.

The question is :

"That article 69 stand part of the Constitution."

The motion was adopted.

Article 69 was added to the Constitution.

New Article 69-A

Mr. President : There is notice of a fresh article given by several Members. No. 1484 Mr. Ramalingam Chettiar.

Shri T.A. Ramalingam Chettiar : (Madras : General) : Sir, I will move it at a more convenient stage. It is not necessary at this stage to move it.

Article 70

Mr. President : Then we come to article 70. There are two amendments of a drafting nature by Mr. Kamath, Nos. 1485 and 1486.

Shri H. V. Kamath : They are not of a drafting nature. If however you hold they are, I shall not insist on moving them.

Mr. President : There is no other amendment.

The question is :

"That article 70 stand part of the Constitution."

The motion was adopted.

Article 70 was added to the Constitution.

Article 71

Mr. President : There is one amendment No. 1487 of which notice has been given. It is negative in character and so I do not allow it to be moved.

Amendment No. 1488 by Prof. Shah. This is covered by article 70 which we have already adopted.

Prof. K. T. Shah : I am not moving it, Sir.

(Amendment No. 1489 was not moved.)

Mr. President : Amendment No. 1490 by Prof. Shah.

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

"That in clause (1) of article 71, for the words 'and inform Parliament of the cause of its summons' the words 'on the general state of the Union including financial proposals and other particular issues of policy he deems suitable for such address be substituted."

The amended article would read :

"At the commencement of every session the President shall address both Houses of Parliament assembled together on the general state of the Union, including financial proposals and other particular issues of policy he deems suitable for such address."

There is a difference in the wording here and the way I have suggested. I should like the President's address to concern itself mainly with the general issues of policy, or the prospects before the country, rather than with the specific causes of the summons. It is the practice in the British Parliament for the King, at the opening of the Parliament, to deliver the Address from the Throne. In that, generally, the issues are mentioned. The main proposals for legislation that the Government proposes to bring forward are mentioned, and specific mention is also made of the demands and the supplies that may be expected. Now, if you say merely the "causes of the summons", it will mean the immediate necessity of the day; whereas if freedom is left to the President to review the general state of affairs, and also to indicate the broad lines of proposed legislation and the policy that may be placed before the House, I think the latitude would be much greater. The officials review, so to say, of the country's situation would go a long way to help the people to realise the way their Government is functioning; and also to be aware from time to time of the tasks that their Government is undertaking, and how far these tasks are being discharged.

I think that, as a non-party head of the State, for the time at any rate, representing the Republic, the President should give a general review, and not merely confine himself to the causes for which the House is being summoned and hence this amendment. I place it before the House.

Mr. President : The other three amendment Nos. 1491, 1492 and 1493 are of a drafting nature and are disallowed. The article and the amendment moved are now open to discussion.

Dr. P. S. Deshmukh (C.P. & Berar : General) : You have ruled, Sir, that amendment No. 1487 is not admissible since it is purely a negation of the clause. I submit, Sir, that I do not feel convinced as to the necessity of the clause itself, much less of the amendment that has been moved by Professor K.T. Shah. Sir, we have already passed a clause by which it shall be open to the President to address either House of Parliament. Now by this clause we are trying to make it absolutely binding on the President that at the commencement of every session he shall address both the Houses of Parliament assembled together and the purpose also has been stated. We have also just had a lengthy debate on the necessity of calling Parliament frequently and some of the honourable Members were insistent that it would be desirable if the Parliament were to meet all the year round, excepting during certain recesses that it may enjoy. I feel, Sir, that nowhere, not even in the British Constitution, it is compulsory upon the King to send an address every time the Parliament meets. So I am really at pains to understand a deliberate provision for compelling our President, whose place and office is more akin to that of King of England. He is the Constitutional Head of India and to compel him that he must give an address and he must also inform the causes which have led him to call the Parliament does not appeal to me. I feel, Sir, that there is no necessity, nor any very useful purpose will be served by having this compelling clause passed by the House. Of course Prof. K.T. Shah's amendment goes much too far. He also wants that the clause should include the subject on which he will deliver his address. This will be binding the President's discretion too much. There is also no necessity for a provision in the Constitution by which time for discussion of the President's speech would have compulsorily to be allotted. I think, Sir, what we have provided for is more than enough and there is no necessity for compelling him that he must address every session and that he must address the session on a particular list of subjects. I think there is no necessity for this clause and I would be glad if Dr. Ambedkar could agree to the omission of it.

The Honourable Dr. B. R. Ambedkar : Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly, what in my judgment is implicit in the phrase 'causes of its summons'. I think this phrase is wide enough to include everything that Prof. K.T. Shah wants and if I may say so, this phraseology, namely "shall address and inform Parliament of the causes of its summons" is a phrase which we find used in British Parliament. If Prof. Shah were to refer to Campion's book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K.T. Shah wants. Prof. K.T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is required than what is contained in Article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

Mr. President : The question is :

"That in clause (1) of article 71, for the words 'and inform Parliament of the cause of its summons' the words 'on the general state of the Union including financial proposals, and other particular issues of policy he deems suitable for such address' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 71 stand part of the Constitution."

The motion was adopted.

Article 71 was added to the Constitution.

Article 72

Mr. President : The motion is :

"That Article 72 form part of the Constitution."

(Amendment No. 1494 was not moved.)

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

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

and the amended article would read as follows :—

"Every Minister and the Attorney-General of India, if elected member of Parliament, shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."

My amendment, Sir, seeks to make only such ministers as are elected members of Parliament to have this right. I think it is a part of the theory on which this Constitution seems to be based that ministers should be responsible to the legislature. That responsibility could be exercised only if they are able to answer for themselves, so to say, as members of Parliament and sitting in Parliament.

The right extended to those who are not members of Parliament, and yet are allowed to speak or take part in the proceedings in either Houses of Parliament, or of any committee thereof, of which such a person may be named a member, appears to me to be an anomaly, if after allowing the right to speak, you do not grant him the right to vote. It is at the same time true that a person who is not a member of a body can have no right to vote in that body. The idea is that the Minister or the Attorney-General, who is in possession of material information and reasoning that may very well influence the judgment of the House, necessitates that such a party should be in a position to place his point of view before the body of which he is a member and where he is speaking. But if he is not a member of that body, the position becomes very difficult, in as much as those who are there are also aware that he has no right to vote and has no place, therefore, as one of them in the House.

The doctrine of ministerial responsibility requires in my opinion that all the principal Ministers should also be members of the legislature; and if they are members of the Legislature, then, as a matter of right they will be entitled to speak as well as vote in the House of which they are members. If you wish to extend this facility to Ministers to 'either House', even if one is not a member of that 'either House', then I think it would be better to word this a little differently. I suggest that if you are an elected member of either House, you may nevertheless be entitled to speak in the other House, just to make known your point of view and explain any particular problem that may be before the other House of which you are not a member when that other House comes to discuss it. But the position in this article as I see is this:

[Prof. K. T. Shah]

A minister who is entitled to speak and take part in the proceedings, or be member of a committee, and who has the right to speak but has not the right to vote, is liable to feel the sense of responsibility much less. Apart from being an anomaly in the Constitution itself, of a Minister being allowed to speak, but not to vote, it would undermine the sense of Ministerial responsibility that is essential.

I therefore suggest that the right of speaking and taking part in the proceedings, as well as becoming members of any committee, should also go with the right to vote; provided that the party is an elected member of the House. I say definitely "elected member" because these experts, for instance, who are, under the provisions of the article adopted earlier by this House, permitted to be nominated by the President for any specific purpose as experts to advise and assist in the passage of any Bill or any other measure, they naturally not being elected, are not representatives of the people; and as such may rightly be confined to giving their expert opinion on the matters before the House, and advising on which they are specifically nominated, but not voting on the question. I can understand therefore that such people may be excluded from the right of voting. But, Ministers in a Constitution based on the principle of Ministerial responsibility should, I think, be not only entitled to take part in the proceedings of any House, but should be members of that House with right of voting as well. Accordingly I commend this amendment to the House.

(Amendment No. 1496 was not moved.)

Mr. President : Amendment No. 1497 is of a drafting nature.

The article and the amendment are now for consideration.

Shri H. V. Kamath : Mr. President, I regret I have not been able to follow the import of Professor K.T. Shah's amendment and therefore I rise to oppose it.

The article as it stands is to my mind quite clear. The article conveys the meaning that any Minister or Attorney-General shall have the right to participate in the debate, but by virtue of this article itself will not be entitled to vote. My friend Professor Shah wants to insert a provision that a Minister or Attorney-General if an elected member of Parliament shall have the right to speak etc., but shall not be, by virtue of this article, entitled to vote. Does he wish to tell the House that a Minister or the Attorney-General even after being an elected member of Parliament shall not have the right to vote? It comes to this : that he wants to provide that a Minister or the Attorney General even after being an elected member of Parliament shall have the right to speak in, or otherwise participate in the proceedings of the House, but shall not be entitled to vote. Then, I ask my learned Friend Professor Shah, who is entitled to vote? If you want to debar even elected members of Parliament from exercising their vote in Parliament, I fail to see to whom he wants to give the right of voting. Does he want to confer this right on those members of Parliament who are nominated. Who are not elected? I really fail to see what purpose is being served by the amendment which he has moved. The article as a matter of fact provides for two distinctive categories, as it stands, so far as I have been able to understand it. One is, Minister pending their election and the Attorney-General who may be nominated. Because a Minister under article 61 (5) may hold his office for six months without being an elected member of the House and under article 63 the Attorney-General need not be an elected member of the House. The President can appoint any person who

is qualified to be appointed as a Judge of the Supreme Court to be the Attorney-General. For either contingency we have to provide for. This, to my mind, is what this article does. Therefore, clear as I am in my mind that this article 72 debars only nominated members of Parliament from necessarily exercising their vote and does not take away that right of voting from elected members of the House whether a Minister or otherwise, I fail to see with what purpose Professor Shah has moved his amendment and I therefore appeal to the House to reject his amendment.

Mr. Tajamul Hussain : Sir, there are only five minutes at my disposal and I propose to finish my speech in those five minutes.

Now, Professor Shah has moved two amendments. His first amendment is to delete the words "Every Minister and". Therefore, he does not want a Minister to participate in the debate. The result would be this. Supposing in a Province or the Indian Union, there are....

Mr. President : That amendment has not been moved. You are referring to amendment No. 1494. Only amendment No. 1495 has been moved.

Mr. Tajamul Hussain : I am sorry I made a mistake. I am now dealing with amendment No. 1495 that has been moved by Professor Shah in which he says that the words "if elected member of Parliament" be inserted after the words "Attorney-General of India". He means that the Attorney-General of India shall be an elected member of Parliament. My objection to this is this. Suppose there is no qualified member of the Bar elected, you cannot guarantee that of the person elected, one must be a qualified member from the Bar-how are you going to have an elected member as the Attorney-General? My Friend Mr. Kamath has already dealt with article 63 which provides that the President can appoint as the Attorney-General for India from amongst the Judges of the Supreme Court. Therefore, I submit that the amendment moved by Professor Shah that the Attorney-General must be an elected member has no sense at all. I do not understand why he has moved that amendment. With these words, I oppose the amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear, I might begin by stating some simple fundamental propositions. Every House is an autonomous House; that is to say, that it will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to take part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the Constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being enacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the

[The Honourable Dr. B. R. Ambedkar]

right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through. It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House, he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person'. That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

Mr. President : I now put the amendment to vote.

The question is :

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

The motion was negatived.

Mr. President : I put the article to vote.

The question is :

"That Article 72 stand part of the Constitution."

The motion was adopted.

Article 72 was added to the Constitution.

Mr. President : The House stands adjourned till Eight O'clock tomorrow morning.

The House then adjourned till Eight of the Clock on Thursday the 19th May, 1949.