

Thursday, 19th May, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 19th 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.)

DRAFT CONSTITUTION—(contd.)

New Articles 72-A, B and C

Mr. President : We have now to proceed with the discussion of the articles of the Draft Constitution. The next thing to take up is amendment No. 1498 of Prof. K.T. Shah.

Prof. K.T. Shah : (Bihar : General) : Sir, I do not wish to move the new article 72-A, I shall move only 72-B and 72-C. There is, I find a small misprint in the amendment as printed here. The word cannot be “Minister” of Parliament, but “Member” of Parliament. With your permission I am making the correction.

Sir, I beg to move :

“That after article 72, the following new articles be inserted :—

‘72-B. A Member of Parliament may vacate his seat by resignation in writing addressed to the Speaker of the People’s House, or to the Chairman of the Council of States, as the case may be. Any Member of Parliament who accepts any office or post carrying a salary, shall be deemed forthwith to vacate his seat, and cease to be a Member of Parliament. No one shall continue to be a Member of either House who is convicted of any offence of—

- (a) treason against the sovereignty, security, or integrity of the State,
- (b) of bribery and corruption,
- (c) of any offence involving moral turpitude, and liable to a maximum punishment of two years rigorous imprisonment.

72-C. All expenses in connection with Election to Parliament of all candidates, whether at the time of a General-Election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitled to claim such expenses.’ ”

Sir, these two additions that I am suggesting lay down in the first place the manner in which Members of Parliament can resign their office or be relieved of it. Particularly, importance should attach to the disqualification for sitting and voting in Parliament even after a member is once elected, if guilty of any of the offences mentioned. Anybody convicted of treason, bribery or corruption or of any offence involving moral turpitude, would obviously be unfit to sit in Parliament. I think some machinery should be provided to allow automatically such persons to be excluded from membership of Parliament, even though they might have been elected in the regular way.

The second proposition is more important from the point of view of expenses. I suggest that all election expenses should be paid out of the public treasury, in accordance with a certain prescribed scale; and that anyone who fails to secure a given percentage of votes should not be entitled to claim such expenses. My purpose in laying down this is that one of the handicaps which makes

[Prof. K. T. Shah]

democracy in actual practice a failure is the heavy cost of seeking representation, seeking election, to public bodies like the Central Parliament for a large country like this. The ordinary expenses may run to such amounts that only large Parties with large Party funds can alone carry on election campaigns, extending over months perhaps, and involving hundreds of workers to canvas votes. Private individuals who can afford to stand on their own must have very large bank balances to be able to do so. Now, it does not necessarily mean that persons who have considerable means of their own, or who are able to command influence in large well organised Parties with large funds at their disposal would be the best representatives of the people. I, therefore, suggest—that is the practice elsewhere too—that election expenses should be met from the public treasury, so that there may be no unfair or improper advantage to the richer candidates as against the poorer candidates.

I also suggest that the scale of expenditure should also be laid down so that there is no abuse of this privilege. I have suggested that election expenses be met out of the public treasury both at the general election and at the bye election. I have also added the safeguard that any candidate who secures less than 10 per cent. of the votes cast cannot claim such expenses. This is some guarantee, that the facility, the help will not be abused by any candidate. The provision I suggest would be of substantial help to candidates who for lack of funds would otherwise not be able to come forward for such public service.

I think the principle is sufficiently sound for me to commend it to the House.

Mr. President : Does any Member wish to speak on this amendment of Prof. K. T. Shah?

Shri H. V. Kamath (C.P. & Berar : General) : Mr. President, I take it, Sir, that Professor Shah has not moved 72-A and that he has moved only 72-B and 72-C.

I submit, Sir, that as regards 72-B there is no need for a new article at the present stage. If Professor Shah would take the trouble of referring to an article which will come up before us shortly, namely, article 83, he will find that it provides for disqualifications of Members—either for being, chosen as Members of Parliament, or for continuing as Members. The various disqualifications have been laid down in sub-clauses (a), (b), (c), (d) and (e). sub-clause (e) is comprehensive in this sense, that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament. It is true enough that sub-clauses (a), (b), (c) and (d) do not envisage the contingencies visualised by Professor Shah. But the new Parliament which will be elected under this Constitution will, I hope, Sir—in spite of the misgivings which you expressed yesterday as regards the dangers inherent in the adult franchise and the wider rights and privileges that are being conferred under the Constitution—be composed of persons imbued with wisdom and public spirit, and that in spite of all those handicaps and disadvantages we shall be able to elect persons to this Parliament who will discharge their duties to the electorate and the country with wisdom and sagacity. I am sure that this new Parliament under the new Constitution will frame such rules as will debar such Members from sitting or continuing in either House of Parliament as have been convicted of any of the offences which are mentioned by Prof. Shah in this new article 72-B. The case mentioned in the amendment is so obvious that nobody who is imbued with the right public spirit will say that a member convicted of treason, bribery or corruption or any other offence involving moral

turpitude should be allowed to continue as a Member of either House of Parliament. It is derogatory not merely to the dignity of the Houses of Parliament but also derogatory to the good sense and wisdom of the people who elected them as members of Parliament. I therefore feel that the amendment of Prof. Shah 72-B is unnecessary at this stage and out of place here. As regards 72-C I think it is a mere matter of procedure which can be regulated later on when the procedure for the elections to Parliament and bye-elections comes up before Parliament. I therefore feel that both the amendments are out of place and need not be considered at this stage. I appeal to the House to reject both the amendments.

Mr. Tajamul Husain (Bihar : Muslim) : My honourable Friend Prof. Shah has moved two amendments 72-B and 72-C. I find that I am not prepared to agree with my honourable Friend and I therefore oppose both the amendments. Under 72-B my honourable Friend wants that if any member of Parliament is guilty of moral turpitude he should cease to be a member. As has been pointed out by Mr. Kamath, this is already mentioned in article 83. So this is absolutely redundant here. Apart from that, if he wishes to move this amendment he should move it at the proper place when we are discussing article 83, and so at this stage it should be thrown out.

As regards 72-C the point of my honourable Friend Prof. Shah is that Government and the public treasury should meet the expenses of all the candidates who stand for Parliament. I oppose this also because this is not the practice in any civilised country in the world where there is a parliamentary system on democratic lines. We may have to spend crores of rupees. Also look at the number of people who will stand when they know that they will not have to spend out of their pockets for their elections. If Prof. Shah thinks that individual candidates should not spend money from their pockets let the party which sponsors their candidature spend the money and not the government. I oppose this amendment because at present our country is not rich enough to meet the individual expenses of a candidate.

Prof. K. T. Shah : I should like to withdraw my amendment 72-B, if I may.

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

Mr. President : The question is :

“That after article 72 the following new article be inserted :—

‘All expenses in connection with Election, to Parliament of all candidates whether at the time of a General-election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitled to claim such expense.’ ”

The amendment was negatived.

Article 73

Mr. Tajamul Husain : Sir, before we proceed I would like to know whether you could now take up article 73 as we were given to understand that only those articles will be taken up for discussion which relate to election matters, so that the electoral rolls may be prepared as soon as possible. I submit that article 73 does not deal with election matters : it deals with the offices of the President, Vice-President and so on.

Mr. President : We wanted to take up the articles dealing with election matters but I was told that honourable Members were not yet quite ready

[Mr. President]

and wanted a day or two before those articles could be taken up. That is why I have accommodated them and we shall go on with those articles from Monday next.

The motion is :

“The article 73 form part of the Constitution.”

(Amendments Nos. 1499, 1500 and 1501 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I would like to move Amendment No. 1502. It is not a formal amendment.

Sir, I beg to move :

“That in clause (2) of article 73, for the words ‘another member’ the words ‘a member’ be substituted.”

The text as it stands rather favours the election of ‘another member’ and not the member who has ceased to be the Deputy Chairman. According to article 74, a Deputy Chairman shall vacate his office if he ceases to be a member or he may resign. When an election of a Deputy Chairman takes place he would be debarred from contesting for no fault of his. I submit that for the words ‘another member’ the words ‘a member’ be substituted, leaving it open to the outgoing Deputy Chairman to contest the seat if he has meanwhile been re-elected.

There is however one contingency in sub-clause (c) of article 74 where the Deputy Chairman may be removed for want of confidence. I do not know whether it is desired to allow him also to contest. At any rate, this is a matter which requires consideration and I shall be content if it is considered by the Drafting Committee, because there is a complication in sub-clause (c). It may be desired that he may not be allowed to contest, but in the other case there is no reason why he should not be allowed to be a candidate.

There is one other thing which I would suggest here, if I am permitted. Clause (1) of article 73 is a repetition of what we have already accepted and it is a mere duplication. Clause (1) says : “The Vice-President shall be the *ex-officio* Chairman of the Council of State,” I beg to draw the attention of the House to article 53. This is identical with clause (1) of article 73.

Article 53 also runs to the same effect. It says : “The Vice-President shall be *ex-officio* Chairman of the Council of States”. There are certain conditions and there is a proviso. I submit that the same provision, word for word, has already been accepted in article 53 which is fuller and more complete. At any rate we have made the same provision in identical terms in article 53. Therefore sub-clause (1) is a mere duplication. We certainly do not desire to have two Chairmen of the Council of States. Therefore clause (1) should be deleted or the two clauses may be put separately and clause (1) ruled out. I hope that the Honourable Dr. Ambedkar will consider this and see whether we should provide for the same thing twice.

Mr. Tajamul Husain : Sir, Mr. Naziruddin Ahmad wants that instead of the words ‘another Member’ there should be the words ‘a Member’. I oppose it. My reason is this: clause (2) of article 73 runs thus :

“The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.”

The point is this. Supposing a Deputy Chairman has been removed from office for certain reasons, if the word ‘another’ is there the Council cannot choose him, but some other member. That is why the word ‘another’ is put in. When a

Deputy Chairman resigns or if he is not wanted again—if he is removed we cannot have him again—another member will have to be chosen. If you have the words ‘a member’ there, the Council may choose the same member again. Therefore the words ‘another member’ are more appropriate and more correct and better than the words ‘a member’. I oppose the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House, and obviously, that person having ceased to be a member of the House, you cannot say that they may elect ‘a member’ which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is ‘another member’, because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is ‘another member’.

Mr. President : The question is :

“That in clause (2) of article 73, for the words ‘another member’ the words ‘a member’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 73 stand part of the Constitution.”

The motion was adopted.

Article 73 was added to the Constitution.

Article 74

Mr. President : Article 74 is for consideration. Amendment No. 1503 is covered by another already passed.

(Amendments Nos. 1504 to 1508 were not moved.)

Mr. President : As there are no amendments to article 74 I will put it to the House.

The question is :

“That article 74 stand part of the Constitution.”

The motion was adopted.

Article 74 was added to the Constitution.

Article 75

Mr. President : Article 75 is for consideration.

(Amendments Nos. 1509, 1510 and 1511 were not moved.)

[Mr. President]

There is an amendment to amendment No. 1511. As amendment No. 1511 is not moved, it does not arise.

The question is :

“That article 75 stand part of the Constitution.”

The motion was adopted.

Article 75 was added to the Constitution.

Mr. President : There is notice of a new article 75-A—amendment No. 28 of List II.

New Article 75-A

Shri T. T. Krishnamachari (Madras : General) : Sir, I beg to move :

“That after article 75, the following new article be inserted :—

‘75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting, from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

Sir, the reason for this new article is that in the event of proceedings being taken against the Chairman or the Deputy Chairman for their removal, the Chairman or the Deputy Chairman might be present in the House to answer the charges against him; and if he is present, unless it is expressly stated that he will not preside, the Chairman or, when he is absent, the Deputy Chairman, will have to preside. In order to obviate this particular difficulty, this new article is being moved.

Dr. P. S. Deshmukh (C.P. & Berar : General) : I cannot hear anything.

Shri T. T. Krishnamachari : This amendment is being moved to overcome the technical difficulty that will arise in the case of proceedings against the Chairman, or the Deputy Chairman, as the case may be, of the Council of States. The article is self-explanatory and the difficulty that it seeks to overcome will be clear to any member who reads the article.

Shri H. V. Kamath : Mr. President, Sir, I feel that the article as has been moved before the House suffers from a slight lacuna. The lacuna has arisen because the article merely says that the Chairman or the Deputy Chairman shall not preside on any occasion when the question of his removal from office is under consideration. So long as the article does not provide specifically, does not lay down explicitly in so many words that somebody else from the House or outside the House shall preside on such occasions, the article as it stands, cannot to my mind be clear in its significance or its import. The article must at the same time state that the House shall elect somebody from within the House or appoint somebody else to preside on such occasions. Otherwise, it will mean that when the question of removal of the Chairman is under consideration, the Chairman shall not preside; but who will preside?

I feel that this lacuna must be removed before the article is passed by the House. The article as it stands cannot be accepted by the House.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this : If the Chairman is being tried, so to say—I am using the popular phrase—then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that “During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council shall act as Chairman.” Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President : The question is :—

“That after article 75, the following new article be inserted :—

‘75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

The motion was adopted.

Article 75-A was added to the Constitution.

Article 76

Mr. President : The motion is :

“That article 76 stand part of the Constitution.”

(Amendment No. 1512 was not moved.)

Mr. President : Amendment Nos. 1513, 1514, 1515 are all verbal and therefore disallowed.

Amendment No. 1516 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit, Sir, my amendment was not absurd. There is yet time to reconsider the matter in the Drafting Committee. What I wanted to submit to the House was that if the Deputy Chairman loses his seat by resignation or by losing his membership, and if he is re-elected as a member, he should not be debarred from contesting. The only difficulty was in clause (c) of article 74. I think it is a very substantial matter that if a Deputy Chairman loses his seat but is re-elected, then he should not be debarred from contesting. That was the point I wanted to bring to the notice of the House. The House has already declared itself against the amendment, and so I do not wish to move it. I only submit that the amendment is not at all absurd but rather very reasonable.

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar amendment was moved by my honourable Friend to article 73.

Mr. President : That has already been disposed of. As regards article 76 there is no amendment.

(Amendments Nos. 1517 and 1518 were not moved.)

Mr. President : The question is :

“That article 77 form part of the Constitution.”

The motion was adopted.

Article 76 was added to the Constitution.

Article 77

Mr. President : The motion is :

“That article 77 form part of the Constitution.”

(Amendments Nos. 1519, 1520 and 1521 were not moved.)

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

“That in clause (b) of article 77, for the words ‘to the Deputy Speaker’ the words ‘to the President’ be substituted.”

This amendment of mine relates merely to a matter of procedure. I feel that when the Speaker of the House of the People resigns his office, it will be far better if he addresses his resignation to the President and not to the Deputy Speaker, because the Deputy Speaker holds an office subordinate to him.

I am not suffering from any false sense of dignity, but procedure in these matters, as in others, must be regulated by what I may call decorum and the proprieties of the particular occasion and, therefore, it seems to me that when you have provided that when the Deputy Speaker resigns, he addresses the Speaker and sends his resignation to him, I feel that it is proper that the Speaker should address it, not to the Deputy Speaker, but to the President of the Union of India. I hope and trust that Dr. Ambedkar will see the propriety of a procedure like this and will accept this amendment of mine which provides that in the event of resignation by the Speaker, his resignation will be addressed to the President and not to the Deputy Speaker Sir, I therefore, move my amendment No. 1522 standing in my name and commend it to the acceptance of the House.

(Amendments Nos. 1523 and 1524 were not moved.)

Mr. Naziruddin Ahmad : Amendment No. 1525 is verbal.

Mr. President : I also thought so.

(Amendments Nos. 1526, 1527 and 1528 were not moved.)

I think these are all the amendments to article 77. There is only one amendment moved to this article.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I wish to oppose the amendment moved by Mr. Kamath. I feel that he has forgotten that the President is the Executive head and we want that the Speaker and the Deputy Speaker should be completely independent of the Executive and when, therefore, it is provided that the Speaker should send in his resignation to the Deputy Speaker, it only means that the independence of the Speaker

and the House over which he presides should be maintained. If we send it to the President, it means we send it to the Executive. It is a very healthy principle that the Speaker and the Deputy Speaker should be completely independent of the Executive. I therefore hope that Mr. Kamath will not press his amendment.

Mr. Tajamul Husain : Mr. President, Sir, I support the amendment moved by my honourable Friend Mr. Kamath and I think that when the Speaker wishes to resign, he should send his letter of resignation not to an officer who has been working under him, but to someone higher in authority, *i.e.*, the President of the Republic. This would be better, Sir, I think, for the dignity of the House. My honourable Friend Prof. Saksena said that he wants to keep the dignity of the House. The House of the People is intermingled with the President in many ways and you cannot separate one from the other; it is impossible; and the President of the Republic, after all, Sir *de jure* is the head of the House of the People. These are the two heads and it is really right and proper that when he wishes to resign, the letter should go to the highest tribunal that is the President, than to his subordinate. With these words, I support the amendment moved by my honourable Friend Mr. Kamath.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. Now the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently, these two people, if they want to resign, must tender their resignations to the House which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the Speaker to tender their resignations to the President who has nothing to do with the House and who should have nothing to do with the House in order that the House may be independent of the executive authority exercised either through the President or through the Government of the day.

Shri H.V. Kamath : On a point of information may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today?

The Honourable Dr. B.R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H.V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly?

The Honourable Dr. B.R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor-General.

Shri H.V. Kamath : I beg leave to withdraw the amendment, Sir.

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

Mr. President : The question is :

“That article 77 stand part of the Constitution.”

The motion was adopted.

Article 77 was added to the Constitution.

Article 78

Mr. President : The motion is :

“That article 78 form part of the Constitution.”

(Amendments Nos. 1529 and 1530 were not moved.)

The amendment to amendment No. 1530 does not arise because the amendment itself is not moved.

(Amendment No. 1531 was not moved.)

There is no amendment that has been moved to article 78.

The question is :

“That article 78 stand part of the Constitution.”

The motion was adopted.

Article 78 was added to the Constitution.

New Article 78-A

Mr. President : There is notice of an amendment by Mr. T. T. Krishnamachari to add a new article 78-A.

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

“That after article 78, the following new article be inserted :—

‘78-A. At any sitting of the House of the people, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.’ ”

Sir, this new article is exactly the same in content as article 75-A which the House was good enough to accept. The need for this article has been explained fully by the Honourable Dr. Ambedkar. I hope the House will have no difficulty in accepting this new article as it relates to the House of the People in the same way as the previous article 75-A relates to the Council of States. Sir, I move.

Mr. President : I desire to put this amendment straightaway as this is the same as a previous article adopted, with this difference that this relates to the House of the People whereas the previous article relates to the Council of States. I take it that no further discussion is necessary.

The question is :

“That after article 78, the following new article be inserted :—

‘78-A. At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of

the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.’ ”

The motion was adopted.

Article 78-A was added to the Constitution.

Article 79

Mr. President : The motion is :

“That article 79 form part of the Constitution.”

(Amendments Nos. 1532, 1533 and 1534 were not moved.)

Mr. President : There is no amendment moved to article 79.

The question is :

“That article 79 stand part of the Constitution.”

The motion was adopted.

Article 79 was added to the Constitution.

New Article 79-A

Mr. President : There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B.R. Ambedkar : I would like to stand over.

Mr. President : Article 79-A stands over. There is another article 79-A given notice of by Mr. Naziruddin Ahmad.

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

“That after article 79, the following new article be inserted :—

‘79-A. (1) The Chairman shall preside at a meeting of the Council of States, and in his absence, the Deputy Chairman shall preside; and in his absence, any one of the panel of Chairmen appointed by the Chairman and selected by him for the purpose, shall preside; and in their absence any member of the Council of States elected by the Council shall preside.

(2) At a meeting of the House of the People the Speaker shall preside, and in his absence, the Deputy Speaker shall preside, and in his absence a member of the panel of Chairmen appointed by the Speaker and selected by him for the purpose, and in their absence, any member elected by the House shall preside.

(3) At a joint.....’ ”

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this is already provided in article 75.

Mr. President : Clauses (1) and (2) are already covered by articles 75 and 78.

Mr. Naziruddin Ahmad : In that case, I shall move clause (3).

The Honourable Shri K. Santhanam : Even clause (3) has been provided for.

Mr. President : Clause (3) is covered by article 98 (4). If you want to move your amendment, you can take it up then. That would be the proper stage.

Mr. Naziruddin Ahmad : But a duplicate provision has today already been accepted by the House.

Article 80

Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80.

The motion is :

“That article 80 form part of the Constitution.”

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

“That in clause (1) of article 80, for the words ‘Save as provided in this Constitution’ the words ‘Save as otherwise provided in this Constitution’ be substituted.”

Sir, this is just a slip and it has to be corrected.

Mr. President : Amendment No. 1537. I take it this amendment is of a drafting nature. Amendment No. 1538. Mr. Kamath, this is covered by the amendment which has just been moved.

Shri H.V. Kamath : The second part is new, Sir.

Mr. President : You may move the second part.

Shri H.V. Kamath : Sir, may I at the very outset bring to your notice that I had sent five amendments separately, but they have been brought together, three in one amendment No. 1538 and two as amendment 1541. I do not wish to blame the office in any way; the office is working very hard and it is quite possible that on account of pressure of work this has happened. I would only crave your indulgence to move these amendments separately.

Mr. President : Yes.

Shri H.V. Kamath : I shall move only the last two portions in 1538, and, also by your leave, 1541 because that relates to the same clause.

Mr. President : Yes.

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

“That in clause (1) of article 80, after the words ‘at any sitting’ the words ‘of either House’ be inserted and the words ‘other than the Chairman or Speaker or person acting as such’ be deleted.”

and further

“That in the second paragraph of clause (1) of article 80 before the words ‘The Chairman’ the words ‘Provided that’ be inserted.”

I am not moving the second half of the amendment 1541.

Shri T.T. Krishnamachari : May I point out that House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath?

The Honourable Dr. B.R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T.T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus—

“Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting.

Provided that the Chairman or Speaker, etc.”

I do not wish to expatiate upon this amendment. I think these amendments are fairly obvious because the first amendment seeks to insert the words 'of either House'. It stands to reason that we must make everything clear. There is the other clause subsequent to that which refers to joint sitting of the Houses.

As regards the other two amendments which in my view must be taken together or rejected together, I would only say that at times I feel that this Draft Constitution has been encumbered with needless verbiage, words which might have been reduced in number, words which might have been omitted. I am aware that the elephant is one of our emblems but I am sure the House does not agree we should make the Constitution an elephantine one. Our sages and wise men have written sciences and philosophy in brief Sutras and one of our greatest men—I think it was Vyasa himself who took pride in his sloka when he said—

“श्लोकार्धेन प्रवक्ष्यामि यदुक्तं ग्रंथकोटिभिः”
(*Shlokardhena pravakshyami yaduktam granthakotibhih.*)

[What crores of Granthas have said I will say in half a verse.]

But have we are repeating words which are absolutely unnecessary and which might have been easily, without any detraction of meaning or derogation to the propriety of the article, omitted. I wish we had a Constitution much less bulky. The other day some friends of mine who were students in a college wrote to me after they had persued the Draft Constitution—they are students of politics—they said half in jest and half in earnest that the future generation of students will curse many of us who have presented the country with such a bulky document.

Mr. President : Is all this necessary for this amendment?

Shri H. V. Kamath : I only wanted to make my point clear. I will come straight to the point, as you have been pleased to remark that it is not necessary for the amendment. I only wish to say that here in clause (1) of article 80 we find that these words 'Chairman or Speaker or person acting as such' has been repeated in the first para as well as the second para. In the first para the meaning is quite clear without the incorporation of these words 'other than the Chairman or Speaker etc.' If they just add a proviso like 'Provided that' the meaning that the draftsmen have in mind will be clearly brought out and we will be saved the burden of at least 8 or 9 words in this one article. If we proceed in this fashion with many articles, I am sure that at least a thousand words might be omitted from this Constitution.

I therefore move the latter two-third portions of No. 1538 and the first half of No. 1541 and commend these for the acceptance of the House.

(Amendments Nos. 1542, 1543, 1544, 1545, 1546, 1547 and 1548 were not moved.)

Mr. President : No. 87 of Amendment to Amendments.

Acharya Jugal Kishore (United Provinces : General) : Sir, I move :

“That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word 'sitting' where it occurs for the first time, the words 'of either House' be inserted.”

This is only a verbal change and I hope the House will accept the amendment.

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

Mr. Naziruddin Ahmad : Mr. President, Sir, with regard to article 80, I have to point out one drafting lacuna for the consideration of the Drafting Committee. After clause (1) there is a complete paragraph which should bear a clause number. I think this is an isolated instance where a paragraph has not been numbered. This paragraph should be numbered 1(a) and the subsequent clauses re-numbered.

With regard to another aspect of drafting, I would suggest for the consideration of the Drafting Committee this : In certain places in articles 78, 79, 80, 81 and 82, the word "the" has been treated with considerable amount of affection. It has been used rather very freely. But in other places there is considerable amount of antipathy to the word "the"; as for instance in article 79, there is the expression "the Chairman", "the Deputy Chairman", "the Speaker", "the Deputy Speaker" etc. But in articles 78, 80 and 81, the word "the" in similar context does not appear. But the word again appears in article 82.

Shri M. Ananthasayanam Ayyangar (Madras : General) : On a point of order Sir, you have ruled out verbal amendments. Is it open to my Friend to speak on these verbal amendments? It is for the purpose of enabling us to get along with the substantial portion of the work and to confine ourselves to the substance and in order not to spend away time that you have ruled out verbal amendments. Then what is the use of taking up our time in another form by speaking on them?

Mr. President : I only wanted to know on which side the Member's sympathies lay, whether in favour of or against the word "the". That apart, I would request the honourable Member to discuss it with the Members of the Drafting Committee.

Mr. Naziruddin Ahmad : Sir, I have already finished. But let me point out that my honourable friend in taking up this point of order has taken up more time than I would have done. I have simply pointed out these two points for the kind consideration of the Drafting Committee and I have finished.

Prof. Shibban Lal Saksena : Mr. President, Sir, my objection to this article is with regard to the words "joint sitting of the Houses". In this Draft Constitution, it is article 88 that deals with joint sittings of both Houses. That is a question of principle, and I am one of those who think that there should be no joint sittings of the two Houses. Therefore, I hope that even if this article is passed just now as it is, and if article 88 is amended or dropped, I hope this portion of article 80 also will be dropped.

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H.V. Kamath : Which of my amendments? I moved three amendments, separately.

The Honourable Dr. B.R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendments as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out. Firstly, adding “of either House” after the words “at any sitting”. Secondly deletion of the words “other than the Chairman or Speaker or person acting as such”. Thirdly inserting the words “provided that” at the commencement of the second para. I would like to know which of these three the honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourable Dr. B. R. Ambedkar : I am referring to the honourable Member’s amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

“Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be...”

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

Mr. President : That covers the first part of your amendment. Then there is the second part of the amendment. I would rather begin with amendment No. 1536.

The question is :

“That in clause (1) of article 80, for the words ‘Save as provided in this Constitution’ the words ‘Save as otherwise provided in this Constitution’ be substituted.”

The amendment was adopted.

Mr. President : Then we come to No. 87 on the List of Amendments to amendments, moved by Acharya Jugal Kishore.

The question is :

“That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word ‘sitting’, where it occurs for the first time, the words ‘of either House’ be inserted.”

The amendment was adopted.

Mr. President : Then we come to the third amendment which is Mr. Kamath’s amendment. It is to this effect.

“That the words in the first paragraph of clause (1) ‘otherwise than the Chairman or Speaker or person acting as such’ be deleted, and at the beginning of the second paragraph ‘provided that’ be added, with of course, necessary changes in the punctuation.”

The amendment was negatived.

Mr. President : Then I put the article, as amended to vote.

The question is :

“That article 80, as amended, stand part of the Constitution.”

The article, as amended, was adopted.

Article 80, as amended, was added to the Constitution.

Article 81

Mr. President : Then we come to the next article, article 81.

The motion is :

“That article 81 form part of the Constitution.”

There is an amendment of which notice was given by Mr. Tahir and Mr. Jafar Imam. But they are not here and so it is not moved. Then there is amendment No. 1550, standing in the name of Mr. Kamath.

Shri H.V. Kamath : That does not arise now, in view of article 68-A adopted yesterday; and so I do not move it, Sir.

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

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States’ be substituted.”

The amended article would then read that :

“Every member of either House of Parliament shall, before taking his seat, make and subscribe before the Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States, a declaration according to the form set out for the purpose in the Third Schedule.”

Sir, my purpose in submitting this amendment is to keep out the President of the Republic from taking part in what I regard to be a purely internal concern of the House. The President of the Republic should have no concern with such matters. I think it is a very simple matter relating to the internal autonomy of the House and as such ought to find no objection.

Sir, I commend the motion to the House.

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

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

Mr. President : All the amendments have been moved. They are open to discussion now. Does anyone wish to speak?

Mr. Tajamul Husain : Mr. President, Sir, I rise to oppose the amendment No. 1551 moved by my honourable Friend, Prof. K. T. Shah. At present the procedure is this. When the House is elected, one from amongst the Members of the House is appointed by the Governor-General to preside at their meetings and then the election of the Speaker and the Deputy Speaker takes place. Now, Sir, article 81 says that the affirmation or oath should be taken before the President or some person appointed in that behalf by him. The amendment is that it should not be taken before the President, but should be taken before the Speaker of the House of People or Chairman of the Council of States, or some person appointed by the Speaker or Chairman.

Now, Sir, I think, this has no meaning. I think the practice as it stands now is more reasonable than what is proposed in this amendment because before the oath there is no Speaker. With these words, Sir, I oppose the amendment moved by Professor Shah.

Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words “a declaration”, the words “an affirmation or oath”. May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the

President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should before he enters upon his office take the oath or affirmation in the following form :—

“I, A, B, in the name of God, do swear”, or “I, A, B, do solemnly affirm”...

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause.

There is a notice of an amendment to the Schedule also to bring it into conformity with the article. There is one difficulty which has struck me. Under article 81 every member of either House of Parliament has to affirm or take the oath before the President or some person appointed by him in that behalf. That will happen on the very first sitting of the Parliament when the members will take the oath or make the affirmation. Supposing a member joins in the middle of the session after a bye-election. Will he be able to take the oath or make the affirmation before the Speaker or the Deputy Speaker as the case may be?

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my Friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading “Disqualifications of Members” the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,—election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is in whom this power to administer the oath shall be vested. Obviously it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath? Has he to go to the President or can he take the oath before the Speaker? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently in the case of a newly elected person it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the Speaker to derive his authority to administer the oath from the President?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.....

Mr. President : I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President : Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President : The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

Maulana Hasrat Mohani : Unless and until all the members take the oath I should like to know how the Speaker can delegate his authority to any other person :

Mr. President : I will now put the amendments one by one to vote. The question is—

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of State’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 81, as amended, stand part of the Constitution.”

The motion was adopted.

Article 81, as amended, was added to Constitution.

Article 82

Mr. President : The motion is :

“That article 82 form part of the Constitution.”

(Amendment No. 1555 was not moved.)

Mr. President : I suggest that 1556 and 1557 are covered by 1558. If it is moved and if Prof. Shah is not satisfied, he can move Amendment No. 1556.

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

“That after clause (1) of article 82, the following new clause be inserted :—

‘1.(a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person in chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person’s seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.’”

Sir, it requires no comment. It is the ordinary rule.

Mr. President : I think that covers amendments Nos. 1556 and 1557. Mr. Naziruddin Ahmad may move his amendment No. 1559 if he thinks that it is not of a drafting nature.

Mr. Naziruddin Ahmad : Sir, I move :

“That in sub-clause (a) of clause (2) of article 82, for the words ‘becomes subject to any disqualifications mentioned in’, the words ‘is disqualified under’ be substituted.”

Article 82(2) says :

“If a member of either House of Parliament—(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article;”

For these, I would substitute the words ‘is disqualified under clause (1) of the next succeeding article’. The next succeeding article is to this effect that

[Mr. Naziruddin Ahmad]

a person "shall be disqualified" under certain contingencies. If those contingencies really happen the disqualification is automatic and absolutely complete. The text says; if a member becomes "subject to any of the disqualifications." I say, "if he is disqualified under sub-clause (1)" of the next succeeding article, the expression 'subject to any disqualification' implies that the event is likely to happen and therefore I suggest 'is disqualified' which indicates a completed fact. The real clause which deals with disqualification is very absolute and deals with this matter as a completed fact. I suggest therefore that my amendment be accepted. I do not deny that the amendment is somewhat of a drafting nature. But I submit that the implications would be different. If you do not think that this should be considered by the Drafting Committee, I desire that it should be put to vote.

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

"That in clause (2) of article 82, the following new sub-clause be added :—

- '(c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties,
- (d) or if he dies.' "

As regards (d) I do not think much need be said. I fail to see why this contingency was not provided for in this article. It may be that Dr. Ambedkar may say that when a member dies, it naturally follows that his seat will be vacant. But you may remember that this Constituent Assembly laid down in rule 2 or 3 that a seat will be declared vacant either on account of resignation, death or otherwise of a member. Therefore I feel that nothing would be lost if we provide in this article that upon a member's death his seat will fall vacant.

As regards the first part of my amendment, I may say that all democracies, at least in theory, and some of them in actual practice, have provided for the recall of members or perhaps Ministers, in the event of their failing to discharge their duties to the constituency concerned. I think the Swiss Federal Constitution has incorporated a provision to this effect and some of the American States have also a similar provision. This provision, Sir, goes a long way to fulfil what, to my mind, an ideal democracy should be. I am not sure that we in this country will have an ideal democracy and you, Sir, yesterday rightly observed that there are many dangers inherent under the new dispensation. I feel and I am sure the House will agree that since adult franchise is being introduced by this Constitution, we should take early steps, vigorous steps, towards adult education also, because, to my mind, adult franchise without adult education will not work efficiently—I will not say it will be a failure—but it will not be in the best interests of the country. If it is visualised that there will be adult franchise with a duly and properly educated electorate, then it is desirable that a member of Parliament should fulfil his duties to the satisfaction of his constituents, and the electorate must have the right, must have the feeling, must have the satisfaction, the conviction that, if their elected member does not so fulfil his duties, they have the right to recall him. It is common knowledge that in modern Parliamentary democracies, a member once elected has no responsibility to his constituents and he continues to sit in Parliament till the next election arrives and then he goes to the electorate asking for their votes. This is hardly a satisfactory state of affairs and I feel that there is no harm if an educated electorate is invested with the power to recall a member elected by them. I perfectly agree that as long as the electorate is not properly educated, there is every danger that the electorate, on consideration other than the right ones, out of pique or ignorance or malice or some such motive, might decide to recall him; but

on the whole, by and large, the electorate that we are going to create is a huge electorate and if this principle is accepted, we might devise some sort of machinery to implement it, and we might also fix the proportion, whether two-thirds, three-fourths or four-fifths of the electors should be necessary before a member is recalled. This is a matter of detail which can be decided later on. I move this amendment and commend it for the acceptance of the House.

Mr. President : Amendment Nos. 1561 and 1562 are covered by the amendment moved by Mr. Kamath.

(Amendment No. 1563 was not moved.)

Amendment No. 1564 is of a drafting nature and therefore disallowed.

(Amendment No. 1565 was not moved.)

Prof. K. T. Shah : Sir, I do not wish to move Amendment Nos. 1566 and 1567, but if you would permit me, I would like to move the latter part of Amendment No. 1568.

Mr. President : Yes.

Prof. K.T. Shah : I move :

“That after clause (3) of article 82, the following new clause be inserted :—

‘(4) No one who is unable to read or write or speak the National Language of India after ten years from the day this Constitution comes into operation shall be entitled to be a candidate for, or offer himself to be elected to, a seat in either House of Parliament.’ ”

This, I think, is very important from the point of view of developing and universalising the use of the national language. Whatever our professions with regard to the need for building up and popularising the national language at the present time, for such technical purposes as law or the constitution, we have yet to develop it. That cannot be developed unless we introduce some form of compulsion, at least in the Legislatures; so that no one who is unable to understand or speak or write in the national language should be entitled to be a candidate or be elected to the national legislature. I realise that all at once such a thing would be difficult and therefore I am suggesting that only within a period of ten years, or after ten years from the day on which the Constitution comes into operation, everyone who offers himself as a candidate for election to either House of Parliament shall be expected to know the national language sufficiently to read and write that language. I think that in the situation in which we are, it is important and necessary that some such provision should be introduced in the Constitution and hence my proposal. I hope it will prove acceptable to the House.

Mr. President : There is notice of an amendment No. 89 by Mr. Lakshminarayan Sahu to amendment No. 1568. But that does not arise since 1568 has not been moved. Amendment No. 1569 by Mr. Sahu is covered by the amendment moved by Mr. Kamath, and it is not necessary to move it separately. Now the amendments and the original proposition are open to discussion.

Mr. Tajamul Husain : Mr. President, Sir, I first take up the amendment of Dr. Ambedkar. His amendment says that no one shall be a member of two legislatures at the same time. That is a very sound principle. If a member is elected to two legislatures, he must resign his seat in one or the other. That is what has happened now. Some Members of this House are also members of provincial legislatures. That is an anomaly which this amendment seeks to remove. Therefore I support it.

[Mr. Tajamul Husain]

Then amendment No. 1559 by Mr. Naziruddin Ahmad. I support that also. The words used by the Drafting Committee are "subject to any disqualifications". Now, "subject to any disqualification" is quite different from "is disqualified". "Is disqualified" is a definite thing that a member has become disqualified. "Subject to any disqualifications" is an indefinite thing. I think that this amendment should be supported. Now comes Amendment No. 1560 of my honourable Friend, Mr. Kamath, which I oppose, Sir. He says that the seat shall be declared vacant if the member is recalled by the constituency for failure to properly discharge his duties. Now, Sir, what happens in politics? Supposing there is an election and there are three candidates for one seat and supposing there are 1,000 voters. Two candidates, who have not succeeded, secure 300 votes each and the person who has succeeded has secured 400 votes, although 600 voters are against him, and in spite of that, he has succeeded. Now when he becomes a member of the House those 600 voters may join against him and say : "Well, you have failed to properly discharge your duty and we recall you." I think it is a very dangerous provision, Sir, and I think it should not be accepted. The second provision is that the seat should be declared vacant if the member dies. Naturally if he dies, the seat must be declared vacant; it cannot but remain vacant when the member is dead and my honourable Friend will pardon me if I think his amendment is absurd.

Shri H.V. Kamath : May I remind my honourable Friend that he was himself a party to the rule which we passed in this Assembly?

Mr. President : He remembers all that. We need not remind him.

Mr. Tajamul Husain : With these words, I resume my seat.

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. President, Sir, with regard to Mr. Kamath's amendment, it is neither workable nor practicable. He says : "or if he is called by the electors in his constituency for failure to properly discharge his duties". Now who is to decide? 'Electors' means that a referendum has to be actually taken by some authority just as he is elected by an authority through the ballot box. I know, Sir, some constituencies disapproving the actions of a member have passed resolutions against a member in a public meeting. 5,000 or 10,000 or 500 can make a declaration that a member has lost the confidence of the electorate and he should be recalled. May I ask whether it is the view of the electorate? Out of that 4,000 or 5,000 three-fourth members may not be voters. They may be simply other as public men. It is therefore not possible unless it is stated that it must be by the same process by which he is elected, by the regular process of voting in a ballot-box; if such a system is adopted, I can understand, but that is not possible, that is nowhere workable and, therefore, Sir, I contend on the face of it, this amendment should not be accepted. As for the member dying, even today if a member dies, under the present Act, new elections take place. The office knows that. I, therefore, feel that this amendment should not be accepted.

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr. Naziruddin Ahmad or of Mr. Kamath either.

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

The question is :

"That after clause (1) of article 82, the following new clause be inserted :—

'1.(a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of

Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.' ”

The amendment was adopted.

Mr. President : The question is :

“That in sub-clause(a) of clause (2) of article 82, for the words ‘becomes subject to any disqualifications mentioned in’, the words ‘is disqualified under’ be substituted.”

The amendment was negatived.

Mr. President : As regards Mr. Kamath's amendment, I shall put the clauses separately because there is another amendment which I did not allow to be moved.

The question is :

“That in clause (2) of article 82, the following new sub-clause be added :—

‘(c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties.’ ”

The amendment was negatived.

Mr. President : The question is :

“That in clause (2) of article 82, the following new sub-clause be added :—

‘(d) or if he dies.’ ”

The amendment was negatived.

Mr. President : Then we come to Amendment No. 1568, the second paragraph.

The question is :

“That after clause (3) of article 82, the following new clause be inserted :—

‘No one who is unable to read or write or speak the National Language of India after 10 years from the day this Constitution comes into operation shall be entitled to be a candidate for or offer himself to be elected to, a seat in either House of Parliament.’ ”

The amendment was negatived.

Mr. President : The question is :

“That article 82, as amended, stand part of the Constitution.”

The motion was adopted.

Article 82, as amended, was added to the Constitution.

New Article 82-A

Mr. President : There is Amendment No. 1570 in the name of Prof. Shah and Mr. Jhunjhunwalla. That relates to the qualification of candidates and I think we have already dealt with this question. It is covered by a decision already taken.

Prof. K. T. Shah : I do not move, Sir.

Article 83

Mr. President : The motion is :

“That article 83 form part of the Constitution.”

[Mr. President]

We have a number of amendments to this article.

(Amendments Nos. 1571, 1572, 1573 and 1574 were not moved.)

Amendment 1575—This is already covered by an article already adopted and relates to qualification of candidates. This need not be moved.

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

“That in sub-clause (b) of clause (1) of article 83, for the words ‘is of unsound mind and’, the words ‘is declared by a competent court to be of unsound mind’ be substituted.”

Sir, the original text lays down the test of the qualifications if a man is of unsound mind. No test is indicated. Who is to find whether a man is of unsound mind or not? Under these circumstances, it is usual to lay down an objective test. That is the test of a finding of a court of law. It will be extremely dangerous to leave it as vague as this. I beg to submit that there is unsoundness of mind or less almost in every man. It depends on a question of degree or it depends upon the context. If a man is highly sound, he may say.....

Mr. President : If the honourable Member will refer to clause (b) of article 83, he will find : “if he is of unsound mind and stands so declared by a competent court;”

Mr. Naziruddin Ahmad : I need not press it.

(Amendments Nos. 1577, 1578, 1579 and 1580 were not moved.)

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

“That for sub-clause (d) of clause (1) of article 83, the following be substituted :—

‘(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.’ ”

(Amendment to Amendment No. 1581 was not moved.)

(Amendments Nos. 1582, 1583 and 1584 were not moved.)

Mr. President : Amendment No. 1585, I think that is covered by amendment No. 1581. Do you think it is anything different from 1581?

Shri H. V. Kamath : I am asking for the deletion of some words, Sir. I move :

“That in sub-clause (d) of clause (1) of article 83, the words ‘or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power’ be deleted.’ ”

Sir, I am following the sound maxim which I laid down a few minutes ago that as far as possible, we might dispense with needless verbiage and try to be as brief as possible, of course, without sacrificing the meaning or significance or importance of an article, and to compress it into as few words as possible. Brevity is not merely the soul of wit; it is also the soul of truth. Here, I feel that in sub-clause (d) of article 83, the first part is adequate to cover any circumstance arising out of the second part of sub-clause (d). A person who is under any acknowledgment of allegiance or adherence to a foreign power, if he is disqualified, it stands to reason, it follows *ipso facto* that a person who is a subject or a citizen, which is a matter of graver moment than merely owing allegiance or adherence to a foreign power, must be disqualified. A subject or a citizen or one who is entitled to the rights or privileges of a subject or a citizen of a foreign power, certainly stands in

a category which in comparison with the first part of the sub-clause of this article, is of more serious import. If we disqualify a person who merely owes allegiance or adherence to a foreign power, we need not explicitly say that a subject or a citizen is disqualified. If one category is disqualified, in my humble judgment it must follow as the night doth the day, that a citizen or a subject must also be disqualified. I therefore move, in the interests of brevity and elimination of unnecessary verbiage, that this amendment be accepted.

(Amendment No. 1586 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Amendment No. 1587 is merely of a drafting nature.

Mr. President : I would ask Dr. Ambedkar to consider this, because it might create some difficulty. The existence of the word 'and' at the end would mean that all the disqualifications should concur.

The Honourable Shri Ghanshyam Singh Gupta : That is what I fear, Sir.

Mr. President : Any one of them should be a sufficient disqualification. If you add the word 'and', it means that all the disqualifications must concur. In that sense, it is not merely verbal.

The Honourable Shri K. Santhanam : The word 'and' must be changed into 'or'.

The Honourable Shri Ghanshyam Singh Gupta : I considered that to be a verbal slip only. It becomes substantial if it is changed into 'or'.

Mr. President : If you add 'or', it would be clear.

The Honourable Shri Ghanshyam Singh Gupta : May I move it formally, Sir?

Mr. President : Yes.

The Honourable Shri Ghanshyam Singh Gupta : Sir, I move :

"That the word 'and' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

Sir, the meaning is quite clear and you have so well expressed it that, if we keep the word 'and', it may mean that all the disqualifications contained in sub-clauses (a), (b), (c), (d) and (e) may be necessary. It may just mean that if one suffers from one of these disqualifications, it may not be enough to disqualify him. Therefore, it is necessary that the word 'and' should be removed and it should be replaced by the word 'or'. Or, even if we do not keep the word 'or', then, too, it would be all right.

The Honourable Shri K. Santhanam : Mr. President, I think another verbal change is needed. The clause, as it is, says, "subject or citizen of a foreign power". I think it must be, "foreign State". I think there is some incoherence.

Mr. President : Dr. Ambedkar has moved amendment No. 1581. That alters the wording.

(Amendment No. 1588 was not moved.)

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

"That sub-clause (e) of clause (1) of article 83 be omitted."

[Mr. Naziruddin Ahmad]

Clause (1) of article 83 deals with various disqualifications for being a member of either House. Sub-clause (b) deals with the ordinary well-known classes of disqualifications. Sub-clause (e) which I seek to delete is to this effect :

“If he is so disqualified by or under any law made by Parliament.”

I submit this delegates to the Parliament the power to disqualify a lot of people. Instead of this being clearly defined in the Constitution, it leaves the future Parliament to prescribe or invent new kinds of disqualifications. I submit that it may in certain circumstances be extremely dangerous and a political party may ban its opponents by a disqualification imposed by Parliamentary legislation. It may, in certain circumstances be dangerous to allow such a thing. Disqualifications should be very clearly defined in the Constitution itself and should not be left to be determined or invented by legislature. That is why I seek to delete this sub-clause.

Mr. President : No. 1590.

Shri R. K. Sidhva : Sir, he has referred to convictions, moral turpitude etc. in (e), (f) and (g), they will only form part of rules. Return of election expenses does not come in the Constitution. All these points have been discussed and covered.

Prof. Shibban Lal Saksena : Sir, I move :

“That sub-clause (e) of clause (1) of article 83 be omitted and the following sub-clauses (e), (f), (g) and clauses (2) and (3) be substituted in its place and existing clause (2) be re-numbered as clause (4) :—

‘(e) if after the commencement of this Constitution, he has been convicted or has in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by an Act of Parliament to be an offence or practice entailing disqualification for membership of this Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Act.

‘(f) if after the commencement of this Constitution he has been convicted of any criminal offence involving moral turpitude by a court and sentenced to transportation or to imprisonment for more than two years unless a period of five years has elapsed since his release.

‘(g) if after the commencement of this Constitution having been nominated as a candidate for the Union and State Legislatures or having acted as an election agent of any person so nominated he has failed to lodge a return of election expenses within the time and in the manner required by any Act of Parliament or of any State Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification :

Provided that a disqualification under paragraph (g) of this sub-section shall not take effect until the expiration of month from the date by which the return ought to have been lodged.

“(2) A person shall not be capable of being a member of Parliament while he is serving a sentence of transportation or of imprisonment for a criminal offence involving moral turpitude.”

“(3) When a person who, by virtue of a conviction or a conviction and a sentence becomes disqualified by virtue of paragraph (e) or (f) of sub-section (1) of this article is at the date of the disqualification a member of Parliament, his seat shall, notwithstanding anything in this article, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.”

As I stated yesterday, the Parliament should not be given power to lay down conditions which will disqualify men from being candidates. In fact even the

Government of India Act did not give this power to the Federal Parliament and there they had laid down certain definite conditions which disqualified a candidate. I think this provision is liable to be abused by any party in power which may like its opponents to be disqualified. I have therefore suggested this amendment. As was suggested by another Friend here yesterday the new Parliament may say 'Nobody can stand for election unless he pays income-tax or unless a high revenue is paid by him'. It is not quite impossible that sometimes reactionaries may come into power and they may not want any of their opponents to be elected. So I feel that this power of laying down qualifications and disqualifications of candidates should not be given to Parliament but the Constitution should provide these qualifications and disqualifications. The Constitution should definitely lay down the disqualifications of candidates. I hope that Dr. Ambedkar will include this in the draft.

(Amendments Nos. 1591 to 1608 were not moved.)

Mr. President : There is one point which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

All amendments have been moved. If anyone wishes to speak on these, he may do so.

Dr. P. S. Deshmukh : Mr. President, I wish to oppose the two amendments moved by my Friend Mr. Kamath and another by Professor Saksena. One refers to article 92, clause 1 (d) and the other to (e). Mr. Kamath has objected to the enumeration of the various categories of the connection of an individual citizen or resident of India with foreign powers and foreign States. He thinks and rightly so that the whole includes the part. Although that may be correct, I think so far as connection with foreign powers and States are concerned, it would be safer to define all the categories and to make the definition of this connection as exhaustive as possible. I agree with him that brevity should be our utmost concern and just as the Sanskrit Poets considered the omission of a single superfluous word as equivalent to the birth of a son, we might keep this high ideal before us. But so far as this particular sub-section is concerned, I think it should stand as it is. The second amendment moved by Prof. Saksena which has been supported by another honourable Friend refers to the clause 1 (e). The honourable Members are apprehensive that the Parliaments to come may, somewhat frivolously or to suit the party in power, introduce disqualifications which are unreasonable. I am sure no Parliament will act in a spirit which is not supported by the Constitution. These disqualifications again in their very nature are likely to be of an emergent character and I do not feel apprehensive that there is any likelihood of its being abused. In fact if there is no such provision, the hands of the Parliament would be tied and even if it is necessary to prevent a body of persons from interfering with the Indian Republic they will be powerless to do so. So it is very necessary that such a provision should be there and I have no fear that it is likely to be abused at any time. After all the party in power, if it has really the support of the people, should have perfect liberty to act in any particular manner and pass an enactment which would be necessary under the circumstances. If at any time the Parliament acts frivolously it shall be answerable to the people. So I feel, Sir, that both these amendments may be rejected by House.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, I only wish to draw the attention of the House to one provision namely sub-clause (b) under article 83 (1) "if he is of unsound mind and stands so declared by a competent court," and I hope the soundness of my mind will not be questioned if I say that this clause is not so happily worded as it should be. Sir, I presume that it is the desire of the authors of the Draft Constitution that no person of unsound mind should be allowed to be a member of this House, and I believe that the present House has been so selected, and that no person of unsound mind has been able to creep into this House. Sir, if you allow this clause to stand as it does, it will mean that there will be a large number of persons of unsound minds coming in, because the qualification is there that the man must be declared to be of unsound mind, by a competent court. This question was also raised on the last day of the previous session, and after that, I had tried to find out through the agency of the Government of India, that is to say, by putting questions in the Legislative section of the Constituent Assembly to find out how many of the lunatics who are actually in the different asylums in India have been declared by a competent court to be persons of unsound mind. If you make further investigations into this matter, you will find that not even ten per cent of all the persons who are now undergoing treatment in the different asylums and mental hospitals in India have been declared to be persons of unsound mind, by a competent court. My question is whether you will allow such persons who are actually in the asylums and mental hospitals to be enrolled as voters and also to stand for election. We know that in every village and in every town, there are a certain number of persons who go about like lunatics, and who are actual lunatics, and whom everybody, even the child who pelts stones at them, knows to be a lunatic. It is quite possible, and generally it is true that nobody has taken the trouble to declare them as persons of unsound mind, or to get them so declared by a competent court. Will you allow them all to be enrolled? Every villager, every citizen in a town knows that such and such person is of unsound mind, that he is a raving lunatic. Will there be any agency to prevent him from being enrolled as a voter, or standing for election?

Mr. President : But is there any chance of such a person being elected unless the whole electorate is of unsound mind?

Shri Rohini Kumar Chaudhuri : But, Sir, I can enrol him if I can get his vote. Unless a competent court declares him to be of unsound mind, he can enrol himself. This declaration is obtained only if the person is a moneyed man and has property and his relatives have to deal with his property. In other cases where do we find a person going in for such a declaration? There is no occasion to do so. It may also be that the person is so violent that he has got to be controlled by a court, but even in that case, he is only sent for observation for a few days and afterwards no such declaration is obtained. If you want to leave a loop-hole for persons of unsound mind to come in and have a voice in the selection of the members of the future House, you may leave the clause as it is. If you want to shut out such persons, the words "declared by a competent court" should be deleted. I say this because from my own experience, I know a vast majority of persons of unsound mind have not been so declared by any competent court.

Mr. President : Does anyone else want to speak? Has Dr. Ambedkar to say anything?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

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

The question is :

“That for sub-clause (d) of clause (1) of article 83, the following be substituted :—

‘(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.’”

The amendment was adopted.

Mr. President : Then there is the amendment of Mr. Kamath No. 1585. But that does not arise now after accepting Dr. Ambedkar’s amendment.

There is then Mr. Gupta’s amendment No. 1587, that the word “and” should be deleted. Or has it to be substituted by “or”?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted “and” or substitute ‘or’ for ‘and’.

Mr. President : The question is :

“That the word ‘and’ occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted.”

The amendment was adopted.

Mr. President : Then there is Prof. Saksena’s amendment No. 1590.

Prof. Shibban Lal Saksena : Sir, I request leave of the House to withdraw it.

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

Mr. President : There is then No. 1589, in the name of Mr. Naziruddin Ahmad.

The question is :

“That sub-clause (e) of clause (1) of article 83 be omitted.”

The amendment was negatived.

Mr. President : These are all the amendments. I will not put the article.

The question is :

“That article 83, as amended, stand part of the Constitution.”

The motion was adopted.

Article 83, as amended, was added to the Constitution.

Article 84

(Amendments Nos. 1609 to 1618 were not moved.)

Mr. President : The question is :

“That article 84 stand part of the Constitution.”

The motion was adopted.

Article 84 was added to the Constitution.

(Amendment No. 1619 was not moved.)

Article 85

Mr. President : The motion is :

“That article 85 form part of the Constitution.”

(Amendments Nos. 1620-1624 were not moved.)

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

“That in clause (3) of article 85, for the words ‘as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution the words ‘as were enjoyed by the members of the Dominion Legislature of India immediately before the commencement of this Constitution’ be substituted.”

Sir, my knowledge of the various Constitutions is not as vast or as profound as that of Dr. Ambedkar, but relying on my meagre knowledge of these constitutions, I venture to state that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the constitution of another State. I see no valid reason why this should be done. It may be that the rights and privileges which we are going to confer upon the Member of Parliament of free India will be identical with, or more or less similar to, those enjoyed by the Members of the House of Commons in the United Kingdom. But may I ask, Sir, in all humility, “Is it necessary or is it desirable when we are drafting our own Constitution, that we should lay down explicitly in an article that the provisions as regards this matter will be like those of the House of Commons in England?”

It may be argued in support of this proposition that there is nothing derogatory to the dignity of our Constitution or of our State in making reference to the United Kingdom. It may be further reinforced by the argument that now that we have declared India as a full member of the Commonwealth, certainly there should be no objection, or any sort of compunction in referring to the House of Commons in England. But may I suggest for the serious consideration of the House as to whether it adds—it may not be derogatory, or detract from the dignity of the Constitution—but does it add to the dignity of the Constitution? We say that such and such thing should be what it is in the United Kingdom or in America. Will it not be far better, far happier for us to rely upon our own precedents, or our own traditions here in India than to import something from elsewhere and incorporate it by reference in the Constitution? It is not sufficient to say that the rights and privileges and immunities of Members shall be such as have been enjoyed by the Members of the Constituent Assembly or Dominion Legislature just before the commencement of this Constitution? Personally, I think, Sir, this would be far better. I venture to hope that my honourable Friends in this House will be inclined to the same view that instead of quoting or citing the example of the United Kingdom it would be far better for us to rely upon the tradition we have built up here. Surely, nobody will dispute the fact that the privileges and immunities enjoyed by us here today are in no way inferior to, or worse than, those enjoyed by members of the House of Commons in the United Kingdom.

As a matter of fact, I think most of us do not know what are the privileges of the member of the House of Commons. We know very well what our privileges at present are. Therefore, Sir, it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries.

With these words, I commend this amendment for the consideration and acceptance of the House.

(Amendment No. 1626 was not moved.)

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, I beg to move :

“That in clause (4) of article 85 after the words ‘a House of Parliament’ the words ‘or any committee thereof’ be inserted.”

After the insertion of these words clause (4) will read thus :

“The provision of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

The object of any amendment is to bring clause (4) in conformity with clause (2) of this article. According to clause (2) a member of Parliament is immune from any proceedings in a court of law in respect of anything which he may speak on the floor of the House and also in respect of whatever he may say in a committee of the Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a committee of the Parliament. I see no reason why this privilege should be restricted in the case of a non-member of Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. Generally I think we shall be calling in the assistance of experts to give us the benefit of their experience and knowledge on technical subjects. Often members of the learned professions and technical experts would be invited by sub-committees of the Parliament to give evidence before it, so that right decisions on important subjects may be reached. That being so, I think it is very necessary that whatever is said either in evidence or otherwise by persons who are invited by the sub-committees of Parliament to speak before them, whatever they say, must also be privileged. This is an important omission and hence my amendment which I hope would be readily accepted by the House.

(Amendments Nos. 1628 to 1630 were not moved.)

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

“That after clause (4) of article 85, the following new clause be inserted :—

- (5) In all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.’ ”

Sir, this is a simple proposition well known in constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority.

I am enunciating no new proposition that, by virtue of this Constitution, every House of Parliament should be the sole judge of its collective privileges as well as the privileges of its members, whatever they are; and that any breach of such privileges should be dealt with by the House concerned similarly, any sentence passed also shall be executed by its own officers or under its authority. Sir, I commend the amendment to the House.

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

Prof. Shibban Lal Saksena : Sir, I wish to oppose the amendment moved by my honourable Friend Mr. Kamath. He said that instead of the privileges of the members of the House of Commons in the British Parliament we should enjoy the privileges of this Dominion legislature of India. So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted. Yet I do feel that

[Prof. Shibban Lal Saksena]

reference to the privileges enjoyed by the members of the House of Commons in our Constitution would not be desirable. Many members do not know what those privileges are. I, therefore, suggest that the learned Doctor who is in charge of the Draft Constitution should append some appendix containing the privileges of members of the House of Commons and those should be our privileges too. It may be a long appendix no doubt, but many Members are not aware of these privileges. Also it will not be proper for us to refer in our constitution to privileges of members of House of Commons which are liable to change. We can give ourselves these privileges as they exist at a particular point of time. The Parliament will of course have the power to frame its privileges but until it frames these privileges, Members should enjoy the privileges enumerated in the proposed appendix. We must therefore define the privileges enjoyed by the members of the House of Commons and put them as an appendix to our constitution, so that Members will know what these privileges are. I hope Mr. Kamath will not press his amendment in the present form which will only mean the nullification of all privileges of the members of this House for several years to come.

I want to draw attention to one other aspect of clause (2) of article 85, which says :

“No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.”

The privilege is given only in respect of publication “under the authority of either House of Parliament.” This is a very important thing. About ten or fifteen years ago an honourable Member of the Central Assembly, Pandit Krishna Kant Malaviya, had made a speech in the House which was suppressed by the papers but he published his speech in his paper at Allahabad. Prosecution was launched on the ground of this publication. If I make a speech and the Government sees that it is not published in the press and I publish it in my own paper I may become liable to prosecution. Whatever I speak in the House should be privileged. If the public is not to know what I said here, I cannot discharge my duties to the electorate which has chosen me. I want the privilege which is qualified in this clause to be absolute so that whatever is spoken in this House may be published in any paper and people may know what has been said here. In fact all that is said here will be published in Government publications and will be available to the public but very few people can read them. It is very important that journals and newspapers should have the privilege of publishing all that is said here. Sir, if any member of the House abuse his privileges as a member, the House has the power to remove him from the House. I do not think that any fear of abuse of such privileges need prevent us from granting such rights to members. If the President finds that any member is abusing his rights and privileges he will check him and expunge objectionable passages from his speech. I hope the learned Doctor Ambedkar will see that the privileges of the members are made absolute with reference to publication of their speeches both inside and outside and not confined to publications by or under the authority of Parliament. This is a matter of great importance to the Members.

Shri H.V. Kamath : A word of personal explanation, Sir. I may tell my honourable Friend Prof. Shibban Lal that the acceptance of my amendment will not be tantamount to no privileges. I may remind him that under the rules of procedure which this House sitting as the Legislature has tentatively adopted, there will be a Committee of Privileges which will go into the matter and define the various privileges of Members of the House.

Mr. Naziruddin Ahmad : I wish to draw the attention of the House to certain aspects of article 85. It deals with the privileges and immunities of Members. The first clause says that there shall be freedom of speech in Parliament. The second clause says that publication is also privileged provided it is a publication by or under the authority of either House of Parliament. It does not cover publication of speeches by the press outside. I think the right of a Member to speak anything in the House must be guaranteed—subject of course to the rules of procedure and the ruling of the President or the Speaker. It is very desirable that the speeches made in any of the Houses which are not objectionable and are not ruled out by the Speaker or the Chairman should also be fully published outside also without the authority of the Houses of Parliament. I submit that the freedom of the Press is a very important item among the rights of the people. If anything could be published by or under the authority of the House, the Press should have freedom to publish it. It is essential that the Press should be able to publish the proceedings of the House and also offer fair comments on them. It is somewhat anomalous that the Press could not publish what can be published by the authority of the House. This is a lacuna in the Draft Constitution which requires careful consideration.

With regard to clause (3) of the article I may say that the provision is vague. The privileges and immunities it provides for are of the vaguest description possible or imaginable. This clause has been bodily lifted from the existing Government of India Act enacted in England where the rights and privileges of the Members of the House of Commons are known and they have quite properly referred to them. I submit that, after Independence, we cannot relate our rights to those available to the members of the House of Commons. We should have our rights clearly and specially defined. In fact, the privileges of the Members of the House of Commons are not statutory. They are embedded in the Common Law to be found in the text-books which are many and also in case law which are scattered in many places. No one can tell us what the privileges are. Sir, to give Members here privileges similar to those enjoyed by the Members of the House of Commons is to give the Members practically no privileges at all. If a Member who wants to move about in his constituency desires to know his rights, he will have to take the help of an English attorney or Counsel to enlighten him. The Members of the House of Commons have freedom from arrest while going to or from Parliament and while doing work connected with Parliament. What about the many other undefined rights? These should all be defined and not left vague as at present. I suggest that at the end there should be added a Schedule defining the rights pending the House of Parliament making adequate laws in this respect. I submit we cannot leave the matter like this here.

As regards the amendment moved by Mr. Jaspat Roy Kapoor, I think it should be accepted. He wants to insert the words 'or' any committee thereof in clause (4) after the words 'a House of Parliament'. These words are there in clause (2). This is a vital clause. The rights and privileges of Members should not be left to be ascertained from next-books on English law. They are no longer applicable to us. These should be specially and clearly defined as suggested by me.

Dr. P. S. Deshmukh : Sir, I am constrained to express considerable sympathy with the point of view that the privileges should not be left vague as is now being done. The privileges of the Members of Commons are well understood and well defined and so there should be no difficulty in enumerating them in a Schedule. I think it is not very satisfactory to say that the privileges shall be that of such and such a person in such and such a place either the privileges are definite or they are vague. If they are well-defined

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and definite there should be no difficulty in stating them *in extenso*. If they are vague and indefinite it is wrong to console ourselves with a mere reference to such a thing. To say that the privileges shall be those of the members of the House of Commons in England is certainly vague. There is no use merely referring to some exterior body and the privileges enjoyed by that body or its members. It is better to make an effort to specify and define those privileges. Moreover, Sir, there should not be any difficulty in saying "as defined in the Schedule" and then set out the privileges actually in that schedule. I think, Sir, this point of view has considerable force and I hope my honourable Friend, Dr. Ambedkar, will oblige the House by finding a suitable solution for this. This article is most important and I am sure we will not allow it to be passed in a hurry because it embodies the privileges and rights of the members of Parliament.

So, far as the publication of the reports is concerned, I would like to support the point of view that has been raised by my Friend, Professor Saksena. We know the efficiency with which our printing office prints the official reports. If the members were entirely to depend or even the press were entirely to depend upon the speeches being published in the official reports, there would be nothing known outside the House of the happenings inside the House for months to come. That is the situation which actually obtains now. In spite of all efforts, we have not been able to rectify or remedy this state of things. So, I think that the privilege ought to be embodied somewhere, so that so long as a particular speech has been made in the House, there is no offence committed if it happens to be published in the papers.

These are two points of view which deserve consideration and I hope Dr. Ambedkar will feel inclined to agree with me.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges, unless they

went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no *infra dig* in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a bodge of sefdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

Shri H.V. Kamath : On a point of clarification, Sir, may I ask my honourable jurist Friend Mr. Alladi Krishnaswami Ayyar whether the Constitutions of Canada and Australia to which he has referred, whether those constitutions in providing for this matter which is under discussion make direct reference to the Constitution of the U.K. and the House of Commons in the U.K.?

Honourable Members : They do.

Shri Alladi Krishnaswami Ayyar : I said both in the Canadian and in the Australian Constitutions. The Canadian was earlier and the Australian was later. With regard to the Canadian constitution it was felt that there might be a lacuna and they had to pass special legislation in regard to committee procedure there.

Shri H.V. Kamath : I could not hear, but I suppose that does not matters.

Mr. President : In the Australian Constitution there is a direct reference to the House of Commons of the United Kingdom :

Section 49.—The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the Committee of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Practically the same words are used here.

Shri Jagat Narain Lal (Bihar : General) : Sir, I want to speak with regard to clause (2) as I have not been able to share the point of view expressed by Mr. Naziruddin Ahmad and some other friends. I feel that so far as the members of parliament are concerned, clause (2) seeks to give them two privileges or immunities. One is with regard to vote and the other is with regard to the speech which they may deliver in the Parliament and which might be published under the authority of the Parliament. My friends want further immunity. They want that the member who has delivered a speech in the parliament should have a further immunity, should have the right and privilege of publishing their speech outside in the Press. That may relate to the freedom of the Press, but that does not pertain to the freedom of the member so far as his speech or his vote in the parliament is concerned. I think that is stretching a point too far and it is neither fair nor proper. If a member, for example wants to deliver a speech in the parliament, not for the purpose simply of making an honest speech, but for the purpose of maligning some body or some institution and he starts straightaway by delivering a speech and publishing the same in so many other papers outside, I should say, that is not an honest expression of opinion and that is not a *bona fide* expression of opinion either. Therefore, I would like honourable Members to confine the privileges which are given and the immunity which is sought to be given to members of parliament only to those two which are contained in clause (2). I have nothing further to add.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, my first impression on this section was that it was rather restrictive of the privileges of a member of a parliament or legislature, but on second consideration...

An honourable Member : You are not audible.

Shri Rohini Kumar Chaudhuri : I advise you to go to the doctor. Sir, I am very sorry to learn that I am not audible. There may be some defect in my voice. If there is no defect in my voice. I would ask my honourable Friends who complain about it to go immediately and consult a ear specialist.

Sir, as I said my first impression of this article 85 was that it was rather restrictive, restrictive of the privileges of a member of a parliament or a legislature. But on second thought I found that my honourable Friend Dr. Ambedkar has been very wise. I think he has been wiser by experience because I know that in future there will be more women Members of the legislature than there are now. The strategy which they have played by the non-reservation of special seats in the future legislature only goes to prove that they will get more seats when they do not ask for it. That is the ordinary human experience. If a woman does not ask for anything you give her more. If she asks, you may sometimes refuse. So in future, I am sure, Sir, partly on account of the Hindu Code which is in the air, there will be more women Members of the legislature and when you are convinced of that and when my

honourable Friend Dr. Ambedkar is convinced of that, it is only a measure of caution that the privileges of members should be hereafter more curtailed than is now, but there is a one thing, Sir, which I am rather apprehensive about and it is this. Sir, while you are alive people are eager to find defects in you; your defects are sometimes exaggerated; sometimes defects which do you not possess are attributed to you; but when you are dead and gone, when, for instance, I am not in this House, when the condolence resolution is passed, qualities which I may not possess are spoken of as my own and paraded in the House. So you are more admired when you are dead than when you are alive. So I believe is all right that our speeches which are delivered here are published in the ordinary proceedings; that is all right and there is no fault in that. Nobody can find fault with that, but you may have a relation, you may have a friend, you may have your own son who would like to publish your speech, who would like to publish your speech in a book form, but supposing those speeches contain certain objectionable points, then he would be prosecuted. There may be various speeches, Sir, which are worthy of publication and you publish it because the ordinary Government proceedings are not available to every body. You publish it or some friend of yours publishes it and then he has not that privilege and he will be prosecuted. That is a danger which this clause as it stands will bring about. So I would say that *bona fide* proceedings which the Speaker or the President has not expunged, which the Speaker or the President has not stopped should be allowed to be published. The President or the Speaker has the right to stop any speech which incites people to violence, to stop any speech which contains defamatory remarks, and the Speaker and the President have the inherent right always to do so. Why should you like the Speaker or the President will allow a member to make defamatory remarks against any member in the House or any member who is not in the House? Why should you presume that the President will allow a speech to remain which incites people to violence. Once a speech is made and the Speaker does not think it fit to be expunged, why should you stop its publication by other papers than the government publications? I do not find any reason except one which might have prompted Dr. Ambedkar to consider that there would be more women Members and loose talk and therefore it would be better to stop that. If he has adopted that reason, I am entirely at one with him. Otherwise, I find no Justification for this clause.

There is another aspect. It has been seriously objected to by some Members of the House about the reference to the House of Commons of the United Kingdom. Of course, it would have been much better if it was possible to avoid such a reference. It has been pointed out that even in countries like Canada and Ireland, these provisions are incorporated in their constitutions. After all, the Canadians are merely people of England; most of them have gone from England. Blood is thicker than water. There is no harm in the Canadians adopting entirely the Constitutions of England. In the case of Ireland also the same remarks apply. But that does not apply to the Indians. We cannot claim that the same blood runs in our veins or that we came originally from England and settled here. Of course matters have changed considerably. So long as we are in the Commonwealth, we might also flatter ourselves and think that the same blood flows in our veins also. For the present, so long as we are in the Commonwealth, there should be no objection in retaining these words.

Mr. President : I think we have had a fair discussion on this; I would request Members to be short.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Mr. President, Sir, article 85 is apparently innocent but in my opinion there are certain features which should attract more than a mere passing notice of honourable Members of this House.

[Pandit Lakshmi Kanta Maitra]

Two points have so far been discussed. One is that the right and privileges that accrue to the members of Parliament shall be the same as prescribed for the member of the House of commons of the Parliament of the United Kingdom at the commencement of this Constitution. My honourable Friend Shri Alladi Krishnaswami Ayyar has explained the reason why this has been put in that way. Speaking personally, I feel that this sort of legislation by reference, that is to say, making certain legislative provisions, not in the form of substantive provisions, but by reference to the constitutions of foreign countries should, in my opinion, not be acceptable to the house. We are framing a constitution for a free, independent sovereign republic. In the body of that Constitution itself, we are going out of our way to prescribe the rights and privileges for the interim period by reference to what is contained for the members of the House of Commons of the Parliament of the United Kingdom, though there also there is no exhaustive list of the rights and privileges which the Members enjoy. It is a matter of deep sentiment that these words should not have found a place here. I would much rather go without any privileges for the next few months or a year for which we shall be functioning—I would much rather go without any specified privileges than make provision therefore by reference to foreign legislation. That disposes of one part.

The other part relates to the immunity with regard to publication of the proceeding of the House, which bears on the freedom of speech. Here, Mr. President, with your indulgence, I would like to place certain historical facts which should be carefully considered by every single Members of this House. You are going to provide that whatever you do in this House, your speeches or your conduct inside the House is absolutely privileged, and that immunity attaches only to the publication made by the Government of India or by the authority of the House. That means that any speech we make here, if it is printed and published in the official debates, is absolutely immune and the court has no jurisdiction to take cognisance of any case arising out of that, be it slander, or libel or whatever it be. Mr. Jagat Narain Lal has placed a point of view which is of course worthy of our consideration. It is quite possible that the privilege can be abused in that way, but there is also the other side of the shield. Let me tell you how this question arose in our Parliament.

The House may perhaps recall that one Miss Bina Das shot at the Governor of Bengal, Mr. Stanley Jackson. She was arrested; the Governor was not killed. In the course of her trial, she made a statement in the court. This statement could not be available anywhere in the country. It so happened that one member of the Central legislature, at that time, in the course of his speech on the repressive policy of the Government in Bengal read out the entire statement given by Miss Bina Das in the course of her trial. That was a revealing document. She gave the entire history of the genesis of the terroristic outrages in Bengal and particularly the circumstances that compelled her to take to that drastic step against the Governor of Bengal. Not a single line of that was allowed to come out in the Press on the ground of security by the British Government. The question arose when the speech of the honourable Member of the Central legislature which contained that statement came to be published. The Government said could be not be published. Sir B.L. Mitter the Law Member of the Government of India stoutly resisted its publication—a speech in the course of which he simply narrated the full text of the statement made by the accused Miss Bina Das in connection with her trial. That was in 1934. In 1935 or 1936—I do not exactly recollect, probably it was in 1935—we has been discussing the Criminal Law Amendment Bill in Simla. In the course of the general debate on the Criminal Law Amendment Bill, a speech was delivered by my late lamented Friend, Pandit Krishna Kanta Malaviya in which he gave a resume of the so-called terroristic outrages in the country and tried to explain

how the policy of the British Government had been mainly responsible for the morbid psychology which compelled young men and women to take to the cult of the bomb and the revolver. It was a magnificent speech. We were surprised that the next morning, none of the papers did publish a single sentence of the two-hour speech, a written speech which was delivered by my Friend Pandit Krishna Kanta Malaviya. The Government of the day, the Home Minister, I think it was Sir Henry Craik, took jolly good care to see that not a single line of that speech came out in the Press. He could only print and publish it on pain of penalty. Thereafter, my Friend Mr. Malaviya published the entire text of that speech—the speech as it is—in his own paper, *Abhyudaya*. At once the Government of the day came down upon him, he was not prosecuted but a security was demanded from his paper. Now when this was done, we on the floor of the House of the Legislative Assembly in 1936 raised a debate and brought a censure motion. We took the stand that the privilege of the house was infringed in-as-much as when a member made a speech on the floor of the House which was printed and published in the Government publication or assembly Debates and when he made a verbatim transcript of the whole thing in his own paper, immunity should also be extended to it. There were elaborate arguments by honourable Member on either side. The then Law Member Sir Nripendra Nath Sircar came out with a statement—at that time surprising—that the House had no privileges thought all time the House had been acting in the belief that it had certain rights and privileges. He said ‘This House has no privilege’. Be that as it may owing to our pressure the matter was settled then. This raises a very important point. I am surprised today at this change of attitude of those my friends and colleagues, who were with us in those days and who condemned the stand of the Government of those days and stoutly maintained that a published report of the proceedings, if honestly made by any private agency should also be entitled to protection. In those days they were the people who were all of the same opinion. Today we conveniently forget that and we do not allow that same privilege to be extended to non-Government publication. I realise that it is quit possible that in the course of the debate a member might be making references which if made outside will not give him immunity in a Court of law; but frivolous charges are not allowed to be made by the Speaker in the House. As a matter of fact the Standing Orders also provide that you cannot digress and make all manner of scurrilous or objectionable speeches. If you make libellous or slanderous speeches, the Speaker pulls you up. A member cannot say things unless he is sure about them and can substantiate them. Whenever references like that are made, by any particular member, the Speaker or President of the Chamber at once calls him to order. If in spite of that, the Member is firm and makes a speech with certain objectionable remarks what happens? When the government publishes that in the shape of records of Debates, there is no harm. If the Government prints them in large numbers, one can buy and distribute them as he likes with impunity. Put if at a later stage for instance an honourable Member wants to publish his own speeches or some of his relations wants to publish them and they make a verbatim transcript of these very speeches delivered by him which are published in the Official Debates, if they publish them in their own books, then no immunity is attached to that. It is preposterous, whatever the excuse may be for that. I ask the House to carefully consider this.

Shri M. Ananthasayanam Ayyangar : Sir, I am not a little surprised at the manner in which my honourable Friend Pandit Lakshmi Kanta Maitra wants to claim what according to me, is not a privilege but a licence. We are not trying to claim any thing more than what in the Mother of Parliaments those members in England who have striven for liberty of speech inside and outside the House have claimed and are claiming. Now let him consider one or two aspects. Outside this House Members are not entitled to either speak seditious

[Shri M. Ananthasayanam Ayyangar]

or make defamatory statements, but inside the House itself one many make any statement whatsoever, either attacking the Government or preach violence so overthrow the State or even defamatory statements, If you think it is on the public interest. In the Government of India Act, 1919, seditious statements and libellous defamatory statements were tabooed and were not allowed to be made.

Pandit Lakshmi Kanta Maitra: Subject to the permission of the Speaker you can make any speech.

Shri M. Ananthasayanam Ayyangar: It has been removed in the Act of 1935.

Pandit Lakshmi Kanta Maitra: Standing orders are not made under that Act.

Shri M. Ananthasayanam Ayyangar: Under the 1919 Act no seditious words could be uttered even inside the House. If they were made, the Speaker will pull up the member who was making any seditious or defamatory statement. That was the time when the foreign bureaucracy was trying to have its stranglehold upon us and did not allow us any freedom. But under the 1935 act Adaptation laws we had been given freedom of speech in the House. There, any member of the House can utter any statement which he may not be able to make outside. Whatever he is not able to say outside, merely because he becomes a member and he makes any statement,—is that not to the confined? He is given the privilege for a particular purpose. Here members can say what they like with a view to convert the other Members of the House to their own view. They may even advocate violence. A Member when making speeches in the House cannot be looking round here and there, afraid of Criminal Laws. It is very dangerous and it is impossible for the country to progress towards democracy if he has to make speeches under those limitations. So, absolute freedom is given inside the House. My Friend wants that even if he makes an absolutely improper statement for which, if he makes it outside, he will be liable under the sedition section,—merely because he makes a statement here, he wants to go out and print them. My Friend, Mr. Rohini Kumar Chaudhuri, wants to ask his son to publish a lakh of copies and broadcast to the whole world the world that have been uttered by his father. What my Friend, Pandit Maitra, wants is this. He wants to make all kinds of defamatory statements, leaving alone for the time being seditious statement. Some of us are so left-wingers as to want to make all sports of against Government, whether it is our own Government or any foreign Government. We have not yet got out of the rut. In the House we can make any kinds of statement against anybody. If we utter them outside, the Courts of law will not give you redress. In the House it is open to me to say that Pandit Maitra is a dishonest man. Outside, if I say that, I will be liable to be proceeded against.

Pandit Lakshmi Kanta Maitra : I perfectly allow you to do it.

Shri M. Ananthasayanam Ayyangar : In the public interest, if it is necessary, I ought not to be afraid of saying it in the House.

Pandit Lakshmi Kanta Maitra: The moment you say Maitra is a dishonest person, the Speaker will call you to order.

Shri M. Ananthasayanam Ayyangar : The President is not entitled to do it under the existing law.

Pandit Lakshmi Kanta Maitra : Absolutely, if you make any personal aspersion.

Shri M. Ananthasayanam Ayyangar : If it is necessary in the public interest for me to say anything against the personal conduct of an individual, I am entitled to say so. I feel that under the present Government of India Act—and this article is only a copy of it—I am entitled to say that, if it is in the public interest. After all it privilege and it is an exception, as ordinarily you ought not to make any defamatory statement against private individuals, or make violent statements that will overthrow the State. So any exception so made is a privilege and we should not grudge its limitation. If at all those statements are to be printed, they can be only in those reports. Even copies of those reports ought not to be made outside. If a man goes to the extent of buying a copy of the official Report, let him do it. As the member might know making defamatory statement alone is not liable to punishment but any person who published it also is liable. Why should a person print a million copies and publish it? It is a different offence altogether. It is an offence in itself. The maker of a defamatory statement is liable to punishment, as also the person who publishes it. To say that you have got it here printed, and so you can reproduce it, any number of copies of it, is not correct. It is not a privilege, but a licence. The honourable Member says there is no opportunity for explanation, but explanation or no explanation, a defamatory statement is a defamatory statement.

Shri Lakshmi Kanta Maitra: It is an astounding proposition.

Shri M. Ananthasayanam Ayyangar : My Friend says it is an astounding proposition. He referred to a statement made by a girl and to its not being allowed to be published. Complaints were made against the government of those days. But if it had been this present government even, I would say that the statement should not be allowed to see the light of day. It is an abuse of a privilege. It is a license. For what purpose is such a statement to be published? To destroy the established order of society, to destroy the feeling between man and man, and to throw the whole community into confusion. I repeat such a things is an abuse of a privilege in such circumstances, it is an exception made to the ordinary rule. In facts, it is a special weapon given into our hands and that weapon has to be used carefully. Members must be able to speak freely in the House without constant fear of any one dragging them into a court of law; otherwise to that extent they will not be discharging their duty to the country properly. It is for that purpose that this privilege is given, but is must be restricted to free speech inside the House. Repetition outside cannot be allowed. Merely because a person is a Member, he cannot do anything he likes; that is the positions. That it is the positions in the British Parliament, and we want to be in line with them in this. I am opposed to any amendment, and I want the clause as it stands to be accepted. As regards the reference to the House of Commons, I see no harm, especially as recently we have becomes a member of the Commonwealth of Nations. This is in tune with what we have been doing, and we can do so, till we give up the English language altogether, as you yourselves suggested yesterday.

Mr. President : We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything.

The Honourable Dr. B.R. Ambedkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : No. 1625, Mr. Kamath's amendment.

The question is:

"That in clause (3) of article 85, for the words 'as are enjoyed by the members of the house of commons of the Parliament of the United Kingdom at the commencement of the Constitution' the words 'as were enjoyed by the Dominion Legislature of India immediately' before the commencement of this Constitution be substituted."

The amendment was negatived.

Mr. President : Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is:

"That in clause (4) of article 85, after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President : Then Prof. Shah's amendment No. 1631.

The question is:

"That after clause (4) of article 85, the following new clause be inserted:—

- (5) In all matters of the privileges of the House of Parliament or of members thereof the house concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof."

The amendment was negatived.

Mr. President : Now I put article 85, as amended by Shri Jaspat Roy Kapoor's amendment No. 1627, to vote.

The question is:

"The article 85, as amended, stand part of the Constitution."

The motion was adopted.

Article 85, as amended, was added to the Constitution.

Mr. President : Before we adjourn, I desire to make one suggest to the House. Members are probably aware that there is going to be a meeting of the All-India Congress Committee at Dehra Dun on Saturday and Sunday next. The suggestion has been made that we might adjourn for one day; but I do not think we should stop the proceedings of this House because of this meeting. I suggest that on Monday instead of meeting in the morning, we may meet in the afternoon, if that is acceptable to the Members. On Monday we may meet in the afternoon instead of the morning, to enable those who return from Dehra Dun to attend our session. I suggest five to eight o'clock in the evening on Monday next.

Honourable Members: Yes.

Mr. President : The House now stand adjourned till tomorrow at 8 o'clock.

The Assembly then adjourned till Eight of the Clock on Friday, the 20th May 1949.