

Mr. Deputy-Speaker: The question is:

"That clauses 4, 5 and 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 4, 5 and 1, the Enacting Formula and the Title were added to the Bill.

Shri T. T. Krishnamachari: Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

LEGISLATIVE COUNCILS BILL

The Minister of Law (Shri A. K. Sen): Sir, I beg to move that the Bill to provide for the creation of a Legislative Council for the State of Andhra Pradesh and the increasing of the strength of the Legislative Councils of the States having such Councils and for matters connected therewith, be taken into consideration.

In moving this motion it is necessary for me to state the circumstances which have necessitated this particular measure. There are two statutes which have made this measure necessary. The first is the Constitution (Seventh Amendment) Act, which increased the strength of the Legislative Councils from one-fourth of the membership of the Legislative Assemblies to one-third of each State Assembly.

The second is the State Reorganisation Act which, first of all created a Legislative Council for the new State of Madhya Pradesh. And, it also reorganised certain States more or

less extensively which were already enjoying Legislative Councils; Bombay, Mysore and the Punjab, underwent substantial changes in territory which has also necessitated the reorganisation of their respective Legislative Councils.

Hon. Members will recapitulate that the States Reorganisation Act laid down the manner in which the Legislative Councils of the newly created States of Bombay, Mysore and the Punjab would function, first of all, before their reconstitution and, secondly, after their reconstitution. So far as the State of Madhya Pradesh was concerned, the States Reorganisation Act did not contemplate, first of all, an interim reorganisation and, secondly, a final reorganisation. It has, therefore, become necessary to provide for the final constitution of the Legislative Councils of these reorganised States and also of the State of Madhya Pradesh.

Secondly, it has become necessary to increase the strength of the Legislative Councils in accordance with the Seventh Amendment of the Constitution which raised the strength of the Legislative Councils to one-third really a ceiling of one-third of the total membership of the Lower Houses.

Hon. Members would have noted in the Bill the provisions which are intended to give effect to this two-fold purpose. First of all, the requirement for reorganising the Councils in the newly re-constituted States of Bombay, Mysore and the Punjab and also Madhya Pradesh; and, secondly, to give effect to the increased representation in the Legislative Councils in accordance with the Seventh Amendment of the Constitution.

It is necessary to state here that we have not, in the Bill, given effect to the maximum increased strength allowable under the Seventh Amendment of the Constitution. We have increased the strength so that the Upper Houses may represent roughly 30 per cent. of the total membership

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of the Lower Houses in those States where Legislative Councils are functioning and, in the case of Andhra Pradesh where a new Legislative Council is going to be set up for the first time in deference to the wishes of the Legislature there.

The State of Andhra Pradesh is the only one which has not, up till now, enjoyed a Second Chamber, the Council. Hon. Members will recollect, no doubt, that the Constitution, article 171, provides that besides the States mentioned in that article, for other States, similar Councils may be set up by appropriate legislation by Parliament. The Andhra Pradesh Legislative Assembly passed a Resolution which is printed in the Bill itself and I would refer hon. Members to the resolution printed at page 20 of the Bill. The Assembly recommended as follows:—

“This Assembly recommends to the Parliament that a Legislative Council may be created in the State of Andhra Pradesh and that necessary legislation may be passed under clause (1) of article 169 of the Constitution of India containing such provisions for the amendment of the Constitution as may be necessary to give effect to the provisions of the law and also such supplemental, incidental and consequential provisions as the Parliament may deem necessary.”

It is not quite accurate to say that any amendment of the Constitution is necessary to create a Council for a State which has not been in enjoyment of it so long. An ordinary law is enough for this purpose. Hon. Members will, no doubt, look at article 169, clause (1) of the Constitution which says:—

“Notwithstanding anything in article 168, Parliament may by law provide.....for the creation of such a Council in a State having no such Council,.....”

And, it is in accordance with that article and in accordance with the Resolution recommending the creation of an Upper House for the Andhra Pradesh, that we have made appropriate provisions in the Bill for the creation of such a Council in Andhra Pradesh.

So far as other Councils are concerned, those States have been enjoying Legislative Councils throughout excepting Madhya Pradesh, in which case the States Reorganisation Act, 1956, had already set up a Legislative Council.

13.59 hrs.

[SHRI BARMAN *in the Chair*]

The other provisions are really meant to carry out the details necessary for giving effect to this two-fold purpose. And, hon. Members will see at a glance the increased representation which is visualised for the Councils which are already in existence and Councils which are going to be created, namely, the Council for Andhra Pradesh and the Council which has already been created for the State of Madhya Pradesh. I would ask the attention of the hon. Members to a chart at page 100 of the Bill itself. This gives a final picture of the total strength of the Councils for all the States including the new Council to be set up for the State of Andhra Pradesh. This chart also gives the different categories from which representation will be forthcoming to the Councils in accordance with article 171 of the Constitution.

16 hrs.

•Hon. Members are aware that the total membership of the Council is to be drawn from certain categories of special constituencies—the Assembly sends roughly one-third, the local authorities one-third and the rest divided between graduates, teachers and Members nominated by the Government.

There is one special feature worth mentioning in this connection, that in

most cases we have kept the nominated cadre more or less constant excepting a very slight increase in the case of one or two Councils not proportionate to the increase which we are proposing, namely, an increase to make the composition of the Upper House roughly 30 per cent of the total membership of the Legislative Assembly concerned. The increased representation is not reflected in the nominated cadre. They have more or less been kept constant, for it was thought that the purpose of the Bill being to give effective representation in accordance with the Constitution to the special constituencies set up under the Constitution, we should allow greater emphasis on the elected cadre rather than on the nominated cadre. That is why we find that in the case of a State like West Bengal the old nominated cadre was of the strength of only 9 and it remains the same. It is the same for other States excepting, I think, one or two States where there has been an increase only by one or two. That has been done because it is difficult to divide the total membership exactly mathematically, in accordance with the increased representation. Therefore, we had to vary the increase in a little different way in different cases. But, more or less, the principle has been, let the increase be so as to bring the strength roughly to 30 per cent of the total membership of the Legislative Assembly, keep the nominated cadre constant and give increased representation to the elected cadres.

This is the main purpose of the Bill, and I have not understood why such a long time was taken for the debate on this, what appears to be a rather non-controversial measure.

The hon Members are aware that so far as representation of the one-third of the total membership of the Upper House is concerned, that is members coming from the Legislative Assembly, that is based on proportional representation. That means each party or group has equal chance of sending its own representatives to the Upper House in accordance with

the strength it bears in relation to the total strength of the Assembly. The local authorities have similar rights to send in increased representation. The graduates and teachers also have similar rights to have increased representation for this total increase.

For good or for bad, the framers of the Constitution thought it desirable to set up second chambers in certain States and also for other States which may be selected by the Parliament for this purpose. It is not, therefore, necessary to go into the merits or demerits of the system of second chambers, or enter into any theoretical discussion on that subject. Suffice it to say that here as in other States we function with two Houses and, for good or for bad, the framers of the Constitution thought that it was necessary to bring to bear the mature judgment of certain special constituencies on legislation emanating from the Parliament or from the States. That is why graduates, teachers, local authorities and others were selected to send their representation to the Upper House.

Therefore, that fundamental principle accepted by the Constitution we must accept it here.

Shri Shree Narayan Das (Darbhanga): Why is it a fundamental principle?

Shri A. K. Sen: It is a fundamental principle, whether there will be a second House here or a second House in certain other States.

Shri Khadilkar (Ahmednagar): The second House in the Centre is a different category altogether from the second House in a State.

Shri A. K. Sen: The hon. Member, Shri Khadilkar, should remember that the second House here is not like the second House in the United States where the second House represents the States. Therefore, there is no difference, whether we have a federal constitution or a unitary constitution; because, here the second House is not to represent the States equally but to represent other institutions.

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Therefore, whether it is a federal or a unitary constitution it does not matter.

Now, Sir, whatever it is, the structure laid down by the Constitution I regard as extremely fundamental, because it is only by a special process that we can alter that structure. We have to function through second chambers so long as we accept the Constitution as binding, as we must, here and in certain States. Therefore, I do not think, personally, without meaning any disrespect to those who may feel otherwise, that a discussion on the relative merits or demerits of second chambers is not very pertinent for the discussion on this particular measure.

We have second chambers. We have made several amendments to the Constitution giving increased representation to second chambers. We have newly re-constituted States. The Councils of these States have to be re-constituted in accordance with the effective representation visualised in the Seventh Amendment to the Constitution.

Shri Parulekar (Thana): Why was a second Chamber constituted in Andhra where it did not exist?

Shri A. K. Sen: Because the Parliament and the legislature there feel that there should be one. The Lower House there voluntarily feels that they must have the mature judgment of a second chamber. It is for them to decide and not for us. Certainly, ours is the last voice, but we do respect the wishes of the local legislature.

Shri D. C. Sharma (Gurdaspur): As if the Lower House is immature.

Shri A. K. Sen: If they think that way, it is their concern.

That is the principle of second chamber, otherwise there is no justification for a second chamber sitting over the same measures which are passed through the Lower House. I

apprehend that any student of Constitution, politics or constitutional law would recognise this, that the basic principle underlying the constitution of a second chamber is that maturer deliberation should be brought to bear before a statute becomes final (*Interruption*).

Now, as I said already, whether that basic principle underlying the constitution of second chambers is outmoded or not is not for us to debate here. That should have been debated at the time when the Constitution was framed or at the time the Seventh Amendment to the Constitution was passed.

An Hon. Member: We were not there.

Shri A. K. Sen: This is the principle on which the constitution of second chambers rests and, as I have said, the other principle is to reorganise the Councils in accordance with the reorganisation of the territorial structures of the States. The provisions are meant to give effect to that and this is all that I need say at the moment to explain the necessity for undertaking this measure.

I commend that the House do accept this motion for consideration of the Bill.

Shri T. K. Chaudhuri (Berhampore): On a point of order.

Mr. Chairman: I shall put the motion before the House.

Shri T. K. Chaudhuri: Before you put the motion, I shall say this. If you look to article 171 (2) and (3) and also to article 169(3) of the Constitution, I think the measure proposed by the hon. Minister involves an amendment to the Constitution. If you look to article 169(3), you will find that it specifically says that with regard to certain sort of laws contemplated under that article, those laws only

should not be deemed as amendments of the Constitution for the purposes of article 368. In article 171(2), of course it has been said that until Parliament by law otherwise provides, the composition of the Legislative Councils of States shall be as provided in clause 3, which may seem to signify that Parliament may by ordinance alter the composition of the Legislative Councils of the different States.

I have to submit that the specific provision of article 169(3), that no law as contemplated under article 169 should be deemed as amendment of the Constitution, is there, but here, this has not been mentioned. That proves that the framers of the Constitution were very explicit and very clear in their minds that so far as the composition of the Legislative Councils of the States is concerned, any law seeking to alter the composition of the Legislative Councils of States should be deemed as amendment of the Constitution. Therefore, I think that this Bill is not in proper form and it cannot be taken up.

Mr. Chairman: Article 169 is with regard to the abolition of Legislative Councils in States. You have just now stated it. Clause 3 of that article says:

"No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368".

I could not follow that.

Shri T. K. Chaudhuri: May I submit that the law contemplated under article 169 only refers to the creation or abolition of Legislative Councils in particular States which may pass resolutions to that effect. But so far as article 171 is concerned—

Mr. Chairman: Let me first understand article 169. Is it your argument that because this is not abolition or creation, but amending the existing position, it does not fall under that article.

Shri T. K. Chaudhuri: Yes; that is my contention. If you allow me to elaborate my point, I would say that the Bill, as framed, contemplates a fundamental alteration in the scheme of the composition of Legislative Councils as envisaged under article 171(3).

Mr. Chairman: I do not think there is any dispute over that.

Shri T. K. Chaudhuri: Even the proportional representation is given to different kinds of electorates.

Mr. Chairman: That is modification of the existing Councils also. There is no contention about that, I think. But your contention is that because this is not total abolition or new creation, but only amending the existing Councils, the Bill is not in order.

Shri T. K. Chaudhuri: Yes.

Shri Shree Narayan Das: Article 169(2) says as follows:

"Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary".

So, the things mentioned by the hon. Member are consequential changes.

Shri Radhelal Vyas (Ujjain): In respect of Andhra Pradesh, that Assembly passed a resolution that Council should be created.

Shri T. K. Chaudhuri: That is only a permissive legislation.

Mr. Chairman: Shri T. K. Chaudhuri's argument is that because this is not outright creation or total abolition, but only a change in the character of the already existing Councils, it is not covered by article 169.

Shri A. K. Sen: There is hardly any point of order in this. First of all, under article 169, you will find that the power of creating or abolishing Councils is given to Parliament and it is unfettered by the Constitution. That includes a part of the power. That is a very well-recognised principle of construction, namely, that the greater includes the less.

Apart from that, we are really not bothered about it, because, with regard to Andhra, only a new Council is set up. That is covered by article 169.

Mr. Chairman: Shri T. K. Chaudhuri also agrees to that.

Shri A. K. Sen: With regard to the other States we are only increasing the strength, the strength prescribed by article 171(1) which says:

"The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State."

So long as it does not exceed one-third, we are not contravening any Constitutional provision at all. Clause 2 of article 171 says:

"Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3)."

So, even the composition may be altered by an appropriate law of Parliament.

Going back to article 169, I am very much obliged to Shri Shree Narayan Das for pointing out the very pertinent question, namely, that when you give a total power to Parliament, all ancillary powers are included, and that is made more clear by the clause itself, namely, clause 2 of article 169, which says:

"Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of

the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary".

These two articles completely answer the point.

Shri T. K. Chaudhuri: May I take the points elaborated by the learned Minister one by one? So far as his first contention is concerned, that is, this Bill only seeks to give effect or it is a sort of a consequential measure, seeking to give effect to the seventh amendment of the Constitution, I think that hardly meets my objection, and that is why I wanted to elaborate how the present Bill seeks to alter the composition of the Legislative Councils in the States. If you look at page 11 of the Bill, the Third Schedule gives the final position as contemplated under this Bill. If you calculate the proportions of the different categories of the members of Legislative Councils in the States, you will find that the proportion has been altered quite fundamentally. I will take one example.

Mr. Chairman: It has no doubt changed the composition, but what are the fundamentals that have been changed?

Shri T. K. Chaudhuri: The fundamental change is in the proportion of the total number. Article 171(3) reads like this:

"Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards . . . etc." That is the representation given to local bodies.

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates . . ." etc.

Similarly, one-twelfth representation has been given to school teachers and secondary institutions.

Shri Shree Narayan Das: If you look at article 171(2), it says:

"Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3)."

So, it is within the power of Parliament to change the composition.

Shri T. K. Chaudhuri: My hon. friend, Shri Shree Narayan Das, perhaps did not listen to me very carefully. I myself referred to the provision in article 171(2). My contention is that here this is not covered by article 169(3). I have already stated that and advanced the reasons therefor.

Mr. Chairman: I think the hon. Member has submitted his main point. His main point is that article 169 only authorises this Parliament to abolish a legislative council now existing or create a new legislative council.

Shri T. K. Chaudhuri: And to make such ancillary or secondary provisions which are necessary to give effect to it.

Mr. Chairman: The whole objection of the hon. Member is that this article 169 does not cover a case where the existing Council is being changed in its composition, and therefore, it is not covered by sub-section (3).

Shri T. K. Chaudhuri: Yes.

Mr. Chairman: My view is that when the Constitution has given authority under article 169 to create a new legislative council for any State or abolish any Legislative Council of any State where it is existing, it automatically implies that this article authorises Parliament,

without any amendment of the Constitution, to make alterations in the composition also. Therefore, I rule out this point of order.

Shri T. K. Chaudhuri: Is that your ruling?

Mr. Chairman: Yes; that is my ruling. So, the motion for the consideration is before the House.

Shri Supakar (Sambalpur): There are amendments to the consideration motion also.

Mr. Chairman: Yes. Of these amendments, amendment No. 2 is ruled out of order, because it says:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st of December, 1960".

I think it is an unreasonable amendment and dilatory; so I rule it out. The other amendments may be moved and discussion may go on. At the end we shall see which motion is put to the House.

Shri Narayanankutty Menon: I want to move amendment No. 1.

Shri Supakar: No. 3.

Shri Jadhav (Malegaon): No. 66:

Shri D. R. Chavan (Karad): No. 67.

Shri Nagi Reddy (Anantapur): 68, but it is same as No. 1.

Shri T. K. Chaudhuri: 79.

Shri Narayanankutty Menon: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st of December, 1957."

Shri Supakar: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 23rd February, 1958."

Shri Jadhav: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th of December, 1957."

Shri D. R. Chavan: I beg to move:

That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st April, 1958.

Shri T. K. Chaudhuri: I beg to move:

That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1958.

Mr. Chairman: Then, there is another amendment which seeks to refer the Bill to a Select Committee. I do not think that this is also a motion that can be put to the House, because it only comprises of 5 Members. I do not know whether those hon. Members have given their consent; but even if they have, 5 Members constituting a Select Committee is an extraordinary proposition for a House of 500 Members.

Shri Nagi Reddy: The number can be increased by the House itself.

Mr. Chairman: But the names must be put to the House.

Shri Nagi Reddy: When the House accepts the appointment of a Select Committee, it can nominate its own Members to the committee.

Shri A. K. Sen: How can it?

Shri Nagi Reddy: Why not?

Mr. Chairman: Unless the names are announced to the House, how can the House go on deliberating on that motion?

Shri Parulekar: First of all the principle should be accepted that the Bill should be referred to a Select Committee. The number arises only after the principle has been accepted that it should be referred to the Select Committee.

Mr. Chairman: All right; it may be moved. It may be considered later on.

Shri A. K. Sen: I object to the motion, if it is going to be moved without names.

Mr. Chairman: The names are there.

Shri A. K. Sen: The hon. Member said that five need not be the number and that the motion may be moved for simply referring the Bill to a Select Committee.

Shri Nagi Reddy: Only after we finish the discussion on the motion for circulation of the Bill for eliciting public opinion, the question of reference to the Select Committee comes.

Shri A. K. Sen: I want to submit that it is a most unreasonable amendment, because the Select Committee is to consist of five Members.

Shri Nagi Reddy: If I were on the side of the Government, I could have given 13 or 14 names or probably more. I could not give all the 40 names here.

Shri Mohamed Imam (Chitaldrug): The Constitution does not prescribe the number of members of the Select Committee. It may be three or five.

Mr. Chairman: Let the discussion go on. All these motions are before the House, along with the consideration motion.

Shri Nagi Reddy: I beg to move:

"That the Bill be referred to a Select Committee consisting of Shri Devulapalli Venkateswar Rao, Shri Vutukuru Rami Reddy, Dr. P. Subbarayan, Shri Vijayarajam Raju and Shri T. Nagi Reddy, with instructions to report by the 30th April, 1958."

Mr. Chairman: Shri D. S. Sharma.

Shri T. K. Chaudhuri: Does he have a motion for eliciting public opinion in his name?

Mr. Chairman: That is not necessary.

Shri T. K. Chaudhuri: Only when the motion is moved an opportunity is given.

Mr. Chairman: All the motions are deemed to have been moved.

Shri D. C. Sharma: My friend has a point of order on almost everything and I hope he may have a point of order about existence itself.

I welcome this Bill and congratulate the Law Minister for his very lucid exposition. But, I would like to seek clarifications on certain things which do not satisfy me. Though the strength of the councils had been put down roughly at thirty per cent. or one-third, very queer arithmetic has been applied in different States. In my State, I do not think that the arithmetic has been arbitrary or erratic. But in other States, it has been slightly unarithmetical. I am talking about Bombay, U.P. and Bihar. I do not know how they have arrived at these figures. From one point of view, these figures may be useful; they would mean less of expenditure and so many other things. But, I do not understand why the same principle has not been observed in all the States. If you want the maximum for one State, why not for another State? Whatever be the principle, it should be applied logically all along the line.

My second point is this. Why should there be any nominated Members (interruptions.) Of course the Constitution provides but that does not mean that I cannot question the propriety of that provision. It is said that nominated Members are there to provide for the representation of minorities and other groups which do not generally come in. All the same, if our legislative councils are to be so in the real sense of the word, the nominated element should be curtailed. It has been done in some cases; it should be done in others.

Then, there is some difference between mature judgment and mature deliberation. I am coming to that question.

Shri A. K. Sen: I said 'mature deliberation'.

Shri D. C. Sharma: In the Council you have mature deliberation. But

mature deliberation need not always be mature judgment. That is the point which I want to make. Mature deliberation is good; it comes from well-informed and enlightened elements of our society. I hope my friends, hon. Members of this House, will pardon me when I say that I do not think that they are the exclusive custodians of these things. The products of our universities and our teachers are there who can bring to bear some kind of enlightened judgment and deliberation on the problems at issue. But, I find that the proportion given to the teachers and graduates has been kept very low. I am talking about my own State; it applies more or less to other States. In my State of Punjab, only four seats are reserved for the teachers and four seats for the graduates.

Then, take the case of local bodies. They are very good institutions and give training to the people in the art of self-government. But, while I look at the map of these local bodies, I do not feel very happy. In most of the States they are being suspended or superseded... (An Hon. Member: By your Government). Our Government has very adequate and ample reasons for doing that; I am glad that our Government is strong to supersede and suspend these local bodies which are not working efficiently. That is a point in favour of the Government.

I was saying that these local bodies were there. They have been given as much representation or almost as much representation as others. Taking into account the way in which these local bodies are functioning all over India, I feel that something should have been done to curtail their number. It would have been a salutary reminder for them and a warning for them that they should do better. I find that the number of seats reserved for local bodies has been kept at the same level.

What is the position of these Councils? Are they elected or partly elected and partly functional? Are they bodies which do not conform to any

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set pattern of constitutional development? I wish they should have been partly elected as they are now and mainly functional. But, I find that in the case of functional organisations only one group has been given any representation—teachers. I am speaking about the State of Punjab. So far as Punjab is concerned, nothing has been done to delimit the constituencies. So far as teachers and graduates are concerned I find that the constituencies have been delimited in West Bengal. Again I find that something like that has been done in the case of Bihar. I think it is very useful; this is something very helpful that has been done. But I find that so far as Punjab is concerned, four graduates are to represent the entire State of Punjab. The whole of the State of Punjab is a constituency so far as teachers and graduates are concerned.

Now you must know that teachers are not generally very well off. If there is one class in this country which is not in a position to spend much money, it is the class of teachers. Graduates are also like that. But in their case, so far as our State is concerned, the whole State has been made a constituency and I find that this is not a very happy state of affairs. Of course, I am very glad that the old councils will continue and new persons will be added to them..

Shri Nagi Reddy: What is the suggestion of the hon. Member: to make it into three constituencies?

Shri D. C. Sharma: I would say that we should do the same thing that has been done in Bihar. In Bihar the delimitation of constituencies I should say was done very well. The same thing should be done in the Punjab.

As the hon. Minister said the question of second chambers is not under discussion at this time and I accept his ruling. I would not say anything about the utility or non-utility of the second chambers at this time. I would only say this much that the constituencies should have been properly delimited and there should have

been more of functional representation in these councils. If you want to make the councils mirrors of the State or mirrors of the nation—as the Rajya Sabha is—these bodies should be more functional than anything else.

Mr. Chairman: Shri Tridip Chaudhuri. I shall call Mr. Achar of Mysore later.

Shri Nagi Reddy: May I know the time allotted for the general discussion?

Mr. Chairman: That will be decided by the Deputy-Speaker who will be coming shortly.

Shri Nagi Reddy: Otherwise what would happen is that those who have given amendments will not get a chance and even if they get a chance at the fag end they would not be able to put forward their case properly.

Mr. Chairman: The time will be fixed by the Deputy-Speaker.

Shri T. K. Chaudhuri: Mr. Chairman, Sir, I do not propose to inflict any lengthy speech on the House about the proposed Bill. But there are certain matters which call for a comment and we on this side of the House cannot at all understand or appreciate the reasons advanced by the hon. Minister for Law as to why the question of second chambers in the States cannot be discussed here. It can be very pertinently discussed because the Legislative Councils in the States and the Council of States in the Union Parliament stand on altogether different footings.

He sought to contest the argument put forward by our colleague Mr. Khadilkar that the question of second chambers in federal constitutions stands on absolutely different footing. I should consider that that was a fact which is only obvious. Our Council of States here also in a way represents the States, and if I remember aright, on various occasions in the past when this matter was discussed

in this House it was stated authoritatively from the Government side that our Council of States represent something like the Senate of the American Congress or the Council of Nationalities in the Soviet Russian Constitution. Although there are basic differences the general scheme is more or less the same.

So far as second chambers in the States are concerned, it can be very much doubted whether these are something fundamental to our Constitution, because our Constitution provides that there would be legislative councils only for certain States and not for others. It even provides that if the legislative assemblies of States having or not having legislative councils want to abolish councils that they are having, or in those cases where they do not have any legislative councils they want one for themselves, then Parliament may by law provide for the abolition or creation of such legislative councils in the States. This clearly proves that this is not a fundamental matter and in view of the question which has been agitating the country and the public opinion for quite a number of years why there should be a second chamber in the States and additional expense for this legislative paraphernalia, it passes all comprehension why Government should not have taken after five years of the working of the Constitution an opportunity to review the whole thing from a fundamental point of view. And even if the Government has not thought it proper to go into this question, this Parliament is by all means within its rights and the Members of Parliament are within their rights if they seek to raise this question in connection with the discussion on this Bill.

Without going into that question further, which I leave to my other colleagues to deal with, I would refer to the Statement of Objects and Reasons of this Bill. So far as the proposal for a Legislative Council in the State of Andhra is concerned, if we are to have Legislative Councils

there is no reason why the State of Andhra or the Andhra Legislative Assembly should not have one. But it is the other part of the Bill which relates to the constitution and composition of Legislative Councils in other States which is more important here. Now, the Statement of Objects and Reasons says that it was represented by some Members of Parliament—not by this Parliament as a whole but by some Members of Parliament—as well as by some State Governments that compared to the Legislative Assemblies the strength of the Legislative Councils was meagre and that the Constitutional amendment should be availed of to increase that strength. Then it is stated that resolutions to this effect were passed by the Legislatures of Bombay, Madhya Pradesh, Madras, Mysore, Punjab and Uttar Pradesh asking for the increase of the seats in the Legislative Councils.

The hon. Minister comes from the State of West Bengal. I would ask him with due respect, why did not the Government of West Bengal go to their Legislature, go to the Legislative Assembly and seek a resolution of this kind? And why is it that in certain cases it was not the Legislative Assemblies that passed the resolution but it was only the Governments and to the voice of those Governments was added the voice of some Members of Parliament? We can very well conjecture or guess who those Members of Parliament might be or what might be their political affiliations.

The hon. the Law Minister said that the question of Second Chambers is not in question. We know that so long as Congress rules this country, the existence of Second Chambers will be inevitable. (An Hon. Member: Even after that). They will be inevitable because we have learnt things in the British way. In Great Britain they have a way of kicking people up: when they cannot provide them in any other way they just ask the Crown to nominate that person to

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the august House of Lords. Here also we find that the composition of the Legislative Councils being what it is, it gives, the ruling party here in the Union Centre and also in the States, particularly in those States where the Congress wields a majority, a wonderful opportunity to avail of the provisions of the Constitution so far as the Legislative Councils are concerned, to provide for the men and to bring them into the Legislature by the back door. It has been done time and again. It was done after the last elections, I mean the First Elections under the new Constitution, and it has been done this time also.

So I would humbly request the hon. the Law Minister to explain why certain States the legislatures of which did not want such a provision are now being given increased number of seats in their Legislative Councils.

Then I come to the next point in the Statement of Objects and Reasons. It has been made out there that at present the strength of Legislative Councils bears no relation either to the population or to the strength of the Legislative Assembly of the State. The hon. Minister admitted as much and he put the Bill before us in his opening speech in a manner as if the Government was going to remove that defect. But all that the Government has stated here or all that the hon. Minister has stated just now is that they have decided to fix the strength of each Legislative Council at roughly 30 per cent. of the strength of the corresponding Legislative Assembly, except in the case of Uttar Pradesh and Bombay. One only asks, why, what prevented him from applying the same rule to Uttar Pradesh and Bombay? After all, we need to be guided by some sort of a consistent scheme with regard to our edifice of the Constitution, whether in the States or in the Centre. But here we find that there is no common rule. Variation has been made just on a rule-of-thumb method, according to the sweet

will of the Government or according to their notions of convenience.

Shri Viswanatha Reddy (Rajampet): It was according to the resolution of the State Legislature. In U.P. for instance they wanted only 108 Members. So it is in accordance with their wishes.

Shri T. K. Chaudhuri: That is what I am saying, because we cannot lose sight of the fact that Uttar Pradesh and the Union Centre happen to be ruled by the same party. That is why I referred to their notions of convenience.

Shri Viswanatha Reddy: Unfortunately the same party commands confidence in both the places!

Shri T. K. Chaudhuri: Now, there is one other matter which I want to refer to. That is about the composition of the Legislative Councils as contemplated in the Bill. Here also we find that the scheme of composition as envisaged by the Constitution is being altered. Of course, it has been altered more or less at the expense of the strength of nominated Members, but the nominations were for literature, science, art, co-operative movement and social service. I agree with our respected friend Shri D. C. Sharma that the principle of nomination is one which cannot be supported in a democracy, but even then if we are to have a system of nomination it is certainly in these cases, that is getting representative spokesmen of literature, science, art, co-operative movement and social service into the legislature, that we should have it. The hon. Minister does not explain why the scheme is being altered and the composition as envisaged in the original provision of the Constitution is being altered. That is why from the fundamental point of view of opposition in principle to second chambers in the States and also from the point of view of the arguments that I have just adduced, I have to oppose this Bill. But the rules provide that I can only

move for circulation of the Bill for eliciting public opinion, and hence I have moved such a motion.

I would draw the attention of the House to the date that I have set, namely 31st August, 1958. In other words, this Bill should be before the public for one year, and the public opinion in the country should be given an opportunity to be expressed on it, and we must take this one year's time to discuss this question throughout the length and breadth of the country, and then decide what we have to do about this measure.

Shri Achar (Mangalore): Some criticism has been levelled against the bi-cameral system itself. I do not wish to deal at length with that question, but one thing is certain, that so far as our Constitution is concerned, we have accepted that proposition more or less. Apart from that, I may point out that so far as this Bill is concerned, it has not enunciated any new principle. After all, there are these Councils already existing. It happens on account of the States Reorganisation Act that certain areas have merged with different States, bigger States have been formed, and in fact, we are having now only 14 States whereas the number was much more formerly. On account of these circumstances, these Councils have not exactly to be entirely re-constituted but certain adjustments have to be made, and the number of Members has to be increased in most of the cases. And it happens that in certain States certain new areas have merged and delimitation has also to take place to some extent.

As I stated earlier, there is absolutely no new principle enunciated by the Bill. The country as a whole has accepted this bi-cameral system, and I do not see much point in arguing this aspect of the question that we should have no bi-cameral system, the Councils should not exist at all. If so, it must be so in all places, but as it is we are not adhering to that principle.

I would like to go to certain other provisions which affect my own State.

So I do not want to dilate on this subject, but there is one aspect which I wanted to point out. We have to remember that ours is a very vast country. No doubt, we have so many States. Probably many of the States compare with other countries; some of them are as big, as, if not much bigger than, some of the sovereign States. The questions involved are very complicated sometimes and some sort of check and control, especially when we are experimenting with the democratic system, is necessary. On account of these facts, I do not think it is necessary to argue this point further. I fully support the principle of the bicameral system. It is not proper to say that we are adopting it simply because it is a method adopted in Britain. It is not only there in Britain; in America also, they have got the Senate. They may not have carried it to the States, but that is probably because they are not so large. So I say that the bicameral system is necessary in the present condition of development and I welcome that principle.

I come next to some of the main provisions in this Bill.

Shri Mohamed Imam: On a point of information. We are still in the first stage of discussion dealing with the entire Bill. I think discussion on the clauses is in the next stage when amendments are moved and speeches are made on clauses and amendments. How can the hon. Member speak on them now?

Shri Achar: I do not know what is the point raised by my hon. friend. I have not referred to any amendment. I am only discussing general principles. Certainly I know what is the stage for referring to amendments. So I do not see any point in my hon. friend to my right raising any objection.

I am only discussing the main thing. To that extent, probably some provisions also will have to be considered. The first point I would like to

[Shri Achar]

mention is with regard to the principle that so far as the existing Councils are concerned, they should not entirely be abolished. The Members who constitute these Councils in the different States must be allowed to continue. Probably that is also the underlying principle of this Bill. But when I read the provisions I have a doubt in some places whether the Bill as framed gives scope for the interpretation that some of the Councils are entirely to be abolished.

Shri Nagi Reddy: Right.

Shri Achar: The proposition is that so far as those States are concerned, new Councils will have to be formed on the basis of entirely new elections. I am not quite sure whether the provisions exactly mean that.

Shri Nagi Reddy: He can be sure of that.

Shri Achar: Anyhow that is my interpretation; it is for other Members to say what they feel. Article 172(2) of the Constitution says:

"The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law".

This constitutional provision clearly states that the Legislative Councils are perpetual bodies; they cannot be dissolved. All that it provides is that one-third must retire every two years. So, no Council of any State could be dissolved. The Councils, as they are, have to continue. All that can be done is only to add some more or to make some re-formation. But, if we take the Bill, so far as some of the States are concerned, there can be no doubt; the whole Council is not dissolved. In fact, specific provisions are there for the election of the new members, the larger number added to these Councils.

Take, for example, Bihar, Madras, the Punjab, Uttar Pradesh and Bengal. Of course, there are . . .

Shri Nagi Reddy: The hon. Member wants the same provision for his State also.

Shri Achar: I want the Council to continue. I say, according to the Constitution it cannot be dissolved.

I am only pointing out that these provisions are there. For example, page 2, when it is dealing with Bihar, line 35,

"As soon as may be after the commencement of this Act, election shall be held to fill—

(a) the additional seats . . .

Similarly, if we take page 4, dealing with Madras, line 29, it is said:

"(a) elections shall be held to fill—

(i) the additional seats . . .

I need not repeat this so far as those States which I have mentioned are concerned, that is, the States of Bihar, Madras, Punjab and Uttar Pradesh and Bengal. So far as these are concerned, it is very clear that elections are to be held for the new seats only.

But, when we come to the three States of Bombay, Madhya Pradesh and Mysore (An Hon. Member: Punjab?)—so far as Punjab is concerned, election is provided only for the additional seats—but so far as Bombay, Madhya Pradesh and Mysore are concerned, I find there is no such provision at all.

Shri A. K. Sen: So far as Madhya Pradesh is concerned, it is provided by the States Reorganisation Act of 1956.

Shri Achar: At least so far as Mysore is concerned, clause 8 reads

Shri A. K. Sen: I may mention that we are already moving an amendment to bring Mysore and Bombay on the same line as Punjab. I have already

mentioned it to my hon. friend over there.

Shri Nagi Reddy: Why not Madras? Why Madras is excluded?

Shri A. K. Sen: It is not necessary.

Shri Achar: I am very thankful to the Law Minister. That is one aspect, and as the hon. Law Minister agrees that only new members will be elected, I shall not say anything more on that aspect of the question.

Only one more point I would like to submit. So far as Mysore is concerned, the Bill proposes in clause 8 a number of 63. Of course, the maximum is one-third and that would be 69.

I would request the Law Minister to consider that matter also. I may also draw the attention of the Law Minister to the resolution passed by the Legislative Assembly on the 28th December, 1956. It is printed as annexure to this Bill on page 21. That resolution requests that this number may be raised to 69 whereas the Bill proposes only 63. When other States are having the full one-third, I am unable to understand why Mysore also should not have its full quota of 69.

One word more and that is only about the question of delimitation. As I said, into this Mysore State areas have come from Bombay, Coorg, Madras and Hyderabad. Therefore, delimitation has to be done and necessary provisions will have to be added. I have tabled certain amendments, and if I am permitted I will speak on them. So, I would request the Law Minister to look into that aspect of the question also and make necessary provisions for delimitation of constituencies. Except the Legislative Assembly, so far as other constituencies—graduates, teachers etc.—are concerned, delimitation has to be done and necessary provisions will have to be made in this Bill.

Shri D. R. Chavan: Mr. Chairman, Sir, I am grateful to you for having given me a chance to make some

observations on the Legislative Councils Bill which is before the House. I come from Bombay State and I shall confine my observations with regard to that State only.

Sir, concerning the State of Bombay a resolution was passed by the former Bombay State Legislative Assembly and the resolution was to this effect, that the Legislative Council in the Bombay State should be abolished. I would like to read out that resolution as that resolution was sponsored by the Government and was unanimously supported by the House, including the Congress and the opposition parties. The resolution was passed on 14th December, 1953 and the resolution was like this:

"Whereas clause (1) of article 169 of the Constitution provides that notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State, having such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the Members of the Assembly present and voting;

And whereas it appears to this Assembly that it is desirable to abolish the Legislative Council of this State;

Now, therefore, this Assembly resolves that the Bombay Legislative Council be abolished."

There was an amendment to that resolution and the amendment was to this effect:

"The present motion should be numbered as paragraph 1, and the following should be added as paragraph 2 thereto, namely:

(2) This House recommends that the Parliament be pleased to direct that the law which it may make in this behalf shall take effect from the date on which this Legislative Assembly is dissolved."

[Shri D. R. Chavan]

This resolution was debated on the floor of the Bombay Legislative Assembly in the year 1953. As I said, it was a Government sponsored resolution. Then, subsequently, after the reorganisation and the redistribution of provinces, States came into existence, when the States Reorganisation Bill was passed, may I ask the hon. Minister as to what action was taken on that resolution which was passed by the members of the Bombay Legislative Assembly with the requisite majority?

Shri Nagi Reddy: Action is only taken to create and not to abolish.

Shri D. R. Chavan: So far as the rest of the resolutions are concerned, they are covered by the annexures.

Shri A. K. Sen: Since that resolution, the Parliament has passed an Act called the States Reorganisation Act and the Parliament Act supersedes any resolution of the State Assembly.

Shri D. R. Chavan: It may be after the Reorganisation Act came into being, and it may be argued also that the effect of that resolution was nullified, and therefore, that resolution does not stand. My submission is, when a particular resolution was considered by all the members assembled there and it was unanimously decided that it is not necessary to have a Legislative Council there, I cannot understand the proposition that is now being made on behalf of the Government and the resolution that is being passed that there should be a second House. On principle, I am opposed to bicameral legislatures. I do not want these Councils, because as has been submitted by some hon. friends, the second chamber has been accepted in principle by the Congress Party. May I remind all the Hon'ble friends who are now in the ruling party of what the trend was when those persons were struggling against the imperial power, what was said in the Nehru Committee Report, what was said by the Simon Commission and what was

said by Shri Sir Sankaran Nair Committee which was appointed when the Simon Commission came to India

I would like to read some of the quotations because they will certainly give us an idea that was then entertained by the persons who are now on the opposite benches. The idea that was unanimously shared by all the persons then who were fighting against the imperial power was that there should be no second House and it was also said that a second House is nothing but an outcome of a sinister motive of the conservative British dichards and therefore that was opposed

I would like to give out some of the quotations here, which would certainly enlighten this House and make my argument more forcible and cogent for opposing this institution, the introduction of the second House in the Indian legislatures.

Mr. Chairman: That point has already been decided by the Constitution.

Shri D. R. Chavan: Yes, Sir. But Andhra is there. There is that resolution.

Shri Naushir Bharucha: It is a new chamber.

Shri D. R. Chavan: A committee was appointed by the Indian National Congress under the chairmanship of Pandit Motilal Nehru, the father of the present Prime Minister, a very eminent man and a great scholar, and the members of the committee were, Sir Ali Imam, Dr. M. R. Jayakar and Shri M. S. Aney—all very eminent persons. So, my hon. friend here, in this House, will at least accept that proposition of mine, that the persons composing that committee were all very eminent persons in the Indian political life and they then decided, when those persons were fighting against the British imperial power, as follows. Rather, the committee's opinion was this:

"We have reasons to believe that in some high quarters the belief is seriously maintained that

all that need be done at present is (1) to establish a modified form of Government which will consist of Ministers appointed from among the elected members of the Legislature and officials appointed by the Crown and owning responsibility not to the legislature but to the Crown; and (2) to establish second chambers in the provinces so as to stimulate conservative element and thus to provide an equipoise against the hasty ill-conceived activity of the irresponsible lower House."

The committee at page 91 of their report stated as under:

"The provincial legislatures should, in our opinion, be unicameral."

That is what was decided by such eminent scholars and constitutional experts that India should have a unicameral system of legislation.

Shri Achar: The British were dominating then.

Shri D. R. Chavan: Now you dominate.

Mr. Chairman: Our Constitution has accepted a second House. The arguments that the hon. Member is advancing today are out of date. Of course, you can very well argue about your Bombay State, whether it should have a second chamber or not. But whether a second chamber is good or bad in general is a point of ancient history; it is out of date.

Shri Nagi Reddy: It is necessary because the Constitution does not provide a Legislative Council for every State automatically. Therefore, the discussion as to the goodness or badness of Legislative Councils is very pertinent for that simple reason.

Mr. Chairman: So far as any particular State is concerned, certainly every Member is competent to argue. But the broad question whether a second chamber is good or bad has been thoroughly thrashed out already.

Shri Nagi Reddy: There is bound to be overlapping. We cannot divide the two points into water-tight compartments. (Interruptions.)

Shri P. R. Patel (Mehsana): There is a proposal to constitute a second chamber for Andhra. For that the arguments may hold good.

Mr. Chairman: Certainly; I do not rule it out at all.

Shri Khadilkar: Am I to understand that the last word on this question was said when deliberations took place in the Constituent Assembly?

Mr. Chairman: What I say is this. Whether the second chamber should exist in our States in India or not is not the point at issue in this discussion. Unless some Member definitely brings that thing as an issue, that is not the general issue before the House now. For any particular State, certainly every Member is entitled to argue.

Shri D. R. Chavan: With regard to Andhra, I may submit that I may be allowed to put my arguments here.

That Nehru Committee further recommended adult franchise as early as 1929 and also stated that so far as the Centre was concerned, it should have bi-cameral legislature, but in the provinces, the legislatures should only be uni-cameral.

Mr. Chairman: The hon. Member's time is up.

Shri D. R. Chavan: The bell has gone and much of my time is wasted by interruptions. My submission is that the persons who were fighting the British imperialist power then thought that we should have uni-cameral legislatures. Now, after the advent of freedom in this country, we are suitably modifying and changing. The hon. Minister for Commerce and Industry was formerly the Chief Minister of Bombay State. He had participated in the debate on that resolution and had advanced wonderful arguments in support of what I am saying here.

Shri A. K. Sen: We are not discussing the general question of the abolition of second chambers. It is outside the scope of the Bill.

Shri Nagi Reddy: We are discussing the question whether a second chamber should be established in Andhra or not. So, it is relevant.

Mr Chairman: I have already said that the general principle whether a second chamber should be there or not in India is in my opinion not the point at issue. But the hon. Member is mentioning about a particular State. He has referred to some hon. Minis-

ter and his opinion. Certainly it is relevant.

Is the hon. Member likely to take some more time?

Shri D. R. Chavan: Yes.

Mr Chairman: He may continue tomorrow. The House stands adjourned till 11 A.M. tomorrow.

1731 hrs

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 5th September, 1957.