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Volume VII  
No. 31



Monday  
3rd January  
1949

# CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF INDIA

Monday, the 3rd January 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

### DRAFT CONSTITUTION—(Contd.)

#### Article 66

**Mr. Vice-President** (Dr. H. C. Mookherjee): Before we begin the work of the House, I am sure that honourable Members will agree with me if I ask them to stand for a minute in silence to show our gratitude to the Source of all life, and the Source of all energy whom we all worship in our different ways, that at last there has been this cease-fire arrangement at Kashmir.

(The Assembly stood for a minute in silence.)

Thank you all.

We shall begin our work today by taking up article 66 which has to be passed before we can pass on to article 67.

The motion before the House is:

"That article 66 form part of the Constitution."

**Amendment No. 1353** to this article, standing in the name of Mr. Naziruddin Ahmad is disallowed as it is not substantive.

Nos. 1354, 1355 and 1358 are of similar import and No. 1355 may be moved. It stands in the name of Shri Brajeshwar Prasad.

(Amendments Nos. 1354 and 1355 were not moved.)

No. 1358 may be moved, standing in the names of Shri Lokanath Misra and Shri Mohan Lal Gautam.

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

"That in article 66 the words 'and two Houses to be known respectively as the Council of States' be deleted."

If this amendment is accepted, the article would read like this:—

"There shall be a Parliament for the Union which shall consist of the President and the House of the People."

The effect will be that there will be no second Chamber to be called the Council of States.

Sir, I beg to submit that I am not against second Chambers on principle. But in the present temper of our people, and in view of the manner of the constitution of the second Chamber as has been envisaged in the Draft Constitution, I do not think there is any real need for the second Chamber, nor do I think that it will serve any useful purpose. Sir, so far as I have studied the Constitution and the constitutional precedents, it is now admitted almost on all hands that second Chambers are out of date. The only argument that is generally advanced in favour of such a chamber is that it will have a sobering effect on the decisions of the Lower House which is more representative of the people and that the people are now restive. I therefore submit that unless the manner of the Constitution of this second Chamber is changed and we are

[Shri Lokanath Misra]

in a position to accept something which will be purely Indian based on Indian culture of deep, all-pervasive view and on Indian sentiment and temperament based and nurtured on our traditions which alone can have a sobering influence, the creation of an Upper House by itself will have no influence on the House of the People. But this is not to be and therefore I do not think there is a real need for the second Chamber. Its creation will only result in so much waste of public money and so much waste of time. I therefore submit that if the House is not prepared to change the Constitution of the second Chamber as proposed in the Draft Constitution, it will be much better for us to do away with the second Chamber altogether. I am glad that my own province of Orissa has already decided against a second Chamber and we are going to have only one Chamber. I do not think that without a second Chamber the country will be any the poorer for it, as now we stand.

**Mr. Vice-President:** Amendments Nos. 1356 and 1359 are of similar import. Begum Aizaz Rasul may move amendment No. 1356.

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

"That in article 66, for the words 'There shall be a Parliament for the Union which', the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The Article will then read:

"The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People."

Sir, my object in moving this amendment is that the word 'Parliament' may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words 'Indian National Congress' are substituted for the word 'Parliament', the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically for otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation's urge to freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word 'Congress' is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words 'National Congress' should be substituted for the word 'Parliament'. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words I move my amendment.

**Mr. Vice-President:** Now, in List I of the VI Week, amendment No. 1 standing in the name of Shri R. K. Sidhwa seeks to amend the amendment just moved. Mr. Sidhwa may move it. I see that Mr. Sidhwa is not in the House. The amendment is therefore not moved.

Prof. Shah's amendment comes next. Before I ask Prof. Shah to move I would like to know from Mr. Lari whether he wants amendment No. 1359 to be put to vote. I see that Mr. Lari is not in the House. Prof. Shah may now move amendment No. 1357.

**Prof. K. T. Shah** (Bihar: General): Mr. Vice-President, I beg to move:

"That in article 66, the words 'The President and' be deleted."

The amended article would then read:

"There shall be a Parliament for the Union which shall consist of two Houses to be known respectively as the Council of States and the House of the People."

Sir, in presenting this amendment to the House I want to bring to its notice the fact that the clause as it stands is merely an imitation, and, in my opinion, an unnecessary imitation, of the British system where the King still forms an integral part of the entire Governmental machinery, the entire Constitution, and particularly of the Parliament. All the laws are made by "the King's Most Excellent Majesty, with the advice and consent of the two Houses". Justice is administered in the name of the King. The Post Office functions in the name of His Majesty. The army, the navy, all defence forces, all civil services are in the service of His Majesty.

That, however, is a state of affairs, which is not quite suited to, and should not be imitated in, this country's Constitution. The King-in-Parliament is not only a traditional institution; but has some solid constitutional foundation to rest on, such as, for instance, the large margin of Prerogative powers which the King exercises. No doubt, he exercises those powers on the advice of His Ministers, but they still reside in the King only.

In the case of the President in India, on the other hand, it is I think, a very misleading analogy to make him the Indian counterpart of the King in England. The comparison is, therefore, very misleading to make the President an integral part of the Legislative organ of the Indian Union.

The President would not only not have the Prerogative authority in all respects that the King has; it is in my view, the basic idea of this Constitution, unless I have grievously misunderstood it, that the President would be only a figurehead, who will act everywhere and every time only with the advice of his Ministers and with the advice of his Ministers alone. By himself he will be nothing but the ornamental head of the State.

If this conception of the President's place in our Constitution is correct, and I see nothing in the Constitution to contravene that view, then I submit that the inclusion of the President in article 66, making him an integral part of the parliamentary machinery, is utterly out of place; and as such it should be avoided.

This Constitution, Sir, is not like the British Constitution growing up from age to age, from generation to generation, from century to century. It is a Constitution which has been made by the authority of the King making one concession after another, surrendering one prerogative after another foregoing one power after another or consenting to use it only on the advice of his Ministers. It is by the authority, and in the name of the people of India that the Parliament of India will function; and, as such, the President, even though the people's chosen representative, need not be—and should not be,—associated with the legislature as an integral part thereof.

I think a blind imitation of this kind of the British convention or British constitutional practice, carried to this extent, will only land us in difficulty. For the theory on which the British Constitution is formed is utterly different from that on which ours is based. The British Constitution is very largely based on convention and tradition. Large portions of these conventions are still unwritten and uncertified, leaving an indefinite margin for adaptation to circumstances. And those which have been written and codified are only the various legislative enactments of Parliament, which, however, themselves are founded only on accepted traditions, conventions or precedents.

In our case, on the other hand, we are writing this Constitution for the first time by our own efforts. As such for us to associate the President with our

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Parliament, in the same manner as the King is associated with the British Parliament is, I submit, utterly out of place.

I suggest, therefore, that these words should be deleted. Lest anybody should feel that this, again, arises out of my old idea and amendment about the separation of powers between the chief executive, the chief legislature, and the chief judiciary, let me assure you that that is no longer my submission now; and that that idea in no way affects this amendment now before the House. "The President" can very well be removed from this clause, without in any way infringing upon the doctrine of combined powers or collective responsibility on which this Draft Constitution is based. Accordingly I trust that this amendment will commend itself to the House.

(Amendments Nos. 1360, 1361, 1362, 1363 and 1364 were not moved.)

**Mr. Vice-President:** The article is now open for general discussion.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): I am sorry, Sir, that I have to oppose all the amendments that have been moved. The amendments relate to three aspects. Number one and the most important of them seeks to restrict the scope of this article to the House of the People alone. That is, the mover of this amendment does not want an Upper House. Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reason, we must find opportunity for various people to take part in politics. Therefore it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the lower House may be checkmated by the go-slow movement of the upper House. The third reason is that the upper House is a permanent body, while the lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary that in the interests of the progress of this country we should have a second House.

Then, Sir, so far as the name is concerned, there has been a suggestion that has been moved by my honourable Friend, Begum Aizaz Rasul and there is a similar amendment also standing in the name of Mr. Lari. Both of them want the name of the Parliament to be changed into the Indian National Congress. I appreciate their motives. It is the Congress which fought for the freedom of this country and therefore these friends who sympathise with the Congress, though they are not participants in this organisation, recommend that the name of this organisation should be associated with the name of the Parliament of the Union. However, laudable this may be, if it is accepted, it would lead to the accusation that a one-party government has been established in this country. The very same friends might say, "Look at what is happening. The Congress, the fighting organisation, has established a one-party rule in the country. It has even lent its name to the Parliament of the Union". If this suggestion is accepted, it may even prove to be the death-knell of the Congress, for it would no longer be able to function as a political party, to fight its way against the various reactionary political parties which are still raising their heads, mostly based on community and religion. Therefore, Sir, this is not at all acceptable.

Then, as regards the amendment moved by my honourable Friend, Prof. K. T. Shah, that the word 'President' should be removed and ought not to be associated in any shape or form with the administration of the country, I would ask him to refer to article 42 which has already been passed and where it is laid down that the executive power of the Union shall be vested in the President of the Republic to be exercised by him in accordance with the Constitution and the law. The President has been made a very important functionary in the whole scheme of things, and in the Constitution he is the chief executive

authority. Executive power is co-extensive with legislative power. Therefore it is not mere copying of the United Kingdom practice, but independently also we have to come to the same conclusion. Therefore it is necessary that the word 'President' should be retained. Otherwise, there will be a lacuna.

I submit, Sir, for the consideration of the House that the article as it stands may be accepted and that all the amendments should be rejected.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): I do not accept any of the amendments, nor do I think that any reply is called for.

**Mr. Vice-President:** I shall now put the amendments one by one to vote. Amendment No. 1358. The question is:

"That in article 66, the words 'and two Houses to be known respectively as the Council of States' be deleted."

The amendment was negatived.

**Mr. Vice-President:** Amendment No. 1356. The question is:

"That in article 66 for the words 'There shall be a Parliament for the Union which' the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The amendment was negatived.

**Mr. Vice-President:** Amendment No. 1357. The question is

"That in article 66, the words 'the President and' be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That article 66 stand part of the Constitution."

The motion was adopted.

Article 66 was added to the Constitution.

#### Article 67

**Mr. Vice-President:** We next come to article 67. The motion is:

"That article 67 form part of the Constitution."

**Shri L. Krishnaswami Bharathi** (Madras: General): Mr. Vice-President, I have an humble suggestion to make in the matter of procedure when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of States and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts: one relating to the composition of the Council of States—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People: clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straightaway to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when honourable Members deal with the Council of States they may confine their

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discussion on it and later on they may concentrate their discussion on the part of the article relating to the House of the People.

**Mr. Vice-President:** Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi?

**The Honourable Dr. B. R. Ambedkar:** I am quite agreeable to the suggestion for the purpose of facilitating discussion.

**Mr. Vice-President:** Then we can take up the amendments in their particular order.

The first amendment is No. 1365. It is negative and is therefore disallowed.

Amendments Nos. 1366, 1367, 1379 and 1408 may be considered together.

Amendment No. 1366 may now be moved. It is in the name of Shri Mohan Lal Gautam.

Since he is not in the House, we pass over it.

The next amendment is No. 1367, in the name of Shri Lokanath Misra.

**Shri Lokanath Misra:** Since we have passed over amendment No. 1366, I do not want to move my amendment. It does not fit in now.

**Shri M. Ananthasayanam Ayyangar:** The question does not arise!

**Mr. Vice-President:** The next amendment is in the name of Prof. K. T. Shah—No. 1379.

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

“That clause (2) of article 67 be deleted.”

Clause (2) reads as follows:

“The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,—

- (a) literature, art, science and education;
- (b) agriculture; fisheries and allied subjects;
- (c) engineering and architecture;
- (d) public administration and social services.”

As the clause stands, Sir, it offends in my eye for two reasons. First of all, the element of nomination introduced here, however small, militates against the symmetry of the Constitution of our Legislative bodies. And it fundamentally mars the principle of election. I hold that with regard to both these chambers, in the way we are making this Constitution, the Legislative organ should be wholly elected and so the element of nomination should be completely excluded, however small it may be. Its being brought in, in this way, only affects, as I have said, the internal symmetry of the Legislative bodies. It must therefore, be avoided and excluded.

The second reason why I should not like this clause as it stands to be there in the Constitution is: that the various interests or elements selected by nomination are arranged in a somewhat mixed manner. It is not quite consistent intrinsically, logical or scientific.

For instance, “art” is mentioned separately and “science” is distinct,—which it may very well be: “Engineering” and “architecture” are mentioned separately in another sub-clause. Now it is generally agreed that “architecture” is one of the fine Arts; and if that is so, I, for one, fail to see the reason of its separate mention, after you have mentioned the generic term “Art”.

Moreover, "science, literature and education"—are mentioned each separately by name. These are, once more, not logically divided one from another. There, again, I really fail to understand what should be the purpose of this separate enumeration. For, consider this. If by "education" it is intended to include both "Art and Science", through, let us say, such institutions as the Universities, I do not see why they should not be mentioned by their names as universities, I do not see why they should not be mentioned by their names as universities; and why they should be specifically stated, each apart from the other as Arts, Sciences, or Literature.

Literature again is usually included, at least in the University terminology, in the Fine Arts or in the Faculty of Arts. Accordingly to mention Literature, Science and Arts separately seems to be utterly incongruous, illogical and overlapping.....

**Shri L. Krishnaswami Bharathi:** May I submit that there is an amendment to be moved by Dr. Ambedkar? It is No. 1380. It deletes all these portions, and includes only Arts and Sciences with Social Service. If the honourable Member bears in mind that it is likely to be accepted, the discussion need not be concentrated on this matter. He may be pleased to see amendment No. 1380, wherein Dr. Ambedkar is to move the deletion of the whole clause and substitute only the four categories. So I may request you to ask the honourable Member to cut short the discussion.

**Mr. Vice-President:** Have you been able to understand the honourable Member?

**Prof. K. T. Shah:** I have quite understood the honourable Member's suggestion, but have certain points to advance, which I may, if I am allowed to, though I do not insist on it. I have seen Dr. Ambedkar's amendment; and I not only think that it is probably going to be accepted, but I know that it is *certain to be accepted*. Still I feel that there are points of view which this House might be freely allowed to hear, without such impatient attempts to smother discussion. But if you do not wish it, I will not press my view.

**Mr. Vice-President:** Please go on.

**Prof. K. T. Shah:** Thank you, Sir. Take "Engineering". It is much more "Technology" or what used to be called in the United States Technocracy, which might be mentioned instead of Engineering. It would include much more than "Engineering". As it stands, it creates a needless anomaly.

Take yet another illustration, Social Services, which do not include public utilities presumably: and then again "Public administration". I for one do not understand what is meant by "Public Administration," in this connection of composing a legislative body. Is it intended to bring in the Civil Service? By common consent it is thought best to keep the Civil Service out of politics. Is it intended by "Public Administration" to bring in heads of departments, or their nominees? The old Indian Constitution gave a place to secretaries; but I think there is no room for them in the Legislature now. Or does "Social Service" mean something different from "Education", because Education has been separately mentioned already? One would have thought that social service, among the most important of which is Education, would be represented through all the categories in the ordinary system of election, and would not need a special mention by itself. But if you must make special mention of it, then I do not see why you single out only Education. You use a general word like "Social Service"; and yet include only that, presumably because you mention it separately, and leave out "Health" which may also be mentioned separately.

Accordingly it seems to me that this classification is not quite logical. It also offends against the principle, at least in my eyes, of the symmetry of the

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legislative body, by including in it the element of nomination. For these two main reasons I think the whole clause should be deleted, and substituted by something different which Dr. Ambedkar's amendment no doubt provides for to some extent; but does not provide for in the manner that I would have wished it to. As I would not have any right to speak on this amendment again, or take part in the general debate, I think it is just as well that the House should be put in possession of my point of view on the matter.

**Mr. Vice-President:** You may also move amendment No. 1408.

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

"That Clause (4) of Article 67 be deleted."

Clause (4) of article 67 reads "the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe".

Here, again, I take my ground on the principle of equality amongst the constituent States. Whatever may be the variety or the differences amongst themselves, in regard to area, population, resources, or whatever other criterion you select for judging of the importance of the several States, so far, at any rate, as you accept the principle of a Federal Union, you ought to make the States equal *inter se*.

On that basis I do not quite subscribe to the view propounded in clause (4) of the article, whereby it is left to Parliament to distribute the seats amongst the States, and not provided for in the Constitution itself. I have tabled another amendment which would suggest that the States should be represented equally in the Council of States, that is by the same number of delegates that any other State may have. On that ground also this clause seems to be superfluous, and I move that it be deleted.

(Amendments Nos. 1368 and 1372 were not moved.)

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

"That for clause (1) of article 67, the following be substituted:

- (1) The Council of States shall consist of not more than two hundred and fifty members of whom—
- (a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and
  - (b) the remainder shall be representatives of the States."

The only important thing is that the number fifteen has been brought down to twelve.

**Mr. Vice-President:** There are six amendments to this amendment which I am calling out one by one. The first is amendment No. 2 on List No. 1 (Sixth Week) in the name of Mr. L. N. Misra.

**Shri Lokanath Misra:** Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in the proposed Clause (1) of article 67, for the word 'two' the word 'one' be substituted."

It comes to this that the Council of State shall consist of not more than one hundred and fifty Members. In moving this amendment reducing the number to one hundred and fifty I have only one intention and it is this, that from our actual experience we find that such a huge number of people either in the House of the People or in the Council of States does not serve any very useful purpose. And we know that there is real difficulty in finding out so many Members who will be qualified and quite interested in such law-making. We see from the proceedings of this very House which consists of more

than three hundred Members that so few of us take real part in and are really useful to constitution-making.

**Mr. Vice-President:** That is a reflection I cannot allow.

**Shri Lokanath Misra:** I am sorry, Sir. It is no reflection. I therefore submit that instead of having two hundred and fifty Members it will serve the purpose of the second Chamber if we have one hundred and fifty Members. In that case there will be a saving of money and time. I therefore submit again that the number two hundred and fifty may be reduced to one hundred and fifty.

**Mr. Vice-President:** Amendment No. 3 of List 1, standing in the name of Mr. L. N. Sahu may be moved.

**Shri Lakshminarayan Sahu** (Orissa: General): (Began to speak in Hindi).

**Mr. Vice-President:** I wish only to make a request to the honourable Member. Many of our Members coming from South India do not know Hindi. Probably if he wants to convince them it would be better if he speaks in English. But he is at perfect liberty to speak in any language he wants.

**Shri Lakshminarayan Sahu:** No, Sir. I will speak in Hindi.

\*[**Mr. Vice-President:** I rise to speak a few words in support of the amendment which stands in my name and is now before the House. It is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

My reason for moving it is that we do not favour the system of nomination. The truth is that under no conditions and in no place do we approve of it. Therefore, when we are framing our Constitution afresh we must consider very seriously whether we should do away with this system or not. My submission is that nomination in whatever place or form it may be—and I may add that indirect election is also a form of nomination—should be abolished.

I submit that we should consider with all earnestness the grounds, if any, which justify the original provision for fifteen nominated members or as amended now, for twelve nominated members. We should think why this provision for nominated members is made. Is it because they are so highly talented as to make us desire their presence as members in the said House? If that be so we can get such people from Universities—through election. I fail to understand what prevents this being done. My submission is that we should make some provision for the election of such talented persons who fail to get elected to the Legislature from the general constituencies. Unless we keep this in view, the constitution that we are framing would not be to the liking of the majority. If we authorise the President to nominate these twelve members, he will always be accused of favouritism by quite a good number of people. People will complain that instead of nominating the right and able persons the President has nominated his own favourites. I am afraid that the danger of the President being subjected to unfair criticism would always be there. It is evident that it is the most undesirable thing that the Leader of our Nation, the Supreme Head of our Republic should thus be an object of unfair criticism. I would, therefore, submit Sir, that the provision for nomination be deleted and in its place Functional Representation be provided. It is said by some people that Functional Representation has been tried and found seriously defective in Ireland. But I submit, Sir, that it is bound to succeed if it is tried along with Panel System. I do not think that I need say much against the system of nominations, but in this connection I may draw your attention to the fact that till recently, we members of the Assemblies and Councils in India used to go to one person—Mahatma Gandhi—for advice and used to manage our affairs in the light of his advice. Even if there be any person who is as

\* [ ] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

really great as Mahatma Gandhi was, and for bringing in whom this system of nomination is being provided for and who is not willing to come in through elections, well we can go to him and have his advice. If there be any person of great learning or scholarship who may be unwilling to contest election, well, for myself I can say that I would feel no hesitation in going to him for seeking his advice. We used to go to Mahatma Gandhi for his advice. Similarly, if any able and competent person does not seek election, we may go to him and have his advice. We may constitute a board of such meritorious and learned persons to aid and advise us. The system of advisory board does exist in Russia. We may constitute an advisory board for every minister. Instead of doing what I have already suggested, if we authorise the President to nominate twelve persons, bitter allegations of favouritism and nepotism will be levelled against him and that would not be desirable. Therefore, I propose, Sir, that the provision of nomination should be totally deleted. With these words I resume my seat]

**Mr. Naziruddin Ahmad** (West Bengal; Muslim): I do not wish to move Amendment No. 5 of List I (Sixth week), because it is merely verbal. I, therefore, confine myself to Amendment No. 4.

Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent of the total number of members of the House' be substituted."

**Shri S. V. Krishnamurthi Rao** (Mysore): I suggest that this may be ruled out of order as the number originally fixed is 15 and the total number is 250. Six per cent will be again 15.

**Mr. Naziruddin Ahmad**: It would not be fifteen. I submit, Sir, that the original clause of article 67 was to the effect that the Council of States shall consist of 250 members. By the amendment moved by Dr. Ambedkar it now stands as *not more than 250 members*.

**Mr. Vice-President**: He says he seeks to fix the maximum; therefore, it is slightly different. You need not labour the point. He may go on.

**Mr. Naziruddin Ahmad**: In the new clause you make the House one of not more than 250 members. Therefore, by Dr. Ambedkar's amendment, the number of members in the Council of States would fluctuate. It may be less; it will never exceed 250. The number of nominated members should bear a proportion to the actual number of members in the House. This number should also fluctuate in proportion. I have, therefore, suggested 6 per cent which would be 15 only if the maximum number of members in the House is taken. Otherwise, if the number of members is less, the number of nominated members would also be less. They should, I submit, bear some relation to each other. In fact if the number be reduced to twelve, an arbitrary figure, that would bear no relation to the actual number. The actual number in the House may be considerably less. So, I think, Sir, a proportion of 6 per cent of the total membership of the House would be more convenient and more logical.

(Amendment No. 6 in List I (Sixth Week) was not moved).

**Pandit Hirday Nath Kunzru** (United Provinces: General): Mr. Vice-President, Sir, it has just been suggested to me that it would be better if instead of moving my amendment now, I move it as an amendment to Amendment No. 1378, which is to be moved by Dr. Ambedkar. It is all the same to me, Sir, when I move this amendment. If you agree to the view that I have expressed, I can move this amendment a little later.

**Mr. Vice-President**: Yes; I agree.

I have admitted a short notice amendment standing in the name of Sardar Hukam Singh. It may be moved now.

**Sardar Hukam Singh** (East Punjab: Sikh): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided', the words 'from amongst the categories of persons illustrated' be substituted".

Sir, it might be thought that this is a very small affair; but I have to submit and I request that some attention might be paid to this, because I think there is some force in my amendment.

Amendment No. 1369 says that twelve members shall be nominated by the President in the manner provided in clause (2) of this article. According to this amendment, we should expect that some manner, which means method or mode of doing things, will be laid down in clause (2) of this article. But, when we look to this clause, there is no method or mode provided; no manner is provided there. What we find is that the members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in such matters as the following. Therefore, no manner or method is provided by this clause (2). Rather, there is a class of persons or categories of citizens and these categories or classes are illustrative, they are not exhaustive. They are described here as the categories from amongst whom the President shall nominate twelve members that are proposed to be selected under clause (1). My objection is that instead of putting in these words that these twelve shall be nominated by the President in the manner, it ought to be, from amongst the categories of persons illustrated in clause (2). This is the only amendment and I request that some attention might be paid to this.

(Amendment No. 1370 was not moved.)

**Mr. Vice-President:** There are three amendments which may be considered together, amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

(Amendments Nos. 1371, 1373 and 1374 were not moved.)

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved. Amendment No. 1376 is identical with amendment No. 1375. So, I am not going to put it to vote. Amendment No. 1375, Dr. Ambedkar.

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

"That the proviso to clause (1) of article 67 be deleted."

With your permission, Sir, may I also move amendment No. 1378? It is in substitution of this proviso.

**Mr. Vice-President:** Yes.

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

"That the following new clause be added after clause (1) of article 67:

'(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

**Mr. Vice-President:** The amendment of Pandit Kunzru may now be taken up. It is amendment No. 7.

**Pandit Hriday Nath Kunzru:** Mr. Vice-President, Sir, I beg to move:

"That to clause (1a) of article 67 as now moved, the following words be added:

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.'

Sir, the proviso to clause (1) of article 67, the deletion of which has been moved by Dr. Ambedkar, runs as follows:

"Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder."

that is, forty per cent of the elected members of the Council of States. It has now been proposed by Dr. Ambedkar that as many seats in the Council of State should be allocated to the States specified in Part III of the First Schedule as may be laid down in Schedule III-B. We have not got this Schedule before us. We do not therefore know what proportion the representatives of the States mentioned in Part III of the First Schedule will bear to the representatives of the States included in Part I of the First Schedule.

Sir, during the Round Table Conference, the Rulers of the States insisted that they should be given greater representation both in the Assembly and in the Council of State than their population warranted. In other words, they asked for weightage in both the Houses of the Central legislature and it was therefore laid down in the Government of India Act, 1935, that the representatives of the States shall be forty per cent of the total representatives in the Council of State whether elected or nominated and that in the Assembly, the number of representatives of the States should be one-third of the total number of elected representatives. The Union Powers Committee recommended that the proportion of the representatives of the States mentioned in Part III of the First Schedule should be 40 per cent of the total number of elected representatives in the Council of States. In other words, in this respect it approved of the provision contained in the Government of India Act, 1935, but it departed from that Act in regard to the representation of the States in the Legislative Assembly. The Draft Constitution follows the recommendations of the Union Powers Committee which were accepted by the House last year. Dr. Ambedkar has now moved that no percentage should be fixed for the representatives of the States specified in Part III of the First Schedule but that the seats allocated to the States should be as laid down in a schedule to be attached to the Draft Constitution. Now, Sir, when the Government of India Act, 1935, was passed by the British Parliament, the situation was very different from what it is now. The States were then not prepared to join the Federation except at a price. Apart from this, it suited the British Government to give weightage to the States. In the new order, however, the position of the States formerly known as the Indian States, has completely changed. Their representatives in this House themselves want that their position should be assimilated to that of the provinces. There is no reason therefore why the weightage given to the States in the Government of India Act, 1935, should be continued any longer.

Sir, I have already said that the Draft Constitution, so far as the representation of the States in the House of the People goes, has not adopted the provision relating to this matter in the Government of India Act, 1935. If honourable Members will turn to clause (5) of article 67, they will find that the proviso to sub-clause (b) of this clause lays down that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such

States. The Draft Constitution insists that the States shall be represented in the House of the People in accordance with their population. What I want is that in the Council of States the representation of the States specified in Part III of the First Schedule should also be fixed in accordance with the same principle. Sir, I may be told that as the Upper Chamber will be known as the Council of States, it means that the number of the representatives of the States specified in Parts III and Parts I and II cannot be fixed in accordance with their total population. If such an objection were put forward, I should regard it as purely superficial. Had I said that in the proviso to sub-clause (b) of clause (1) of article 67 for the word 40, the figure 25 or 30 should be substituted, no such objection could have been brought forward. I seek however to achieve the same purpose in a different way. My amendment cannot really therefore be objected to, on the ground that it would go against the principle that seems to underlie the composition of the Council of States.

Again, Sir, if honourable Members turn to clause (1) of article 67, they will find that it has been laid down there that "upon the completion of each census the number of representatives of the States and the subject of the several parts of the States shall be subject to the provisions of the Constitution by such authority in such manner as may be determined by law, determining the number of representatives in determining representation in the Council of States." The provisions of Clause (1) of article 67 are as follows:

Sir, I have moved an amendment to clause (1) of article 67, which is a new proposal made by Dr. Ambedkar. It is that the number of representatives allotted to the States specified in Part III of the First Schedule shall be 40 per cent of the total number of elected members of the Council of States or in excess of what their population entitles them to, whichever is less. It is not going to be laid down in so many words in the Constitution that the representatives of the States in Part III of the First Schedule shall bear a fixed proportion to the total number of elected members in the Council of States but the allocation of the seats may be such as to bring this about in practice. I want to prevent this and to ensure that as between the States specified in Parts III and Parts I and II of the First Schedule, seats should be divided in accordance with their population. We have already done away not merely with separate representation in this Draft Constitution but also with weightage. If we have done away with weightage in the case of the various communities, there is no reason why we should retain it in connection with the representation of the States mentioned in Part III of the First Schedule.

For these reasons, Sir, I hope that my amendment will commend itself to my honourable Friend Dr. Ambedkar and therefore to the whole House.

**Mr. Vice-President:** Amendment No. 9 in List I, standing in the name of Prof. Saksena.

**Prof. Shibban Lal Saksena (United Provinces: General):** Sir, I beg to move my amendment which is:

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1a) of article 67, the following be substituted:

'(1a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:

- (i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States,
- (ii) one representative for every two million population after the first seven millions.' "

[Prof. Shibban Lal Saksena]

Sir, I had, along with this amendment, given a chart showing the numbers of seats to be given to each of the States, and I do not know why it is missing here. In fact, when we were discussing the Report of the Constitution Committee, we had laid down that the maximum number of representatives from any province shall be twenty, and we laid down the numbers for each Province. The system then envisaged was not scientific or logical. I think that the numbers should be laid down on the basis of population up to a limit and that is why I have laid down the limit of one representative for every million up to seven millions, and after that, one representative for every two millions of the population. In this way, we can see to it that the bigger States have lesser numbers of representatives and the smaller States shall get a little weightage which we want to give them. That will be more scientific. Otherwise, it may be that the U. P. will have twenty seats, and Bihar also twenty. If the chart I referred to, had been here, it would have made the position clearer, by showing what is the number of seats I would allot for each State. Sir, I submit the method I suggest is the proper method of distributing the seats and I suggest that it may be adopted by the House.

**Mr. Vice-President:** Amendment No. 10, standing in the name of Shri Phool Singh.

(Amendment No. 10 was not moved.)  
 Amendment No. 11, in the name of Shri Saksena, Shri Misra.

**Shri Lokanath Misra:**

"That in amendment No. 11, in the proposed clause (1a) of article 67, for the words 'one representative to each of the component States, the number of which represents the population of the State shall be not more than three' be substituted."

Sir, the idea I have in my mind is to have an amendment to the amendment moved by Dr. Ambedkar. The Council of States is going to represent the States, it is but only one unit that these units should be dealt with as units and every State should be equally represented. Otherwise, there is no sense in saying that the States shall be represented in the Council of States. In fact, in the United States of America and in other countries where there are second chambers, representing the interests of the States, the representation given to the units is always the same. We also know that the elected members of our Council of States will be returned by the Lower House of the State Assemblies, and if we say that the election will be in some other form, either in proportion to their population or on some other basis and yet people with the same qualification, the Council of States will serve no real purpose, except a purpose of unnecessary duplication of the House of the People. In fact, the House of the People itself will be representative of the people of the States themselves, because the States will be sending in their representatives to the House of the People on almost the same basis. Therefore, if we do not accept this principle, that of taking every State as an equal unit, and sending in their representatives to safeguard or protect their special interests, there is no sense or meaning in having a second chamber to represent the States. Though we have Schedule III-B, the position, I feel, should be made clearer that the Council of States will be representative of the State interests, and therefore the States, as States, and as autonomous units, must be equally represented. On this ground, I suggest that the allocation of seats to the representatives of the States in the Council of States should be on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than three. Why I fix upon the figure three is this. I feel that if three members come from every State, that will be sufficient to safeguard the special interests of the States, and their special problems. After all, this is to be a sobering

House, a reviewing House, a House standing for quality and the members will be exercising their right to be heard on the merits of what they say, for their sobriety and knowledge of special problems; quantity, that is, their number, is not of much moment, and I think three is just sufficient for the purpose.

**Mr. Vice-President:** Amendment No. 12 in List I, standing in the name of Shri Lakshminarayan Sahu.

\*[**Shri Lakshminarayan Sahu:** Mr. Vice-President, my amendment runs thus:

"That in amendment No. 1378 of the List of Amendments after the proposed clause (1a) of article 67, the following new clause (1b) be inserted:

'(1b) Steps should be taken to see that, as far as possible, men from different units are represented.'"

The reason why I move this amendment is that in view of my previous proposal to delete clause 1(a) of article 67 it is necessary that a proviso be made that every member of the Council of States should come there only as a representative of some state. It is because of this that by this amendment I have sought to include a proviso so that representatives from each unit may be able to get into the Council of States. No mention has been made there of the number of representatives from each province and each unit and therefore, we do not have any idea as to the composition of the Council of States, I, therefore, entirely endorse the amendment moved by Pandit Hirday Nath Kunzru. The amendment moved by Shri Shibban Lal Saksena is, as I understand it, also intended to secure representatives in the Council of States for every State. But I find that there are three categories of States. It would be better if we could put all of them in a uniform pattern. It is quite possible that the small states which are neglected now-a-days and are unrepresented may later on desire to have representation in the Council of States. But there are many such small States as will have no opportunity of securing any seat in the Council of States in the ordinary course of things. It is for this reason that I am moving this amendment. I need not add anything further.]

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

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1):

'(1a) Parliament may by law establish a consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

*Explanation.*—The number given in the brackets after each group is the total number of representatives from each section.

Members of this Council shall have, individually or collectively no administrative or executive duties, functions or responsibilities. Every member of this Council shall be paid such salaries, emoluments or allowances as Parliament may from time to time provide."

Sir, this is an innovation, not borrowed, I can assure the honourable Chairman of the Drafting Committee, from any of the present Constitutions. Some thing similar to this was to be found in the now defunct Weimar Constitution of Germany; but even that precedent has been radically modified.

The suggestion here is three-fold: It is an advisory Council, consisting of certain special interests elected by organisations in those interests, like agriculture, forestry, mining, engineering, trade, industry, social services and so on.

**Dr. Jivraj N. Mehta (Baroda):** May I know why Members of the Medical profession have been left out of the amendment?

\* [ ] Translation of Hindustani speech.

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**Prof. K. T. Shah:** I would be very willing to accept an amendment to that effect provided you choose to move it. It is an oversight on my part, for which I personally apologise to you. My amendment, however, does not mention either the learned profession of law or the members of the Clerical Order. If the House desires to rectify the omission I have no objection. But I would like to make it clear that it is not so much any profession that is sought to be represented, as the various interests, or the various items in which the country as a whole is interested, and not the exclusive interest, in an economic sense, of those bodies.

Sir, this will be an advisory council which will have no executive or administrative functions according to the amendment I have tabled. It would advise in all matters on legislative proposals that may be coming up before Parliament, or which Parliament may direct them to scrutinise.

Sir, legislation is now-a-days becoming so extremely complex, so varied, and so numerous,—if I may speak individually or severally of the Acts passed by Legislatures now-a-days, that an average member of Parliament would find it extremely difficult to make up his mind, or even to understand the special provisions couched in technical language that grow up or that have to be sanctioned by Parliament.

It is becoming more and more a fine art, not merely in drafting the legislative proposals, which by itself is an extremely complicated task; but also in laying out the various items and satisfying the various interests that have to be provided for. It is even now a convention generally established and commonly followed, whereby the various interests not directly represented in Parliament can put forward their case before the Departments and make their own alternative proposal. Whether it is Insurance Legislation or Labour Legislation or Banking, or Shipping, or Trade marks legislation, those concerned see to it that their case is placed before the authorities. The Minister in charge of such legislation generally hears them before the final draft is made. If the Minister concerned does not so consult the interests concerned, then the Select Committee on the Bill sometimes hears representatives or representations from the interests concerned, before the legislation is passed by Parliament.

On this basis, I think it would be of the utmost benefit to have this consultation, not only to the interests concerned, but also to the proper co-ordination of the particular pieces of legislation with the rest of the social economic framework under which the country is to live. It does happen that, when individual items of legislation come up, only those concerned or interested specially, directly or personally, take any intelligent interest in the various clauses as well as in the general principle underlying; while the rest of the House,—by far the large majority,—remains relatively indifferent. Whether by the guidance of the Party organization, or by personal loyalties, votes are cast not so much by the provisions and their implications understood properly, but by influences of the kind I have just mentioned.

It is, therefore, not in the interests of proper legislation that we should have a body of laymen—and popular representatives are bound to be laymen only in the majority of cases in law-making that come up before Parliament—who should be passing laws, without any advice or guidance from recognised experts upon the complicated pieces of legislation which almost every year come before Parliament. They should have a non-interested, or dis-interested, and impartial body of advisers who are competent to advise by their study, training and experience in all such matters, who would have no executive or administrative function, who would not be law-makers themselves, and who would be sufficiently respected outside to influence the decisions in the best interests of the country. Sir, the practice is growing in many countries whereby Parliament passes organic laws, of great social importance, but allows more and more powers to departments to make bye-laws, or rules under such laws,

which enables the bureaucracy—I am not using the term in any objectionable sense, call it the permanent services,—to make elaborate codes under these laws. These codes are not enacted by Parliament. These codes are, no doubt, sometimes laid on the table of the House, in the presumption that members, if they have any objections to the rules, will point them out. But, as a matter of fact, these codes are scarcely ever scrutinised by members when once they are enacted under the authority of the law by the departments concerned and so they become laws by fiat of the bureaucracy without any proper understanding by members of Parliament.

This, Sir, is a practice which has led an eminent jurist, Lord Hewett, Chief Justice of the King's Bench Division in England, to describe it as 'The New Despotism'. It really amounts to arming the civil services, arming the permanent officials, with a vast margin of power and discretion that practically amounts to a denial of civil liberties, or at any rate the ordinary freedoms of the citizen.

This, Sir, I submit, is not in the interests of the free institutions which we are planning for. I, therefore, suggest that it would be in the interests of the freedom of the people, and also the interests of sound legislation, that we should have a body of disinterested advisers chosen with an eye only to their experience, training and qualification, and not burdened with any other duties as our Ministers are, not charged with any other administrative or executive functions, and remunerated sufficiently to be beyond any influence other than the interests of the country, and so able to devote their entire time to the particular subjects that come up for legislation. I hope this amendment will be accepted.

**Mr. Vice-President:** Amendment No. 1380 standing in the name of Dr. Ambedkar.

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

"That for clause (2) of article 67, the following be substituted:

'(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:  
Letters, art, science and social services.'

**Mr. Vice-President:** There are some amendments to this amendment which I am calling out one after the other. No. 13 in the name of Mr. Kamath.

(The amendment was not moved.)

No. 14 standing in the name of Mr. Lokanath Misra.

**Shri Lokanath Misra:** Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian philosophy and culture, art and science and social services towards reconstruction of Introspective India' be substituted."

Sir, I am really thankful to Dr. Ambedkar for introducing this amendment and for placing the words "Letters, arts, science and social services" much better than the original. In fact, in my humble opinion as I have conceived this Council of States, to me it represents our past, as the House of the People represents our present. Our future no doubt is in the hands of God. I say that we can have that sobering influence we need, only if we can build our mind and our ideas on our past. I suggest that India to be India must know her lofty past, and the members of the Council of States nominated by the President should be people who know our past, our history, our philosophy and our culture. Therefore, instead of having letters, let us say history, philosophy and culture. All our efforts should be towards one direction and

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that direction can only be an ideal which will bring up India to her past, *i.e.*, to her own. The nominated members by the President should represent these four things, and to bring home a justification of this point, I need not make a speech of my own. I will only quote some lines from an essay "India and the Western World" by Captain Anthony M. Ludovici (England). He says:

"We are credibly informed by anthropologists that often all that is needed for the ultimate extinction of a particular race is, not violence, disease, or some vicious habit introduced by the European, but merely the despondency generated by the imposition of new forms of behaviour and belief—a state of mind which, by diminishing their zest and *joie de vivre*, undermines their will to survive.

Now, when we grasp how deep attachment to native culture-forms may be, even among the random-bred stocks of Europe, need we be surprised to learn that, among peoples whose capacity for change and for suffering change has a tempo different from our own, the impact of new and powerful culture, sometimes imposed rapidly with every artifice of proselytization, force and example, has resulted in a complete renunciation of every hope, belief and desire.

He (the European) was in a position to coerce recalcitrants and by means of the importunacies of his proselytizing and commercial agents, to provoke acts of hostility which often provided the excuse for retaliatory military measures. If, therefore, certain races survived the impact, not only as a united people, but also, above all, as a community still observing their traditional culture-forms, including the worship of the gods of their fathers, the phenomenon partook of the nature of a feat so stupendous in recuperative power and stamina as to amount almost to a miracle—a miracle of resistance, faith and loyalty.

Well, we now know that, up to a point, India performed that miracle. Thanks to the relatively high evolution and intricacy of her own culture, her large population as compared with the numbers of her invaders, and, above all, of the high intellectual level of her leaders, and their steadfastness as custodians of the people's cherished habits of mind and body, India should, in the millenniums to come, stand as a proverb and example among nations, as a country. . . . .

**Mr. Vice-President:** How long do you propose to read this? It seems to have little connection with your amendment.

**Shri Lokanath Misra:** I will be short, Sir, it is relevant, as a foreign appreciation of what we are:

"as a country which, against forces almost everywhere else triumphant, contrived for centuries—in fact until the eve of the ultimate recovery of her freedom—to uphold and continue, without irretrievable loss, her own life and her own way of life."

Sir, I beg to submit, that in drafting this Constitution we dare not forget our own. The Council of States should represent our past and that could be done only by the President nominating only those who represent our great past of great intellectual fervour, high morals, deep and lofty flights of the spirit.

**Mr. Vice-President:** Amendment No. 15 standing in the name of Mr. Naziruddin Ahmad.

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

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67 after the word 'science' the words 'philosophy, religion, law' be inserted."

**Mr. Vice-President:** Why not move amendment No. 17 also? That too stands in your name.

**Mr. Naziruddin Ahmad:** I also beg to move:

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter:

'(t) journalism, commerce, industries, law.' "

Sir, I beg to submit that the original clause (2) of article 67 contains a number of categories, representing different intellectual spheres from which members could be nominated by the President. In fact there is a number of

such items, namely, (a) literature, art, science and education: (b) agriculture, fisheries and allied subjects: (c) engineering and architecture: (d) public administration and social services. Of this long list, only three have been accepted in Dr. Ambedkar's amendment, namely, "art, science and social services" and a new item has been added, namely, "letters". I submit, Sir, that there is a danger in restricting the choice of the President in the matter of nomination to only four classes and rejecting the others. There is no reason why the choice should not be rather wide than restricted. However, my amendment (the first amendment which I have moved) wants to introduce Philosophy, Religion and Law. Sir, I submit that Philosophy is peculiarly Asiatic in origin. So is Religion. All the great Philosophies and all the great Religions emanated from the East. There is no reason why we should give up the Philosophers or the men who are the leaders of Religion. It is only the other day that at the instance of Mr. Kamath we introduced the name of Almighty in the constitution. In fact, the President is to take the oath of office in the name of God. Having agreed to give the Almighty a place in the Constitution, I think that Religion which follows from God should also have some recognition in this Constitution. It is often hinted that Religion is a very bad thing and that it leads to quarrels. I submit, Sir, that Religion never leads to quarrels. It is communalism that leads to quarrels and not Religion. All the great Religions are really good and supply a fundamental moral basis for humanity to act. Therefore, Religion should not be discarded; so also with Philosophy. A philosophical attitude is particularly useful for a House like this; particularly when a Member finds that his amendments are not listened to or his speeches are not listened to by the Honourable the Chairman of the Drafting Committee, he cannot but be philosophical. So for God's sake, do not discard Philosophy too.

Then comes the matter of Law. I submit, Sir, Law should also be represented. The legal talent of the Upper House should particularly be strengthened, because the Upper House will rather be a revising chamber and Law should be particularly represented. Men like Sir Tej Bahadur Sapru, Shri Alladi Krishnaswami Ayyar. . .

**Shri L. Krishnaswami Bharathi:** Sir B. N. Rau.

**Mr. Naziruddin Ahmad:** Yes, Sir B. N. Rau too. I am thankful for the suggestion. These are very useful names. I think their names should not be shut out from the choice of the President. It may be that at any future election we may lose Dr. Ambedkar himself, and there should be some means of bringing him in by a presidential nomination. Then there is the Rt. Honourable Mr. Jayakar. These are really great men of the Law and their addition, or rather the choice of the President in their selection should be very useful. In these circumstances they should also have some place.

Then with regard to the second amendment: I have also tried to introduce Journalism, Commerce, Industry and Law. Law has already been suggested in my previous amendment. With regard to Journalism, journalists have also a great duty to perform. In fact, they are a kind of go-betweens between the Legislature and the people and between the people and the Legislature. Ideas which are expressed in the Legislature are disseminated by the journalists, and ideas which prevail among the people are also brought to the notice of the legislators by journalists. A democracy is run by the three States—the Executive, the Legislature, and the Judiciary. To these must be added the newspapers which have been described as the Fourth State. They also play a very important part in the role of freedom of a country. Journalism should also be one of the categories from which the President could make his selections.

Then we come to Commerce. We want to associate those great commercial magnates who are really the wealth producers in the country and they

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should also be represented and their advice and counsel would be of great help. So also with Industry.

These are the different categories from which the selection should be made.

I submit that the introduction of these classes will not in the least compel the President to select or nominate anyone from any of them. The choice would be reasonably wide and I submit that this amendment should be accepted by this House.

In making the suggestion about Journalism, Commerce, Industry and Law, I took them from a suggestion made by a few learned lawyers who considered the Draft Constitution in the "Indian Law Review" of Calcutta. It is a quarterly journal. It is in volume 2 at page 9 onwards. There, with regard to this very clause of this article, they have suggested that Journalism, Commerce, Industry and Law should also be represented. They said that there is no reason why these important professions and callings should not be included as well. The great point which I wish to suggest to the House is that the choice should not be restricted, but should be widened. It would be an advantage to have different professions and callings in the list so as to make the choice of the President easier and better.

**Mr. Vice-President:** The next amendment in our list is amendment No. 16 in List No. 1 standing in the name of Mr. Sidhwa.

**Shri R. K. Sidhwa** (C. P. & Berar: General): I am not moving my amendment.

**Mr. Vice-President:** The next amendment is No. 18 in List No. 1 standing in the name of Shri B. Das.

Since Shri B. Das is not in the House we pass it over.

The next amendment is No. 1381. I find this is of similar import to 1386, 1384, 1385 and right up to 1392. All these amendments may therefore be considered together.

Amendment No. 1381, standing in the name of Shri Prabhudayal Himatsingka may be moved.

**Shri Prabhudayal Himatsingka** (West Bengal: General): I am not moving my amendment.

(Amendments Nos. 1381 to 1394 were not moved.)

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

"That for clause (3) of article 67, the following be substituted:

(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens."

Sir, this is in consonance with the general principle I am advocating, namely, that the Legislature shall be constituted only by elected representatives, election being by whatever method you may agree to.

Secondly, that, in the Council of States, all constituent parts of the Union—call them States, Units or what you like—shall be equally represented. Whereas in the lower House, or the House of the People you may have representation in accordance with number, in the Upper House or the Council of States the representation is more of the territory of the Unit, of the special interests of the Unit or region, than of the people pure and simple.

And these, also, I would suggest should be elected rather than nominated, co-opted, or chosen by any other method. The whole body should be elected; and none but elected representatives should come there.

Next, the representatives, so far as they are representatives of the Units, should be equal in number amongst themselves—that is to say, for each State the same number be returned,—so that it will bring some sense of a real Federation working, rather than of discrimination or differentiation as between the Units. On these grounds I commend my proposition to the House.

**Mr. Vice-President:** Amendment No. 1396 is formal and is therefore disallowed.

(Amendment No. 1397 was not moved.)

**Mr. Vice-President:** The first part of amendment No. 1398 and amendment No. 1402 are identical. I can allow the first part of amendment No. 1398 to be moved.

**Mr. Mohd. Tahir** (Bihar: Muslim): What about the second part?

**Mr. Vice-President:** That will come at the proper place.

**Mr. Mohd. Tahir:** Sir, I beg to move:

“That in sub-clause (a) of clause (3) of article 67, the word ‘elected’ where it occurs for the second time be deleted.”

I have moved this amendment because I think that there should not be any distinction between the elected members and the nominated members so far as the election of the representatives in the Council of States is concerned. Nominated Members, as soon as they become Members of the House, should enjoy all the rights and privileges of a Member as such.

I had moved a similar amendment in respect of the election of the President of India, but in that respect the House adopted that only the elected members should be allowed to vote for the President of India. In that case there was some meaning to it, because if a President who nominates certain members to Parliament again stands for the Presidentship election, there would have been some difficulty for the members nominated by the said President in exercising their votes. But so far as the election of the representatives of the Council of States is concerned, I do not think that there is any reason why the nominated Members of the Legislature as such should be debarred from voting in the election of their representatives in the Council of States. I hope that taking all these facts into consideration the House will accept my amendment.

**Mr. Vice-President:** Now you may move the second part of the amendment. They will be voted upon separately. Do you want amendment No. 1402, which is identical, also to be put to vote?

**Mr. Mohd. Tahir:** Yes.

**Mr. Vice-President:** You may move the second part of amendment No. 1398.

**Mr. Mohd. Tahir:** Sir, I beg to move:

“That in sub-clause (a) of clause (3) of article 67 the words ‘Legislative Assembly’ be substituted for the words ‘Lower House’.”

In this connection I would require the special attention of my honourable Friend Dr. Ambedkar. I have moved this amendment because in article 143 of the Draft Constitution the Legislature of the States has been defined as the Legislative Assembly and the Legislative Council; and there is no such term as has been suggested in article 67, that is to say, the ‘Lower House’. In this connection I think my Friend Dr. Ambedkar was more conscious than myself because while we were discussing article 43 he introduced an explanation, namely, that “in this and the next succeeding article the expression ‘the Legislature of the States’ means, where the Legislature is bicameral, the Lower House of the Legislature.” This explanation, Sir, he had to add while we were discussing article 43, which means that this explanation is meant for article 43 and article 44 only. Therefore, Sir, in order to clear the position in

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the article under discussion, I think there is no other alternative but to accept my amendment; or I would request my Friend, Dr. Ambedkar to introduce an explanation as he has done in article 43, because unless it is done, the meaning of the article will not be clear, and I hope, Sir, this would be duly considered and accepted by the House.

**Mahboob Ali Baig Sahib Bahadur** (Madras: Muslim): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House', the words 'two Houses' be substituted."

The sub-clause as proposed to be amended by this amendment reads like this:

"67 (3) (a) where the Legislature of the State has two Houses, be elected by the elected members of both the Houses."

I do not see any reason, Sir, why, when there are two Houses in the Provincial Legislature, the elected members of the Upper House should be excluded from taking part in the election. I am not thinking of those who may be nominated to the Upper House. I am urging that those members of the Upper House who have been elected may be allowed to take part in the election. On principle, there is no reason at all why the elected members of the Upper House should be excluded. That is the reason why I move this amendment.

I have got one other amendment, No. 1407, Sir. I may be allowed to move that also.

**Mr. Vice-President:** There are three amendments of similar import. One is amendment No. 1400, the other is No. 1403 and the last is No. 1407. Amendment No. 1407 seems to me to be the most comprehensive. Mr. Baig can move that amendment.

**Mahboob Ali Baig Sahib Bahadur:** The other amendment that stands in my name is Amendment No. 1407.

Sir, I beg to move:

"That in clause (3) of article 67, the following new sub-clause (d) be added:—

(d) The election under sub-clauses (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote."

**Shri Mahavir Tyagi** (United Provinces: General): On a point of order, there is a similar amendment standing in my name just before that of Mr. Baig. I have not been allowed to move that amendment.

**Mr. Vice-President:** Because the three amendments have been moved together, namely, Nos. 1400, 1403 and 1407, as the honourable Member will find by reference to papers already circulated, and, in my view, Amendment No. 1407 seems to be the most comprehensive. The honourable Member will have his chance later on.

**Mahboob Ali Baig Sahib Bahadur:** I am glad that some Members are of the same opinion as I am with regard to the method of election, particularly my honourable Friend, Mr. Mahavir Tyagi, and I am glad when we come to this part of the Constitution Mr. Mahavir Tyagi has changed his mind. I remember quite well when I moved for the election of the President in the earlier part of the Constitution, Mr. Mahavir Tyagi was, I should say, uncharitable.

**Shri Mahavir Tyagi:** That was the President's election; this is of the Council of States.

**Mr. Vice-President:** I think it would be better to substitute the word "emphatic".

**Mahboob Ali Baig Sahib Bahadur:** Perhaps he did not understand. But now he finds that the method of election by a system of proportional representation by means of the single transferable vote is not injurious for the solidarity of the country. I remember at that time. . . .

**Mr. Vice-President:** May I suggest that instead of making remarks on the past attitude of Mr. Mahavir Tyagi, another honourable Member of this House, the honourable Member may proceed with his own amendment. Probably that would save the time of the House.

**Mahboob Ali Baig Sahib Bahadur:** Now, Sir, this House has already accepted the system of election under article 55, that is, in regard to the election of the President.

"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

Therefore, Sir, there is nothing new or extraordinary in my proposing this method of election.

Further, Sir, may I refer to the opinions of certain authorities who are competent to speak on this matter which are referred to in the Constitutional Precedents, supplied to the Members of this House by the Constitutional Adviser? The opinions of persons who are competent to speak on this method of proportional representation are these:

"One of the best safeguards for minority rights and interests is the system of election by proportional representation with the single transferable vote (P.R.) which has already been adopted in a large number of countries; Switzerland is a conspicuous example:

"In the past there were bitter differences, religious and cantonal. But for a long period of years now, government has been stable. The responsibility for forming a government rests upon parliament; its first duty is to elect an Executive. The Swiss parliament is elected by proportional representation."

The late Lord Howard of Penrith, who was Britain's representative at Berne, Stockholm, Madrid and Washington, and who made a study of the working of governments, wrote as follows:

"Two fundamental requirements of democracy, first that Government should be an expression of the people's will and secondly that it should work both smoothly and stably and not be subject to frequent crises, seem to have been met more successfully by the Swiss system than by any other in the world."

Another authority has stated like this:

"Sir Samuel Hoare addressing his constituents in Chelsea expressed the view that representative Government might function more satisfactorily in Europe if the Swiss rather than the British form of Government was adopted. The New York review Free World organised an unofficial round table discussion on the future of Italy. In this discussion Colonel Randolfo Pacciardi, an active member of the Left, said:—'The frequent crises of the Latin democracies, which have so greatly discredited representative democracy, can be avoided by a constitutional form like that which has been developed in Switzerland.'"

This was issued by the Proportional Representation Society in June 1945.

Therefore, this method of election represents the expression of the people's will and it will be more stable as well as responsible. My submission is that all the fears that some people might entertain that this method of election would involve the country in sections and it will go against the solidarity of the country are false. Some people who are really communally-minded smell a rat in anything in regard to this kind of representation; that is unjustifiable. This is the most scientific and most democratic method of representing the people of a country in a democratic system of Government. I, therefore, commend these two amendments, firstly that the elected members of the

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Upper House also should be allowed to take part in the election and secondly that the method of election should be by this system, that is proportional representation by means of the single transferable vote. Sir, I move.

**Mr. Vice-President:** The other two amendments which have been dealt with together are amendments Nos. 1400 and 1406.

**Shri Mahavir Tyagi:** Sir, these are my amendments and I beg to submit that I may be allowed to move these amendments separately, so that the House may decide on the issues separately.

**Mr. Vice-President:** Come to the mike please.

**Shri Mahavir Tyagi:** Sir, I beg to move:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

"in accordance with the system of proportional representation by means of the single transferable vote."

Sir, while moving this amendment,

**Mr. Vice-President:** I am afraid I have not given the honourable Member permission to move his amendments. I want to know the reason why he wants to move them. They are of similar import as amendment No. 1407.

**Shri Mahavir Tyagi:** That is perfectly true. My reason is the House can decide the issue in one case in one way and in the other, in another way. Therefore, I want to give the fullest opportunity to the House.

**Mr. Vice-President:** I can give the honourable Member an opportunity of making his point in the general discussion; but I cannot depart from the convention which has already been established. His two amendments will be put to vote one after the other.

**Shri Mahavir Tyagi:** Shall I have my say now, Sir?

**Mr. Vice-President:** I shall certainly give the honourable Member an opportunity in the general discussion.

**Mr. Vice-President:** Amendment No. 1401, Mr. Naziruddin Ahmad.

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

"That at the end of sub-clause (a) of clause (3) of article 67 the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

I also beg to move amendment No. 1404:

"That sub-clause (c) of clause (3) of article 67 be omitted."

Sir, so far as this sub-clause is concerned, it introduces some anomalies. Clause (3) where this sub-clause occurs relates to the representation of the various States. Sub-clause (a) deals with the representation of States having a legislature with two Houses. Sub-clause (b) deals with representation of States having a legislature with one House.

**Mr. Vice-President:** Mr. Naziruddin Ahmad, you might move amendment No. 1404 also.

**Mr. Naziruddin Ahmad:** Yes, Sir. That is the amendment which I have also moved.

**Mr. Vice-President:** And one speech.

**Mr. Naziruddin Ahmad:** Sub-clause (c) deals with representation of States having no legislature. States here comprise the Provinces, the Chief Commissioner's Provinces and the Indian States. All the Provinces, however, have legislatures and they will have legislatures too in the future constitution.

Sub-clause (c) therefore really affects the States which are now called Indian States and the Chief Commissioners' Provinces. Where there is no legislature, power is being given to the Parliament to prescribe or determine the manner of choosing their representatives. I submit this would be an encroachment on the rights of those States—specially the Indian States. These States having no legislature have a distinct identity, a modified kind of sovereignty. Dr. Ambedkar conceded the other day that they have some kind of sovereign rights, though not full sovereign rights. The mere fact that they have no legislature is no ground why their representation should be left to be determined by the Parliament. If they have no legislature for the time being, there must be a President, or a Raj Pramukh or some authority who or which would function in the State. If the business of the State, its administration, its executive and the judiciary and other matters could be carried on by some authority, that authority should also deal with and prescribe how the representatives of that State should come to the House. Therefore, this sub-clause is anomalous. Parliament may perhaps come in when there is a gap, when there is really a constitutional vacuum in the State. The only void that is contemplated is the absence of any House of Legislature. There is not a political vacuum. But, still, the State may have an organised Government without a legislature and their representation should really be a matter for them. It really is a question of the terms of the Accession. In fact, if a State having no legislature has acceded on certain terms, then, sub-clause (c), to be valid, must come within those terms. As I see it, sub-clause (c) goes beyond the terms of Accession, and is an encroachment upon the sovereign or semi-sovereign rights of these States. I therefore submit that Parliament would not be entitled to deal with their representation. It would be beyond its competence. The States should be left to decide their own representation. In fact, it is due to them that they should decide their own representation. A Legislature is desirable but by no means a constitutional necessity. The fact that they have no Legislature does not debar their expressing themselves as to how they will be represented.

In these circumstances, I submit that sub-clause (c) should be deleted. But I also feel that some appropriate provision recognizing the right of States themselves having no legislatures to determine their own representation may be substituted. In the shortness of time at my disposal I could not submit an alternative proposition but the question is one of principle. If the principle is acceptable to the House, a suitable substitute may easily be introduced. As at present advised, I submit that Parliament would not be a legal and constitutional substitute for the authority of the States whatever be the form of Government or the nature of the authority which really functions.

With these few words, I submit that my amendment should be accepted.

(Amendment No. 1405 was not moved.)

**Mr. Vice-President:** No. 1406 disallowed as verbal.

(Amendment No. 1409 was not moved.)

No. 1410 is disallowed.

I would like to put one suggestion before the House, before the general discussion begins. It is this. I have broken many of the Rules of Procedure, some through ignorance, others deliberately. I am going to break a convention already established deliberately, but I think I ought to get the permission of the House. This article falls under two separate broad divisions. The first four clauses deal with representation in the Council of States and the last few provisions deal with representation in the House of the People. My suggestion is that first of all we discuss the first part, *i.e.*, the first four clauses dealing with representation in the Council of States. The amendments relating to these clauses have been moved one after another. Now I want to give an opportunity to honourable Members to take part in the general discussion on these four clauses. After that I intend to call upon Dr. Ambedkar to

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reply and after that only these amendments will be put to vote. Then we shall take up the amendments concerned with the clauses (5) onwards. Then the amendments will be moved, and then again a similar procedure will be followed. But this procedure is only for this clause. Have I the permission of the House?

**Honourable Members:** Yes.

**Mr. Vice-President:** Now these four clauses are open for general discussion. I call upon Mr. Rohini Kumar Chaudhari.

**Shri Rohini Kumar Chaudhari:** (Assam: General): Mr. Vice-President, Sir, I wish to say a few words on this article. My honourable Friend Moulvi Mohammad Tahir has moved an amendment objecting to the use of the word 'Lower House'. Practically speaking as is known to everybody, the Lower House means really the Upper House. That is the House which has a more important voice and has the upper hand in the administration of the province. Similarly the House of Commons is the House of the Commoners and the House of Lords is the House of the Lords. All the same the House of Commons exercises more powers than the House of Lords and nobody for a moment suggests that the name should be changed for that purpose only. Furthermore, the use of the word 'Lower House' connotes that there must be an Upper House in the same province. Now so far as the Upper House is concerned, its members have been denied many privileges—for instance, one would have normally expected that in selecting or in electing members of the Council of States, their compeers, the members of the Upper House should certainly have a voice. Because after all the birds of the same feather flock together and there is a sort of sympathy between members of the Upper House in a Province and the members of the Council of States in the Centre but, Sir, when you are not giving them the privilege which is exercised by the ordinary members of the Lower House or the Assembly, you must console them by calling them members of the Upper House. Therefore from that point of view also, the words 'Lower House' should be allowed to remain where they are, firstly because the Lower House does not mean a House of Lower dignity but it has to be used for purposes of expediency; and secondly, Sir, so long as we think that we must have a second legislature in a Province, there should be one which is called 'Upper House' because as a matter of courtesy we should call them Upper House because we are not giving them many privileges.

Then I also want to say a few words on the amendment of Prof. Shah. It is certainly democratic to expect that members of any House should be elected but there is one difficulty in the way. If you leave the representation entirely to election in a Council of States, the class of people whom we want to nominate by this article, *i.e.*, the class of people who must have some special knowledge in agriculture, fishery, administration and social services, these people generally fight shy of election and will never be able to come to the House and therefore it is necessary in the exigencies of circumstances that some provision should be left for nomination so that the House may get the advantage of people who would normally not like to enter into a contest of election and at the same time whose services to the Legislature would be very useful.

With these words, Sir, I support the first part of the article.

**Shri R. K. Sidhwa:** Mr. Vice-President, Sir, this article so far as it relates to the Council of States contains two parts, one is clause 1 (a), which has been amended by Dr. Ambedkar by reducing fifteen members which he had originally suggested for nomination to twelve members and in clause (2) where the Drafting Committee had suggested about 14 categories under which the

nomination had to be made, he has moved an amendment of 4 categories. Now this is the most contentious clause in this article, which ought to require the serious attention and consideration of the House. There is an election and also nomination in the clause. I have stood all along my whole life for election in all legislatures and public bodies and local bodies.

Not that I do not realise that conditions have changed today, but I do feel that even under the changed conditions, the power that is vested in the President may be misused, I mean the power of nomination. This, Sir, is a matter in which we cannot challenge the action of the President, because it is a matter which is absolutely within his discretion. A certain person 'A' may be more desirable to be nominated, but according to the President, another person, 'B' may be considered more suitable and he may nominate 'B'. The House cannot, and no one can challenge that choice or nomination of the President. No one can say that the President can be impeached because he has done something in bad faith or anything of that kind. I am afraid, Sir, that there will be a good deal of bickerings, that while able persons are available, some favourites, or some persons who are in the good books of the President or some persons who are always around the President, are nominated. Human nature being what it is, such a thing is quite possible. I am not stating something new, for persons above these things are exceptional. The President has to take into consideration so many factors when making his selection and at that time, qualifications or merit or service or sacrifices may be set aside or ignored. Therefore, I do feel that even these nominations should not be there, because they will lead to bickerings and out of them bickerings will accrue. The very fact that while the Drafting Committee had laid down some thing like fourteen categories, the Chairman of the Drafting Committee has now come forward with an amendment seeking to change the number to four, and also the number of amendments moved to this particular article show the degree of difference of views. One view is that experts will be required only for a few subjects such as law etc. which are rather technical. But it was asked, why have you left out health? Sir, I do not attach much importance to Law. There are many lawyers in this House, and some quite as competent as Dr. Ambedkar, if I may be permitted to say so. I am only saying that natural temptations will arise, and they are arising, as is shown by the various amendments that have been moved. Therefore, I feel, Sir, that these nominations, in the present juncture, should be done away with.

Coming to Prof. K. T. Shah's amendment I would certainly advocate the suggestion or rather the amendment moved by him proposing the appointment of advisory committees. I do not subscribe to his view completely. For instance, I do not agree with the various numbers and various other experts he has suggested, such as 25 for agriculture and so on. I do not subscribe to so many categories coming in. But certainly, I feel that there is scope for advisory committee of experts. For instance, we may require experts in civic life and also experts in Social life. We cannot ignore the civic service amongst the villages and local bodies. But I do not think such an advisory body should be provided for in the Constitution. In case nomination is to be there, then as an alternative we may have these advisory committees on some two or three selected subjects. But that can be done by Parliament by enacting an Act. These persons need not be given undue prominence by making a provision in the Constitution for these advisory committees. According to the conditions that may be prevailing at an election, the Parliament may decide to have certain experts to be attached to particular ministries. But let the House itself be given an opportunity to find out from its own Members whether certain members with expert knowledge on particular subjects are available. If that is not possible, then Parliament can make a law to have Advisory Committees appointed. Sir, today you know we had

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to seek the advice of economic experts in view of the serious economic conditions in the country. But such an outside body would not be quite desirable, if we are to get a completely unbiassed opinion or advice. But if they are in the service of the State, as suggested, they can be trusted to give unbiassed opinions.

I would, however, like to make it quite clear that I am opposed to nominations, and the above suggestion is only made as an alternative. We cannot take it, that because we have all been elected, therefore, nomination will be harmless. As I have stated, we cannot expect everybody to be of sterling character, though we wish all of us were of sterling character, and that when we decide upon a person, we do so without any favouritism or any other such considerations, and select the really best man for the place.

With this reservation, Sir, I support the article.

**Mr. Vice-President:** Shri Mahavir Tyagi.

**Shri Mahavir Tyagi:** Sir, I must thank you for giving me an opportunity to express my views on this article. I wanted to move an amendment, but you were pleased to rule that it has been already covered by an amendment.

**Mr. Vice-President:** Yes, your amendments Nos. 1400 and 1403.

**Shri Mahavir Tyagi:** Yes, Sir, I wanted to say that "in accordance with the system of proportional representation by means of the single transferable vote" may be added at the end of sub-clause (a) of clause (3) of article 67, and in the same manner, similar modifications may be made to sub-clause (b). But I have not much to say now. My friend Mr. Mahboob Ali Baig has already moved an amendment which I think has the same purpose. But I think the words he has suggested will not fit in properly with the existing words, and I am afraid Dr. Ambedkar will have to take the trouble of setting right the whole sentence. Mr. Baig has suggested that a new sub-clause (d) may be added. Now, sub-clauses (a), (b) and (c) all form part of one big sentence. The sentence begins like this;

"The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall . . . etc., etc."

and then come sub-clauses (a), (b) and (c). If another sub-clause (d) is added, as suggested by my friend Mr. Mahboob Ali Baig, it will read:

"(d) The election of the representatives of each State . . . shall be in accordance with the system of proportional representation, etc., etc."

That will create a construction which is neither here nor there. I feel that my amendment is much more simple and does not lead to any such difficulties. I hope my suggestion will be considered by the House, because if it is accepted, then Dr. Ambedkar will not have to trouble himself about re-adjusting the wording of the article.

Sir, the Council of States will be represented by those members who are sent into the Council by the respective States, by general election, by majority voting, which means that the representatives of the States will not have any member belonging to the minority party of the respective States. It means that, if in the States the election is not by means of the single transferable vote, the minorities will have no representation at all in the Council of States. Sir, I do not agree with the type of democracy in vogue in Europe. This is the biggest fraud which the politicians of the world are unconsciously practising on the masses. Under the existing system of elections the masses do not get any real representation at all. All democracies based on party basis are the monopoly of the chosen few, the literates and the intelligentsia. They form parties and the elections are run on party lines. This being the case, the seats are held by the same set of people who are borne on the crest of the wave of emotion of the masses. The emotion of the masses is excited,

fanned and inflamed by the politicians. So much so, that when people go to the booth, they go swayed by the emotion created by the heat of the election campaign. When an elector goes to the polling station, he is not his normal self. His emotions are excited and he forgets his individuality. Mass mind is a separate entity. When the elector votes under his emotions, he does not exercise his individual judgment. He is swayed by the election propaganda. Under the circumstances even the representatives of the majority party are not really representatives of the normal mind of the masses. It is only those members of the minority who are either defeated at the elections or have won that represent the real spirit of the masses to some extent. They are the only bold ones who have withstood the attacks, hits, and pushes of the majority party and who have kept their heads cool and aloof amidst waves of mass emotion created by election propaganda and stuck to their principles. So, those who belong to the minorities should be always cared for and looked upon as people who hold to their own opinions staunchly. Therefore, although democracy as practised in the western countries is a hoax and a fiction, it has survived so long because of the opposition. It is the opposition that reflects the true voice of the people. It is the opposition that sustains democracy. Were it not for this, democracy would have long ago crashed and fallen down. I believe in the democracy.....

**Mr. Vice-President:** The honourable Member's time is up.

**Shri Mahavir Tyagi:** Please give me one more minute, Sir. I assure you I shall be giving useful suggestions.

**Mr. Vice-President:** But the honourable Member is taking away the democratic right of others to speak.

**Shri Mahavir Tyagi:** According to Mahatma Gandhi real democracy is Ram Raj where every one puts himself and all his power and possession under the supreme control of the general will. Each in fact becomes an indivisible part of the whole body, and indivisible member of the body. Although he acts according to the total will of the people as a whole, even so he obeys himself alone and maintains his freedom. Under such a democracy an attack on the individual is a hit on the total body of the people and a hurt on the total body is a hurt on each individual. We have, however, adopted the western model of democracy which I cannot help. There must therefore be parties in our body politics. Let us therefore give seats in the Council of States to some members holding the views of the opposition also. Such members can get elected only if my amendments are accepted. Only then Members who are opposed to the party in power in the States can come in. Whenever high State policy is under discussion we can have the advantage of the views of the other side only if they are allowed to come in by this method. The Democracy of the western type is based on free play of the opposition. Without good opposition the democracy will become one legged, it would limp and tumble down. With these words I hope that my amendments will be accepted.

**Mr. Mohamed Ismail Sahib (Madras: Muslim):** Mr. Vice-President, I want to say only a few words and will not take more than one or two minutes.

Under clause (2) of article 67, the different classes from amongst whom the President is to nominate members to the Council of States have been given. In the reason for omitting trade and commerce and industry, the Drafting Committee says that these people can as well come through the general election in view of adult suffrage. Sir, for the same reason you could have omitted to give representation by nomination also to the classes of the people enumerated in sub-clauses (a) to (d). They can also come through general elections under adult suffrage.

[Mr. Mohamed Ismail Sahib]

Sir, I do not know that the importance of commerce is in any way less than the importance of the other classes of people enumerated in this clause. Therefore I think it is very reasonable and fair that trade and commerce also should be included.

Sir, now coming to clause (3), in the various sub-clauses, nominated members are being sought to be excluded from having anything to do with the election or the choice of representatives to the Council of States from the States. Sir, if no nomination is provided for at all, that is another thing and I would have no quarrel at all. But you think that nomination is necessary and are providing for the nomination of certain people. Then, when you have recognised the importance of nominating people and when you have actually nominated them to the Council of States, it will not do to discriminate against them. It will not be at all fair to place them at a disadvantage and give them an inferior status. When you have recognised their importance and nominated them, they must also be treated equally, after they have been nominated, with the other members who have been elected and who form part of the various bodies. Therefore I am not able to see the reason why these people should be eliminated from having anything to do with these elections.

Then, Sir, a word with regard to the system of proportional representation proposed in more than one amendment to this article. It is said that this system of election will lead to fissures and divisions amongst the people. But, in reality, it would not be leading to that result or effect at all, because people know that under this system of election every group of people has got an effective say in the election. Therefore every group will be drawn towards the other group. When it is a question of election they will be made to work with each other. They will be compelled to seek the franchise of every group. Therefore it will really bring the people together instead of disintegrating them. It will make each group seek the franchise of other people. Therefore it would really work for unity rather than for disunity. Sir, I think that the Chairman of the Drafting Committee would see the reasonableness of this proposal and would recommend to the House the acceptance of this system.

**Mr. Vice-President:** Dr. Ambedkar.

(Pandit Hirday Nath Kunzru rose to speak.)

**Mr. Vice-President:** What is it that you want to say, Pandit Kunzru?

**Pandit Hirday Nath Kunzru:** I would like to say something about this question of proportional representation before Dr. Ambedkar rises to reply.

**Shri L. Krishnaswami Bharathi:** In the general discussion only two people have spoken so far, Sir.

**Mr. Vice-President:** On the whole four people have spoken. But I would allow you to speak, Pandit Kunzru, but please confine yourself to the question of proportional representation only.

**Pandit Hirday Nath Kunzru:** Mr. Vice-President, as it has been proposed that the members of the Council of States should be elected by the Lower Houses of the provincial legislatures, it is necessary that a system should be laid down for the election of the members as would be fair to men holding different views. It has accordingly been suggested that in their election the system of proportional representation by means of the single transferable vote should be used. Honourable Members may be afraid that, if this system is accepted, it would mean the introduction of communal electorates by the backdoor. We know the evils of communal electorates. We know that the partition of India is the direct result of such electorates.

We have therefore to be on our guard against any system of election that would lead to the maintenance of the old evil in a new form, but let us consider whether the acceptance of the suggestion that has been made would in practice amount to the election of the members of the Council of States by people belonging to separate communities. In order to clarify our minds, it is necessary for us to consider how the members of the provincial legislative assemblies will be elected. They will not be elected on the basis of communal electorates. The electorates will be mixed. They will consist of men of all communities, and the men returned by mixed electorates are not likely to be imbued with communal virulence. It should not be supposed that the representatives of any community would be able to get in merely by the votes of the members of that community. They will have to seek the suffrages of mixed electorates and it may therefore be supposed—we may take it for granted—that if they want to maintain their position, if they want to be re-elected, they will have to follow a policy that is not based on religious or communal divisions. Now if we get such members in the Lower Houses of the provincial legislatures, is there any reason to fear that if the system of proportional representation by means of the single transferable vote were introduced for the election of the members of the Council of States, the evils of communal electorates would be maintained or intensified? Sir, we ought not to consider this question entirely from the point of view of the representation of different communities. We ought also to consider the need for the representation of persons holding views that are not popular, and the method of proportional representation would enable fair representation to be given to minorities holding views different from those of the majority. Unless the system of proportional representation is introduced, the views that are unpopular would never be represented. Take, Sir, the election of members to the Constituent Assembly. There are some members of this House who do not belong to the Congress and have yet been able to get elected. They have been able to secure their election because of the existence of the method of proportional representation with the single transferable vote for the election of the members of the Constituent Assembly. But for this system no one who was not a Congressman could have been here.

**Maulana Hasrat Mohani** (United Provinces: Muslim): Hear, hear.

**Pandit Hirday Nath Kunzru**: I think therefore that it is desirable that we should adopt the system of proportional representation by means of the single transferable vote in connection with the election of the members of the Council of States. I need not repeat that these members will be elected by provincial representatives who have not been returned on a communal ticket so to say. They will be elected by men who will owe their election to an electorate that will consist to an overwhelming extent of members of the majority community. There need be no reasonable fear therefore that the election of members of the Council of States by means of proportional representation would mean the reintroduction of communal electorates with all the evils that they involve. On the contrary, I think that in the changed circumstances this method would enable a fair representation of the views of sections that would otherwise be overwhelmed and would not be able to make their voice heard, to be secured.

**Mr. Vice-President**: Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar**: Mr. Vice-President, I am agreeable to amendments Nos. 1369, 1375, 1378, 1380, 1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali Baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, on examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only

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reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object.....

**Mr. Vice-President:** It was not moved.

**The Honourable Dr. B. R. Ambedkar:** Then I do not think I need say anything about it. There remain only two—one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should clear the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the Council of States they got two-fifths representation which was 40 per cent. That is not the origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this: That there should be one seat for every million up to five millions, plus one seat for every additional two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of the Indian provinces and the representatives of the Indian States. Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopaldaswami Ayyangar, who moved the adoption of the Report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the State had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original state of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged

States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this:

We have removed this 40 per cent ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian States as well as to the Provinces, and I am in a position to give some figures, which, although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the provinces will have 141 seats. The Chief Commissioners' provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats. That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions, in the first place it removes weightage and secondly, it brings the total of the House within the maximum that has been prescribed by the amendment that I have made. I think the House will find that this is a very satisfactory position.

**Pandit Hirday Nath Kunzru:** May I ask my honourable Friend whether the States in Part III of the first Schedule have been represented in accordance with their population?

**The Honourable Dr. B. R. Ambedkar:** Yes, everybody will now get population ratio.

Then I come to the second amendment—No. 1377 by Prof. K. T. Shah. Prof. K. T. Shah proposes that there should be a council of the representatives of agriculture, industry, commerce and other special interests created by statute. It will be a permanent body of people. The States shall be required to give them salaries, allowances, and the duty of this council, as proposed by Prof. K. T. Shah, is that it shall have the statutory duty of giving advice to Government, and the Government will have the statutory obligation of consulting this body, and it shall not be permissible for the Government, I take it, to introduce any measure which on the face of it does not bear the endorsement that the statutory body has been consulted with regard to the contents of that Bill. I believe that is the purpose of Prof. K. T. Shah's amendment.

There are various objections to this. In the first place anyone who has held any portfolio in the Government of India or in the Provincial Governments will know that this is the normal method which the Government of India and the Provincial Governments adopt before they finalise their legislative measures: there is no proposal brought forth by the Government of India in which the Government of India has not taken sufficient steps to consult organised opinion dealing with that particular matter. It seems to me that this provision which is a matter of common course is hardly necessary to be put in the Constitution. I therefore think that from that point of view it is unnecessary.

Then I should like to tell the House that it is proposed that at a later stage should bring in an amendment which would permit the President to nominate three persons either to the Council of States or to the House of the People who shall be experts with regard to any matter which is being dealt with by a measure introduced by Government. If it is a matter of commerce, some person who has knowledge and information and who is an expert in that particular branch of the subject dealt with by the Bill, will be appointed

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by the President either to the Council of States or to the Lower House. He shall continue to be a member of the Legislature until the Bill is disposed of; he shall have the right to address the House, but he shall not have the right to vote. It is through that amendment that the Drafting Committee proposes to introduce into the House such expert knowledge as the Legislature at any particular moment may require. That justifies, as I said, the rejection of Prof. K. T. Shah's amendment; and also the other amendments which insisted that the other clauses of this article requiring that agriculture, industry and so on be also represented, become unnecessary. Because, whenever any such expert assistance is necessary, this provision will be found amply sufficient to carry out that particular purpose. Honourable Members might remember that in the 1919 Act when Diarchy was introduced in the Provinces a similar provision was introduced in the then Government of India Act which permitted provincial Governors to nominate experts to the House to deal with particular measures. Sir, I suppose and I believe that this particular proposal which I shall table before the House through an amendment will be sufficient to meet the requirements of the case.

**Shri R. K. Sidhwa:** Will the nomination clause remain?

**The Honourable Dr. B. R. Ambedkar:** Yes.

**Mr. Vice-President:** I shall now put amendment No. 1379 to vote. The question is:

"That clause (2) of article 67 be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That clause (4) of article 67 be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1369 of the List of Amendments, in the proposed clause (1) of article 67, for the word 'two' the word 'one' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent. of the total number of members of the House' be substituted."

The amendment was negatived.

**Mr. Vice-President:** I shall put the short notice amendment of Sardar Hukar Singh to vote. The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided' the words 'from amongst the categories of persons illustrated' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That for clause (1) of article 67, the following be substituted:

"(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representative of the States."

The amendment was adopted.

**Mr. Vice-President:** I shall put amendment No. 1375, standing in the name of Dr. Ambedkar, to vote.

It reads:

"That the proviso to clause (1) of article 67 be deleted."

**Shri L. Krishnaswami Bharathi:** On a point of Order, Sir. Amendment No. 1375 is out of order in view of the fact that we have already adopted amendment No. 1369 which is a substitution of the clause including the proviso. The proviso has been omitted now by the acceptance of the new clause. There is no point in having an amendment about something which is not in existence.

**Mr. Vice-President:** Then I shall not put it to vote.

**Mr. Vice-President:** The question is:

"That to clause (1-a) of article 67 as now moved, the following words be added:

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1378 of the List of Amendments for the proposed clause (1-a) of article 67, the following be substituted:

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:

- (i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States;
- (ii) one representative for every two million population after the first seven millions.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1378 of the List of Amendments, in the proposed clause (1-a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than three' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1378 of the List of Amendments, after the proposed clause (1-a) of article 67, the following new clause (1-b) be inserted:

'(1-b) Steps should be taken to see that, as far as possible, men from different units are represented.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That the following new clause be added after clause (1) of article 67:

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1):

'(1-a) Parliament may by law establish a consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

*Explanation.*—The number given in the brackets after each group is the total number of representatives from each section

Members of this Council shall have, individually or collectively, no administrative or executive duties, functions, or responsibilities. Every member of this Council shall be paid such salaries, emoluments, or allowances as Parliament may from time to time provide.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian Philosophy and Culture, art and science and social services towards reconstruction of "Introspective India"' be substituted respectively."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, after the word 'science' the words 'philosophy, religion, law' be inserted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter:

'(b) journalism, commerce, industries, law.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That for clause (2) of article 67, the following be substituted:

'(2) The members to be nominated by the President under sub-clause (a) of Clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:

Letters, art, science and social services.' "

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That for clause (3) of article 67, the following be substituted:

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (a) of clause (3) of article 67, the words 'Legislative Assembly' be substituted for the words 'Lower House'."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House' the words 'two Houses' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in clause (3) of article 67, the following new sub-clause (d) be added:

'(d) The election under sub-clauses (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote.'

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

'in accordance with the system of proportional representation by means of the single transferable vote.'

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause (3) of article 67, after the words 'of that House' the words 'in accordance with the system of proportional representation by means of the single transferable vote' be inserted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That sub-clause (c) of clause (3) of article 67 be omitted."

The amendment was negatived.

**Mr. Vice-President:** It thus appears that there are altogether 5 amendments which have been carried, namely Nos. 1369, 1378, 1380, 1400 and 1403.

I am now in a position to make a formal announcement to the House that we definitely adjourn from the 3th of this month, but we do sit on the 8th Saturday. The House now stands adjourned to 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 4th January 1949.

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PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA,  
PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI INDIA.

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CON. 2. VII. 32. 49  
2,600

Volume VII  
No. 32



Tuesday  
4th January  
1949

# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 4th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

### DRAFT CONSTITUTION—(Contd.)

#### Article 67 (Contd.)

**Mr. Vice-President** (Dr. H. C. Mookherjee): Before we begin the business of the House, I have to inform honourable Members that yesterday information was received that members of the R.S.S. would somehow secure entrance into the lobbies and galleries in order to create disturbance. Fortunately, this was prevented. May I request honourable Members to issue visitors' cards for those only who are personally known to them in order that we may proceed with our business without any interruption?

We shall now take up discussion of article 67. The first amendment on the list is amendment No. 1411. This is disallowed as being verbal.

Then we have amendments Nos. 1412, 1413 first part, 1414 first part and 1415 first part. These are identical. Amendment 1415 standing in the name of Kazi Syed Karimuddin is allowed to be moved.

**Kazi Syed Karimuddin** (C. P. & Berar; Muslim): Mr. Vice-President, Sir, I move:

“That in sub-clause (a) of clause (5) of article 67, the following words be deleted:—

‘Subject to the provisions of articles 292 and 293 of this Constitution’;  
and the following words be added at the end:—

‘in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote.’”

Sir, the present electoral system, of single member constituency according to me, is very defective. The one pervading evil of democracy is the tyranny of the majority that succeeds in carrying elections. To break off that point is to arrest danger. The common system of representation perpetuates the danger and the only remedy is proportional representation. That system is also profoundly democratic for it increases the influence of thousands of those who would have no voice in the Government and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own choice and opinion. Sir, another objection to the present electoral system is that the system does not even guarantee the rule of majority. We have innumerable instances of this type in England and America. The Conservative majority of 1924 was unreal because it polled 48 per cent of votes and it was supposed to be the majority party in the country. Then in America, Presidents Hayes and Harrison became Presidents in 1876 and 1888 when they secured votes less than the votes secured by their adversaries. In so far as this is concerned, the present electoral system is really perverse. This system may even deprive the minorities of their just share of representation as to render them

[Kazi Syed Karimuddin]

impotent. An instance of this has happened in the Irish election. The most ardent defenders of the system would hardly deny the right of the minority to some representation and it is worthy of note that one of the reasons advanced by Gladstone was that such a system tended to secure representation for minorities. This is found to be wrong in Ireland; yet as prophesied in the debates of 1885, the minorities in the South and West of Ireland have since that date been permanently disfranchised. In the eight Parliaments of 1885 to 1911 they had been without representation. Therefore my submission is that the present system as it stands does not guarantee a majority rule as people commonly suppose and does not guarantee a representation to minorities, not necessarily religious, even the political minorities. Today we are faced with an electoral system in which there is no guarantee except the reservation of seats that has been embodied in article 292 and 293. By my amendment I plead that if proportional representation is guaranteed the reservation of seats even on religious grounds must go. It has been accepted on all hands that communalism must be uprooted from the soil of this country. We have had evil effects of it and the Dominion Parliament is already committed to this stand because a Resolution has been already passed that no communal party may be allowed to function in the country. Therefore separatism, communalism and isolationism must disappear from the body politics of India but we cannot ignore the existing conditions in the country. We find that there is a movement for the establishment of a Hindu Raj. We find that there is an R.S.S. organisation also in the country. In view of this we have to proceed cautiously and gradually, and therefore we have to find out a way that communalism must go and the minorities must be represented in the legislatures.

Now there are two methods before us. One is the reservation of seats as has been provided in the Constitution, i.e., under article 292. The other is proportional representation. There are very serious defects about the provision of reservation of seats because it is based on religious grounds. It defeats the very objects for which it is adopted because the chosen representatives of the community for which reservation is given cannot be secured. Then as I had already said in the general discussions, that even a false convert for the purposes of election will defeat a choice representative and the minorities will be engaging lawyers who would argue the cases against their own clients; but it is wrong to say that it is communal because it is the majority that would elect the representatives of the minorities mainly and not the minority communities.

The system which I regard as the best is the system of proportional representation. It is not based on religious grounds and it applies to all minorities, political, religious or communal. There are three objections to this system, which are generally argued and debated. The first is that there would be very large constituencies and it would be very difficult to manage the voters. The second objection is the instability of the Government and the third is the establishment of Coalition Governments. Now in regard to the first objection, I think it is not tenable at all. In a large constituency if the party system works, then there is no question of the candidate coming in contact with the voters. The party machinery would work successfully. It is wrong to suppose that there will be instability of Government because the majority is bound to secure majority in the House and the majority is bound to form a Government. Then about the Coalition Government, in my opinion, where there is heterogeneous population; it is very necessary that we should have Coalition Governments. It will not be a bad thing that various representative elements should have to be consulted in forming a Ministry. The country is passing through transition and Communism is knocking at our door. It is very necessary that

the opposition whether it is communal or it is political will have to be accommodated. We are about to transfer the Government of this country from the middle classes to those whom I might describe as the wage-earning class. This is an immense change which is realised by very few people in the country. The Congressmen are of opinion that they are bound to sweep the polls and therefore they support the Draft Constitution which establishes a majority rule, making no effective provisions for the benefit of either communal or political minorities in the country. They are wrong and they would be found to be wrong. No organization in the world has reconciled the conflicting claims of labour and capital, tenant and landlord and it is impossible to keep them under one banner. Look around us, communism is spreading with alarming speed and once it catches the imagination of the working classes, its potentiality is very grave. Suppose the working classes take a fancy for socialist dogmas or communist dogmas, they being in majority, are bound to capture power in absence of any provision to protect political or communal minorities. In order to provide against such contingencies the system of proportional representation is the only method. Secondly, without any sacrifice of democratic principles, it can afford protection to communal minorities also. Without any spirit of communalism, representatives of political and communal minorities can be elected. In the absence of this, the country can be plunged into communism.

**Shri L. Krishnaswami Bharathi** (Madras: General): Sir, may I request the honourable Member to read slowly?

**Kazi Syed Karimuddin**: I am not reading. I am only referring to my notes. You can come here and see it for yourself.

**Mr. Vice-President**: Mr. Karimuddin, I suggest you speak more slowly.

**Kazi Syed Karimuddin**: Sir, in the general election and according to the present electoral system if the pendulum swings in favour of communism, all schemes of development will be lost and if it swings in favour of communalism, the secular nature of the State will be lost; and if the minorities are neglected, whether they are political, or communal, and crushed and kept out of Parliamentary activities, it will be a good fodder for the communists and they will sit in their lap. Therefore it is part of wisdom to persuade the opposition to take to the ways of constitutionalism and the only way to do it is the introduction of the system of proportional representation. I prophesy that if this is not done, it will lead to chaos. That does not mean that I oppose the continuance of the present regime. I want the Congress to live longer because they have given peace, tranquillity and a secular State to all the communities in India but this cannot be guaranteed unless the system of proportional representation is introduced.

Now, Sir, the first part of my amendment says that there should be abolition of the provision of reservation of seats in case the proportional representation is granted; otherwise not. Sir, in fact when I spoke about the abolition of reservation of seats and adoption of proportional representation, there was an incorrect idea that I was pleading for the abolition of reservation of seats unconditionally. I had stated and I state even today that if proportional representation is introduced, there should be no provision regarding the reservation of seats. Once you accept that there are minorities and also that some recognition has to be given to them, then my submission is that the House should be pleased to introduce the system of proportional representation.

**Mr. Vice-President**: Then amendment No. 1412 which stands in the name of Mr. Mohd. Tahir. Do you want it to be put to vote Mr. Tahir?

**Mr. Mohd. Tahir** (Bihar: Muslim): No, I do not want to move it.

**Mr. Vice-President:** Well, in that case the amendments to that amendment, that is No. 19 and 20, standing in the name of Pandit Thakur Dass Bhargava fall through. But do you want to move them, Mr. Bhargava? I find that they relate to not only amendment No. 1412, but to other amendments also.

**Pandit Thakur Dass Bhargava** (East Punjab: General): Sir, though I do not want to move those amendments, with your permission, I would like to make a statement about them.

**Mr. Vice-President:** You can do so in the course of the general discussion. I shall bear that in mind. So I score them out. Then we come to amendment No. 1413, standing in the name of Pandit Lakshmi Kanta Maitra.

**Pandit Lakshmi Kanta Maitra** (West Bengal: General): I am not moving it, Sir.

(Amendment No. 1414, first part, was not moved.)

**Mr. Vice-President:** Then we come to the second part of No. 1414, second part of 1415 and No. 1421. These are of similar import and may, therefore, be considered together. Amendment No. 1415 may be moved. It stands in the name of Kazi Syed Karimuddin; I am referring to the second part of No. 1415.

**Kazi Syed Karimuddin:** Sir, I have moved both parts of No. 1415.

**Mr. Vice-President:** All right. I am sorry I did not follow. Then No. 1414 falls through, as Mr. Lari is absent. Then we come to amendment No. 1416 and amendment No. 1417; amendment No. 1416 stands in the name of Prof. K. T. Shah.

**Prof. K. T. Shah** (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters', the words 'such members as shall, in the aggregate, secure one representative for every 500,000 of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

Sir, by this amendment, I seek to make three changes.

The first is to avoid a maximum number of representatives being fixed by the Constitution for the People's House of Representatives. It is, I think, not in accord with the correct principle of popular representation that it must be the people's voice which must be the final authority in the governance of a country calling itself a democracy. Under such a principle the Constitution should not fix permanently the maximum number of representatives for the popular chamber.

We have observed the tendency, during the last three or four censuses, towards a steady increase of the population of our country at every decennium. The last census shows an increase of as much as 15 per cent in ten years. If, now, you fix the absolute maximum number, it would happen that you might change the number of persons represented by each representative in an undesirable direction. That is to say, the representative character of each representative would become lesser and lesser, as he would be representing larger and larger numbers.

I feel, Sir, that if you make representation of very large numbers of voters to be concentrated on a single member, so to say, you may not have a correct

verdict of the people on a multiplicity of issues that are usually placed before the electorate at a general election.

A general election—and that is presumably contemplated here—is always an occasion when a number of issues come before the voters, in which the people, that is, the voters are likely to be confused, because of the varying, and often conflicting, pulls of the different issues on which they are asked to give each a single vote. This being the unavoidable case at each such election, I think it may be as well to fix no maximum number of representatives for the representation of the people. Instead we should allow the number to shape itself according to the varying population.

It is true that if your census is a decennial affair, it may not give you the correct guide for every election in the interval between two censuses, assuming that elections come at least once in five years, if not more frequently. Even so, since we have agreed to take the last preceding census as the basis, and that census is now more than eight years old,—apart altogether from the originally doubtful character of that census taken during the war,—the next general election may itself be not correctly representing all people, especially if you fix a maximum number of representatives to start with. In other later general elections, the five-year interval would not make so great a variation. That variation may be about 5 per cent or 6 per cent or  $7\frac{1}{2}$  per cent. This only means that representatives would number so many more on that amount of change, it may not be impossible for a proper electoral machinery to cope with.

Taking that to be the case, I would suggest that a limit of 500,000 population be fixed as being entitled to be represented. This would be much more likely to reflect the real opinion of the people, even on a number of issues, than if you fix the total number of representatives at 500 as is contemplated under this clause. The number would, no doubt, increase, if the population tends to increase. It is, therefore, possible that the maximum for the coming two decades may reach the figure of, say 600, or even more. Even with that number, I do not think that, for a country of the size and population of the Union of India, it is too large a number of representatives.

Anybody interested primarily in expediting things, and in governing the country according to a few people's will, will naturally not like large numbers of representatives. The larger the number the greater, of course, is the chance, of deliberation, and the longer the time taken in passing laws or resolutions. The scrutiny of Government's executive actions would also be from a greater variety of angles by interpellations and the like. Those, therefore, in favour of expediting public business may not quite like this suggestion.

Those, on the other hand, who think more of the people and their wishes, would not, and should not, find in this, in my opinion, a hindrance or handicap to good government. The possibility of varying or increasing number of representatives should not, by itself, be regarded as an objection. In fact, even in the clause as it stands, the very idea that you think it necessary to fix the maximum number of representatives indicates that, even in this scheme, there is a possibility of variation in number; and as such, my amendment is, by itself, not to be condemned.

My second point is in relation to the scheme of voting. There are, in later clauses, some other amendments which I have tabled, and which when they come up, I will discuss. I will, therefore, not take up the time of the House at this moment.

As regards the scheme of voting, I only insist that voting should be by secret ballot, by adult citizens; and that it should be by means of a scheme of Proportional Representation under the device of the single transferable vote. I do not propose to descant at length, upon the theoretical grounds in favour

[Prof. K. T. Shah]

of Proportional Representation or against it, as the previous speaker has placed a fairly exhaustive case before you. I would only like to add, lest I should be misunderstood, that the principle of Proportional Representation is not intended so much to perpetuate communal minorities, as to reflect the various shades of political opinion which after all, should be reflected in your Legislature, if you desire to be really a democratic government. The French system for instance, strictly speaking, is not based on Proportional Representation; and yet, different shades of political opinion are reflected in the French Assembly. Even so French Governments in the third Republic had an average life, it is said, of perhaps not more than eleven months. On that count, however, the principle is not necessarily to be condemned, as the public opinion of all shades gets a chance of expression and there is in it, if not greater stability, at least greater reflection of popular will than would be the case in a system of absolute vote that is apparently contemplated here.

The possibility of securing varying shades of political opinion will give a chance, not only for minorities to be duly reflected in the Legislature of the country, but also for them to assert themselves, and to convert themselves into a majority, which, perhaps, those who might confuse Proportional Representation as synonymous with the possibility of communal representation would do well to consider. On these grounds, Sir, I commend this motion to the House.

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

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The clause as it appears in the Draft Constitution reads thus:

"(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters."

If my amendment is accepted by the House, the clause will read thus:

"Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States."

The House will see that my amendment makes for brevity, clarity and precision and further, seeks to eliminate the convolutions of language which mar the construction of the clause as it stands at present. I do hope that Dr. Ambedkar and the House will not have any difficulty in or objection to accepting it. I will only say one word more. If my amendment is accepted by the House, certain consequential changes will follow in sub-clause (b) of clause (5) and in the proviso thereto. In the sub-clause as well as in the proviso, the words "representatives of the States" will have to be altered to 'members' in conformity with the amendment which has been moved to sub-clause (a) of clause (5). I commend this amendment to the acceptance of the House.

**Mr. Vice-President:** Amendments Nos. 1418, 1419 and 1420 are of similar import. I allow Prof. Ranga to move amendment No. 1419.

(Amendments Nos. 1418 to 1423 were not moved.)

**Prof. K. T. Shah:** Mr. Vice-President, I beg to move:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67:—

'and Territories directly governed by the Centre'."

Sir, the existing clause provides only for those States which are mentioned in the Schedule attached. The Schedule does not mention considerable territories, with considerable population in them, which are directly administered by the Centre. Lest their claim to representation be overlooked altogether and they be denied representative institutions in themselves, and go without representation at the Centre also, I think it is but proper and necessary specifically to include them in this clause.

It has been alleged, and I have heard it said on very high authority, that the people of some of these territories, of a given area now administered directly by the Centre, are so backward, so lacking in education and the country so undeveloped, as not to deserve representative institutions at all. The remark I am referring to was made at the Jaipur Sessions of the Congress with special reference to Cutch.

I was, I confess, surprised to hear such a sweeping condemnation being enunciated by such high authorities in respect of a territory such as Cutch, which is being directly administered by the Centre. Sir, quite a good proportion of the business enterprise and industrial activity of the city of Bombay has come from the Cutchi people settled there. It is true that those Cutch people have more or less become permanent citizens of Bombay, though they retain their connection with the State of Cutch and may, under the changed conditions of today well make substantial contribution to the rapid advancement of the area and its inhabitants today. But that is no reason to calumniate the whole province or State as lacking in education, development, enterprise or understanding of the resources, or the possibilities of the State.

This, Sir, is, in my opinion, very unfair to a whole people who have made their contribution to the country's general awakening and advance. To deny the people there, on such grounds, representation either in the State itself, or in the Centre as part of the Union, is highly retrograde, to say the least.

The possibility, therefore, of other similar territories being also ignored and going unrepresented has become so vivid in my mind, that I have felt it necessary to table this amendment, and specifically to include them in this clause with the words that I have suggested being added. I commend this to the House.

**Mr. Vice-President:** The first part of amendment No. 1425 and amendment No. 1426 standing in the name of Mr. Kamath are identical. I propose that amendment No. 1425 may be moved, the first as well as the second part. Mr. Kamath, do you want your amendment No. 1426 to be put to vote?

**Shri H. V. Kamath:** I see that Dr. Ambedkar has stolen a march over me, and so I do not propose to move my amendment.

**Mr. Vice-President:** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar (Bombay: General):** I am not moving it.

**Mr. Vice-President:** Then we come to amendment No. 1427 standing in the name of Prof. K. T. Shah.

**Prof. K. T. Shah:** Amendments Nos. 1428 and 1429 also stand in my name. Can I move all these together?

**Mr. Vice-President:** You can move them one after the other. After moving all the three amendments, you can make one speech covering all of them.

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

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added:—

'so that each State being constituent part of the Union, or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million.'

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full-stop be added; the word 'and' following immediately be deleted; and the word 'the' be printed with a capital 'T'."

Sir, the purpose of these amendments is consequential upon what I have already moved; that is to say, we should form constituencies in such a manner that each constituency has at least the representative possibility of two seats. Not less than a million, population, therefore, is the limit which I would suggest should be the unit in the device of Proportional Representation by which representation is to be secured.

Proportional Representation, Sir, would not be feasible or even possible for single member constituencies. At any rate it will not yield the same results as are expected by those who believe in the principle. It is but right, therefore, and proper that you should have multi-member constituencies; and the minimum must not be less than two.

It is on that basis, and this understanding of the principle we have already adopted in the Constitution of this very Assembly, that I have suggested a unit of a million population. I have also suggested, in a previous amendment, the minimum population requiring representation to be 500,000. These two together, I think, would provide every constituency with not less than two representatives.

Most of the States will be able, each by itself, to provide such constituencies. There will, of course, be some States which will be much larger; and as such the working of Proportional Representation would in them fit in very successfully. All States as well as territories governed from the Centre would by this means receive their full measure of representation. It would enrich the representative character of the Union Legislature; it would provide expression for all shades of opinion, it would help to place before the Union Legislature all aspects of the problems that come before it for legislation or otherwise for disposal.

As I have stated already, I think it is but right and proper that we should have constituencies arranged or grouped in such a manner, formed in such units, as would secure the fullest possible representation on a Proportional Representation basis for every constituent part of the Union which may also enable every shade of political opinion to be represented. Sir, I commend this to the House.

(Amendment No. 1430 was not moved.)

**Shri H. V. Kamath:** May I make a submission, Mr. Vice-President? I thought that Dr. Ambedkar was moving his amendment No. 1425 and so I said that my amendment would not be moved. It appears that Dr. Ambedkar is not moving his amendment. His amendment consists of two parts and he has not separated the two. Therefore, will you kindly permit me to move my amendment No. 1426?

**Mr. Vice-President:** All right.

**Shri H. V. Kamath:** Mr. Vice-President, I move, Sir:

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

Sub-clause (b) of clause (5) as it appears in the Draft Constitution reads as follows:—

“For the purpose of sub-clause (a), the States of India shall be divided, etc.”

Now, obviously the words ‘of India’ are redundant and superfluous, and in my judgment they should be deleted because the States in the Draft Constitution always mean the States of India. Therefore, Sir, I move that the words ‘of India’ should be deleted in this sub-clause, and if this is accepted, the sub-clause will read as follows:—

“For the purpose of sub-clause (a), the States shall be divided, etc.”

This is quite clear. There is no need for me to expatiate upon this point. I commend this amendment to the House for its acceptance.

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

“That the proviso to sub-clause (b) of clause (5) of article 67 be deleted.”

This, is consequential, Sir, from the previous amendments that I have moved. In as much as I do not desire that a maximum figure should be fixed for representatives in the House of the People, it follows that such maximum or proportion being fixed as between the two Chambers would also be out of place. If my previous amendments are accepted, then this would follow as a matter of course. I, therefore, do not think it necessary to take any further time of the House. I commend the amendment for the acceptance of the House.

**Mr. Vice-President:** Amendment No. 1432 is verbal and is therefore disallowed.

Amendment No. 1433 both alternatives and amendment No. 1437 are of similar import. Amendment No. 1437 may be moved. It stands in the name of Prof. Shibban Lal Saksena.

(The amendments were not moved.)

**Mr. Naziruddin Ahmad (West Bengal: Muslim):** Sir, with your permission and the permission of the House I wish to move amendment No. 1434 in a slightly altered form. There will be some verbal changes in accordance with a similar amendment which has already been accepted by the House.

I beg to move:

“That in sub-clause (c) of clause (5) of article 67, for the words ‘last preceding census’, the words ‘last preceding census of which the relevant figures have been published’ be substituted.”

This is the form in which another similar amendment was found to be acceptable to the honourable Member, Dr. Ambedkar. This matter has already been discussed in the House and the principle has already been accepted in another context, namely, that if we have to depend upon a census, it must be a census of which the figures are available. We cannot depend upon a census for which figures are not yet available. If we are to hold an election, almost immediately after a census is held, the figures will not be available. It takes about a year to make the figures available. We have to do a lot of things depending upon census figures before an election. In these circumstances one has to depend upon the previous census of which figures are available. This matter was well discussed in the House and the principle was accepted and this amendment is practically consequential upon the acceptance of that motion.

**Shri L. Krishnaswami Bharathi:** Sir, I beg to move:

"That with reference to amendment No. 1434 of the List of Amendments, in sub-clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

Clause (c) reads as follows:

"The ratio between the number of Members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

As per clause (b), there shall not be less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population. That latitude being given, it is just possible that there may not be uniformity of representation throughout India. The object of this clause is to secure a uniform scale of representation throughout India, whatever it may be, and in order to secure this uniformity this clause is introduced. But the wording "members to be elected at any time for each territorial constituency" does not bring out the sense fully and hence my amendment that for the words "members to be elected at any time for", the words "representatives allotted to" be substituted. If my amendment is accepted the clause would read:

"The ratio between the number of representatives allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

It is in order to bring out the sense more clearly that this amendment is moved.

(Amendments Nos. 1435 and 1436 were not moved.)

**Mr. Vice-President:** No. 1438 is disallowed as being formal.

(Amendments Nos. 1439, 1440, 1441 and 1442 were not moved.)

Amendment No. 1443 is disallowed as being verbal.

(Amendments Nos. 1444 and 1445 were not moved.)

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

"That clause (7) of Article 67 be omitted."

This clause deals with territories other than States. The objection to this clause is that it gives the right to Parliament to determine the representation of areas other than the States. With regard to these territories, I submit, as I submitted in connection with another similar amendment, that if any area is governed by any authority, that authority should decide its representation. That principle should be fixed in the Constitution. It should be left to an appropriate authority in the area to whom representation is given. There would be some authority functioning in those areas and it is for that authority to fix their own representation and not for Parliament. It may be a referendum or the like. In fact, it deprives certain areas of the right of self-determination.

**Mr. Vice-President:** Amendment No. 1447. Prof. K. T. Shah.

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

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union' be substituted respectively."

The amended clause would read:—

"Parliament shall, by law, provide for the representation, in the House of the People, of the Territories directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union."

That would put all those territories on a par as between themselves.

I have already mentioned, Sir, that there are considerable chunks governed directly by the Centre; and perhaps there may be more hereafter, if new territories desire to form part of the Union. And if even for a while these are to be directly governed by the Centre, then it is but right and fair that they should be also receiving some representation.

I would, therefore, make it compulsory by the Constitution that they too be provided with adequate representation. Their representation should be on the same basis as that for other States already forming part of the Union, i.e., one representative for every 500,000 population. There should be no talk about any territory being more developed, and therefore better fitted to be represented, while others are called less developed and backward and therefore not fitted to be properly represented either in their own land or in the Union as part of the Union. This kind of talk might suit the alien power which ruled in the land up till 18 months ago; and for that power the entire country was deemed for a long time to be unfit for representative institutions. Had those ideas prevailed, we should not be shaping this Constitution for a free-India today. It is of the essence of such institutions and of the task of working them, that people learn to use them by using them. No amount of teaching their use will make people learn to use them as the actual responsibility of using them. Accordingly, I feel that this flows directly from the previous amendments which I have moved and should, as such, be accepted.

Sir, I commend it to the House.

**Mr. Vice-President:** Then we come to amendments Nos. 1448 and 1449 which are disallowed as they are merely verbal.

Amendment No. 1450 standing in the name of Pandit Lakshmi Kanta Maitra may be moved.

**Pandit Lakshmi Kanta Maitra:** Mr. Vice-President, Sir, I beg to move:

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

Clause (8) of article 67 provides that upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority in such a manner, with effect from such date, as Parliament by law may determine. My amendment is that this readjustment should be made on the basis of population. The amendment is self-explanatory and I need not labour the point. I commend the amendment for the acceptance of the House.

**Mr. Vice-President:** There is an amendment to this amendment, No. 43 of List II, standing in the name of Mr. L. K. Bharathi.

**Shri L. Krishnaswami Bharathi:** I am moving it, Sir, I beg to move:

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted:—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House.'"

Sir, sub-clause (8) of article 67 reads as follows:

"Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine."

[Shri L. Krishnaswami Bharathi]

The object of this sub-clause is, that after the elections to the Legislature—either the Council of States or the House of the People, as the case may be—census may happen to be taken and new figures may be available; and we have of course to adjust the number of seats in accordance with the census figures available then. But it may not be quite possible to provide representation in accordance with the figures available thereafter, but it has got to be done only at the subsequent elections. So, in order to obviate this difficulty, whenever there is some census taken and figure available, in terms of which we have got to adjust, it has to be adjusted only later on at the subsequent election and should not have anything to do with the existing Council of State or the House of the People. A similar provision is found in article 149, sub-clause (4). It is an omission here and I have sought to bring it here so that it may be in line with the scheme as found in article 149. I hope this amendment will be accepted by the House.

**Mr. Vice-President:** Amendment No. 1451 standing in the name of Shri Nandlal comes next. The honourable Member is not in the House.

Amendment No. 1452 standing in the name of Mr. Mahboob Ali Baig may be moved.

**Mr. Mahboob Ali Baig Sahib (Madras: Muslim):** Mr. Vice-President, Sir, I beg to move:

“That to article 67, the following new clause (10) be added:—

“(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote.”

Sir, I am only proposing the extension of the principle which we accepted yesterday in the matter of election to the Council of States. I am very much gratified to find, Sir, that yesterday the House recognised the principle underlying this method of election and I need not repeat all the arguments that I adduced yesterday in support of this system and to establish the fact that this system of election is more democratic and more scientific. But by the speeches of some honourable Members of this House, especially my honourable Friend, Paudit Kunzru, an impression was created on this House that in that particular case, namely, in the case of the Council of States, the electorate therefore are the Members of the legislature, who were elected on a joint electorate and not on communal electorate. Therefore, there was no danger, if this system is adopted for the election of the Council of States and of any council, of any communal party coming in. That was the reason, he said, he was supporting it. Thereby he meant, if I may be permitted to say inferentially, that if the method of election would enable communal parties to be returned to the legislature, he would not support it. My submission is that there is no scope for any communal body as such being returned by this method, and if it could be returned, it would be returned in the same way as any body holding different views from the majority party could be returned. If there is no objection to a section of people holding views different from the majority, they could get into the legislatures by this method. I do not see any reason why any communal body should have the right to be returned. The reason why Pandit Kunzru supported this method for the Council of States, he said, was that people holding different views must be enabled to be returned, although they may be holding the view which was not held by the majority. That was the reason why he said that proportional representation method is good, because it enabled people, who held different views from the majority, to enter the legislature.

Therefore, Sir, my submission is that if there is any defect in this system of election, according to me, it is this parliamentary democratic system, it is the political party system that is responsible and not the method as such. On a former occasion, I said that because of this party system, this parliamentary democracy where one party is returned and it tries to dominate another and

make it impossible for the minority party to be returned and all repression and suppression takes place, it is for that reason, Sir, I said this form of Government based upon parliamentary democracy is not desirable. Whatever it is, Sir, my submission is this method of election, this method of proportional representation by single transferable vote will enable peoples and parties in the country, who hold views different from the majority party, to be represented in the legislatures. What is true in the case of election to the Council of States is equally true in the case of election to the House of the People. Why should it be different, I ask, if this method would enable a party or section of persons, who hold different views from those views held by the majority, if this method enables those persons to be represented there and thereby they form what is called 'an Opposition Block'? Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature. So, Sir, by this method and by this method alone, I submit there can be a strong opposition in a parliamentary democracy. So, my submission is, in the first place, on principle, there is nothing wrong in it and as I said, it is more scientific and democratic, and I submit, that it will enable sections having different views from the majority party to be returned and thus form an opposition to the party in power. Otherwise, it will degenerate the party in power into a fascist body. Therefore, Sir, I commend this method even in the case of election to the House of the People.

Sir, I do not move the other alternative amendment.

**Mr. Vice-President:** The article—clauses (5) up to the end—is now open for general discussion.

**Pandit Thakur Dass Bhargava** (East Punjab: General): Mr. Vice-President, Sir, clause (5) of article 67 speaks of the fixation of 500 representatives to the House of the People and also says that these representatives shall be directly chosen by the electors and clause (b) speaks of territorial constituencies. I sent in amendments, in regard to these two sub-sections and the purport of the amendments was that a reference to article 292 be deleted, as also that the territorial constituencies should be of contiguous areas and there should be no special constituencies or reserved constituencies. As a matter of fact, this clause (5) only speaks of one method of the choice of the voters and does not say in what particular way these electors will have the right to choose the representatives. An amendment was sought to be moved by Mr. Karimuddin to the effect that the representation should be by way of proportional representation by the use of cumulative voting, which to my mind clearly means a reversion to separate electorates. I propose that these two clauses and the question of the reservation of seats under article 292 and other articles which relate to elections may be fully discussed at the time when we are on those articles and not separately here. Because, if we choose to make modifications in article 292 or 293 as they stand, the right of proper occasion to amend or adopt them will be when we will be considering these articles. Therefore, my humble submission is that in regard to clause (5) we may take it that unless articles 292 and 293 are disposed of, we shall not be debarred from moving amendments there and modifying them as we choose. I therefore propose that discussion about reservation of seats, delimitation of constituencies and the method of delimiting them be postponed to the time when we consider articles 292 and 293.

In regard to the rest, I also wanted to propose an amendment to clause (6) that illiteracy should also be regarded as one of the grounds for not giving a vote on the basis of adult suffrage. If a person is illiterate, he should not be granted the right to vote. As a matter of fact, my idea in moving this amendment was not to deprive any persons of their right of voting, because I am very much in favour of adult suffrage. I wanted that as the elections are not coming on before another two years or one year, by that time, every elector should educate

[Pandit Thakur Dass Bhargava]

himself and could at least know how to read and write, as in my opinion reading and writing can be acquired by any person in three months. It will give a great fillip to the drive for adult education and to the electors to make an attempt to know how to read and write if we condition the exercise of the right of voting to literacy. When I consider, Sir, the number of electors which will come on the electoral roll if we allow the basis to be adult suffrage, I am astounded by the magnitude of the problem. According to calculations, I understand that there will be something like twelve crores of voters. In a population of thirty crores, it is not a wrong estimate to think that the number of voters may be twelve crores. If there are 500 representatives, it means that each constituency will consist of at least 240,000 voters, if there are single member constituencies. If there are multi-member constituencies, then, if a constituency is formed for the purpose of electing four members, there will be something like 960,000 voters. At the present time, in ordinary elections for the Central Legislative Assembly, we had from 8,000 to 40,000 voters. With this increase of numbers, I shudder to think how we will be able to arrange for the elections. It will require not one or two days as at present for the elections; it will require, I think, about a month. The number of booths will be very large. I think the magnitude of the problem is such that it must give serious cause for doubt whether we would be able to hold these elections in the manner in which we want them to be held. How will this large electorate be educated? How will you approach these electors so that the elections might be good. When I consider that there is a proposal to have multiple constituencies, and reserved constituencies, the situation becomes all the worse. So far as I think, at present, a person belonging to the Depressed Classes, etc., is known only in his Taluka; he is not known over several districts. If the Constituency is spread over several districts, I do not know how the elections would be real. The electors will never have occasion to know who the person elected is. Therefore, to obviate this difficulty, I would suggest, for the first ten years, just limit this right of voting to literate people. We will be doing a thing which will be really useful. Otherwise, in my humble opinion, these elections will be a great farce. Therefore, my submission is that if the House is so advised, we should have the provision of literacy put in clause (6).

Similarly, I have to make one point more; that is about sub-clause (c) of clause (5). The words in the article are "as ascertained at the last preceding census". The population as ascertained at the last preceding census will, in many cases, be absolutely wrong. In East Punjab lakhs of people have come from West Punjab and gone away from East Punjab. Similarly in West Bengal, people are still coming in from East Bengal. In regard to Delhi, there has also been a large influx of population. The last preceding census will not give the correct figures and if we consider the present position, the figures will be quite incomparable with the real figures in which the population is to be found in these places. Therefore we shall have to have recourse to some other expedient, and the expedient which has been suggested is in article 313. I doubt very much if we would be able to arrive at the real figures from the number of electors. The right figures about the population from the number of electors will be at best a conjecture and it will not be in accordance with the true principles set out in clauses (5) to (8). Therefore, my humble submission is that with regard to East Punjab and West Bengal, unless a census is taken, we will not be correct in our figures. This will entail a good length of time. If the elections are coming in 1952 or 1951, then the position can be solved; otherwise, you will have to take a census before these provisions can be given effect to, or the words "as ascertained at the last preceding census" will have no meaning for us. If these words are taken in their literal sense and no adaptation

is made, it would mean for such of the Muslims, about 50 lakhs as have left East Punjab, you will reserve about fifty seats in the local legislature whereas the population of the Muslims at present is said to be about two lakhs. These are real difficulties which have to be solved. Unless we solve these difficulties, my own apprehension is that there will be no real elections.

In regard to article 292, I have to submit one more word. In clause (5), the reference to article 292 is certainly not wanted, because article 292 deals with direct elections, in regard to constituencies and in regard to reserved constituencies also. The present position is that they are proposed to be chosen by direct elections. The reference to article 292 is absolutely unnecessary. Even if it is kept, I would, with your permission, repeat this that I take it that the reference to article 292 does not bind the House and we would be able to modify article 292. I do not want to conceal my feelings from this House that I want that there should be no reservation of constituencies for any communities, i.e., no reservation of seats for any community. I only want that so far as the Scheduled castes are concerned, there may be reservation of representation, which we can do on the lines suggested in article 293. We do not want any reservation of seats because if you consider the whole question, and if you consider the multiple constituencies, the entire elections will be absolutely unreal. Our difficulty is that we have not realised how these constituencies will be formed. When the matter comes to the House in a concrete form, I am perfectly sure that the House will not even touch the reservation of seats with a pair of tongs.

With these remarks, Sir, I support article 67.

**Shri Deshbandhu Gupta** (Delhi): \* [Mr. Vice-President, I want to draw the attention of the House specially to parts (b) and (c) clause (5) of article No. 67. My learned Friend, Pandit Thakur Dass Bhargava, has also drawn the attention of the House and has pointed out that if we are relying on the last census figures for fixing the number of representatives then it would affect adversely, specially in the case of East Punjab, West Bengal and Delhi. I want to point out that so far as East Punjab is concerned only a little less of the population which has gone away from East Punjab to the Pakistan, has come from Pakistan to East Punjab, and therefore the population of East Punjab has not swollen much. But as regards Delhi, it is an admitted fact, that its population has greatly swollen by the influx of refugees more than in any other town. According to the last census, Delhi's population was about 9 lakhs, but at present it is estimated to be about 19 lakhs. Therefore, it would be very unfair for the Delhi province, should the number of representatives be fixed according to the last census.

Mr. Vice-President, that is why I want Dr. Ambedkar and others to keep this fact in view. I hope that in regard to Delhi and other cities, whose population has swollen apart from the natural causes, due to the partition of the country, this fact would be borne in mind when seats are allotted to them. I think that in clause (c) if for the words 'actual population' the words 'actual number of voters' are inserted, then there would be no ground for any objection from any body. Therefore, I want this fact to be borne in mind, and as has been provided by article 313 of the adaptation clause or under it, or in any other form, an assurance to this effect should be given; otherwise grave injustice would be done to Delhi and other towns, which have absorbed our refugee, uprooted brethren from Western Pakistan, who would be denied their due representation in the House.]

**Shri Prabhudayal Himatsingka** (West Bengal: General): Mr. Vice-President, Sir, in connection with clause (5) of article 67, Pandit Thakur Dass Bhargava has tried to explain the difficulties that are likely to be encountered

\* [ ] Translation of Hindustani Speech.

[Shri Prabhudayal Himatsingka]

in having a proper election. The proposal is to have one member for five to seven and a half lakhs of persons and roughly speaking we may expect that there will be about three lakhs voters in each constituency. However if the election is expected to be properly held and in order to avoid the malpractices that are seen in elections on a large scale where a large number of voters are concerned, some device will have to be found whereby the voters may be identified and false voting may be eliminated. Sir, we know from the elections that we have had to run in the past that where a large number of voters are concerned, a very large amount of malpractice is possible on account of the voters not being known to the persons or authority who are there as Polling Officers. So some method of identification should also be devised in connection with such elections.

As regards the different amendments which have been suggested about multiple constituencies and cumulative votes, Pandit Thakur Dass Bhargava has also explained that it will be a very wrong thing to do it because, as it is, the constituency will be very big and if you have multiple seats, the troubles of a candidate can be better imagined than described. If you have multiple constituencies, even the best man cannot expect to be returned without a contest. If there are more than one seat in a constituency, there will be more candidates and everyone of them, whether he is the best man to be selected or not, will have to come by actual contest and there will be, if it is a four seat constituency, about twelve to thirteen lakhs of voters and if it is more, it will be similarly more and the trouble that a candidate will have to go through will be enormous.

Therefore, Sir, the various amendments that have been moved in order to have multiple constituencies or plural voting should be opposed and defeated.

With these words, I support the motion as it stands.

**Mr. Vice-President:** Sardar Bhopinder Singh Man. The time at our disposal is extremely limited. As there are quite a large number of honourable Members who want to speak, I am offering special facilities to those coming from East Punjab because they have very strong feelings on this matter, and I hope the House will see the reason for this special concession given to them. Now, you will kindly confine your remarks to as short a time as possible.

Sardar Bhopinder Singh Man.

**Sardar Bhopinder Singh Man** (East Punjab: Sikh): \*[Mr. Vice-President, while discussing this article, two points have emerged clearly on which we, as a minority, feel strongly. In your last meeting you had decided without any reservation that so far as minorities were concerned, they had been given reservation of seats on principle. While accepting this principle you had given them an option that if they decide to give it up, they could do so gladly. But I feel that while reopening this question, that offer has been withheld; nay, the right is being snatched away from them. Where is the occasion, I fail to understand, for being in such a hurry, to make a change so early, and for snatching away a right which had been conferred on us in the last meeting? I can understand this much that after the expiry of ten years, when the minorities feel that the majority has gained their full confidence, then they should give up this right of their own accord.]

**Mr. Vice-President:** I am afraid that you are speaking on the right of separate representation: that has nothing to do with the clause in hand. I appeal to you to confine your remarks to the subject of the clause under discussion.

That is my final ruling.

**Sardar Bhopinder Singh Man:** [Mr. Vice-President, I would like that at the time of forming these constituencies, particular care should be taken to make them plural constituencies. The right which you have conferred on the minorities can be preserved only if you make the constituencies in such a way that they should be able to represent themselves. It is necessary, because the minorities have not gained full confidence of the majority up till now. There is yet another point. Pandit Bhargava is trying to have the constituencies so shaped that the rural should be amalgamated with the urban constituencies. But the standard of literacy in the rural areas is so low that while competing with the urban areas, they can never succeed. Besides the old dispute between the producers and the consumers still exists. Whatever we produce, we sell them in 'Mandies' and when 25,000 votes shall be pitted against us, to my mind, the people of the rural areas shall never be able to send their representatives while contesting with the people of urban areas and the stockists. What will be the result under such circumstances? The result will be that the producers whose standard of literacy is low and who live in far-off small hamlets, would not be able to send their representatives through elections. Another result will be that the 'Mandies' would become centre of activities for ever and the villages would be cut off from the political current of the country. The twenty or twenty five thousand voters of mandies will always try to suppress the villagers politically. We in the Punjab feel that so long as there is fundamental difference between the producers and the consumers, they should have separate constituencies. Therefore, what we want is that the delimiting Committee should not be influenced by Pandit Bhargava's speech and this difference should be kept intact, namely, the rural constituencies should be kept separate from the urban constituencies.

There is yet another point. In East Punjab a large population is fluid. Some have migrated to Delhi and a part of it is going back out of Delhi. Then again it is not known what population has stayed in the Punjab and how much has migrated. In these circumstances, it is unavoidable that a census should be taken in East Punjab. To my mind, without an accurate census, confusion might prevail. Therefore, I am of the opinion that arrangements should be made for taking of a census immediately, and the rural and the urban constituencies should be formed separately and they should be plural.]

**Sardar Hukam Singh (East Punjab: Sikh):** Mr. Vice-President, Sir, we have provided that reservation be made for minorities under the present Constitution, reservation of seats, I mean. Certainly there are two methods only by which we can safeguard the interests of minorities. Up to now, the minorities have enjoyed separate electorates and some weightage as well. That has gone, because we have decided that on principle and basically that is a wrong method and no minority should have any weightage or any separate electorate. There are, as I said, only two methods, one recommended by the Minorities Committee, that there should be reservation of seats and that is also provided in the Draft Constitution, under articles 292 to 299. I agree with Pandit Thakur Dass Bhargava when he said that it would be better if both these clauses were taken together, and the discussion of this part of article 67 taken up at the time when article 292 was also being discussed. The amendments that are now before the House, by Mr. Karimuddin and another honourable Member, certainly are the opposite or the alternative of the reservation of seats, provided in those sections. Sir, I am of opinion that if separate electorates have perpetuated communalism, which is so detestable and reprehensible, this reservation of seats, does no less (*hear, hear*). I think it is rather more harmful for the minorities, and it does not safeguard their interests. But it is, on the other hand, beneficial to the majority. When you are reserving, say 30 per cent, for the minorities, indirectly you are reserving 70 per cent for the majority. This allowance or concession or option to contest unreserved seats as well, is in my opinion, very illusory, *22-11-54*

[Sardar Hukam Singh]

brought into actual practice. Further, this reservation, though it is not just now before the House, because the two methods are to be discussed side by side, I am taking it,—and I crave the indulgence of the House in listening to me patiently,—this reservation of seats is rather harmful and would create the same atmosphere that we abhor so much. When the minorities see that certain Members of their own community, offensive to them, are being pushed up and backed by the majority community, certainly the relations would get strained and our object would not be fulfilled at all. And secondly, under this reservation of seats, the majority would be able to secure some Members from the minorities of their own choice, while there will be a certain proportion that would be returned by the minorities themselves. So there will be two sections and a further rift would be created between the sections of the minority community itself.

**Shri L. Krishnaswami Bharathi:** Sir, on a point of order, we are not discussing here the question of reservation of seats, and so I would like to know if these remarks are relevant.

**Mr. Vice-President:** They are relevant in the sense that the honourable Member is defending proportional representation. Am I right?

**Sardar Hukam Singh:** Yes.

**Shri L. Krishnaswami Bharathi:** But this is a matter of great importance on which we will have to concentrate and so more time will have to be allotted if we are discussing it. I wanted to bring that aspect of the matter, because it is a very big issue and. . . . .

**Mr. Vice-President:** In accordance with my general policy, I shall allow Sardar Hukam Singh to speak and to refer to the question of reservation of seats, by way of illustrating the advantages of the system under discussion.

**Shri L. Krishnaswami Bharathi:** Sir, I should not be understood as wishing to shut out such discussion at all, but what I wanted to. . .

**Mr. Vice-President:** Will the honourable Member please take his seat?

We must be generous and we as a majority community must be generous to the minorities (*hear, hear*). It has proved its generosity so far; let not that tradition be broken.

Now, please continue, Sardar Hukam Singh.

**Sardar Hukam Singh:** I am thankful to the House and to the Vice-President, though I do not crave for any generosity at this moment. I will not discuss that point further.

Sir, it has been argued here by more than one Member that plural member constituencies and cumulative voting would be too costly and unworkable. My position is that if separate electorates are detestable and if reservation of seats is objectionable, then some method has to be devised by which the rights of minorities can be safeguarded and that this is the only method suggested in the amendments that can be considered. If it is cumbersome and if it is costly, then it has to be settled in accordance with the democratic principles that we are following now. And my submission is that this is the only mode by which we can satisfy the minorities and stick to our principles that we have chalked out so far.

**Shri V. I. Muniswamy Pillai (Madras: General):** Mr. Vice-President, Sir, . . .

**Mr. Vice-President:** May I request the honourable Member to take as little time as possible? There are many honourable Members who desire to speak and I would like to accommodate as many of them as possible.

**Shri V. I. Muniswamy Pillai:** Sir, in supporting article 67, I may say that I specially welcome sub-clause (6) which envisages adult suffrage. Speaking

for the Scheduled Castes I may say that this kind of election is highly needed at a time like this when we have just secured freedom for this country. Under the Poona Pact, the Scheduled Castes had to submit to two elections—the panel election and the general elections. I know as a matter of fact that this has caused great inconvenience to the candidates.

Sir, one of the Members of the Assembly has moved for the adoption of the cumulative system of voting. I feel that this cumulative system of voting under the present set-up is most dangerous, because the communities will have to go away from the main body of electors. So I feel that on no account should this cumulative system be encouraged. The distributive system of voting is bound to bring the various communities together and prove worthy of the labours undergone by them in maintaining the freedom that we have won.

One of the Members, speaking on this article, observed that reservation of seats for the minorities must go and, at the same time, generously stated that, so far as the Scheduled Castes are concerned, they should not be disturbed. Sir, I welcome the statement made by Pandit Bhargava. This matter of the reservation of seats and protection for the minorities has been dealt with in this sovereign body and we have come to certain decisions. If there is a feeling that this matter should be re-opened, the proper place to do that will be when we discuss articles 292 and 293. Whatever it may be, I feel and also every Member of the Scheduled Castes in this sovereign body feels that the protection given to this community should not be disturbed. You yourself know, Sir, in your tours throughout the country, the disabilities of the Harijan community. The Minorities Report has considered those things and this sovereign body after considering that report has agreed to give some protection to the minority communities. That being so, without taking more time of the House I will conclude by saying that the safeguards and the protection afforded to the Scheduled Castes and tribes should not be disturbed. When we deal with articles 292 and 293, as I said, we can have elaborate discussion on the various points that may be raised then as regards protection for minorities.

**Mr. Vice-President:** Mr. Khandekar may now address the House. I expect him to confine his remarks to the matter under discussion and to take as little time as possible. There are limits to the patience of the majority community on this question.

**Shri S. Nagappa (Madras: General):** My friends say that there is no limit to their patience.

**Mr. Vice-President:** That was a remark meant for Mr. Khandekar only.

**Shri H. J. Khandekar (C. P. & Berar: General):** \* [Mr. Vice-President, I rise to express my views on the matter that is at present engaging the attention of the House. When we go through clause (5) of article 67, we find that the provisions of this clause are subject to the provisions of articles 292 and 293. Article 292 provides for reservation of seats for minority communities and since I myself belong to a scheduled caste—a minority community, I am glad that this House has accepted the article. The Minorities Sub-Committee and the Advisory Committee had also recommended to the House for reservation of seats for minorities. I need not say much about the condition of the minority communities to which I belong. The scheduled castes constitute that section of the country which has been kept suppressed by the other sections for the last thousands of years and which has been denied social and political rights.

I may recall to you, Sir, that under the Government of India Act, 1919, provision had been made for the nomination of persons belonging to the scheduled castes for some seats reserved for this purpose in the Provincial Legislatures. Our representatives present at the Round Table Conference had

\* [ ] Translation of Hindustani Speech.

[Shri H. J. Khandekar]

made a demand that seats be reserved for scheduled castes according to the numerical strength. But to the misfortune of our community, Mr. Macdonald gave an award according to which the scheduled castes which have a population of 75 millions in the country, got only seventy two seats out of a total of 1580 seats, that is, the Macdonald Award allotted us seats many times less than what we should have been given, according to our population. I am very glad that when the Award was announced, Respected Bapu undertook a fast in Yerwada Jail as a result of which the Poona Pact gave the scheduled castes 151 seats out of a total of 1580 in the Provincial Legislatures, i.e., just double of what they had been given under the Macdonald Award. I therefore express gratitude to Respected Bapu on behalf of my community. But in this connection I can say that allotment of 151 seats was also not in proportion to our numerical strength and as my Friend Mr. Muniswamy Pillai has observed, we had to contest two elections under the Poona Pact. First, for Panel election there was contest amongst ourselves and after that in the general election we contested the candidates of other communities. At that time there was cumulative system of voting for us and not the distributive system. My Friend Mr. Kazi Syed Karimuddin has moved an amendment, No. 1415 on the list, seeking to introduce cumulative system of voting. If it is accepted, elections will be held on the basis of cumulative system of voting. Under this system if there be two seats, one reserved and the other general, in a constituency every voter would be given two ballot papers and he would have the option to cast both of his votes for one candidate or distribute these among two candidates. In this case naturally a voter, to whichever community he may belong, will cast both of his votes for the candidate belonging to his community and not to person of other communities. Communal rivalry therefore will continue. We have to do away with communalism as early as possible and therefore I oppose that amendment. As I belong to Harijan community whose elections were so far held on the basis of the cumulative system of voting, I have more experience of it than others. I have still in my mind the disastrous results of the cumulative system. The minorities Sub-Committee and the Advisory Sub-Committee which were formed by this Assembly and above all Dr. Ambedkar himself who has been the greatest supporter of separate electorate have disapproved of separate electorate and have, by voting for joint electorate, eliminated the canker of communalism from our polity. I thank them all for this. In the circumstances I have no option but to interpret this move of Kazi Syed Karimuddin as motivated by the desire to secure separate electorates by indirect means, for while on the one hand we would be abolishing separate electorate, on the other we would be retaining it by having the cumulative system of voting. If we accept the amendment, it is plain that its consequences would be that members of a community would under the cumulative system of voting, cast their votes for the candidate belonging to their community, and thus separate electorates will continue to exist indirectly. I therefore oppose the amendment moved by Mr. Kazi Syed Karimuddin.

There is another point to which I would like to draw the attention of Dr. Ambedkar, and I hope he would give his consideration to it. Sub-Clause 5 (c) of the article refers to a census. A few days ago a clause in which the expression "latest census" occurs, was discussed and passed by this House. It would be better if we add the word 'latest' before the word 'census' in this clause also in order to bring it into uniformity with that clause. I may state the reason why I make this suggestion. In the next election to be held under article 292, minorities will have some reserved seats in the Provincial Assemblies. They will have one seat for every one hundred thousand of population and in the Central Assembly one seat for every million of population. I am sorry to have to say, Sir, that we do not trust the census figures recorded

in 1941 because the population of Harijans shown in that census is very incorrect. Therefore, Sir, unless a fresh census is taken and the population of Harijans ascertained, I do not believe we would be allotted our due numbers of seats. I may submit, Sir, that according to our population there should have been sixty members from amongst our community in this House, because before partition our population was sixty millions. In this connection I am sorry to say, Sir, that in spite of the announcement of the British Government and the decision of the Congress, that Harijans would also have representation according to their population, only twenty seven representatives of Harijans are here in this House. And I may add that it is something painful to me.

We would like to return our representatives according to our population. Even if it be found that it comes to only twenty millions we would not mind sending only twenty members. But a census must be taken before elections are held. I am sure our population can under no circumstances be only twenty millions. Even today when the country has been partitioned, our population is at least sixty millions. I make this assertion without referring to the exact figures of our population. But I am sure that if reservation of representation for the scheduled castes—on the basis of one representative for every one hundred thousand of their population—is maintained in the next elections and for this purpose figures of their population are collected, it would be found that their population even now is not less than seven crores. It is a well known fact, Sir, that the birth rate is high among the poor. We have no money, no learning, but we possess great capacity for producing children. I emphatically say that we are not less than seventy millions today in India. In view of these facts fresh census should certainly be taken.

With these words, Sir, I would appeal to Honourable Dr. Ambedkar that while replying to the debate he would kindly make the position clear regarding the words "preceding census" that occur in this clause. I submit, Sir, that unless a fresh census is taken, neither the provision for reservation of seats, nor electorates would be helpful to any minority. It may be that if a fresh census is taken elections are delayed. But I do not think that it must needs be so. Even if the elections are to be delayed we should not be affected by that prospect. People of every section of the country say that there should be amelioration in the conditions of the Harijans. But this should not remain with these people merely a matter of lip sympathy. It should rather be their sincere desire and ought to be translated into practice. Even if elections are delayed by a year or so on account of the suggestion made above, we should not mind such delay.

With these words, Sir, I support the article and oppose the amendment moved by Mr. Kazi Syed Karimuddin.]

**Shri Biswanath Das** (Orissa: General): Sir, I have come to support the article and in doing so, I feel it necessary to place certain facts before the Assembly. Sir, I think that articles 67 and 149 should have been discussed together because they are correlated and one is complementary or supplementary to the other. As such, I feel that it could have been a great convenience to the honourable Members of this House if both these articles had been discussed together. I have to place before the honourable Members of this House the immensity of the resolution that they are passing today. We are giving our seal of approval to the most important principle, namely the principle of adult suffrage, by which every adult—male or female—in this country, irrespective of the fact that he is a plains-man or belonging to the hill tribes or to the scheduled caste, becomes a voter and as such shares the responsibilities and anxieties of the administration of the State and becomes an equal citizen absolutely and in all respects. Having adopted this important principle it is necessary that we realise the immensity of the proposal. This makes me feel

[Shri Biswanath Das]

That we will hereafter have an electorate which in no case will be less than twenty crores. It may be more. My honourable Friend Pandit Thakur Dass Bhargava I think did less than justice when he stated that the number of voters may be somewhere between 15 and 16 crores. Our population is 32 crores and if those below 21 are eliminated I feel sure that the number of voters is bound to exceed 20 crores. 15 per cent is taken as children of the school-going age, who are below 14. If that is so, I have no hesitation in saying that 25 per cent may as well be taken as people below the age of 21. As such three-fourths of the entire existing population may be taken as voters. Therefore, the country and the Government will have to keep themselves ready to meet the immensity of the proposal that they are accepting today. There would thus be a minimum of twenty crores of voters, which would mean that there should be about 2 lakhs polling stations and four lakhs of polling officers. I do not know how long it will take to conduct and finish the elections. I therefore appeal to the Government and also to you as the person primarily in charge of this work so far as we are here concerned, to take immediate action in time to set up the machinery to carry out this stupendous task. It is through you that we are devising a special agency for this purpose, namely the election commission but that does not minimise the tremendousness of the task.

Having stated so far about the immensity of the problem, I would come to two areas which give enough cause for anxiety. These are the States and provinces in the north and also the provinces of West Bengal and Assam. In these two different and distinct areas there has been huge migration of the population. Lakhs and millions of people have migrated either to Pakistan or have come away from there. We have reservation of seats; and not only that, in certain cases, as in the case of the aboriginal population, the constitution has prescribed that whether they live on the hills or on the plains they have to be taken together and seats to be reserved on that basis. That being the position I think it would be doing a grave injustice to the people of East Punjab as also to the states bordering Pakistan in the North and also probably to the Union of Saurashtra and Bombay, as also to the two provinces of Assam and West Bengal, if a census is not taken. I think a census is called for, because of article 149. This article lays down that the basis of representation has to be devised on the figures of the previous census. The previous census is the one that was taken in 1941. It is a fact within common knowledge that due to the war and in the name of paper shortage and the like the then government did not think it necessary to take a full-fledged census. Not only that but what little information was gathered was also left aside with the result that an abridged census was taken. Ever since, much water has flown under the bridges. Therefore it is necessary that to be fair to these areas in the North-East and the North-West early census is necessary. A special census in these areas for this purpose should be undertaken. In this connection need I invite your attention to what has been done in Pakistan? In Pakistan they have undertaken a census in the Provinces of Sind and the West Punjab as also in East Bengal and they have come to certain conclusions for the purpose of representation in the Constituent Assembly after this census. What was done in Pakistan could have easily been done in India and need I say that even today it is not too late for a census to be taken in all seriousness without further delay.

Having said so much about census I come to another aspect of this question. Soon after passing the Third Reforms Act in the British Parliament the late lamented Gladstone declared in the House of Commons that the time has come when they should find more money and put forth all their exertions to educate their "little masters". Who are these little masters? These little masters are the voters: they are the real masters. What have you done to

educate your little masters? In this country the percentage of literacy is about ten per cent. Female literacy is much lower; so also is the case with the scheduled castes. As regards literacy among the hill tribes whom you have enfranchised in full and given the right to vote, it is practically next to nothing. What a tremendous risk you have taken? You are calling upon them to vote, but who are they? A very highly inflammable class of people who have up to date absolutely no experience either of propaganda or of voting in elections. Therefore I warn you to take early steps in this regard, so that the difficulties that I have placed before you are minimised. And what have you done in this regard to minimise them? You have done nothing. Last year it was my misfortune to have an interpellation in the Constituent Assembly (Legislative) to know whether Government have undertaken to appoint an organisation to delimit the constituencies. The reply was that it had already been done. What is the sort of delimitation that you have already undertaken? The Provincial Governments are asked to delimit the constituencies; they have asked their officials and some blessed official sits and delimits the constituencies. Is that the sort of delimitation that you are going to have under this Constitution? I warn the Government, and through you, Sir, I beg of the honourable Members of this Constituent Assembly to see that these conditions are changed. Immediate action is necessary to see that delimitation of constituencies is undertaken and necessary steps in that regard should immediately be taken.

With these words, Sir, I fully support the article, but with the warning that I have given.

**Maulana Hasrat Mohani** (United Provinces: Muslim): \*[Sir, I had very little to say about article 67, but one thing has compelled me to speak something regarding this.]

**Shri S. Nagappa**: Mr. Vice-President, the Maulana can speak in English.

**Mr. Vice-President**: Can the honourable Member not speak in English?

**Maulana Hasrat Mohani**: I have to make an effort.

**Mr. Vice-President**: That does not matter, we care only for thoughts, not for your language.

**Maulana Hasrat Mohani**: \*[And what is that mentioned in this article which has compelled me to express my thoughts? It is this: clause (5) (a) reads thus: "Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the states directly chosen by the voters." The meaning of this clause and of article 293 is that seats have been reserved for minorities. I am, therefore, strongly opposed to reservation of seats and there should be no reservation under any circumstances. I say that there is absolutely no need of reservations, after we have made provision for joint electorates and adult franchise. The two cannot go together. When the electorates would be joint, it would mean that everybody will have the right to stand and to contest from each and every constituency. On communal basis you are making its scope limited as you have already said that you would like to give reservations to the Muslims because they are in minority. I do not know about scheduled castes, but a friend of mine has just said that you would not like to give them any reservation. Why do you call the Muslims a minority? They can be termed as a minority only when they function as a communal body. So long as Muslims were in the Muslim League, they were in a minority. But if they elect to form a political party without any restriction leaving it open to any community, then you should remember that whenever political parties would be formed, the Muslims would give fight by forming coalitions. Therefore, I say that Muslims would not like to be called a

\* [ ] Translation of Hindustani Speech.

[Maulana Hasrat Mohani]

minority. To say that Muslims are in minority is to insult them. I cannot tolerate this even for a moment. I have had a talk with several Members. They have told me: We are conceding this to the Muslims out of generosity. I ask: Who is asking for this generosity? Muslims will become part of the majority party and they will become majority. We do not want any generosity or concession from you. Does any Muslim require it? Concession to whom? We refuse to accept any concession. In case majority party or the Congress party accepts reservation of seats, its claim for creating a secular State and of putting an end to communalism would be falsified. I say, you have not put an end to communalism. The proof is that this hob-goblin, namely that Muslims are 14 per cent and Hindus are 86 per cent, and that the Muslims being 14 per cent, reservation should be given to them—still persists in your mind. I think that the question of reservation of seats has been raised by the Nationalist Muslims who had always been your slaves and slaves of the Congress. You want to reserve these seats for them and when these 14 or 15 per cent seats are reserved they would get them first of all. I take the responsibility, we will isolate the nationalists. Muslims will form coalitions and shall defeat the purpose of your device and I am sure that the Muslims shall not remain in minority.]

**Giani Gurmukh Singh Musafir** (East Punjab: Sikh): \* [Mr. Vice-President, I had no mind to speak today but as an important matter is under discussion, I would very much like to express my opinion. I am therefore thankful to you, Sir, for giving me this opportunity to speak. Two points have been raised concerning article No. 67, one is regarding the census and the other about the constituencies. In clause (5) of the article there is a reference to article 292 which deals with the question of minorities and hence it would be relevant here to speak about the reservation of the minority problems. It would be to my liking if the chapter pertaining to the minorities is altogether removed; without that there can be no salvation for the country. There remains the question of reservation. Howsoever much one may ponder over the question, he is bound to come to the conclusion that reservation on population basis is of no good to the minorities; and particularly for the Sikhs, reservation is of no use. I am afraid, now the situation is taking such a turn—it may be said the Sikhs are more particular to reservation even than others. I know, at present such things pertaining to matters of policy and others alike, are going on, and which are quite natural during such interim periods. I will not go into the details. Our leaders might have before them some considerations on grounds of expediency and so I would not go into that matter. But this much I would like to make clear that if reservation is retained in the Constitution, it would not be because of the Sikhs. In other words, what I mean to say is that Sikhs would not be in the least benefited by reservation. To cramp them with reservation is to check all their progress. Of course I do think of the Harijans and Scheduled Castes in this connection. But at the same time I think that just as the poison of separate electorate is being removed from this Constitution, similarly no other canker should be allowed to remain by which the communalism may again spread. To achieve this end healthy conventions can be established. Suitable representation can be made through nominations, as would leave no room for objection from any one.

The second point is regarding the constituencies. Pandit Thakur Dass Bhargava had tabled an amendment but it was not moved, and he did not even press for it. This, however, is quite another matter. In my opinion, urban and rural constituencies should be kept separate. Time is not yet ripe to have joint electorates. People of rural areas need education first. They are very backward at present, while people of urban areas are advanced. If one is on the top and the other is on the floor, they cannot meet. In other words a motor-car and a tonga cannot be run together. It is necessary to

\* [ ] Translation of Hindustani speech.

gradually raise the level of the man at the bottom, and it will also be necessary for the man on the top to mould his mentality in such a way as to treat the man below like his own brother. Only after this has been done, the purpose will be achieved. I do not mean thereby that disparity between the urban and rural areas should be perpetuated, and I do not lay much emphasis on the point that village people are backward. It is possible that in other aspects there is more awakening in the rural areas, but it is a fact that they have not much resources. They are so placed that only our government can make any arrangements for them. At present access to villages is difficult. For these reasons I think that rural constituencies should be kept separate, otherwise village people would be at a disadvantage. With these words I support this article.]

**Prof. Shibban Lal Saksena** (United Provinces: General): Mr. Vice-President, Sir, out of the articles which we have passed so far excepting perhaps articles Nos. 13 and 25, which guarantee fundamental freedoms, this article I think is the most important article. Here we are giving the right to vote to every adult citizen of India, and I think, people will realize later on what this really means. The election so far has been held on a narrow franchise, and now if in the new census the population of India is nearly 35 crores, we should have an electorate of about 20 crores in the country. Even America has got only about 5 or 6 crores of voters. But here 20 crores of voters will go to the polls to elect their representatives. I think this fundamental right of adult suffrage guaranteed to all people is the most important part of the Constitution. It has raised great hopes in us and today we are realising the ideal for which we have fought for the last so many years. I think that in clause (6), which guarantees this right, the word 'crime' has also been included as disqualifying a person from being a voter. I feel that even those persons who have been to jail, but have come back afterwards and reformed themselves should not be debarred from becoming voters, and I, therefore, think that the word 'crime' should not have been there. I have no objection to all other conditions, non-residence, unsoundness of mind, etc. being there.

Then, Sir, this article is an omnibus article providing for the constitution of the Council of States and the House of the people. Sir, I cannot refrain from saying that I am one of those who believe in only one Chamber and not two Chambers. Here they have provided for two Chambers and the worst part of this is that in the Upper Chamber we shall have twelve nominated Members; and we passed the other day that even those Members, who have been nominated and who will never seek the vote of the people, can become Ministers also. I think this is a most undemocratic aspect of our Constitution. Everybody who was a specialist in literature, art and science could surely have got. . . .

**Mr. Vice-President:** May I ask the honourable Member to refrain from referring to business which has already been passed. The present discussion is with regard to clause (5) up to the end. That was what was agreed to by the House.

**Prof. Shibban Lal Saksena:** If that is the position, I will refrain from referring to the earlier clauses, although I think we are discussing the whole article.

Then, Sir, another thing in this article is the provision for delimitation of constituencies having a population between 5 lakhs and 7½ lakhs. I think the upper limit was unnecessary. It is not provided anywhere how the exact figure between these two limits will be determined, but I think the average figure will be the figure suited for allotment of seats to every province, and will be somewhere about 6,25,000. I personally think that the clause as it stands, will create great difficulties.

[Prof. Shibban Lal Saksena]

There will have to be big multiple constituencies of 13 lakhs and twenty lakhs population and I do not think poor candidates will be in a position to contest in such constituencies. If we want reservation for minorities, big multiple constituencies cannot be avoided. Only those people who are rich will then be able to get elected. Besides reservations will keep communal passions alive. I therefore think we must have no reservations. In fact, I was very glad to hear my honourable Friends Maulana Hasrat Mohani and Giani Gurmukh Singh Musafir when they said that they do not want any reservation. I think this Constitution must completely abolish all reservation. Let us have a completely secular State where every one will be a free citizen of India and every one can get elected irrespective of his community. I am sure communal passions will die out in a few years and there will be no need for any reservation. I think the time has come, and certainly by the time the elections are held, we shall require no special reservations. If we decide to have reservation for minorities, then the amendment which Dr. Ambedkar did not move should have been moved; otherwise, there will have to be very big constituencies. Even if there is to be one general seat, one Harijan seat and one other reserved Muslim seat in a particular constituency, there will be about eleven lakhs of voters which each candidate will have to canvass and no ordinary person can approach eleven lakhs of voters with his limited resources. Then, there will have to be innumerable booths; I do not know how many booths will be required. I think it will be an impossible task and so even from practical considerations, I think reservations should cease. Again, it is also possible, if there are to be very big multiple constituencies, some people may not be able to get a fair chance; their sphere of influence may be broken up or it may be resumed for a minority community.

Therefore, the only possible and practical course is that there should be no reservations. I am sure the fear of the minorities will soon be removed and I am sure that the people who are now in favour of reservation will also come forward and say that they do not want any reservation. If no reservation is made, we must see that a larger number of members of the minority communities are returned than their population entitles them to.

Sir, the proviso to sub-clause (b) of clause (5) is proposed to be omitted. This is also not fair. Under article 67 clause (1), in the Council of States, the number of representatives of the States shall not exceed forty per cent. Here, in the Lower House the proportion is sought to be abolished. If the States remain to some extent what they are today, if they only accede to the extent of Defence, Communications, etc., this abolition of the proviso will not be possible. The number of representatives from the States may be larger than is warranted by their population. I think the original proposition was better. The States should have seats only in proportion to their population. If the States come into line with the provinces, and the distinction is obliterated, then of course there will be no objection to the omission of the proviso.

Sir, I had given notice of an amendment for the deletion of clause (7) My purpose was, I did not want that Parliament should have the power to make laws to provide for the representation in the House of the People of territories other than States. This is a matter for the Constitution and not for the Parliament. Parliament may always try to make laws in favour of the party which is in power. Parliament should be debarred from making laws in respect of such matters. I think clause (7) should be deleted, because it gives to Parliament the power of creating additional seats in the House of the People.

Sir, these are very important considerations. We have already discussed so many amendments and I think the verdict of the House will be soon known.

Only those amendments which are accepted by Dr. Ambedkar will be accepted by the House. Even though this article is not as I wish it to be, still I think it is a very important article and it should be passed.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Mr. Vice-President, Sir, I shall address myself only to some of the more important amendments of substance that have been moved relating to clauses (5) to (8) of article 67.

Sir, I am much obliged and it is very gratifying to see that members of the minority communities, particularly, my honourable Friends Mr. Karimuddin and Mr. Mahboob Ali Baig were against any reservation for their community. In its place, they have suggested two methods of election; one, proportional representation by means of the single transferable vote, and the other proportional representation by means of cumulative vote.

**Mahboob Ali Baig Sahib Bahadur:** May I correct my friend? I never said anything about reservation of seats.

**Shri M. Ananthasayanam Ayyangar:** Very well; I stand corrected. So far as my friend Mr. Karimuddin is concerned, he did not want any reservation. In its place he wanted election by proportional representation by means of the cumulative vote. Mr. Mahboob Ali Baig evidently wants to run with the hare and hunt with the hounds. He wants both this and that; I will come to him later. The majority opinion seems to be against reservation that is provided for in articles 292 and 293. I also find that with the exception of the Scheduled Castes, so far as the provision for others is concerned, there is the other opinion also from members who do not belong to the minority community that such reservations ought not to exist. Of course, this matter will stand over and will be discussed more elaborately when we come to articles 292 and 293. In the interests of the minorities themselves, I would urge that it would not be very useful to them if they insist on reservations, because.....

**Mr. Vice-President:** Are you speaking on article 292?

**Shri M. Ananthasayanam Ayyangar:** No; I am referring to the alternative that has been proposed.

**Shri Jaspal Roy Kapoor:** (United Provinces: General): Why not delete reference to article 292 here from this clause?

**Shri M. Ananthasayanam Ayyangar:** That is the subject matter of the amendment moved by my honourable Friend Mr. Karimuddin. He wanted reference to articles 292 and 293 to be omitted and in its place add something relating to the method of election: proportional representation by means of cumulative vote. Therefore, if I have said anything in regard to the absence of reservations, which is the substance of articles 292 and 293, I submit with all respect that I am absolutely relevant in what I have said. Mr. Karimuddin's amendment wants to do away with reservations referred to in article 292 and article 293 and in its place, he feels that it would be more useful if the minorities could have proportional representation with cumulative voting. Two methods of election have been suggested. With all respect to the mover, I would suggest that proportional representation by means of the single transferable vote is not practicable at all. These are large constituencies and each constituency will consist of population ranging between five lakhs and seven and a half lakhs. Further, we are not an advanced country; many of the people are not literate. The literate population of our country is not more than fourteen per cent. Exercising preference by means of the single transferable vote is impossible. We commit mistakes even on the floor of the House in the Legislative side when we elect members of the Standing Committees in Legislature for the various Departments. We do not exercise our votes properly. Therefore it is impossible to expect the illiterate voters to be able to exercise their votes properly. For

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a long time to come it is unthinkable having regard to the low progress of literacy in our country.

Then as regards proportional representation by means of cumulative votes, my suggestion is that that has been tried regarding the scheduled caste primary election. I would refer to Volume III of the Constitutional Precedents published by Sir B. N. Rau; at page 161 he has appended an Appendix to the Chapter on the system of representation. Therein he says—

“The number of seats a party captures in an election depends on the correctness with which it has gauged the support it commands in each of the constituencies, and set up the right number of candidates on its behalf.”

As an illustration he says in the Appendix how the Congress lost both seats by miscalculation when it was possible for the Congress to have captured at least one seat. That is what happened in 1937 in the C. P. Legislative Assembly elections—Bhandars Sakoli (General Rural). Both seats were lost to the Congress. Then the Congress party contested in the Bombay Legislative Council, Bombay city and Suburban Districts, two out of four seats. If it had underestimated or over-estimated its electoral strength and nominated less or more candidates, it would have lost a seat. Now therefore this cumulative election would not absolutely be appropriate.

**Shri L. Krishnaswami Bharathi:** That is not proportional representation.

**Shri M. Ananthasayanam Ayyangar:** That is also a kind of proportional representation. I advocate neither the system by single transferable vote nor by cumulative vote. The one is impossible and the other would not meet the purpose. In that way social justice would not be rendered. On these grounds neither the amendment of Mr. Karimuddin nor that of Mr. Baig is worth considering. I oppose both of them. Prof. Shah suggested that there ought not to be any restriction on the number of Members in the House of People. He said there must be as many as possible. My impression is 500 is large enough. Already, in a House which consists of three hundred members, almost every day we have to ring the bell to get a quorum; and so what is the good of multiplying the number? There will not be effective representation. The smaller the number of members, the more effective it will be. Of course it ought not to be too small. Five hundred seems to be quite a good number. Besides 500 is not such a fixed and an inviolable number at that: because under articles 292 and 293 provision is made for nomination in the case of Anglo-Indian community if they are not represented. Likewise, for the territories which did not form part of the States, the Parliament is entitled under the article clause (7), by law, to provide for their representation in the House of the People. The five hundred under clause (5) are representatives only from States. There can be in addition to the five hundred, some Anglo-Indian members and also members representing territories other than those from the States. Under those circumstances five hundred is not a definite number; but it ought not to be increased enormously.

Then my friend, Pandit Thakur Dass Bhargava, suggested that a kind of qualification ought to be imposed, though he did not move the amendment that literates alone ought to be allowed to vote. Sir, I want a clause insisting that there must be imposition of penalty on those people who refrain from voting. For a long time to come unless people in this country are compelled to come to the Polling Station, many people may not care to exercise their votes at all, and if you put a further qualification that they must be literate, I am sure none will take interest. You are giving adult suffrage and the vote of a single individual may not count. If most of our people are not literate till now, whose fault it is? It is too much to expect that everyone will become

literate within a period of two years. Moreover, literacy is not the only qualification. I know a number of people who are not literate but have very good commonsense,—more than people with academic qualifications.

**Pandit Thakur Dass Bhargava:** Signing the name can be learnt in two months.

**Shri M. Ananthasayanam Ayyangar:** With what effect? It is idle to think that merely if a man is able to sign his name, he will immediately become such a literate and educated man as to exercise his vote properly; I should say such a qualification is unnecessary. Wisely he has not moved an amendment to that effect. On the other hand it may be necessary in the future years when the election becomes so costly and people may not come to the polling station that you may have to have a provision, as exists in some other constitutions, that there must be a compulsion on voters to come and vote. As regards early elections, I would wish that even from now the various provincial Governments must take up the task of making up the list of qualified voters and also delimiting constituencies. That is the object with which we have come to some of these articles and have taken up only those articles which relate to elections. We are also proceeding from here, with the leave of the House, to consider article 148. Therefore, I believe that the Central Government will take steps to issue instructions to Provincial Governments to prepare these lists and also delimit constituencies early with a view to have the elections early next year.

I support the formal amendments moved by my Friend Dr. Ambedkar and oppose the amendments moved by Mr. Karimuddin and Mr. Baig and also by Prof. Shah.

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, I accept the amendments Nos. 1417, 1426, 1431 of Prof. Shah, 1434 as amended by the mover of that amendment and as amended by the amendment No. 42 of List II and No. 43 of List II. Of the other amendments, on a careful examination, I find that there is only one amendment on which I need offer any reply. That is amendment No. 1415 of my Friend Mr. Karimuddin. His amendment aims at prescribing that the election to the House of the People in the various States shall be in accordance with the proportional representation by single transferable vote. Now, I do not think it is possible to accept this amendment, because, so far as I am able to judge the merits of the system of proportional representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact, it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numerals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. That in itself, would, I think, exclude the system of proportional representation.

The second thing to which I like to draw the attention of the House is that at any rate, in my judgement, proportional representation is not suited to the form of government which this Constitution lays down. The form of government which this Constitution lays down is what is known as the parliamentary system of government, by which we understand that a government shall continue to be in office not necessarily for the full term prescribed by law, namely, five years, but so long as the Government continues to have the confidence of the majority of the House. Obviously it means that in the House

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where there is the parliamentary system of Government, you must necessarily have a party which is in majority and which is prepared to support the Government. Now, so far as I have been able to study the results of the systems of parliamentary or proportional representation, I think, it might be said that one of the disadvantages of proportional representation is the fragmentation of the legislature into a number of small groups. I think the House will know that although the British Parliament appointed a Royal Commission in the year 1910, for the purpose of considering whether their system of single-member constituency, with one man one vote, was better or whether the proportional representation system was better, it is, I think, a matter to be particularly noted that Parliament was not prepared to accept the recommendations of that Royal Commission. The reason which was given for not accepting it was, in my judgment, a very sound reason, that proportional representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the Government, with the result that the Government losing the support of certain groups and units, would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for, whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely, it must maintain a stable government and maintain law and order. (*Hear, hear*). I am therefore, very hesitant in accepting any system of election which would damage the stability of government. I am therefore, on that account, not prepared to accept this arrangement.

There is a third consideration which I think, it is necessary to bear in mind. In this country, for a long number of years, the people have been divided into majorities and minorities. I am not going into the question whether this division of the people into majorities and minorities was natural, or whether it was an artificial thing, or something which was deliberately calculated and brought about by somebody who was not friendly to the progress of this country. Whatever that may be, the fact remains that there have been these majorities and minorities in our country; and also that, at the initial stage when this Constituent Assembly met for the discussion of the principles on which the future constitution of the country should be based, there was an agreement arrived at between the various minority communities and the majority community with regard to the system of representation. That agreement has been a matter of give and take. The minorities who, prior to that meeting of the Constituent Assembly, had been entrenched behind a system of separate electorates, were prepared, or became prepared to give up that system, and the majority which believed that there ought to be no kind of special reservation to any particular community permitted, or rather agreed that while they would not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates. Now, my submission is this, that while it is still open to this House to revise any part of the clauses contained in this Draft Constitution and while it is open to this House to revise any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or by what I may call, a side-wind. It had better be done directly and it seems to me that the proper procedure for effecting a change in articles 292 and 293 would be to leave the matter to the wishes of the different minorities themselves. If any particular minority

represented in this House said that it did not want any reservation, then it would be open to the House to remove the name of that particular minority from the provisions of article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely, did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then I think it would be just and proper that the minority should be permitted to retain what the Constituent Assembly has already given to it.

**Pandit Thakur Dass Bhargava:** But there was no agreement about reservation of seats among the communities and a number of amendments were moved by several Members for separate electorates and so on, but they were all voted down. There was no agreement at all in regard to these matters.

**The Honourable Dr. B. R. Ambedkar:** I was only saying that it may be taken away, not by force, but by consent. That is my proposition, and therefore, I submit that this proportional representation is really taking away by the back-door what has already been granted to the minorities by this agreement, because proportional representation will not give to the minorities what they wanted, namely, a definite quota. It might give them a voice in the election of their representatives. Whether the minorities will be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, I submit, in fairness ought to be left to them. For these reasons, Sir, I am not prepared to accept the amendment of Mr. Karimuddin.

**Mr. Vice-President:** I shall now put the amendments, one by one, to the vote of the House.

**Shri H. J. Khandekar:** On a point of information, Sir, may I ask Dr. Ambedkar, what about the preceding census? He has not said anything when he amended article 35 the other day. About the preceding census, is he prepared to amend it by saying 'the latest census'?

**Mr. Vice-President:** Mr. Khandekar may come to the rostrum and speak.

**The Honourable Dr. B. R. Ambedkar:** I have accepted the amendment of Mr. Naziruddin Ahmad as amended by him and as amended by Shri Bhargava.

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

The question is:

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted:— 'Subject to the provisions of articles 292 and 293 of this Constitution'; and the following words be added at the end:—

'in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote.'"

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters, the words 'such members as shall, in the aggregate, secure one representative for every five hundred thousand of the population in all the constituent parts of the Union, whether States or territories directly governed by the Centre. All members of the People's House shall be elected directly by the votes of all adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67 :—

'and Territories directly governed by the Centre.'"

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

The amendment was negatived.

**The Honourable Dr. B. R. Ambedkar:** Amendment No. 1426 for dropping the words 'of India' may be put, Sir.

**Mr. Vice-President:** That comes later. I am putting the amendments to vote in the order in which they were moved.

The question is:

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added :—

'so that each State being constituent part of the Union, or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million.'"

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full stop be added, the word 'and' following immediately be deleted and the word 'the' be printed with a capital 'T.'"

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That with reference to amendment No. 1434 of the List of Amendments in sub-clause (c) of clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

The amendment was adopted.

**Mr. Vice-President:** I shall now put amendment No. 1434 as modified by the Mover himself to vote. Is it necessary for me to read out the amended amendment?

**Honourable Members:** No, Sir.

**Mr. Vice-President:** The question is:

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That clause (7) of article 67 be omitted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories', and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituted parts of the Union' be substituted respectively

The amendment was adopted.

**Mr. Vice-President:** The question is:

(8) "That with reference to amendment No. 1450 of the List of Amendments, after clause of article 67, the following new proviso be inserted:

'Provided that such readjustment shall not affect representation of the House of the People until the dissolution of the then existing House.'

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

The amendment was negatived.

**Mr. Vice-President:** I shall now put the first alternative in amendment No. 1452 to the vote of the House.

The question is:

"That to article 67, the following new clause (10) be added:—

'(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of the single transferable vote.'

The amendment was adopted.

**Mr. Vice-President:** I shall now put article 67, as amended to the vote of the House.

The question is:

"That article 67, as amended, stand part of the Constitution."

The motion was adopted.

Article 67, as amended, was added to the Constitution.

**Mr. Vice-President:** The House stands adjourned till 10 A.M. on Wednesday, the 5th January 1949.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 5th January 1949.

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PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA,  
PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI INDIA.

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CON. 2. VII. 33. 49  
2,600

Volume VII  
No. 33



Wednesday  
5th January  
1949

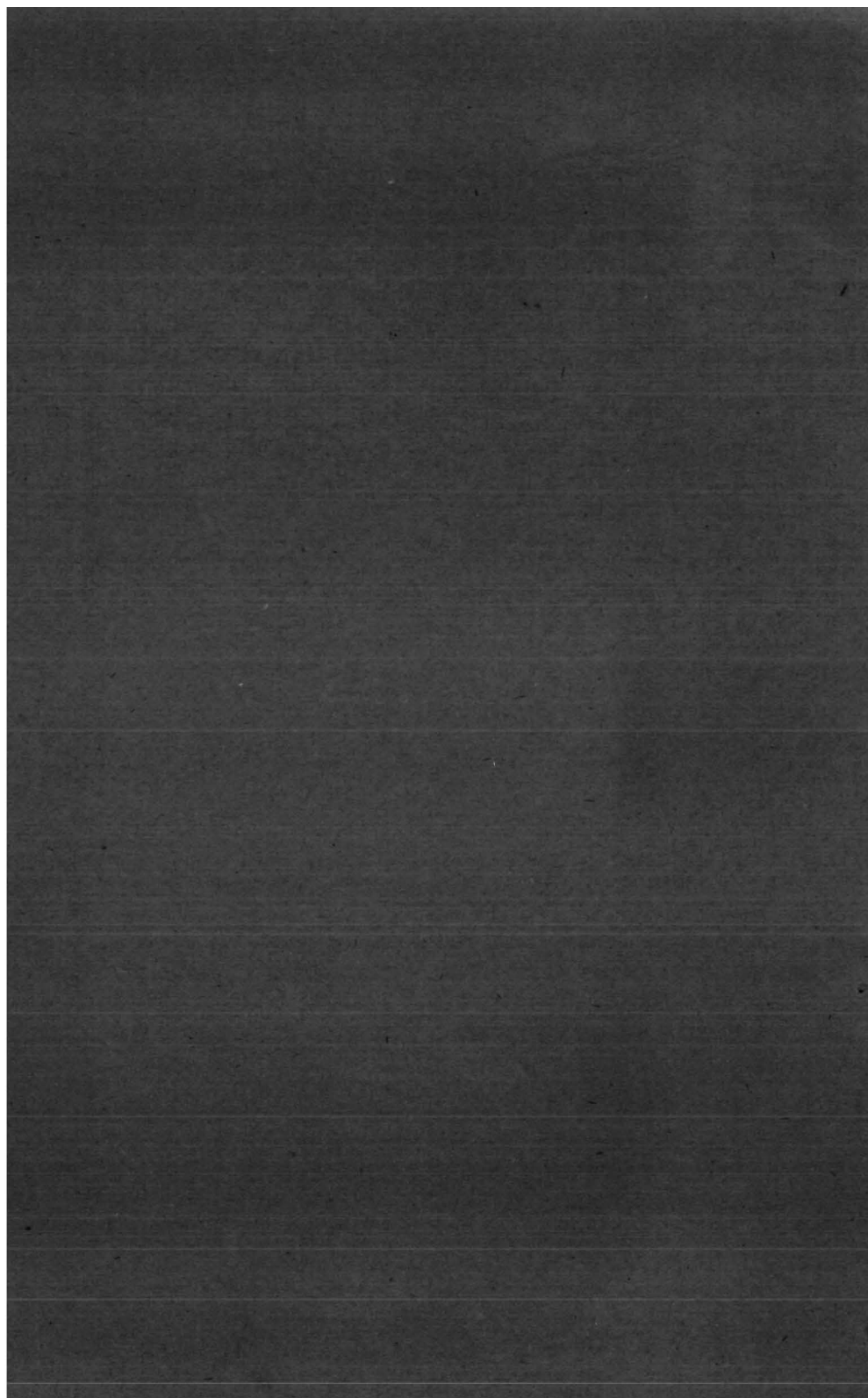
# CONSTITUENT ASSEMBLY DEBATES

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## CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 5th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

### LETTER FROM THE PRESIDENT

**Mr. Vice-President (Dr. H. C. Mookherjee):** Before we start the business of the House, I would like to read a letter which I received last evening from our President. This reads:

"I am thankful for your letter conveying to me your and the House's greetings of the season. I need hardly say how I appreciate such expression of goodwill. I am sorry I could not come even for the last few days of the current session. My plan to start on the first failed because I had fever on the 28th accompanied with severe cough."

Then he says:

"I hope the House will excuse my absence in the circumstances. I am trying as best as I can to recover but somehow I have had a bad time for several months now. As the season becomes milder and warmer, I hope to improve as I do in all summers."

With the permission of the House, I would like to reply to this letter to the effect that we hope that he will not only recover but fully recover and will conduct the proceedings of the House in May next when we meet once again.

We now come to item No. 2, motion to be moved by the Honourable Sardar Patel.

### GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

**The Honourable Sardar Vallabhbhai J. Patel (Bombay: General):** Sir, I beg to move:

"That the Bill to amend the Government of India Act, 1935, be taken into consideration."

The measure before the House is a composite one, and in fact it covers a variety of fields of administration. By experience we have found that some changes in these directions are necessary, and in respect of one field, viz., the States, it is found necessary statutorily to recognise the changes that have taken place in the States during the period of last year and also to regularise them. Now, the House is aware—at least many Members who attended the last session of the Assembly must be knowing—that the working of the Trade Disputes Act has created certain anomalies and difficulties. Under the Trade Disputes Act the provinces have set up Industrial Tribunals for the purpose of disposing of disputes. In the working of these Tribunals, decisions have been given by various Tribunals which are not uniform, at least as regards the principles underlying the decisions. This has created complications and there is a general desire that it would be desirable to have uniformity with regard to the principles governing these decisions. Therefore, the suggestion has been made to the Government that a Central Tribunal or Appellate Authority should be established so that the decisions of this Tribunal may set up a sort of Case Law which would be a guidance for the Provincial Tribunals as well as bring about uniformity in the main principles governing their decisions. Now, that is one thing.

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The other thing is that we had consulted the Provincial Governments and they have all agreed more or less in the necessity of a Central Board of Censors for films. In this respect also, the Central Government should have powers and for that purpose also we propose to introduce a sort of amendment in this Act. Both the Provincial Governments and the film industry have welcomed the Central Board of this kind which will lay down principles for uniform treatment of films and ensure that those principles are implemented in actual practice. Also we are experiencing constitutional difficulties in pursuing certain statistical enquiries. For all these reasons, it has become necessary to secure in the executive sphere power in respect of these matters.

We felt that the Dominion Legislature should have the power to confer such executive functions on the Dominion agency by law of the Dominion, and consequently an amendment was also considered necessary under Section 126-A of the Government of India Act, but after further consultation with Provincial Premiers who are naturally jealous of the powers of their legislatures and rightly sensitive to any encroachment on those powers, we propose to introduce with their advice and with their consent, an amendment of a restricted nature which confines itself to certain specific matters.

Again, the industrial policy of the Government of India makes it necessary that the Central Legislature should have powers in respect of a number of other industries. Firstly, these powers can be derived under Section 34 of List I of the Seventh Schedule, but as that gives Government power to legislate only on development, it is doubtful whether in relation to production, supply or distribution similar powers would be available to the Centre. The House will appreciate that, without such power, control on development will be unreal and ineffective. It is therefore proposed in the Bill to make some additions to the Federal legislative list, but subsequently after discussions with the Provincial Premiers to which I have already referred, it was decided to make an alteration in the arrangements contemplated in the Bill and to secure the object which we have in view by including certain matters in the scope of clause 2 as would be amended on the lines mentioned, in the Concurrent List. This would give the Dominion Legislature power to legislate in respect of these industries and also to confer executive power in respect of them.

I now come to clause 3 of the Bill. This amendment is considered necessary on account of the provisions of sub-section (3) of Section 61 of the Government of India Act, according to which the Legislative Councils of the provinces of Madras, Bombay, United Provinces and Bihar are permanent bodies subject to the condition that, as near as may be, one-third of the members of the Councils should retire every third year. The retirement under these provisions was due in United Provinces in September last and the elections have already taken place there, but in Madras, Bombay and Bihar they are to take place in March or April. It is considered by those Governments that in view of the likelihood of the new Constitution coming into force in the near future further elections for the Upper Chamber which would become necessary by retirement should be avoided. In these circumstances, we have considered it necessary to take powers to extend the terms of office of members of the Councils who may be due to retire under sub-section (3) of Section 61 of the Government of India Act.

Now, I come to Clause 6 of the Bill. The House knows that as a result of merger agreements which have been signed by rulers, full jurisdiction in regard to administration of twenty five States in Orissa, fifteen States in Central Provinces, three States in Madras, thirty five full-powered States and one

hundred and forty semi-jurisdictional States in Bombay, and three States in East Punjab has been handed over to the Government of India who have delegated their powers to the Provincial Governments concerned under the Extra-Provincial Jurisdiction Act which was passed by the Central Legislature. In addition to this, certain States have been taken over by the Central Government and entrusted to officers of the Central Government who have been appointed as Chief Commissioners and these are known as Chief Commissioners' provinces. These are, firstly, the East Punjab Hill States. They are about fifteen to twenty in number,—very small States—which have all been lumped together; and in view of their special condition we have taken them over and formed a Chief Commissioner's province. Other States taken over in this manner are: Cutch, Bilaspur and Mayurbhanj which has subsequently been handed over to Orissa. These have been formed as Chief Commissioners' provinces. In the case of Cutch it has been done on account of its special position, namely, that it has a big, long border line with Pakistan and is an undeveloped area neglected for a very long time, with hardly any railway, no modern conveyance, no roads, etc., and if you want to see a thousand-year old mediaeval State, Cutch is the only one in India. This State, however, has a first-class major port to be developed and the Government of India propose to spend a large amount of money on it. Then a railway from Cutch—metre gauge—is to be laid connecting it to Deesa. There is also a proposal to have another railway—broad gauge—right up to Viramgam. In these circumstances and because of the long border between the two Dominions, it was considered necessary to take over the State's administration and form a separate Chief Commissioner's province.

The legal position in regard to the administration of these provinces is that laws are made by notification issued in the name of the Chief Commissioner under Section 4 of the Extra-Provincial Jurisdiction Act which was passed by the Central Assembly in 1947. The administration is carried on under the provisions of this Act either by the Central Government or the Provincial Governments. It is clear that the process of administrative integration which these agreements were designed to bring about has thus been partially achieved. The laws of the Central Legislature and the appropriate provincial legislatures do not apply as such to the States which have been merged or which are being administered by these Chief Commissioners. The finances of these States do not form part of the finances of the Dominion or the province concerned, but have to be kept separately for the time being. So we naturally considered how best we could bring about complete administrative integration, which was the aim and purpose of the merger agreements which have been signed by the rulers and accepted by the Government of India. It was at first thought that this can be done by an order under Section 290 of the Government of India Act by increasing the areas and altering the boundaries of the provinces, but Section 290 makes no mention of the acceding State and it is therefore extremely doubtful whether the Governor General is competent by an order under that Section to direct the integration of the territories of acceding States to the provinces. It is for a variety of reasons that these merger agreements were entered into and the integration of these States should no longer be delayed. It is therefore considered necessary to make in the Government of India Act of 1935 a provision enabling the governance of an acceding State or States, whose rulers have entrusted jurisdiction and power to the Dominion Government, either as part of a Governor's province or as a Chief Commissioner's province. Such a provision is necessary for political, constitutional and administrative reasons. Politically, it will hasten the process of integration and will provide a means for all these areas being represented in the legislatures of the provinces in which they have been merged. At present, although the States have been merged, there is no arrangement by which they could be represented in any

[The Honourable Sardar Vallabhbhai J. Patel]

manner in the provinces concerned. Constitutionally, the provision will enable the Dominion and the Provincial legislatures to have a legal basis for enacting legislation for these areas, and administrative convenience of complete merger is undoubtedly very great. There is also a provision in the Bill for adjustment of territories between a province and a neighbouring acceding State. If such adjustment is considered expedient or necessary for reasons of administration, it cannot be done at present. I might illustrate this by an example. There are about 12½ villages which form the Chief Commissioner's province known as Panth Piploda, of which the House may know. These villages are not at one place and are situated at different places and are in such a position that their administration is practically neglected. The area cannot be governed properly and to have such a small unit of villages situated at different places is, constitutionally speaking, a problem which requires immediate solution. Now, these States, on account of their geographical position and other reasons, can only be properly merged or administered along with Madhyabharat. They are all situated in the midst of this area.

I hope, Sir, that I have given the House sufficient justification for the measure which I have placed before the House. There are a large number of amendments proposed, particularly to clause 6. The list of amendments for which notice has been given is too long, but I hope I have given sufficient explanation for the justification for the Bill and honourable Members will reconsider them and it will not be necessary for many of them to be moved in the House.

Sir, I move that the Bill be taken into consideration.

**Shri Yudhishtir Misra** (Orissa States): Mr. Vice-President, Sir, I want to take part in the general discussion on the motion before the House and make some observations about the provisions of the Bill for the administration of certain States whose rulers have ceded full and exclusive power and authority to the Government of India. According to the provisions of the Bill, some States such as the States which now comprise the Himachal Pradesh will be constituted into a Chief Commissioner's province and other such as the Orissa and Chattisgarh States, Deccan States and Pudukottah State will be administered as parts of the neighbouring provinces. The integration of the Orissa and Chattisgarh States took place in January 1948 and since then these States have been under the administration of the provinces of Orissa and Central Provinces. The integration was the result of agreements between the rulers on the one hand and the Government of India on the other. The people of these States or their representatives never came into the picture. They were neither consulted about the process of integration nor was their opinion taken about the actual administration of the States to which they belonged. The right of self-determination has been denied to them as a result of which there is great discontent in these States. The popular opinion in the Orissa States as reflected through the Regional Council, affiliated to the All-India States Peoples Conference, was not for unconditional merger. The Orissa States being educationally, politically and economically backward, they apprehended domination and exploitation by the province in services, legislature and in developmental schemes. Hence, their acceptance of the idea of one administration between the States and the province was conditional upon certain terms and conditions which should have been entered into between the people of the States and the province. This idea could not materialise as the people of the States were not taken into confidence and the agreement was purely the affair of the Government of India, the provincial Government and the rulers of the States. The unconditional integration of the States has, to a

certain extent, reduced the people of the States to subjection and justified the apprehensions which they had entertained. To all intents and purposes they are treated as conquered people and instead of the Ruler's Raj there is in the States the Raj of the administrators. There is, no doubt, in each state an advisory Committee, but the advice and suggestions of these advisory Committees are never taken seriously. There are two Executive Councillors, as far as the Orissa States are concerned, but they are, I submit with all humility, mere show-boys and they are never consulted in important and vital matters.

Sir, in this connection, I beg to bring to the notice of the House that when the question of the personal property of the rulers was considered by the Government of Orissa and an agreement was entered into by the Government of Orissa with the rulers of those states, these Executive Councillors were never consulted and the wishes of the people of the States with respect to the property were never taken into consideration.

No doubt, Sir, certain measures have been taken by the Provincial Government to meet the demands of the States people, but they pale into insignificance in the face of the maladministration in certain cases that has taken place in the wake of integration.

Sir, corruption has increased and there is more exploitation than before. Every village has been converted into a liquor shop and the evils of drinking have increased. The medical grants for the purpose of medicine etc., for the State hospitals have been reduced. The substantial pay of some of the employees of the States, especially the low-paid employees, has been reduced and the primary schools which were managed by the respective State Governments have been converted into stipendiary schools as a result of which the teachers of these primary schools will not get any dearness allowance and the benefit of Provident Fund. In some of the States the road development programmes have been held up.

Now, Sir, it is proposed that besides the privy purse which has been granted to the rulers, the relatives of the rulers will be given some allowances. This idea of granting more allowances to the rulers of the States or their relatives is quite against the wishes of the people and there is no reason why these rulers should be granted more money than has been granted to them under the agreement. But, Sir, even against the wishes of the people, the Provincial Government is prepared to consider their cases. I do not know what has happened to that proposal. Now, Sir, before the integration of the States and after the integration, the Provincial Government had held out certain assurances to the people, saying that the Provincial Government will not reduce the pay, especially of the low-paid employees of the States and that the education and other amenities which the people were enjoying will not suffer in the hands of the Provincial Government, but in many cases these assurances have been falsified and the Provincial Government have not kept the promises which they held out to the people before integration.

Now, Sir, I submit that it is the duty of the Central Government to see that the States area should be given certain priorities in the developmental works by the Provincial Government and that the people of the States do not lose the little amenities of life which they were then enjoying. Therefore, I should have personally liked that before handing over the administration of the States to the Provincial Government, as is contemplated in the Bill, the Government of India should have instituted an enquiry into the present administration of the States and should have ascertained that nothing is done against the interests of any section of the people of the States.

Sir, in the amending Bill, a provision has been made to consult the Provincial Government for the purpose of passing orders by the Governor-General making the States parts of the province, but no provision has been made to

[Shri Yudhishtir Misra]

ascertain the views of the people. When the fate of the people of the States is going to be decided, it is meet and proper that the people of the States should also be consulted. If it is not possible for the Government of India to accept this suggestion, at least the popular organisations of these States should be consulted, before the orders are passed, about the manner in which the States will form a part of the province.

Now, Sir, I think that for the interim period, before the new Constitution is adopted and passed, the representatives from the States should be consulted on all the problems which are special to them and that the administration should be carried on according to the advice of those representatives.

Sir, if no constitutional guarantees can be given to the people of the States, as I have suggested, I submit, that before making the order under the proposed Section 290-A, the Governor-General should give some directions to the province to act according to the advice of the representatives of the States on certain special problems.

**Shri Ram Chandra Upadhyaya (Matsya Union):** \* [Mr. Vice-President, as a representative of the people of the State, I welcome this amending Bill. In particular I support the amendment now being proposed in Section 6. I believe that it would be in the interest of the people. I, therefore, desire to make some observations in order to refute the remarks made in this connection by Shri Yudhishtir Misra. I may state that in my opinion this amendment is very much in our interest, and that it would not pay us if we begin to give too much importance to our minor individual or group interests. Not many days ago the problem of the States was considered to be so difficult of solution that on the departure of the foreign rulers from this country the people of other lands seriously apprehended that India would be crushed out of existence under the heavy load of these States. It is a matter of deep congratulation, however, for the Government of India that it has felt the necessity of adding a new section, i.e., Section 290-A, to the Government of India Act. It shows what great progress we have been able to make during this period of one year. It is my belief that we would soon be able to settle even the few matters that remain. I may in this connection draw your attention to what I consider to be a special feature of this Act, and it is the following:—

“Where full and exclusive authority, jurisdiction, and powers for and in relation to the Government of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government the Governor-General may by order direct.”

I believe that the shortest path that the people of the States need follow for securing a complete and final solution of the problem of the states is to induce the Princes of their States to transfer all their powers to the Government of India. A number of States, as Sardar Patel has already informed us, have agreed to adopt this course, but there are also quite a number of States who have not agreed to do so. I think, that after what has happened in Hyderabad, no Prince would dare raise objections to the adoption of this course of action. I have, however, apprehensions about the attitude of the new class of rulers—the class consisting of Popular Leaders—that is now emerging in the Indian States. What we have read about Bhopal is a matter of regret to us today as it was even before. Many of the political workers and popular leaders of the Indian States believe that they would be able to maintain their leading position only if the small States are permitted to maintain their separate existence. But in my opinion it is a grave mistake on their

\* [ ] Translation of Hindustani speech.

part to entertain such a belief, and they are thus hampering the unification of India. It is a matter of great amazement that such people should hold the belief that a petty State like Bhopal can maintain its separate existence. Still more amazing is that traitors like Chaturarayan Malaviya should hold the idea that they can maintain their leadership through the separate existence of such a small State as Bhopal. I have also come across a similar statement about the leaders of Tehri Garhwa. But if we desire to make India great and glorious it is our duty to disabuse the minds of our political workers of such notions. It has already been made clear by Sardar Patel and it is also plain to all of us that the Princes can no more stand in the way of the progress of India. At such a time it would be a matter of deep regret if anyone of us put new obstacles in the path of India's progress. It is for this reason that I would like to emphasise again that it is our duty to define our objectives clearly and precisely.

Another feature of this section to which I would like to draw your attention is the provision for the transformation of some States into Chief Commissioners' Provinces. I think that this is also a correct course to follow. I believe that we shall have to merge the States to form Chief Commissioners' or Governors' Provinces before we can merge them with the Indian Union. There are some people who claim that popular opinion should be ascertained before the adoption of this course. But, in my opinion, if this was to be done the progress of the country would be considerably delayed. I am afraid that plebiscite or referendum for this purpose would not be very useful, because the people of the States are so backward at the present time that they would not be able correctly to appreciate the issues involved and would not consequently favour the right course of action. India is taking big strides in the direction of progress. But her march towards progress would be retarded if we the people of the States, begin to hold a referendum. I, therefore, urge that we should not insist on these claims. In my opinion it would be quite sufficient if the views of the Congress Party in each State are ascertained and acted upon in the matter of the merger of the States with one another. Any attempt to consult a wider section of opinion is likely to create serious complications.

Shri Yudhishtir Misra has remarked that in view of the unsatisfactory way in which the administrations of many of the States are working now-a-days one begins to entertain the opinion that the people were much better off before than what they are or would be when the proposals now being made for their welfare have been carried out. It cannot be doubted that previously when there were small States the people had some conveniences arising from the fact that the High Courts and the administrative headquarters were, on account of their proximity to the people, easily accessible to them. They could run to them and speedily secure the redress of their grievances. But this facility would no more be available to the people on the merger of a State with a big province. People, no doubt, attach quite a great importance to this facility. But it appears to me that we should not give any importance to our petty gains or losses of this kind in order that India, our country may prosper and progress.

We should rather think of the advantages we would have six months hence. It is only in our taking a long and not a short view of our interests that the good of India lies.]

**Mr. Vice-President:** You are not obeying the Bell.

**Shri Ram Chandra Upadhyaya:** \* [It is quite possible that we may have difficulties for some time as a result of the merger of a State with any province.

For instance, if Dholpur or Bharatpur merge with the United Provinces, their people will have to travel a great distance in order to reach Lucknow or Allahabad. But we should remember that the other people of that province have also to travel great distances for the same purpose. I, therefore, submit that, ignoring these minor inconveniences, we should concentrate our attention

[Shri Ram Chandra Upadhyaya]  
 only on the ways and means which would enable us to make our future glorious and bright and which would prove the most fruitful for us. I believe, in view of the above considerations, that Section 6, in the form it is drafted, is quite appropriate. We should, ignoring for the time being our petty difficulties, adopt it without any amendment.]

**Shri B. H. Khardekar** (Kolhapur): Mr. Vice-President, Sir, I welcome this Bill. Actually it was overdue. This Bill will put an end to the anomalous position that has been created in the case of certain merged States. Of course, there are a few defects in the Bill. I will point them out later on.

First, Sir, I will make a few general observations and then discuss particulars. You know, Sir: the Englishmen left India.....

**Mr. Vice-President:** I suggest that the honourable Member refer to these clauses merely and that he could take part in the general discussion on the several clauses, especially clause 6 which is concerned directly with the States. In that way, we shall save the time of the House.

**Shri B. H. Khardekar:** Yes, Sir. I come to particulars. Sir, it is, now about eleven months since some of the States have merged; and because there was no such enactment, they could not be absorbed into the provinces. This Bill rights the wrong which has been there for a long time. In a short time, I will describe the nature of the wrong that was there. For these ten or eleven months, in most of the States, there has been what might be called the Administrator's autocratic rule. The disadvantages, some of them, of the provincial Governments crept in whereas the advantages could not be had. I shall give one notable instance, that of education. Particularly in one State, as also perhaps in several others, education in the last regime was entirely free, right from the primary up to M.A., and M.Sc. After the merger, fees have been imposed. As against that, the teachers' salaries have unfortunately remained the same. Let me in a minute or two describe the nature of the Administrator's rule in general. These Administrators, most of them in all the important places, have been members of the old I.C.S. In our school we interpreted the I.C.S. as one who is neither Indian, nor civil nor a servant. Today, of course, he is mostly Indian, but the other description fits him. In most of the States, political life of whatever nature it was came to an end suddenly. In place of the old autocrat,—the old autocratic Rulers had ceased to be autocratic because some sort of constitutional rule was introduced—this new official autocrat came in. Sir, I will describe briefly the **state of affairs in one State.** Section 144 of the Criminal Procedure Code prevails permanently and there also partiality was to be found and a certain group allowed certain facilities. There have been arrests, detentions, detentions without limit, for eight or nine months. That is why, Sir, most of the members here, who love personal liberty were very anxious that the expression 'without due process of law' should be included in article 15. A number of papers which even indirectly criticised or attempted to criticise the Administrator have been banned. The language of the civil servant is anything but civil. He uses such expressions as, "I will shoot you; I will imprison you; I will extern you, your family and your children". Such uncivilised bullies, unfortunately, bring discredit to the Government they represent. A certain high official was not only dismissed without powers, but he was actually served with a notice of externment. The position of that high official is very very high indeed. He is a former minister of a provincial Government; he was a member of the Constituent Assembly and so on and so forth. If I am to use parliamentary language and yet use the strongest expression, I would say, Sir, that this regime is the opposite of heaven. I would request the States Ministry to enquire into the conduct of such officials. I know that such officials, in some cases, came in, had to come in, as a result of certain

"*pagal*" ministries; but representatives of Government should not try to surpass the "*pagal*" ministry itself.

A defect in this particular Bill is that the provinces are to be consulted as regards the absorption of certain States; but the people of the States are not to be consulted. Self-determination is the very essence of democracy. If you are going to deprive the people of choosing their own province or Chief Commissioner's province, you are really denying democracy itself. And that is why I would, when the time comes, support Pandit Thakur Dass's amendment. Now, Sir, I have a few words to say about the policy the Government of India have followed as regards merger. To Sardar Patel the Nation owes a great debt of gratitude for having made the map of India better, clearer and cleaner; but there has been certain misunderstanding as also certain defects in the policy of merger. The declared policy of the Government of India is that a State should merge only when the Ruler and the people so desire. First, I have my theoretical objection to this policy because we have declared the people to be the sovereign. Now suppose there is an obstinate Ruler who does not want to give away his rights as a Ruler and the people desire merger—as in most cases it might be so—what are we going to do? Then by some underhand methods we may have to persuade him. That is not proper. Then the other position is, most of the Rulers have suddenly become very patriotic and because they look more to their monetary, financial interests they have decided to be loyal to the Indian Union; these persons who were enemies of the country and the people formerly, persons to whom the name of Gandhiji was something that infuriated them, persons for whom the very sight of Gandhi cap gave severe headache, such persons have become patriotic all of a sudden and have agreed to merge. I am not grudging this epithet which has been used by Sardar Patel to these people. After all in conducting State administration, some statesmanship is necessary and where a goat is to be sacrificed, it must be fed previously; so, where the States are to be wiped out, they may be fattened for a time. In this case what of the people? I want a very clear declaration on the point. Ultimately all States must go. I do not want relics of barbarism and feudalism to remain anywhere in this country. But the process of merger should be such that when the States are swallowed, no bitterness is left in the mouth and the merger should be for the happiness and for the good of all. So my recipe or my humble suggestion to Sardar Patel in this important matter—I know he is a very great man and he is a very practical politician—but as a youngster looking up to an elder with deep reverence and respect, I wish to throw a few humble suggestions. Sir, for the States—viable States which have not yet merged, a date should be fixed for the plebiscite. The people must be consulted; that is what I think; and three months previously the Ruler of the State concerned should be humbly advised to leave the State and go to some foreign country—Europe or America; let him enjoy himself. Then after a short time Sardar Patel should pay a flying visit to the State, discuss matters in a friendly manner with the leaders of public opinion. That would be half the battle won. India, I think, has got a magic weapon in the moral and spiritual armoury of the country and that magic weapon or mantra is Pandit Nehru. Just before the plebiscite Pandit Nehru should be persuaded to pay a flying visit and deliver a short lecture. I dare say there is not a single Indian heart that can possibly resist Pandit Nehru; by such means, by proper means—after all those of us who believe in Gandhism, we should not only have laudable and proper ends but our means also must be proper. So even when we are trying to do away with relics of feudalism, let our means be worthy of the Father of the Nation.

**Shri Rohini Kumar Chaudhari** (Assam: General): Mr. Vice-President, Sir, in my opinion the question which is to be considered by the House is not

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so much the merits of the provisions of this Bill, but the question is one of principle as to how far will you allow the Dominion Government to interfere in the provincial affairs. I quite admit, Sir, that in cases of emergency, it is expedient and not only expedient but desirable that the Dominion Government should have the right of interference and we have to consider how far these provisions of this Bill have kept within its limits, reasonable limits of interference or whether at any time the powers which have been sought to be exercised by virtue of this Bill are liable to be abused and cause discontent in the administration of provinces. Sir, there have been a number of amendments to this Bill before us. I can safely predict that most of these amendments will not be moved and much less carried, excepting perhaps in the case of my honourable Friend the Premier of U. P. whose weight, I believe, will enable him to carry some of his amendments. I find a curious coincidence so far as the amendments to this Bill are concerned. I find most of the clauses are not wanted by some member or the other. For instance, clause 1 is not wanted and there is an amendment for deletion of this clause by no less a person than my Friends Mr. Krishnamachari and Mr. Bharathi. Deletion of clause 2 is wanted by the Honourable Pandit Pant and deletion of clause 3 is wanted by my honourable Friends Mr. Chaliha and Mr. Lakshminarayan Sahu. Deletion of clause 4 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of clause 5 is wanted by the honourable Pandit Kunzru. Deletion of clause 6 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of sub-clauses (b) and (c) of clause 7 is wanted by Mr. T. T. Krishnamachari. Therefore, Sir, if you are going to allow all these movers of amendments to have their way, very little will be left of the Bill itself. (*Laughter*). It seems to me, Sir, that the only clause which is wanted by the Members of this House is sub-clause (a) of clause .....

**Mr. Vice-President:** How do you infer that all the Members will want to have even that?

**Shri Rohini Kumar Chaudhari:** I find all the other clauses are not wanted by one Member or the other and so .....

**Mr. Vice-President:** Then all that you can logically infer is that ten persons do not want seven clauses. As I was taught in my school days, this is what one would call the dangerous inductive leap.

**Shri Rohini Kumar Chaudhari:** That is quite correct, Sir. This is a Bill of seven clauses, six of which are not wanted by some one or the other and so the only clause which the House unanimously desires to consider is sub-clause (a) of clause 7, in respect of which there has been no amendment for deletion.

**Shri T. T. Krishnamachari (Madras: General):** Not correct.

**Shri Rohini Kumar Chaudhari:** And therefore, Sir, ...

**Mr. Vice-President:** An honourable Member says that even that statement is not correct.

**Shri Rohini Kumar Chaudhari:** May be so, but in any case that is the most important provision of this Bill, and I would warmly support the proposal of the provision contained in this Bill to the effect that the development of industries should be left, in deserving cases, in the hands of the Dominion Government. I have watched with close interest the process of development of industries in the various provinces, and I have to say it with regret that if this matter had been left entirely in the hands of the Dominion Government, we could have seen greater development of our industries even within the

short time in which the National Government has been functioning. Therefore, I have not the least hesitation to support that clause, I mean that portion of the clause, where development of industries has been sought to be taken entirely by the Government of India. But I do not agree to the latter portion of this clause, namely, that trade and commerce within a province, and production and supply of goods, should at any time be left entirely under the control of the Government of India. I am of the opinion that as far as the production and supply of particular commodities are concerned, no restrictions should be imposed upon their supply to a province, if they do not want it, or if they would like to have it substituted by some other article. It may seem as if I am anticipating matters, but all the same, I humbly submit that the proposal which has been mentioned in the amendment proposed to be moved by my honourable Friend Pandit Pant should receive the support of the entire House, and the Provinces should be left free to exercise their own discretion in the matter of trade and commerce in a province in which the industry exists.

With these words, I wish to close my remarks.

**Mr. Vice-President:** Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. Vice-President, Sir, I am in general agreement with the principles of the Bill, except as to a single point, and that is in regard to a portion of clause 6.

**Mr. Vice-President:** If that is so, may I appeal to you not to take more than five minutes?

**Mr. Naziruddin Ahmad:** Sir, five minutes will be more than amply sufficient for me.

Sir, with regard to this clause, all that I object to is as to the provision for incorporating certain acceding States as part of a Governor's Province, or of a Chief Commissioner's Province. Sir, it is not on political considerations that I raise this point, but purely on legal considerations. It should be noted that the Honourable Mover of the Bill when he introduced it, he was simple Sardar Patel, but today I am happy to feel that he is already a Doctor of Law, a degree which he richly deserves, and I believe the legal considerations which I shall submit before him will receive his personal consideration.

Some of the States have acceded and have transferred their right of management or 'administration' of these States to the Dominion Government to be 'administered' in any manner they please, and through any agency they please. My point is, and I shall develop it later on at the appropriate stage, that this concession on the part of the Rulers of those States, to allow the administration of the States, does not include the power to convert these States into so many Provinces and incorporate them as parts of a Province so as to absolutely lose their identity or their integrity. That is a kind of power which has not been given by the agreement.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): It is only "as if" such area formed part of.....".

**Mr. Naziruddin Ahmad:** I have noted the words "as if". But even then, it assumes powers which, as I shall submit later on, cannot be justified by constitutional considerations.

Sir, these States were absolutely free when the British left. The only relation between these States and India would be dependent upon an agreement or the Instrument of Accession or Supplementary Instrument of Accession. There has already been an Instrument of Accession and later on, a fresh agreement delivering the right of management of these States to the Government of India. But in conceding power of administration of these

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States, the power to incorporate them into a Province and to put them together in a manner which will make it impossible for anyone to separate them later on, I submit, has not been given and would be beyond the scope of the agreement. The whole situation, as I shall submit later on, is a question of construction of the second agreement.

Sir, at this stage, I do not desire to take up the time of the House and elaborate the point. With these few words, I support the general principles of the Bill all through, except that portion of it to which I have referred.

**Maulana Hasrat Mohani** (United Provinces: Muslim): Sir, I think that if my honourable Friend, Sardar Patel, is determined to put the cart before the horse and you are determined to support him in this view, I am afraid there is no occasion to discuss this Bill now, considering the Objectives Resolution of this Assembly which definitely stated—

“This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign Republic . . . .”

Sir, I submit that the whole of the Government of India Act of 1935 is based upon a foolish theory of the dominion-hood of India. Every word of that Act is based upon that theory, and if we have to carry out our determination and achieve the objects set out in the Objectives Resolution, I think there is no occasion, and it will be simply a waste of time and energy—to discuss this wretched thing, the Government of India Act, 1935. Where is the use of it? Of course, if we have got some secret understanding that you have resolved that in spite of your declaring yourselves a Republic, you will remain within the British Commonwealth, and if you are going to coin some new phrase as I said some time ago, if you say that you will be a republican dominion, as Holland is, proposing to do with Indonesia, and if that Republic will remain in the arms of the Commonwealth, we will be making fools of ourselves. If we accept this Bill, we may become a Republic, but ours will be a republican dominion. We will still be staying within the British Commonwealth. Sir, even if the word ‘British’ is dropped from the ‘British Commonwealth’, the position will be no better, because, if we remain in the Commonwealth it will mean that we will have to co-operate with the other nations thereof. Once we begin this, we will have to co-operate with the Western Bloc or the Western European nations. This will be something very bad. It will mean that we will have to co-operate with Holland and Belgium and with the rest of the Western Bloc which has been formed with the express purpose of opposing Soviet Russia. If a war breaks out in future between the Anglo-American Bloc and the other side, we will have to co-operate with the Western Bloc. It will mean that we say good-bye to our determination to remain neutral in any future world war. It will mean that we give up everything for which we have stood for. If we say at this stage that we are going to leave the British Commonwealth and if we say that we will become a republic, there will remain no link of the British Crown. If there is no link of the British Crown, then what will be the basis of our remaining within the British Commonwealth? People say it will be on the basis of common citizenship and that the first citizen will be the British King. Sir, to this I say that when we see the attitude of South Africa, New Zealand and Canada, it is absolutely futile to accept any common citizenship. Therefore I say that we will have nothing to do with any citizenship, common citizenship or first citizenship. We will have no longer anything to do with this tom-foolery. Therefore if we are determined to establish a Republic in India, by all means attempt to introduce it and reject the 1935 Act and everything connected with the dominion-hood of India. Everything else is futile and absolutely irregular. I say it is immoral to do any other thing at this stage.

Sir, I wanted to say this in the beginning when my Friend the Honourable Sardar Patel introduced this Bill. I wanted to oppose him in the beginning.

But unfortunately you, Sir, did not catch my meaning, ruled me out of order and put my opposition to the vote without giving me any chance to express myself. I take this chance of expressing myself. For the reasons given above, I request my honourable Friend Sardar Patel not to waste time and energy on such a wretched thing as the Government of India Act, 1935.

**Shri T. T. Krishnamachari:** Sir, I move that the question be now put.

**Mr. Vice-President:** I think we have devoted sufficient time to the general discussion. Altogether seven honourable Members belonging to different parts of India, including the States people who I understand are vitally concerned with the Bill, have spoken. I shall now put the question.

Does Sardar Patel wish to give any kind of reply?

The closure is, of course, accepted.

**The Honourable Sardar Vallabhbhai J. Patel:** Sir, there have been a few speeches on this measure, but all of them were restricted to the provisions which relate to the States. In other respects there has been no discussion at all, and I take it there will be hardly any time spent on those clauses.

Sir, so far as clause 6, which affects the States, is concerned, I find from the general tenor of the speeches that those who spoke supported, more or less in every way, the general principles of the Bill. Some of the criticisms were, to my mind, irrelevant in the sense that some of them questioned the manner in which the merger has taken place, and some related to the question of changes in the administration adversely affecting the area which has been merged. For instance, an honourable Member from Orissa who first spoke, while supporting the measure, complained about some changes that have been brought about by the merger in the area of the State administration. He pointed out that some of the facilities they were getting when the area was administered by the Ruler were not being given, after the merger, by the Orissa Government. It is quite possible and conceivable that a benevolent ruler might have spent some more money for the good of the people in that area and that the Orissa Government might not have found it possible to do so in that particular area in that particular form. I may say that the whole idea of merger, as conceived, is not to keep small bits of territories separately for the purpose of administration. When a merger has taken place it is possible that they may lose some smaller or minor advantages. But the whole idea is to look at it from a broader point of view and to have a better administration on the whole and to bring backward areas to the level of the provincial administration. Now, when you want a larger good to be obtained, it is quite conceivable that you may have to make smaller sacrifices. But when it is proposed to merge these areas, the smaller sacrifices should not be considered worthy of complaint. Otherwise merger would be impossible.

Now, the honourable Member from Alwar talked about Bhopal.

**Shri Biswanath Das** (Orissa: General): I am not rising to a point of order. On a point of information may I ask the Honourable Minister for States whether it is not a fact that the Government of Orissa have in this year's budget allotted fifty lakhs of rupees for the benefit of this very State over and above the income derived therefrom? May I know whether this information is correct?

**The Honourable Sardar Vallabhbhai J. Patel:** That is really supporting what I have already stated that they may make smaller sacrifices but get larger good. If the Orissa Government has provided large sums of money in their budget for these areas, there is nothing very surprising in it. Indeed they are expected to do so, and if the Orissa Government takes care that the interests of these small areas are looked after properly which I have no doubt they will do, this complaint which is based on an apprehension will soon disappear. Therefore the honourable Member who first spoke on this question will take note of the fact that the Orissa Government

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is anxious to give all facilities and perhaps more than they were getting when the administration worked as a smaller unit.

Now, referring to the question which was raised by the honourable Member from Alwar about Bhopal, I do not wish to say anything about questions which are not yet settled and which are under discussion as any discussion of the question may result in prejudicing such issues. But I have already assured all that if the people of any State want a merger or want to join the Union, there will hardly be any strong objection from any rulers because I do not conceive the possibility of the existence of smaller units against the wishes of the people. So, if the people of Bhopal want union or merger with any adjoining area, I have no doubt that the Ruler or the Nawab of Bhopal will not come in the way, because after all in this age no Ruler can safely defy the wishes of his people. That is really the idea of democracy; and when we are now beginning a democratic form of Government all over India, smaller units cannot stand if there is such a severe conflict between the Ruler and the ruled. The fault lies not with the Ruler but with the people themselves. You know that wherever ministries are formed even in the smaller units, ministries create a sort of vested interest and the ministers are not willing to merge and are stronger in their will to remain separate than the Ruler himself. So a general discussion about the question of merger of the States that remain now is not very advisable. It is better to work among the people of the States than to raise the question here, but you can trust us to do all that is possible to bring about uniformity all over India with the consent of the Rulers as well as the ruled. There will be no obstacle if all people consider the interests of the people concerned instead of their own personal short-sighted interests of office or vested interests.

Now the honourable Member from Kolhapur raised several controversial issues so far as the administration of Kolhapur is concerned. I do not think it would be wise to go into the administrative routine and the difficulties of that administration at this stage. Perhaps the House is aware of the Committee of Enquiry which was appointed by the Government of India to go into the administration of this State, presided over by a Judge of the High Court of Bombay. The Report of Justice Coyajee has already been published and I would request those honourable Members who come from the States and who are interested in this affair to read that report. It is a very sad state of things which has been described in that report. After the unfortunate incident of the murder of Mahatma Gandhi, a group of people took it into their heads to harass and molest people called Brahmins in that area, because a Brahmin young man was supposed to be responsible for that murder. A whole family bearing that name was burnt alive. Several houses of the Brahmins were burnt, property looted and tremendous persecution and torture was practised on a large scale. There was a popular Ministry at the time. There was no administrator at the time. Our friend from Kolhapur said that the administration of the administrator who was a Civil Servant was the opposite of heaven in parliamentary language. You ask those people who suffered during the days of persecution whether what he described as a popular government was really heaven or hell of the worst type. I do not think we would be justified in being proud of our democracy if popular administrations behave in this manner. It is a very sad thing. We appointed an administrator with the consent of the Prince. The Prince asked for an administrator. That report condemns the Ministers. I do not wish to proceed further in the matter. What he says is that a time should be fixed by which a plebiscite can be taken of the people of Kolhapur for the merger. Evidently from his speech I gather that he is against merger. Well, we are not forcing merger on the people of any area or any State if the people do not want merger. If the people stand for merger at one time and at another time for keeping the State separate, if they want

merger if there is no ministry and are against merger if they are in the ministry, it is not easy to take a plebiscite, there is a danger of terrorising people and practising criminal acts of violence on a very large scale. I can assure the House that no State has been merged against the wishes of the people and there have been no complaints in the case of any merger up till now. In future also there will be no complaints from any quarter except those who stand out against the general wishes of the people of that area for personal reasons. Whatever we have done up till now has been done with the will and the free will of the Princes as well as of the people of that area. I can say this also, that some of the Princes, smaller Princes, who first signed the merger agreement, long time afterwards on second thought complained, perhaps on some advice given to them by some lawyers, and wanted to question the merger agreement in court. I advised them not to waste money over lawyers and courts and that if they wanted to go back on the merger agreement, I would tear up the merger papers and allow them to go but that they should not return and come to me for safety or security. When I accepted their merger, it was at a time when I had to give them protection because the administration that they were carrying on in those areas was so unpleasant that the people in some cases took possession of the palaces. Therefore, the question of a merger now is not very important because most of the States have either formed unions or have merged and there are those that have remained out. There are Princes who, if they are convinced that it is in the interest of the country as a whole that they should make further sacrifices, will be prepared to do so. If there is any Prince who takes a recalcitrant attitude, then it will not be for me to do anything in the matter. It will be between him and the people to settle accounts.

Therefore, to the honourable Member who has come from Kolhapur, I give this warning: that I do believe that a large majority of the people of Kolhapur wants a merger, and if I can convince the Prince or the Ruler for a merger, then those who stand out against the merger will have no mercy later on. When the world is progressing rapidly, people who put obstacles will have to find out other venues than this.

We want to finish this process of removing these administrative ulcers in the country in small bits, on account of which we have so many difficulties. I appeal to all those who come from those areas to be more reasonable and more sensible and not to talk of what was being done in the past. Here my friend quotes examples of his administration of the education department in his time when there was no administration in Kolhapur. A little efficiency in education in his time is nothing when we see the miseries through which the people have had to pass recently. But after all, what is going to happen after the merger? As it is, it is going to be merged in the Bombay Province. At any rate Kolhapur will have to admit that merger with the province of Bombay is not going to bring about inferiority or inefficiency of administration.

Now there is our Friend, Mr. Naziruddin Ahmad, who is afraid of the administrative entity being destroyed or the State's entity being destroyed. I do not know whether his is a legal objection or just qualms of conscience. But I would say that with regard to the States that have merged, the Rulers and the people have voluntarily ceded all their administrative jurisdictions. Except for the privy purse and certain other rights about their prestige and position which have been secured to them, the rest has been ceded to us and there is no illegality involved in them. If he says that the people have not been consulted, I will ask him to point out one place where this is so. If people do not complain, it is because we have ascertained the wishes in the form in which wishes can be ascertained in this area. You will admit that there are no electoral rolls. There is nothing in that form to ascertain the wishes, except keeping your fingers on the pulse of the people and it is for this that there is no complaint from them.

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Now, there is our Friend, Mr. Rohini Kumar Chaudhari, who in his analysis of the amendments has negatived the whole Bill. I need not say anything about that. But he has referred to only one question—that of the Industrial Bill and he supports it. So it requires no answer.

I do not know whether I can say anything about Maulana Hasrat Mohani. Now that he finds that this House is not supporting him and is not exercising its own sovereignty which he claims, it will be against his conscience to sit in the House. He had better not take part in its proceedings which do not conform with his principles.

**Maulana Hasrat Mohani:** I will not allow you to have your way. I am here for that purpose.

**The Honourable Sardar Vallabhbhai J. Patel:** That is all I have to say. I am glad that the House has supported the Bill generally and we may now proceed to discuss the amendments.

**Mr. Vice-President:** The question is:

“That the Bill to amend the Government of India Act, 1935, be taken into consideration at once.”

The motion was adopted.

**Mr. Vice-President:** I find that there is an amendment, No. 4, in the name of Shri T. T. Krishnamachari and Shri L. Krishnaswami Bharathi and also that there are two amendments to this amendment.

**Shri T. T. Krishnamachari:** With your permission and the permission of the House I would like to move amendment No. 1 in the supplementary list instead of No. 4 in the original list. Sir, I move:

“That after clause 1, the following clause be inserted:

Interpretation—

“1A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.”

This is more or less a formal amendment in that it provides for the interpretation of this Act. The Act that is referred to here happens to be the Interpretation Act of 1889 of Great Britain. Originally as the Government of India Act stood, because it was enacted by the British Houses of Parliament, this Interpretation Act applied. But in the present setting this Act will not apply unless special mention is made in the body of the Bill to that effect. I therefore hope that the House will accept the amendment.

**Mr. Vice-President:** The next amendment is in the name of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad:** Sir, with your permission and the leave of the House, I would like to move my amendment in a modified form, which is consequential upon a change in the original motion. I desire to move an amendment to the motion put to the House by Shri T. T. Krishnamachari namely, that Clause 1-A be inserted in the form in which it appears in the supplementary list No. 1. I shall not move for the deletion of the whole clause but only the latter half. Sir, I move:

“That in amendment No. 1 in the supplementary List, in the proposed Clause 1-A, the words ‘as it applies for the interpretation of an Act of Parliament’ be deleted.”

In deleting these words I fully support the principle that the Interpretation Act of 1889 should apply to the interpretation of this Act. In fact this amendment really removes an anomaly. To all parliamentary Acts the Interpretation

Act of 1889 applies and therefore it applies to the Government of India Act also. But the present Bill says nothing to indicate in the Bill as to what Interpretation Act would apply,—the British Act or the Indian General Clauses Act. It is doubtful if the latter Act applies to the Bill. This amendment really removes this doubt. The words which I desire to delete are merely arguments in support of the operative part of the clause. The clause with the amendment would read:

"1-A. The Interpretation Act, 1889, applies for the interpretation of this Act."

I submit that this is quite enough. The last part "as it applies for the interpretation of an Act of Parliament" merely supplies an argument or a descriptive clause. As no argument or descriptive clause of this nature is permissible in a legislative enactment these words should be deleted, not that the argument or the explanation is invalid,—the argument or the explanation is quite proper—but this should be removed from the effective part of the clause. I hope that the House would consider this point.

**The Honourable Shri B. G. Kher** (Bombay: General): Sir, the honourable Mover of the amendment has not given the reason in his amendment but has indicated the manner in which the Interpretation Act applies. "As" means "in the same manner as". The honourable Member, Mr. Naziruddin Ahmad has understood the word "as" in the sense of "because", as if the mover of the original motion had intended to give an argument.

**Mr. Vice-President:** The question is:

"That after clause 1, the following clause be inserted:

"1-A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament."

The motion was adopted.

**Mr. Vice-President:** Since the House has adopted the first amendment it means that the House negatives the second one in the name of Mr. Naziruddin Ahmad. I shall now put clause 1-A to the House:

The question is:

"That clause 1-A stand part of the Bill."

The motion was adopted.

Clause 1-A was added to the Bill.

**The Honourable Dr. Syama Prasad Mukerjee** (West Bengal: General): Sir, I beg to move:—

"That for clause 2, the following be substituted:

"2. Amendment of section 3 of the Government of India Act, 1935—

In section 3 of the said Act,—

(a) in clause (i) of the proviso to sub-section (1), after the words 'in this Act' the words 'or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are—

- (a) industrial and labour disputes;
- (b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;
- (c) the sanctioning of cinematographic films for exhibition; and
- (d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List."

[The Honourable Dr. Syama Prasad Mukerjee]

Sir, when clause 2 was inserted as drafted, the idea of the Government was that in respect of the entire Concurrent List it should be open to the Dominion Legislature to pass laws for the purpose of exercising executive function. At present so far as the Concurrent List is concerned the Dominion Legislature may pass laws which will supersede any laws passed by the provinces; but so far as executive authority goes, it can be discharged only by the provincial governments. In the new constitution, under article 60 which has already been adopted, it has been laid down that even with regard to the Concurrent List it will be open to the Dominion Parliament to pass laws for the purpose of exercising executive action. The question arose whether any such powers should be taken over by the Dominion Parliament during the interim period. At present under the Government of India Act, the Dominion Parliament and the Dominion Government can exercise authority in respect of matters which normally fall in the Concurrent List in three ways. We have the Essential Supplies Commodities Act which relates to certain specific commodities such as foodstuffs and certain other commodities in respect of which the Dominion Parliament and the Dominion Government have complete legislative and executive powers. This power will lapse in 1951. Secondly, we have a provision which lays down that development of industries which, in the opinion of the Dominion Parliament, is of all-India importance, can be taken up by the Dominion Parliament. But that relates only to the development of any industry which may be so described by the Dominion Parliament. It has been felt that in respect of industrial development it is not sufficient that the Dominion Parliament or the Dominion Government should have power only for the purpose of developing industries which are deemed to be of an all-India importance. Development has been interpreted to exclude regulation and control of such industries and also trade and commerce in such industries, control of production and distribution of the products of such industries. For that purpose it was first thought expedient that wide powers might be taken by the Dominion Parliament even during the interim period by a suitable amendment of the Government of India Act. Apart from industrial development there were certain other matters like statistics, censoring of films and also industrial disputes, in respect of which it was thought desirable that the Central Government should take adequate powers.

So far as industrial and labour disputes are concerned, as has been explained by Sardar Patel, this is a Provincial subject, but it has been felt desirable that there should be some uniformity of legislation followed by necessary executive action with regard to the industrial tribunals which may be constituted under Provincial laws for the purpose of settling disputes. After consultation with the Provincial Governments and some of the Provincial Premiers, and representatives of Provincial Governments who were present in Delhi, it has been deemed desirable that during the interim period completely wide powers need not be taken over by the Government of India, but a suitable amendment may be made only in respect of those particular items which are now of an urgent character and which require an immediate solution. For this purpose, you will find from Amendment No. 9 that we have referred to industrial and labour disputes, trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest; the sanctioning of cinematographic films for exhibition; and inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List. This will mean a consequential change in clause 7, as originally provided in the Bill. The latter portion of clause (a) will be omitted and put in the Concurrent List. The result will be that so far as legislative powers are concerned, the Dominion Parliament will have ample

powers to pass laws wherever necessary and such laws will supersede provincial laws, if any; so far as the executive authority is concerned in respect of these matters, it will also be open to the Dominion Parliament to pass laws and take over responsibility for executive administration, in case such a step is considered to be desirable or necessary. Sir, it is not intended that the Provincial Governments should not be utilised for purposes of co-ordinating the policy of the Central Government even in respect of those matters where central regulation and control are necessary in the interests of the whole country. Obviously in normal circumstances, the executive machinery, which will be utilised, will be the Provincial Governments themselves. But if an occasion arises when it is necessary for the Central Government to exercise executive authority in respect of matters, which are considered to be of an all-India importance, power to do so has to be taken over by the Government of India and the Dominion Parliament. A question has arisen whether this power should be exercised by the Dominion Legislature without consultation with the Provincial Governments. Hitherto whenever the Central Government or the Dominion Legislature had an occasion to take steps for introducing legislation for development of industries, previous consultations did take place with the Provincial Governments. I believe on a suitable occasion when the matter comes up a little while later, Sardar Patel will give an assurance on behalf of the Government that during the interim period before the new Constitution comes into force, if it is necessary for the Central Government to move in accordance with the powers which are now proposed to be taken under Amendment No. 9, previous consultation with Provincial Governments will always be held and the results of such consultation will be placed before the Legislature for information.

With these words, Sir, I move that the amendment be accepted.

**Mr. Vice-President:** There are four amendments to this amendment, which I shall call out one after another. The first is by Mr. Naziruddin Ahmad, No. 3 in the list.

**Mr. Naziruddin Ahmad:** It is only a formal amendment and therefore, I am not moving it.

**Shri T. T. Krishnamachari:** Mr. Vice-President, Sir, I move:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the original list of amendments, for the words 'said Act' the words, figure and brackets 'Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

This is a formal amendment, which makes the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee complete. I hope the House will accept it.

**Pandit Hirday Nath Kunzru (United Provinces: General):** Sir, it is unnecessary for me to move my amendment in view of the amendment moved by Dr. Syama Prasad Mukerjee.

**Mr. Vice-President:** Clause 2 is now open for general discussion. Pandit Kunzru will kindly come to the mike.

**Pandit Hirday Nath Kunzru:** Mr. Vice-President, the Statement of Objects and Reasons appended to the Bill before us asks for more executive power for the Government of India in the interest of the establishment of uniform principles with regard to the review of awards made by the Provincial and Central industrial tribunals. Sardar Patel, in asking that the Bill be taken into consideration also dwelt on this matter only. I think, therefore, that I am justified in concluding that this is the only reason for which Sardar Patel is asking that the Dominion Legislature should have power to confer

[Pandit Hirday Nath Kunzru]

executive functions on Central officials in connection with laws relating to the concurrent field.

It is obvious, Sir, when one reads the amendment proposed in the Bill that it goes far beyond the needs of the case. The question that is being discussed now was raised by me in connection with article 60 of the Draft Constitution which was discussed the other day. My honourable Friend Dr. Ambedkar was unable to accept my point of view and in the course of an excellent speech gave what he thought were convincing reasons against the acceptance of my amendment. This Bill only seeks to bring the Government of India Act in line with the Draft Constitution. I should have thought therefore that the matter had been finally decided by the Constituent Assembly and that it would not come up for consideration again. It seems now, however, that the House is prepared to accept the point of view, that I fruitlessly urged the other day, in connection with the amendment of the Government of India Act, 1935. I do not know, Sir, whether the Provincial Governments will be able to enjoy the freedom that they seek to have only till the Draft Constitution comes into force or whether the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee means that the House is prepared to revise its opinion in connection with article 60 of the Draft Constitution. For my part, Sir, I welcome the amendment moved by Dr. Mukerjee.

Sir, Dr. Ambedkar said the other day in the course of his speech to which I have referred that it was necessary that the Dominion legislature should be in a position to pass laws extending the executive power of the Dominion officials to matters relating to the concurrent field. To explain what he meant he referred to any legislation that the Centre might pass in regard to untouchability and the failure of the provincial Governments to give effect to the Child Marriage Restraint Act. It is undoubtedly desirable that when the Central Legislature passes a measure it should be loyally given effect to by all the provinces. But, it is quite possible that in some provinces there may be little sympathy with a measure that has found favour with the Central Legislature. My honourable Friend Dr. Ambedkar said that in such a case it was eminently desirable that the Central Legislature should be able to authorise the Central officials to see that the law passed by it was properly executed.

**Shri T. T. Krishnamachari:** Not always.

**Pandit Hirday Nath Kunzru:** I have referred only to the two illustrations given by Dr. Ambedkar and I do not think that I have so far unfairly summarised his arguments.

Sir, I think that if the Central Government went so far as to appoint officials of its own to give effect to anti-untouchability laws or the Child Marriage Restraint Act, it would find itself in a serious predicament. The magnitude of the task would, I think, be beyond its powers and the consequences of its coming into conflict with provincial Governments would be so unwelcome that I am certain that any power that the Dominion legislature may have to authorise the Dominion officials to execute certain laws relating to the concurrent field is not likely to be exercised in practice. My honourable Friend Dr. Ambedkar referred to the case of Australia in respect of which I had made an erroneous statement. I accept Dr. Ambedkar's correction. But although the Commonwealth Government in Australia can ask its own officers to execute laws passed by it even in the concurrent field, Australia is, in respect of population, a very small country. I am not aware that in practice, in matters of any importance, it has actually asked the Commonwealth officials to execute laws that it should be the proper responsibility of the States

Governments to enforce. In a country like India, Sir, though the Union legislature may be authorised to confer executive functions as respects laws relating to the concurrent field on Dominion officials, the size and population of the country would render it virtually impossible to put such a law into practice. I think, therefore, that the amendment moved by Dr. Syama Prasad Mukerjee is timely. It reminds the House that it is going too far in its desire to have a strong Centre. We all desire a strong Centre. We do not want that the Central authority should be unable to enforce obedience to its laws in vital matters. The unity and integrity of India depend on the authority and prestige of the Central Government. But there is a limit that must be set to the powers of the Union Legislature and the Union Government. We should not in pursuance of a theory make ourselves responsible for a policy that might lead to serious consequences. It seems to me that the amendment moved by Dr. Syama Prasad Mukerjee is going to be accepted by the House, but I hope that its acceptance will lead to a reconsideration of the decision the House has already arrived at in connection with article 60 of the Draft Constitution.

**Shri B. Das** (Orissa: General): Sir, I was all along unhappy since this Bill was circulated, that this Bill should try to incorporate absolute executive powers which the British Government took in its hands since 1939 in one shape or other. Consequently, Sir, I welcome the amendment which my friend Dr. Syama Prasad Mukerjee has moved whereby the executive power has been restricted. I am glad he has the support of Pandit Govind Ballabh Pant and that the amendment was jointly tabled by my honourable Friends Pandit Pant and Dr. S. P. Mukerjee. Sir, I think the House is very restive over any encroachment of democracy inside the Government as well as outside the Government. This is not the first occasion on which I have spoken of that reprehensible measure—Section 123-A of the Government of India Act, 1935, which the British House of Commons passed in 1939 and gave retrospective effect to it from 1937. Clause 2 wants to incorporate one of the original sub-paras. of Section 126-A. Clause 5 wants to incorporate another sub-section of that reprehensible measure passed in the House of Commons after the War in 1939.

Sir, democracy is under trial and it is particularly under trial in a new Sovereign State like India. The foreign rulers ruled India and looked at India through Section 126-A. I cannot understand how the legal advisers of the Government of India or even how the Constitutional Adviser of this august Assembly advised that in peace time Section 126-A in its various forms should be incorporated in the first Sovereign Bill that this Sovereign House is going to pass. It was a great surprise to me and it gave me great pain. Today I feel relieved that Dr. Mukerjee had voiced the differences which the Government of India has itself had and I wholeheartedly support the motion. I hope later on my friend Pandit Pant will move the other amendment to delete clause 5. I am happy this Sovereign House is functioning as a democratic legislature and not going to give its Government autocratic powers that are required in time of war and not in time of peace.

**The Honourable Pandit Govind Ballabh Pant** (United Provinces: General): Sir, I had given notice of a similar amendment. In fact my name is coupled with that of Dr. Syama Prasad Mukerjee with regard to the amendment which he moved a few minutes ago. I consider it necessary to make a few observations as my reasons for giving notice of the same and identical amendment may not be identical with his. So while welcoming and supporting this amendment, I should like to state why I have considered it necessary to do so.

Section 8 of the Government of India Act gave the Federal Centre the power to appoint its own executive organization only with regard to matters

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included in List I. Every Federal structure involves distribution of legislative and executive functions, powers and duties. The jurisdiction of each organ, so far as it may be possible, has to be earmarked and demarcated. We have under our Constitution now agreed to the fundamental basis of a Federal structure. In 1935 too, when that Act was passed, a Federation consisting of provinces and States was envisaged. The powers of the Federation were defined and also those of the provinces or the States that were to form its component parts. As honourable Members are doubtless aware, three lists were prepared. List I dealt with Central subjects with regard to which the Centre had the power to legislate and to have its own agency and machinery for their execution. List II contained provincial subjects and provinces alone had the authority to pass the laws and to appoint suitable agency for their administration. Besides these two, there was a Concurrent List and it is with reference to that List that this amendment has been proposed. Now the Concurrent List was essentially concerned with provincial subjects, i.e., subjects which were considered to be appropriate for purposes of legislation as well as execution of these laws by the provinces themselves. But some exception was made in order to secure uniformity in the matter of legislation where such uniformity might be considered desirable. Under the scheme of that Act—and our Constitution is modelled on that Act for the most part,—the Centre has no executive authority with regard to Concurrent subjects. It could issue directives to provinces but it could not appoint its own agents in order to execute the laws that came within the purview of List III. That is why this amendment has been moved. Thus under the scheme of the 1935 Act so far as List III was concerned, the Centre had an overriding legislative authority but it had no executive authority beyond this that it could issue directives.

Now, the original clause of this Bill made a very wide provision. It intended to give power to the Centre to appoint its own agency for the execution of any or all of the subjects mentioned in the Concurrent List. That is hardly possible and altogether improbable, because it is not conceivable that the Centre could administer all the subjects that are included in the Concurrent List, in all the Provinces of India. That is beyond the capacity of even the most resourceful and powerful Centre. It would have led to a great deal of confusion, if we had two parallel agencies and machineries in the provinces to deal with matters that came within the purview of the Concurrent List. The Concurrent List includes criminal law, it includes civil law, it includes arbitration. It includes also miscellaneous subjects such as boilers, engines and so on and so forth. Now, if we had parallel agencies appointed on the one hand by the Provinces and on the other by the Centre, for the execution of laws relating to these matters, then there would be confusion and chaos and no government would be able to function with efficiency. That is why under the original scheme of the 1935 Act, the duty of carrying out the laws relating to the subjects included in the Concurrent List was imposed exclusively on the provinces, because thus alone could orderly administration of those subjects be ensured. I personally feel and think, that that was a prudent arrangement. That was desirable. But all the same, the art of government is a practical one and adjustments have to be made from time to time; only whatever we do must conduce to greater efficiency, to greater economy, to greater public good and greater convenience. All these should be taken into account. So I would not altogether exclude the possibility of sometimes arrangements being made by the Centre for administering the subjects which at present might be included in the Concurrent List. So, so far as the general principle is concerned, I believe, the present Government of India accepts that concurrent subjects should ordinarily be administered by the Provinces. It is also, I think, accepted that no change should be made in the

present system of administration except with the consent and, if I may say so, the concurrence of the provinces. We on our part, are ever ready to place ourselves at the disposal of the Centre. In fact there is no occasion for any conflict now; and howsoever much one may feel that another course might perhaps be preferable, if the Centre takes a decision, one does not only reconcile oneself to it, but I for one would think that that is the only right decision, and I am, perhaps, in the wrong. That may be the case, even with respect to this particular clause. But now when we made the analysis of the provisions of this clause, we found that the reasons given for it in the Statement of Objects and Reasons only suggested the appointment of judges of appellate industrial courts in order to settle labour and industrial disputes. Honourable Members might have seen the amendments that I notified previously on the basis of that Statement of Objects and Reasons. I had suggested that in the circumstances, you might make a change in the lists, so as to meet the exigencies of the present situation. When I discussed the matter with the Honourable Home Minister, and the Honourable Minister for Industries and the Honourable Minister for Labour, we found that besides this one matter, there were two or three others also with regard to which they thought that it would be desirable to make some provision, although they had not been mentioned in the Statement of Objects and Reasons. So this amendment was recast. On the one hand, it upholds the principle that with regard to concurrent subjects, the executive authority would ordinarily vest in the provinces. On the other hand, it also accepts that there may be occasions when it may be necessary to make a departure, and it may be necessary for the Centre to step in and even to appoint its own agency and machinery. I do not yet know whether the Centre will actually do so. If I may submit with great humility, there are two sides to the shield, and some times, the Centre sees one and the provinces perhaps see the other. So one may look at one side of the shield and not attach any importance to the other side. But the advantages of one side may be more than out-balanced by the disadvantages of the other. So, unless we take a balanced view of the whole thing, it is difficult to say that the net advantage lies in any particular course that might suggest itself to any Honourable Minister who may be in charge of a particular subject. I do not suggest that in the case of the particular subjects that are mentioned in these amendments there may be such difficulties. But I do think that the basic principle should be adhered to. Otherwise it will lead to confusion. So the position with which some of us were confronted was this, that this Bill had contemplated an over-riding executive authority in the Centre with regard to concurrent subjects. Well, that as I said, seemed to me, to be against the basic principle of the Government of India as well as of the pivotal principle of a federal structure. So some way out had to be found. On the other hand there was the experience of the Honourable Ministers at the Centre who had found that their powers with regard to these particular subjects were not adequate enough to enable them to discharge their duties and obligations satisfactorily. So we hit upon this compromise, that with regard to these subjects, the powers should be conferred on the Centre. Now, that power does not by itself enable the Centre to appoint executive agents, but it gives them the option to bring such a measure in this House and if this House approves of it, then it will be open to them to appoint their own agents. I believe that it will still be simpler and easier if they were to appoint the Provincial Governments themselves as their agents for administering these subjects. We are there in the provinces to carry out their wishes which to us are no less than behests. Whatever communications we get from the Centre, we try our best to give effect to the directions and even to the hints contained in them and it will be our privilege to do so even in future. I hope, however, that things will be arranged in such a manner that there will be no occasion for any confusion. What I am afraid of is confusion in the matter of administration. In the field of administration

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there should be no overlapping so far as it can be avoided. The ambit of provincial autonomy has been clearly defined. All the spheres of provincial administration, whether legislative, executive or judicial, should remain un-tampered with, so that responsibility may be imposed on the provinces and their sense of responsibility may not be impaired. On the other hand, after all, as I said we have to be guided by practical considerations and no theories can be allowed to override the demands of the actual hard realities of the day.

So, while supporting this amendment, I express the hope that there will be no desire to impose any fresh executive on the provinces and that the utmost use will be made of the provinces even in the execution of laws that may be framed with regard to these subjects.

**Mr. Vice-President:** Does Sardar Patel wish to offer any remarks?

**The Honourable Sardar Vallabhbhai J. Patel:** No, Sir. These are agreed proposals.

**Mr. Vice-President:** Then I shall put the question.

The question is:

"That clause 2 as amended by amendment No. 9 and further modified by Amendment No. 4 do form part of the Bill."

I am sorry I find I have to put amendment No. 4 to vote first.

The question is:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the list of amendments, for the words 'said Act' the words, figure and brackets 'Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That for clause 2, the following be substituted:

2. *Amendment of section 8 of the Government of India Act, 1935—*

In section 8 of the said Act,—

(a) in clause (i) of the proviso to sub-section (1), after the words 'in this Act' the words 'or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are—

(a) industrial and labour disputes;

(b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;

(c) the sanctioning of cinematographic films for exhibition; and

(d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List."

The amendment was adopted.

**Mr. Vice-President:** I shall now put clause 2, as amended, to the vote of the House.

The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

**Mr. Vice-President:** The House will now take up clause 3 for consideration.

Amendment No. 15 standing in the name of Shri Kuladhar Chaliha has the effect of a negative vote. It is therefore disallowed. The first alternative in amendment No. 16 standing in the name of Shri T. Prakasam also has the effect of a negative vote and is therefore disallowed. Shri Prakasam may move the second alternative in amendment No. 16. I understand that the mover does not want to move it. The next three amendments to this clause, Nos. 17, 18 and 19, I understand are also not moved.

I shall now put clause 3 to vote.

The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

**Mr. Vice-President:** The House will take up clause 4 for consideration.

Amendment No. 20 standing in the name of Rai Bahadur Lala Raj Kanwar is disallowed as having the effect of a negative vote.

The next two amendments, Nos. 21 and 22, I understand, are not being moved.

I shall now put clause 4 to the vote of the House.

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

**Mr. Vice-President:** Now we come to amendment No. 23 standing in the name of the Honourable Pandit Govind Ballabh Pant.

**The Honourable Pandit Govind Ballabh Pant:** Sir, I am just moving the amendment, but I will not take much time. I beg to move:

"That after clause 4, the following new clause be inserted:—

**4-A. Insertion of new section 108-A.**—Before section 109 in Chapter II of Part V of the said Act, the following section shall be inserted, namely:—

<p>108-A. No Bill or amendment providing for the exercise of the executive authority of the Dominion with respect to any of the matters specified in sub-section (1-A) of section 8 shall be introduced or moved in the Dominion Legislature except with the previous sanction of the Governor-General, and the Governor-General shall not give his sanction to the introduction of any such Bill or the moving of any such</p>	<p>amendment unless he is satisfied that the views of the Government of the Provinces and the Acceding States concerned have been ascertained."</p>
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amendment unless he is satisfied that the views of the Government of the Provinces and the Acceding States concerned have been ascertained."

Sir, I have only suggested in this amendment that before any Bill or any amendment is introduced in the House with regard to the matters mentioned in section 8 or in clause 2 which we have just passed, the provinces should be consulted, that there should be a certificate to that effect and that the papers relating to such correspondence should be placed on the table. I do not want to take the time of the House by any lengthy speech in support of this amendment. The substance of this amendment is, I believe, acceptable to the Honourable the Home Minister. So far as the form is concerned, I do not

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worry too much about it. So, if he will be pleased to accept in substance what this amendment proposes, I will be prepared to withdraw it in form. With these words I propose this amendment.

**Mr. Vice-President:** There is an amendment to this amendment.

**Shri T. T. Krishnamachari:** That is not being moved.

**The Honourable Sardar Vallabhbhai J. Patel:** I entirely agree with the Honourable Pandit Pant with regard to the substance of this amendment. I therefore give him an assurance that no Bill will be introduced in the Legislature at the Centre of the nature mentioned without giving a reasonable opportunity to the provinces for giving their opinion. Therefore it would be quite appropriate if he withdraws the amendment.

**The Honourable Pandit Govind Ballabh Pant:** With the leave of the House I withdraw the amendment.

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

**Mr. Vice-President:** Now we come to clause 5. Amendment No. 24 is that the clause be deleted and it is therefore disallowed. Amendment No. 28 standing in the name of Mr. Naziruddin Ahmad.

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

"That in clause 5, at the end of the proposed section 125-A, the following be added . . . . ."

**Shri T. T. Krishnamachari:** Mr. Vice-President, Sir, may I suggest that since the intention of the mover of the Bill is to ask for this clause to be withdrawn, this amendment is not necessary and need not be moved.

**The Honourable Sardar Vallabhbhai J. Patel:** We have accepted a change in clause 2 and so there is no point in keeping clause 5. I think it may be deleted.

**Mr. Vice-President:** The motion is:

"That clause 5 stand part of the Bill."

The motion was negatived.

**Mr. Vice-President:** Then we come to clause 6. Amendment No. 29 is disallowed as it has a negative effect.

**Mr. Vice-President:** Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad. If you have no objection, we shall take it that the amendment has been read. You can make your remarks upon it.

**Mr. Naziruddin Ahmad:** Sir, I move:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word 'or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted."

the words 'shall be administered', substituted.

*or, alternatively,*

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words 'shall be administered', the words "shall with their consent be administered" be substituted.

*or, alternatively,*

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with 'the Governor-General may by Order direct' to the end of clause (b) of the said sub-section, the following be substituted:—

'the Governor-General may by Order direct that the State or the group of States shall be administered in all respects as if the State or the group of States were—

(a) a Governor's or a Chief Commissioner's province, or

(b) with the consent of the State or States concerned, as part of a Governor's province."

I have to draw the attention of the House to clause 6 for the insertion of the proposed new section 290-A. With regard to clause (b) of sub-section (1) of Section 290-A, the part which I object to is that "the State or group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's province.....". The point which I would like to urge is that the States have entered into an agreement which is called the merger agreement. Under the terms of that agreement, this proposal to treat them as if they formed part of a Governor's or a Chief Commissioner's province would not be legal. Sir, I have to submit that if it is done, with the consent of the State or the States concerned, everything will be all right. So, the first part of my amendment is that the whole clause (b) be deleted. The next part of the amendment is in the alternative form that it may remain with the addition of the words "with the consent of the State or States concerned". The third alternative is the State is to be administered as an independent Governor's province or a Chief Commissioner's province or as a part of it only with their consent.

The reason which induced me to move these amendments is this: It appears that some States, compendiously described as Eastern States, entered into several agreements with the Central Government to the effect that the Ruler cedes to the Dominion Government "full and exclusive authority, jurisdiction and powers for the governance of the State and agrees to transfer the administration of the State to the Dominion Government" with effect from a certain date and the Dominion Government will be competent "to exercise such powers, authority and jurisdiction in such manner and through such agency as they may think fit". The effect of this agreement to my mind is that the State or the Ruler on behalf of the State in each case has ceded to the Government of India the management or the "administration" of the State. That power which has been ceded to the Government of India may be exercised directly or through an agency. What I object to is that this management or rather administration cannot be exercised so as to destroy or alter the identity or the integrity of the State. What has happened is that these States, a large number of them, have been, by virtue of these agreements, actually amalgamated with the Province of Orissa. That, I submit, absolutely destroys their identity. Orissa is a Governor's Province under the Government of India Act. So far as these small States are concerned, their Constitutions are rather obscure, but they are totally dissimilar to the constitution of the Province to which they are to be amalgamated. I submit that while entrusting the governance or rather the administration of the States to the Government of India to be carried on directly or through agency, no power has been given to convert these States into a part of a Governor's province. They could be managed fully and with full authority by the Province of Orissa but without in the least affecting their integrity or character and cannot be merged as part of Orissa. That is the point which I wish to submit before the House. (Interruption).

With regard to the interjection of my honourable Friend, Mr. Ananthasayanam Ayyangar, he has pointed out that it is not actually merging the State in the Governor's province but that is to be treated only "as if" it is part of a Governor's province. I fail to see any real or practical distinction or difference between the two, though there is some verbal difference. In fact, these States are to be treated just like the province, and in effect these States are to be completely merged, or rather sub-merged, in the province. The words "as if" do not at all relieve the situation. To emphasise them would be to shut our eyes to reality—they are, in fact, already actually a part of Orissa.

The House will be pleased to consider the well known legal position. In fact, when the British left, these States did attain some kind of independence or sovereignty. This was conceded by the Honourable Dr. Ambedkar during the debate on the consideration of the Draft Constitution. Some honourable Members had suggested that these States had no sovereignty, but on a proper

[Mr. Naziruddin Ahmad]

consideration, the Honourable Doctor, presumably on behalf of the Government of India and in full concurrence with the Government, cleared the position, namely, that they have some kind of sovereignty. Call it a modified kind of sovereignty or inferior kind of sovereignty, but some kind of sovereignty they enjoyed.

With regard to this, there is a section in the Government of India Act, as adapted, enabling these States to accede and it may be by different documents. The accession, however, is strictly limited to the terms of the accession. That is absolutely clear from the Government of India Act, Section 6, Sub-section (2). In fact, the powers ceded or subjects acceded to must be clearly specified. In these circumstances, the question really will depend upon the construction you put upon the documents. One is the instrument of accession and the second is dated the 14th or the 15th of December 1947. There were a number of similar documents executed by many Rulers of States on or about these dates. These two documents are crucial and their terms would be extremely important and the question will depend upon what powers and jurisdiction and authority have been really conceded to the Government of India—keeping in view only one point, namely, the power to merge the State in a Governor's province as part thereof. Whether this power has been clearly, specifically or by necessary implication really granted is the only point. In interpreting the second document, which is really material, namely, the document dated the 14th or 15th of December, I find there are certain difficulties and I wish frankly to state them before the House both for and against the interpretation which I am seeking to introduce. In the preamble to this document, there is the expression—

“Whereas in the immediate interest of the State and the people the ruler is desirous that the administration should be integrated as early as possible with the province of Orissa . . . . .”

In fact, the Preamble clearly states a desire that the States concerned should be integrated with the Province of Orissa.

**Mr. Vice-President:** Though I do really admit that I have very little knowledge of these matters, it does seem to me as though you are talking in a general way. You ought to talk about your own amendment. This is not general discussion. These things would have been more appropriate in the general discussion.

**Mr. Naziruddin Ahmad:** I bow to your ruling but this, as I am going to point-out, is directly concerned with the point.

**Mr. Vice-President:** I am afraid I do not agree with you. I must ask you to speak on the amendment.

**Mr. Naziruddin Ahmad:** These are the matters in the amendment. I am stating before the House the difficulty which lies against my contention. I must fairly state that also.

**Mr. Vice-President:** Quite so. You have your conviction, but the House has its opinion also, and probably the conviction of 299 members is much more important than the conviction of a single Member.

**Mr. Naziruddin Ahmad:** Of course so, but every Member has the right to speak.

**Mr. Vice-President:** You are not to argue but to follow my suggestion.

**Mr. Naziruddin Ahmad:** What is your suggestion?

**Mr. Vice-President:** That you speak on your amendment.

**Mr. Naziruddin Ahmad:** I submit, Sir, that I was speaking on my amendment.

**Mr. Vice-President:** Directly then, not in a round-about manner.

**Mr. Naziruddin Ahmad:** I am not round-about.

**Mr. Vice-President:** I am afraid you are arguing.

My opinion holds good here.

**Mr. Naziruddin Ahmad:** Of course, Sir. The difficulty is that the subject is a very intricate one. I submit that this desire for integration which is clearly against me appears only in the Preamble and not in the body of the agreement which is really the operative part, and it is a well known rule of interpretation that any wish or opinion or desire inserted in the Preamble is not effective and has no weight unless the same finds a place in the body of the document also. This rule is well established. I submit that in the body of article 1, which is really directly in point, it is said "full and exclusive authority and jurisdiction and powers" but only in relation to the governance or the administration of the State. The State only agrees for the above reasons that the administration should be transferred. There are two important points in this connection. One is that the agreement relates to the governance of the State and transfers the "administration". It does not transfer sovereignty, what remains of that sovereignty at the time of execution of the instrument of accession. Whatever is left as the remainder out of the rights that were carved out of that sovereignty, that remains. There is no mention of 'integration' in the body of the document. Only the right of administration has been transferred. I submit that in administering any property which is left to your care, you cannot alter its character. Supposing for instance any one is asked to administer a certain business, say a business in sugar. You ask a managing agent, or a Receiver or an Administrator to administer it. The managing agent or the Administrator has a quinine business. He converts the sugar business into a quinine business. Instead of producing something sweet, he produces something bitter. I submit, Sir, that you are going to do the same thing here. You are asked to administer a State with distinct and distinctive laws, rules, forms of constitution, forms of government. You want now to change them and convert it into a part of a Governor's province with different rules and constitution. It is not merely a physical combination between the two but a complete merger and a metamorphosis as a result of which the State loses its distinctive character and identity altogether. Suppose a man in difficulty left his wife to the care of a friend; the friend transfers the wife to some other friend, converting her as the latter's own wife. This is what is going to be done.

**Mr. Vice-President:** A not very happy illustration!

**Mr. Naziruddin Ahmad:** The power to administer is a power to manage. In managing or administering a thing you cannot convert it to something else. That is the simple position. The Honourable Dr. Patel referred to certain legal opinion having been obtained for the States. There are opinions, not of insignificant lawyers like me, but some very weighty opinions like those of Sir T. B. Sapru and others which are against the legality of the merger. They are clearly of opinion—I think the opinion has been circulated to the Government of India also that it is illegal.

**The Honourable Sardar Vallabhbhai J. Patel:** This Department keeps away from outside legal opinion.

**Mr. Naziruddin Ahmad:** Quite so, the question should be considered, independently of any outside opinion, on its merits by the House. I submit that there is a body of weighty opinion, and the matter should be carefully considered. In these circumstances I submit that item (b) of sub-clause (1) really goes against the provision in the Agreement. I submit the Agreement should be carefully considered. I find there is nothing in the agreement which justifies the conversion of a State of one kind to one completely of a different kind. This in short is the simple proposition which I submit. I must make it absolutely clear

[Mr. Naziruddin Ahmad]

that in doing so I am actuated only by the desire to regularise things. If there is anything irregular or if there is any lacuna, I think the Rulers should be asked in their own interests to execute another document just to transfer this right so as to treat their States as part of a Governor's province. Suppose at some future date.....

**Mr. Vice-President:** I have already given twenty minutes to the honourable Member.

**Mr. Naziruddin Ahmad:** Is it your desire that I should stop?

**Mr. Vice-President:** Yes.

**Mr. Naziruddin Ahmad:** Thank you, Sir.

**Shri T. T. Krishnamachari:** Sir, I move:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words 'give such' the word 'supplemental' be inserted."

It is more or less a formal amendment. The words mentioned in the clause are 'incidental' and 'consequential'. 'Supplemental' is also necessary.

**The Honourable Sardar Vallabhbhai J. Patel:** I accept it.

**Mr. Vice-President:** Amendment No. 64 to be moved by Shri Himatsingka.

**Shri Prabhudayal Himatsingka (West Bengal: General):** Sir, I move:

"That in clause 6, in the proposed new section 290-B, for the words 'by the Government' of the words 'in all respects by' be substituted."

Section 290-A makes provision for the administration of certain acceding States which are being tacked on to the Chief Commissioner's provinces or Governor's provinces. This is the contrary case where any part of the area included in a Chief Commissioner's province is to be tacked on to some acceding State. I am therefore suggesting that it shall be administered *in all respects*, so that there may be no doubt as to the authority of the state to which it is tacked on, to administer in all respects, executive and legislative authority and other authorities. This will be on par with the previous provision.

**The Honourable Sardar Vallabhbhai J. Patel:** I accept it.

**Shri T. T. Krishnamachari:** Sir, I move:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words 'contain such' the word 'supplemental' be inserted."

This is similar to the previous amendment, moved by me and I hope the House will accept it.

**Mr. Vice-President:** Clause 6 is now open for general discussion. I shall call upon the States' people because they are the people who are principally concerned. Mr. Gopikrishna Vijayavargiya. I am sorry I cannot give you too much time.

**Shri Gopikrishna Vijayavargiya [United States of Gwalior-Indore-Malwa (Madhya-Bharat)]:** Mr. Vice-President, Sir, I am not taking much of the time of the House and particularly I have to reply to the amendment moved here by Mr. Naziruddin Ahmad. I come from a State and I say it is not the rulers but it is the States' people who are most concerned in this affair. It is not a legal question really, although law is required everywhere, but it is a political question. We do not want to divide this country into so many pieces and so many principalities and, therefore, it has been a consistent demand of the people of the States that the several States must go and we should form one India, and so whatever the States Ministry has done and

whatever agreements have been entered into, they are in the interests of the people. After all, the people of the so-called British Indian Provinces and the States are all one, and therefore whatever has been done is in the interests of the country. I must say, Sir, that the words 'as if' are quite sufficient from the legal view point and it maintains whatever little distinction is necessary. I rather wish that these states should be completely obliterated from the face of India and not even this distinction should be maintained, and therefore, I will say that all these legal objections to this section must go and we must pass this section as it is here.

**Shri Eatan Lal Malaviya** (C. P. & Berar: States): \* [Mr. Vice-President, Sir, I rise to support Honourable Sardar Patel's Bill seeking to amend the Government of India Act, 1935, and specially clause 6. The truth is that the Chhattisgarh States had an earnest desire that all of them should be merged in order that they may share in the progress being made by the provinces and also to make their own contribution to the progress of the country as a whole. When, on 14th December 1947, Honourable Sardar Patel reached Kattak, the representative of the Chhattisgarh States submitted to him a memorandum requesting for an early merger of the States on the lines followed in merging certain states in Orissa. I am glad that the Chhattisgarh States have been merged in C. P. On the 1st January, every where in the States, the merger celebrations were held and there was rejoicing among the people. After 1st January, i.e., after the States were merged, the Provincial Government tried its best to bring about improvement in the States and took certain measures in quick succession for their development which gave us satisfaction that the merger had been beneficial to us. But the Provincial Government could not pull on well with the representatives of the States. There arose therefrom some trouble which still continues. The amendment Act, which is before the House should be passed so that the State representatives may have the right to advise the Provincial Government and the State administration may be conducted in the light of their advice. On the 1st January, i.e., one month after the merger, an Advisory Board for the States in Orissa was formed and their representatives were also taken in the Executive Council. But the C. P. Government could not do the same. The representatives of the States in C. P. tried for the formation of such a board. If C. P. had formed an Advisory Council to secure the co-operation in the matter of the State administration and had taken on the board some state representatives, there would have been no discontent. It may be that there were difficulties owing to which the C. P. Government did not form such a board. But with the acceptance of this clause the difficulties, if any, would be removed.

Sir, in this connection I may inform you that since our representatives were not in any way associated with the Government of the Central Provinces, it happened that the reports submitted by State officials against our workers,—and I may add these were responsible workers,—were accepted by the Government in due course. Naturally this led to some trouble in the initial stages.

Besides, as our representatives were not associated with the administration, many excesses were committed in the realisation of the land revenue. When we approached the Prime Minister and the Government with our grievances, the officials felt annoyed with us and started cases against our workers, and I may add that a number of workers have recently been sentenced to imprisonment. Similarly, rates in respect of forest were considerably enhanced which caused considerable discontent in the States. The facilities which the States previously enjoyed were also curtailed and this too created resentment. If the Provincial Government had cared to secure our co-operation, as would be obligatory in future by virtue of this clause, the difficulties which we are

\* [ ] Translation of Hindustani speech.

[Shri Ratan Lal Malaviya]

facing today and the conditions that have been created would not at all have been there.

With the passage of this clause, the representative of the people would be able to render some services to the people and the people would have an opportunity of conveying their wishes to the Government. With these words, Sir, I commend clause 6 of the Bill and express my gratitude to Honourable Sardar Patel for bringing it forward.]

**Mr. Vice-President:** Sardar Patel, do you wish to say anything?

**The Honourable Sardar Vallabhbhai J. Patel:** I have nothing to say.

**Mr. Vice-President:** I shall now put the amendments one by one to vote. Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad:

The question is:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word 'or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted,

*or, alternatively,*

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words 'shall be administered', the words "shall with their consent be administered" be substituted.

*or, alternatively,*

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with 'the Governor-General may by Order direct' to the end of clause (b) of the said sub-section, the following be substituted:—

'the Governor-General may by Order direct that the State or the group of States shall be administered in all respects as if the State or the group of States were—

(a) a Governor's or a Chief Commissioner's province, or

(b) with the consent of the State or States concerned, as part of a Governor's province.'"

The amendment was negatived.

**Mr. Vice-President:** Amendment No. 56 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words 'give such' the word 'supplemental' be inserted."

The amendment was adopted.

**Mr. Vice-President:** Amendment No. 34 moved by Mr. Prabhudayal Himatsingka.

The question is:

"That in clause 6, in the proposed new section 290-B, for the words 'by the Government of' the words 'in all respects by' be substituted."

The amendment was adopted.

**Mr. Vice-President:** Amendment No. 75 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words 'contain such' the word 'supplemental' be inserted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

**Mr. Vice-President:** We take up clause 7. Amendment No. 80 standing in the name of Mr. T. T. Krishnamachari.

**Shri T. T. Krishnamachari:** Mr. Vice-President, Sir, I move:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

Sir, the reason for this amendment primarily was different; but now, in view of the fact that article 2 has undergone a change and also in view of the fact that my honourable Friend Mr. Govind Vallabh Pant is going to move amendments numbers 87 and 88, this will be necessary in order to clarify the position, because the words that are now sought to be omitted are being put in List III of Schedule 7, by the amendments Nos. 87 and 88. I hope the House will accept this amendment.

**The Honourable Pandit Govind Ballabh Pant:** With your permission, Sir, I should like to move. . . .

**Mr. Vice-President:** All the three amendments?

**The Honourable Pandit Govind Ballabh Pant:** Yes, Sir; amendments 84, 87 and 88. I move:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words '34 of List I' the words '31(A) of List III' be substituted."

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures '34 of List I', the words and figures '31-A of List III' be substituted."

"That in clause 7, the following new sub-clause be inserted at the end:—

"(d) after paragraph 31 of the Concurrent Legislative List the following paragraph shall be inserted as paragraph 31(A):—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I."

Sir, all the four amendments Nos. 80, 84, 87 and 88 are inter-connected and inter-linked and they must stand or fall together. According to the Bill, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, regulation and control of such industries, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, were to be included in List I. That is, all these subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the Federal Government. Now, that would have led to several other difficulties and complications. We all realise that so far as development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest and regulation and control of such industries should vest in the Centre. According to the entry already contained in the Federal Legislative List, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, is already included and there is no intention of making any

[The Honourable Pandit Govind Ballabh Pant]

change so far as that is concerned. But, as proposed in this amendment, regulation and control of such industries should also be placed under the jurisdiction of the Federal Legislature. So, so far as the first two parts of this clause are concerned, they will stand as they are. But with respect to the rest, that is, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, it is proposed by the series of amendments to which I referred at the outset, that these should be included in the Concurrent List and consequential changes should be made in the other amendments. So, the main point that is before the House is whether trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries should or should not be transferred from this class to List III, that is, instead of being included in List I, they should form part of List III.

I think honourable Members will agree that the amendments that I am proposing will serve the purpose which the original clause had in view fully and will at the same time avoid other difficulties and complications which might arise if these items were not included in the Concurrent List. For, by including these in the Concurrent List, the power is vested in the Centre to legislate with regard to these matters. Power is also vested by virtue of clause 2, which has already been amended, to appoint agents directly for the administration of any of these subjects so that the Centre can have plenary, comprehensive and if it so chooses even exclusive control with regard to these matters. But, whatever the Centre may do, I venture to submit that it will still be necessary for the provinces to exercise a number of functions within their own provincial boundaries with regard to these matters. So, if these are made the exclusive charge of the Centre, then, the provinces will not be free to discharge the duties and obligations which will necessarily devolve on them. In order to enable the provinces to play their part subject to the overriding powers that will now vest in the Centre, it is necessary to include these items in the Concurrent List and that is what I propose. Even now when we have got the Essential Supplies Act, the Centre generally frames a few basic rules and leaves the rest to the provinces. We in the provinces have been issuing orders rules and regulations with regard to these matters in our respective provinces. Whatever be the position hereafter, it will still be necessary for the provinces to exercise these powers. In our own province for example, we propose to introduce a bill so that the distribution of building materials may be regulated, that no steel or iron or coal etc. be supplied for the purpose of any building which is likely to cost more than Rs. 25,000. That is under our consideration. Now unless these items are included in the Concurrent List, we have no power to introduce such a bill in our Legislature. Besides, as I said, if these items are placed in List I, the Centre will not find it possible to administer these subjects in an efficient way. They require a very extensive network and I think it is not possible for the Centre to manage these things without the active co-operation and support of the provinces. So I propose that the amendments to which I referred at the outset be accepted unanimously by the House.

**Mr. Vice-President:** There are two amendments which have to be considered further. The one is No. 9 in the name of Mr. Naziruddin Ahmad which is disallowed as verbal.

**Mr. Naziruddin Ahmad:** It should be considered by the Draftsmen.

**Mr. Vice-President:** I suppose it will be. Is it necessary to hold a general discussion on this clause?

**Honourable Members:** No.

**Mr. Vice-President:** Then I shall put the amendments to vote one after another.

The question is:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words '34 of List I' the words '31(A) of List III' be substituted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures '34 of List I', the words and figures '31-A of List III' be substituted."

The amendment was adopted.

**Mr. Vice-President:** The question is:

"That in clause 7, the following new sub-clause, be inserted at the end:—

(d) after paragraph 31 of the Concurrent Legislative List the following paragraph shall be inserted as paragraph 31(A):—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I."

The amendment was adopted.

**Mr. Vice-President:** The motion is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

**Mr. Vice-President:** The question is:

"That clause 1 and the Long Title form part of the Bill."

There is an amendment to this.

**Shri T. T. Krishnamachari:** Mr. Vice-President, I move:

"That for clause 1 the following clause be substituted:—

'Short title and commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949.

(2) It shall come into force on the 15th day of January, 1949."

Sir, the first sub-clause is necessary because the date has to be altered and the second one precisely states when the Act will come into force.

Sir, I move.

**Mr. Vice-President:** I now put the amendment to vote. The question is:

"That for clause 1 the following clause be substituted:—

'Short title and commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949.

(2) It shall come into force on the 15th day of January, 1949."

The amendment was adopted.

**Mr. Vice-President:** The motion is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

**Mr. Vice-President:** The question is:

"That the Long Title and the Preamble stand part of the Bill."

The motion was adopted.

**The Honourable Sardar Vallabhbhai J. Patel:** Sir, I move:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

**Mr. Vice-President:** The question is:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

The motion was adopted.

**The Honourable Sardar Vallabhbhai J. Patel:** Sir, I move:

"That the Bill, as amended, be passed."

**Mr. Vice-President:** The question is:

"The Bill, as amended, be passed."

The motion was adopted.

**Mr. Vice-President:** The House stands adjourned till ten to-morrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 6th January 1949.

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PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI INDIA.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA.

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CON. 2. VII. 34. 49  
2,800

Volume VII  
No. 34



Thursday  
6th January  
1949

# CONSTITUENT ASSEMBLY DEBATES

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## CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 6th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

### DRAFT CONSTITUTION—(Contd.)

#### New Article 147-A

**Mr. Vice-President** (Dr. H. C. Mookherjee): We shall take up discussion of article 148. But I am informed that article 147-A comes under the same chapter and so with the permission of the House we can take up article 147-A.

The motion before the House is:

“That article 147-A form part of the Constitution.”

This is in the name of Prof. K. T. Shah.

**Prof. K. T. Shah** (Bihar: General): Mr. Vice-President, Sir,.....

**Mr. Vice-President:** I understand that a similar amendment in the case of the Centre was rejected by the House.

**Prof. K. T. Shah:** Yes, Sir. But I may point out respectfully that in that case the proposal was to separate all powers; but here it is only the legislature that is sought to be separated.

**Mr. Vice-President:** All right; you may move your amendment.

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

“That before article 148, the following new article 147-A be added :—

‘The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State.’”

Sir, while it is no doubt part of my thought on this subject that the powers of the organized government, in a State calling itself federal and democratic, should be separate, one from the other, I have deliberately worded my amendment in such a way that even though the other structure may remain what it is, the local legislature may be separate from the executive and the judiciary. The separation of the two is intended to secure the independence of the legislature and also freedom from any influence of the legislature over the judiciary. I would rather emphasise on this occasion and in this connection the separation of the judiciary, the independence of the judiciary, than of the legislature, as such. When we consider the judiciary, I would place similar amendments with definite reference to the judiciary. In this case, I would like to point out that whereas the law-making body makes laws after due consultation and contacts with the juristic advisers that they may have, or the technical draftsmen who may assist them, nevertheless, they should not have any contact with the judiciary as such, lest the knowledge of what took place in the legislature, the knowledge of the debates, discussions, promises or assurances given, or even *obiter-dicta* that may be thrown out on the floor of the Legislature by either side, may influence judgment. It is an accepted principle—and I think quite

[Prof. K. T. Shah]

a right one—that the judiciary in their interpretation of a written Constitution should not be influenced by anything that took place in the debates on a given piece of legislation. In a federal constitution, it is inevitable that questions may crop up time and again, not only of the interpretation of ordinary legislation, but also of the very constitutional aspect of a given legislation, or acts of the Executive under the Constitution. It is but right and proper that the legislature should be completely free from the influence or any chance of being influenced by the two other organs of the State. Further, the Judges themselves having pre-conceptions—so to say, of the nature or intention of the law—are likely to give an interpretation not necessarily in consonance with the true doctrine of interpretation, but rather, because of their pre-knowledge, so to say, of the intention, even if the meaning is not properly given in the wording as finally decided upon.

For these reasons, Sir, and for securing the purity, both of the Legislature and of the Judiciary, I commend this motion to the House, that the two should be completely separate.

**Mr. Vice-President:** Dr. Ambedkar will reply to the amendment.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General): Sir, I oppose the amendment, and all that I need say is this, that the basic principle of the amendment is so fundamentally opposed to the basic principles on which the Draft Constitution is based, that I think it is almost impossible now to accept any such proposal.

**Mr. Vice-President:** I am now going to put the amendment to vote.

The question is:

“That before article 148, the following new article 147-A be added:—

‘147-A. The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State.’”

The amendment was negatived.

#### Article 148

**Mr. Vice-President:** Now we come to article 148.

The motion before the House is:

“That article 148 form part of the Constitution.”

Amendments Nos. 2222, 2223, 2224 and 2225, and amendment No. 2227 are of similar import. No. 2225 standing in the name of Prof. Shibban Lal Saksena may be moved.

(Amendments Nos. 2222 and 2225 were not moved.)

Amendment No. 2223 and No. 2224 may be moved; both are in the name of Shri Brajeshwar Prasad.

**Shri Brajeshwar Prasad** (Bihar: General): I am not moving them.

**Mr. Vice-President:** Then No. 2227, standing in the name of Shri Nand Lal may be moved.

**Master Nand Lal** (East Punjab: General): I am not moving it.

**Mr. Vice-President:** Then, in List II of Sixth Week, there is an amendment to amendment No. 2222. As it is not moved, Prof. Shah may move amendment No. 2226.

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

“That for the existing clause (1) of article 143, the following be substituted:—

(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature, and such request being duly made and received, Parliament shall pass the necessary legislation’.”

Sir, the original clause as it stands reads:

“For every State there shall be a Legislature which shall consist of the Governor; and  
(a) in the States of . . . . ., two Houses,  
(b) in other States, one House.”

I wish to put the States on a par and suggest that the Legislature of every State should be eventually determined by an Act of Parliament, and subsequently altered, if so desired, at the request of the State concerned.

Sir, I do not believe in a bicameral Legislature at least for the States. I think a Second Chamber is not only not representative of the people as such; but even if and where it is representative of the people, even if and where it has been made in such a way as to represent some aspect of the country other than the pure popular vote, even then it is there more as a dilatory engine rather than a help in reflecting popular opinion on crucial questions of legislation.

Apart from the classic example of the House of Lords, which is a hereditary reactionary and non-elected body, even where the Second Chambers are elected, they deflect the legislative machinery, for one thing; they involve considerable outlay from the public exchequer on account of the salaries and allowances of Members and incidental charges. They only aid party bosses to distribute more patronage, and only help in obstructing or delaying the necessary legislation which the people have given their votes for.

Those who like to defend the Second Chamber are, more often than not, champions of vested interests, which find a place in these bodies and as such find an occasion rather to defend their own special, sectarian or class interests than to help the popular cause.

On the question of Second Chambers, therefore, Sir, I think it is a clear division of political opinion, whether or not it is the will of the people alone which should prevail or some separate interest or special interests be also allowed a say. It must also be admitted that in the course of centuries in the course of history, wherever there have been two chambers, means have been devised to make the popular will eventually prevail. The only result of the Second Chamber, therefore, is that wherever democracy is in working order as an effective machinery of Government, the only use of the Second Chamber is to delay, or to obstruct legislation rather than to make it utterly impossible for the popular will eventually to prevail.

In England, in America and elsewhere, the Second Chamber is ultimately made ineffective. If that is the experience of the world, I do not see why that experience should be neglected and in the States we should repeat a machinery of legislation which is bound to be only expensive and dilatory rather than useful.

The case of the Centre is different. It is so because the interests to be represented are more particularly those of the Units than of the country which is represented in the Lower House. Though a Second Chamber may therefore quite properly be provided for the Central Legislature, the arguments that may be advanced in defence of such arrangements at the Centre would not apply in my opinion to the Units. Accordingly I suggest that the place of the

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Second Chamber may be left entirely to the Units themselves. In the first instance Parliament may determine according to the size, the population, the area and perhaps also the presence of special interests, if any, and lay down a legislative composition as in its judgment the Central Parliament thinks proper. But eventually the Unit itself and the Legislature of the Unit must have the right to say what is most suited for its requirements; and if such a request is made it should be entitled to demand a revision of the original Act as a matter of course and provide for whatever single chamber form of legislation it desires, is necessary and proper for its case.

I have therefore suggested in my amendment that though in the first instance Parliament may lay down for each particular State a form of legislature that it thinks is suitable for given areas, in the ultimate analysis the people in the Units must be able to say whether they want a Second Chamber in their case. This is not therefore summarily a rejection of the Second Chamber here and now. This is not to say that by Constitution we shall make it impossible for local opinion to prevail in the matter. All that I am asking is that in the event of the people of any Unit so desiring, they should be at liberty and entitled to demand of the Central Parliament that, in their case at any rate, a Second Chamber is needless and therefore should be done away with, whereas for others there may be a Second Chamber if the people of that unit so desire. I therefore commend the motion to the House.

**Mr. Vice-President:** The next amendments Nos. 2228 and 2229 standing in the name of Mr. Naziruddin Ahmad are disallowed as being merely verbal.

Mr. L. N. Sahu may move amendment No. 2230.

**Shri Lakshmi Narayan Sahu (Orissa : General):** \*[Mr. Vice-President, the amendment that I am moving before the House is:

"That in sub-clause (a) of clause (1) of article 148 after the words 'States of' the word 'Orissa' be inserted."

It implies that Orissa should have two Houses instead of one and that one of these two should be the Upper Chamber. My Friend Shri K. T. Shah observed a little while ago that a Second Chamber is not very essential and that it may only be constituted where the popular will demands it. There does not appear to be anything objectionable in this proposition. But the constitution, as now being framed, makes provision for a Second Chamber. What I demand is that this provision should continue for the future as well. Second Chambers are functioning even now in Assam, Madras and Bihar. It was not felt necessary to have Second Chambers for the other provinces. I think that a Second Chamber is not needed in Assam at present. But in my opinion it would not be proper for us to decide that a Second Chamber is not necessary for Orissa merely on the ground that the Members from Orissa do not desire to have one. My submission is that there should be at least this provision, that there can be a Second Chamber if it is demanded by the will of the people. It would then be possible for us to decide whether we need a second Chamber or not. We have adopted the American Constitution as a model in drafting our Constitution. Under the American Constitution, however, bicameral legislatures exist in all the States. Besides, we want a bicameral legislature at the Centre in order that Provinces may be represented therein. Recently twenty-five States have been merged in Orissa. So far they were separate from Orissa. Recently they have been merged in Orissa. A Second Chamber, therefore, is very necessary there.

An objection raised by a few people is that dilatory tactics are adopted in the Second Chamber and therefore it is unnecessary. As for dilatory tactics, they

\* [ ] Translation of Hindustani Speech.

can be adopted even where there is only a single Chamber. For instance the Hindu Code Bill is under consideration for the last four or five years. Many people fear that if a second Chamber is constituted well-to-do-persons and big capitalists would be able to secure its membership quite easily. But this is what I would like to happen. Now that our country is free and until we establish a socialist State here, we should give every opportunity to men of outstanding ability and wealth to take their due share in the governance of the country. There is absolutely no justification for denying them this share. I may add that there cannot be any harm done if a few rich men are able easily to secure election to the Second Chamber. Besides, we exclude one important fact from our consideration when we criticise the proposal for a Second Chamber. It is that most probably elections are not going to be on the basis of proportional representation in the Provinces. It is, therefore, quite probable that minorities would fail to secure their due representation in the legislatures. Political parties are not yet properly formed in our country. So long as parties are not properly organised, it is possible for people of all shades of opinion to secure election only through the system of proportional representation. But there being no proportional representation, a Second Chamber appears to be essential, till parties come to be organised on a proper basis, for, then those Sections which fail to get representation in the Lower House would have a chance of getting representation in the Second Chamber.

We see that many people do not very much like a Second Chamber. But, as I said a little before, Orissa has been newly formed. Twenty-five States have been merged in it recently. Therefore a Second Chamber should certainly be provided for Orissa. Besides, changes are taking place fast in our country as in the world. The creeds of Socialism, Communism and so many other isms are appearing, and are making big advances. In order to delay these changes to ponder over them and to control them, it is absolutely necessary to have a Second Chamber. Prof. Shah observed that the House of Lords in England is tradition-ridden. But this need not frighten us, for the Second Chamber we are going to constitute would not be of the type of the House of Lords. It will be altogether of a different kind. I may add that even the English people feel the necessity of a Second Chamber, for even there there is a move to make it strong and effective. Further, ours is not a unitary type of government. It is federal, even though many powers of the Units have been taken over by the Central Government. I, therefore, submit that two Houses are absolutely necessary, for there is very great need of careful thought being given to all the problems that may arise. I may add that when the Centre would be so very powerful it is necessary that there should be two Chambers in the provinces. In any case a Second Chamber must be provided for Orissa in the new Constitution that we are framing. I would like to add that this question of a Second Chamber may be left over to be decided by the will of the people of Orissa, and till the people take a decision in the matter we should take no decision but keep this question open.]

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

"That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the word 'Madras' be inserted."

Honourable Members will see that article 148(1) reads:

"For every State there shall be a Legislature which shall consist of the Governor; and

(a) in the States of . . . . ."

(here there is a blank to be filled in later on.)

My amendment, if accepted, will fill up the blank to some extent, in the States of Madras: that is to say, in the States of Madras there shall be two Houses—one the Legislative Assembly and the other the Legislative Council.

[Shri L. Krishnaswami Bharathi]

Sir, it was understood that Members representing the different provinces should meet together and come to a decision as to whether they would like to have a Second Chamber for their province. Accordingly, Members belonging to the different provinces met separately, and the representatives of Madras also met similarly under the presidency of Rashtrapati Dr. Pattabhi Sitaramayya, and after sufficient discussion it was decided that Madras shall have two Chambers. Recently this decision was come to, but last year...

**Shri Mahavir Tyagi (United Provinces: General):** On a point of order, may I know if it is necessary that honourable Members from all the provinces that have decided to have two Chambers should come here and move separate amendments for their provinces: Cannot the decisions reached by those Members be included in one full list?

**Mr. Vice-President:** If the honourable Member will have patience for a few minutes longer, he will find the answer to this query given by the Chairman of the Drafting Committee.

**Shri L. Krishnaswami Bharathi:** I was saying that the Members representing Madras met together and decided some time last year, when a similar decision was come to, and to regularise it we met recently and decided accordingly.

There is some opposition to this idea of a Second Chamber. I am inclined to think that it is born more out of prejudice of the present Second Chambers and the general view is, and I also agree with that view, that the idea of a Second Chamber is to prevent or check hasty legislation. Experience has shown that so far as the proceedings of this Assembly are concerned, last year we decided many matters. In similar matters we have come to decisions and it was only submitted to the Drafting Committee to put them in order. But we find that we are revising many articles: even article 150, where we fixed a limit is undergoing constant changes. That shows that there is always need for some time to elapse.

In this connection, I might invite the attention of the House to an interesting incident reported in the life of George Washington. It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farrand reports this incident very interestingly: they were taking coffee at breakfast time. Suddenly George Washington asked: "Why, Mr. Jefferson, why are you pouring the coffee into your saucer?" Jefferson replied: "To cool it!"— Even so, we want to cool legislation by putting it into the saucer of the senatorial Chamber. That is a forceful way of expressing the idea and as we are going to be constituted, it is to check or prevent hasty legislation and not at all to impede progressive legislation. There shall be no mistake about it; the idea is not to check progressive legislation but to have some time so that cool, calm and deliberate conclusions may be arrived at.

Therefore, there is absolute need for a Second Chamber for some time, and as I understood Prof. K. T. Shah, I think he wanted that there must be some provision so that if we did not want a second Chamber later on, we must be able to do away with it, not necessarily by amending the Constitution, which is not an easy affair, but provision must be made in the Constitution itself. That is how I understood him.

If the Prof. turns to article 304, sub-clause (2), a provision therefor is therein made. That provision enables the Units or the Legislative Assemblies of the different States or Provinces, as the case may be, to initiate proceedings in a particular assembly with a view not to have the Second Chamber. That is a broad clause which enables a Provincial Legislative Assembly to

decide upon the number of Houses if they so desire. With your kind permission, I may be allowed to read that portion of article 304 (2).....

**Shri S. Nagappa** (Madras: General): Not necessary!

**Shri L. Krishnaswami Bharathi**: Why? It is not for Mr. Nagappa alone: I am reading it for the enlightenment of the House. I suppose, Sir, I have your permission. If Mr. Nagappa knows it, that does not mean that others need not be enlightened.

Article 304(2) reads:

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill."

So, provision has been made. As I was speaking, some honourable Members wanted to know whether there was a possibility of the Provincial Assembly scrapping it. I looked it up and I thought it my duty to invite the attention of the House to the provision made in this Constitution. I therefore hope that this amendment will be accepted.

Sir, I move:

**Mr. Vice-President**: There is an amendment to this amendment—No. 46 of List II, standing in the name of Dr. Ambedkar. Is the honourable Member going to move it?

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

"That for amendment No. 2231 of the List of Amendments, the following be substituted:—

"That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the words 'Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted."

Sir, I should like to state to the House that the question of whether to have a second Chamber in the provinces or not was discussed by the Provincial Constitution Committee, which was appointed by this House. The decision of that Committee was that this was a matter which should be left to the decision of each province concerned. If any particular province decided to have a second Chamber it should be allowed to have a second Chamber: and if any particular province did not want a second Chamber, a second Chamber should not be imposed upon it. In order to carry out this recommendation of the Provincial Constitution Committee it was decided that the Members in the Constituent Assembly, representing the different provinces should meet and come to a decision on this issue. The Members of the different provinces represented in this Assembly therefore met in groups of their own to decide this question and as a result of the deliberations carried on by the Members it was reported to the office that the provinces which are mentioned in my amendment agree to have a second chamber for their provinces. The only provinces which decided not to have a second Chamber are the C.P. & Berar, Assam and Orissa. My amendment gives effect to the results of the deliberations of the representatives of the different provinces in accordance with the recommendation of the Provincial Constitution Committee.

Sir, I move.

**Mr. Vice-President:** Then we come to amendment No. 2232 standing in the name of Shri Mohanlal Gautam. Amendment No. 2233 also is in his name. The honourable Member is not in the House, so these two amendments go out.

The article is open for general discussion.

**Shri Kuladhar Chaliha** (Assam: General): Mr. Vice-President, Sir, one of the most vexed questions of political science is the problem of a Second Chamber. In the 19th century in Europe, Second Chambers were necessary in order to check hasty legislation, but in modern days even if a Second Chamber is allowed to exist we must restrict its powers so that it may not be a clog on our progressive ideas.

Almost all the important States had Second Chambers in olden days, but Turkey and Bulgaria have dispensed with them. The Second Chambers are regarded as an essential element of feudal constitutions. They are the exceptions to the rule of the Constituent units not to have any Second Chambers anywhere. In the U.S.S.R. and in the Union of South Africa the Constituent units are all unicameral. In the Dominion of Canada we find that out of eight Provinces only two have Second Chambers. In the case of Switzerland out of 18 Cantons, except two, all the other 16 are unicameral. In Weimar Germany half the States were unicameral.

The Second Chambers seem to have been created by force of tradition. It seems that the vested interests—men of dignity and nobility—want that they should adorn the benches where they can find some defence against the attack on their rights. It is said that wherever there are vested interests which require defence, the Second Chamber will always be claimed. In India we find that where there are *Zamindars* they want the Second Chamber. We find from the claims made by the different Provinces that are now claiming the Second Chamber, there are the vested interests, there are the *Zamindars*, and they want to be protected against the majority. But then in these progressive days legislation will be held up if we have a Second Chamber, and therefore we should not allow these Second Chambers to exist. Yet, we find that there is a certain amount of desire on the part of some of the Provinces. Assam has rightly said that they are not in want of it; Orissa has also said that they are not in want of it and C.P. has also said that. It is in the fitness of things that they have done so.

A Second Chamber is nothing but a clog in the way of progressive legislation. In our old Central Legislature, by delaying tactics, we have held up the Hindu Code for about four or five years. It is very easy to obstruct progressive legislation as we have done in the case of the Hindu Code. But if we have another Second Chamber I think it will only be adding further trouble in the way of passing progressive legislation. It is really very surprising that some of our Provinces are claiming that there should be Second Chambers even today. They should think that this is rather a burden to them than adding to their progress; the Second Chamber in the past has clogged some very good pieces of legislation in Europe and other countries. I think as a modern people we should get rid of these ideas and we should march forward. Therefore, we should not have Second Chambers in our country.

Secondly, there is another thing. We do not find a sufficient number of leaders in our Provinces to man the Second Chamber. In the smaller and backward Provinces we feel the difficulty and we have rightly voted against the Second Chambers. Even in the bigger Provinces I think we have not been able to produce a sufficient number of leaders who can man it very well.

**An Honourable Member:** That may be the case in your Province!

**Shri Kuladhar Chaliha:** I see. There may be an exception but then it does not prove the case—it rather proves the other way.

You will only be clogging the progress of the country by having second Chambers in Bombay, Madras and other Provinces, so that there may not be any advance. That is how things will be done. These four Provinces will be a clog to us and they will be a drag on our progress. Therefore, the sooner they get rid of this idea and the sooner Dr. Ambedkar withdraws that amendment, the better it will be for the country. Before accepting the amendment, I trust the House will consider it properly and see whether they would like their progress to be clogged, as they want to do.

**Shri K. Hanumanthaiya** (Mysore): Mr. Vice-President, Sir, the Draft Constitution makes provision for either unicameral or bicameral legislature, as the case may be; it leaves the choice to the States concerned and some States have chosen to have bicameral legislatures. Three States—rather Provinces—have chosen to have unicameral legislatures. We are very familiar with the arguments for and against a bicameral legislature. I merely want to draw the attention of the House to the practical aspect of the matter. The people who advocate a bicameral legislature usually say that it is a device against hasty legislation. My Friend Mr. Bharathi gave a very picturesque illustration.

I want my friends who are in favour of a bicameral legislature to remember that we are framing a Constitution for a responsible system of Government. That presupposes party system. Party system of Government works in a peculiar way and not in the way of unicameral or bicameral legislature as such. Every major decision is taken in the party meeting and not in the Upper House or in the Lower House. So the real legislature from the point of view of practical politics seems to me, Sir, to be the party meeting. Once the question is decided in the party meeting, it does not matter whether the question is brought up before the Lower House or the Upper House, or even if there are ten Houses; there is no question of preventing hasty legislation, once the party decision is taken on the subject. Hence when . . .

**Shri O. V. Alagesan** (Madras: General): Will not the members of the Upper House be the members of the party also?

**Shri K. Hanumanthaiya**: That is exactly what I was going to say. You are arguing for me. The party in power will certainly have under the Constitution we are framing a majority both in the Upper House and the Lower House, because it happens to be an elected legislature. Once the joint meeting of the Party Members of both the Upper House and the Lower House takes a decision, that decision goes through irrespective of the opposition or the arguments to the contrary. Such being the case, it is a costly formality to have two Chambers. My Honourable Friend Bharathi gave an illustration of a cup and saucer to show the utility of the second Chamber. Whether it is the cup or the saucer into which the coffee is poured, it is the pot that determines the temperature of the coffee. The pot here is the party meeting; it determines the way we have to vote. Therefore, I really do not see how the Second Chamber under the existing circumstances will be able to show us a better way or a sober way.

I have got another point, Sir. In a federation the legislative field is to a very great extent restricted so far as the legislatures of the unit are concerned. Much of the legislative field and administrative field is taken under the present Constitution by the Centre and what remains is very restricted. For that restricted field, to have two Houses, I fear, is really a very costly and unnecessary affair. Apart from the point of view of legislation, there is also the point of view of administration from which we have to examine this problem. The Ministers who are popular leaders have to devote much of their time to visitors. It is the experience of every Minister in India that much of his time is taken away by visitors and by people who come to see them for all sorts of purposes and very little time is left to them. If we have got two Houses, probably the Lower House will have to sit several months in the year and in addition to it,

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the Ministers would have to spend necessarily much of their time in the Upper House also. I think practically they have to do talking all the time and administrative work suffers in consequence. In fact, if I may claim to know a little of the working of the Ministries in India in the units and the States, they are usually charged with inefficiency. The speed with which administrative work used to be done in the olden days is not done now. That is the specific charge levelled against the various ministries in the units. I do not know how it is in the Centre. But the real reason is they have no time; they have to be talking all the time. It is better in the interests of efficiency and speed of the administration to do away with the Second Chamber.

**Mr. Vice-President:** Many speakers would like to speak on this subject.

**Mr. K. Hanumanthaiya:** Very well, Sir. I have done.

**Shrimati Renuka Ray (West Bengal: General):** Mr. Vice-President, I am one of those who hold the opinion that the bicameral legislature in the present context of things is unnecessary, if not retrograde. Sir, in India, particularly at the present moment, when we need to go through a good deal of legislation in the economic and social field, which has been long overdue during the years of foreign rule, I do feel that the Second Chamber, particularly in the provinces will be very dilatory. The only reason advanced for having a second Chamber is that we can thus prevent hasty or careless legislation. But, Sir, when there is a Governor, in the Province and a President at the Centre, who is empowered to send back to the legislature any Bills which may have been enacted carelessly, for revision, I do not think that this excuse obtains. However, Sir, the majority of provinces have decided to have a second chamber and therefore, in the present Constitution, we shall be embodying it. I want to point out only this, that even if we at the present moment do have to agree to have second chambers in the provinces, there should be some provision in the Constitution that the second chambers can be got rid of as speedily as possible, not at the initiative or the votes of both Houses of Legislature in the provinces, but according to the desire of the Lower House alone. I do not think that it is right that whether a chamber shall continue to exist or not, should be left to that chamber to decide in any way. Although there is an article in the Draft Constitution regarding the manner in which the provinces may decide later not to have Second Chambers, if they do not wish to, that article prescribes that this can be done by both Houses of the Legislature. I hope, Sir, that when the time comes, at least the House and Dr. Ambedkar will agree that it should be the Lower House alone which shall decide whether the Second Chamber should continue or not. As I said before, I do not think that bringing in the Second Chamber is going to be helpful at the present moment. I do understand that the composition of the Second Chamber is going to be fundamentally different from the composition of the Upper Houses of the past. But all the same in the present context of things, as I have said, it will be very much better if we had just one Chamber. As we have seen during the past year or so, while this Constituent Assembly has been functioning as a Dominion Legislature and with an unicameral Chamber, even so the procedure by which legislation is enacted is slower than we desire. I do not see why it is necessary, particularly in the Provinces, that we should go in for a second Chamber, and if we do so, at least let us provide that the Lower Houses in the Provinces are in a position to rid themselves of this encumbrance as soon as possible.

**Shri O. V. Alagesan:** Mr. Vice-President, Sir, the Principle of a second Chamber directly comes before us only today. It was considered by the House when the Report of the Provincial Constitution Committee was submitted to the House not in a direct manner, but in a sort of a backdoor way, I should say.

**Shri L. Krishnaswami Bharathi:** How?

**Shri O. V. Alagesan:** Because, the Honourable Sardar Vallabhbhai Patel, who moved the Provincial Constitution Committee report for the consideration of the House said that the Committee generally agreed that there should be only one House of legislature; but, then, he went on to describe the procedure that the Honourable Dr. Ambedkar just now told the House. The choice was left to the Members of the Constituent Assembly from the various provinces; they were asked to decide whether they should have a second Chamber or not for their province. This liberty was good in a sense; but that very same liberty prevented the House from going into the question in a deeper way and examining it on its merits. When the Honourable Sardar Patel moved the particular clause dealing with this matter, he expressed the hope that the small provinces may not elect to have a second Chamber. But, actually it turned out that the six provinces enumerated by Dr. Ambedkar have elected to have a second Chamber. They did not do it, I submit, on merits. What has been originally conceived as an exception has come to stay as a rule.

**Shri L. Krishnaswami Bharathi:** May I point out, Sir, that the honourable Member was not present on that occasion and that therefore he is not entitled to say this?

**Shri O. V. Alagesan:** That was because I was not well. That does not take away my right to express my opinion.

**Mr. Vice-President:** Please try to address the Chair; do not try to reply to Mr. L. Krishnaswami Bharathi.

**Shri O. V. Alagesan:** Yes, Sir. That particular procedure made the Members of the various provinces think, "Let us have this ornament of a second Chamber." On the other hand, if the question had been placed before the House in a direct and straightforward way, I think the House might have decided against a second Chamber. That was my submission. Since this is the first occasion when we are dealing with this question on merits, this House has got every right to say that we shall not have a second Chamber now.

Then, it was said that these six provinces happen to be big ones now. In some future date they may get split up. Then, what is the provision? They cannot easily get rid of this second Chamber. Already there is an objection to the formation of linguistic provinces on the ground of their financial instability. This will be an additional reason for that, because, the cost of the second Chamber will be an unnecessary burden on the small provinces when they are formed.

Several speakers before me showed how a second Chamber is an unnecessary anachronism. I will say that this is a sort of an old age pension device for the politicians. When we deal with the composition of the second Chamber, I think I shall be able to explain how it will be a demoralising influence and not a helpful influence in the politics of the State. My Friend, Mr. Krishnaswami Bharathi, gave us the cup and saucer example given by Washington. I beg to submit that we have far advanced several centuries from the days of Washington and enlightened constitutional opinion in America today is against a second Chamber. Several experts have prepared a model constitution for the United States of America. They have omitted this bicameral system, and have recommended only a unicameral legislature for the States. Though, up till now, only one State has elected to have a unicameral system. I shall quote an American authority on this specific matter and it will be clear how this second Chamber acts as a reactionary Chamber. The argument often advanced in favour of the second Chamber is that it will be a check on hasty

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legislation by the lower Chamber. He shows how it is only a myth. The learned author says:

"While this idea might seem reasonable and logical, the practice of the bicameral system has contributed little or no evidence in support of this theory. On the contrary, large numbers of instances indicate that politicians have played one House against the other to defeat proposals for which there was a wide public demand, and that they have in this way succeeded in avoiding personal responsibility for their action."

In such unexceptionable words the bicameral system has been condemned by this author. So, I would like first of all that this principle of a second Chamber for the Provinces should be outright rejected by this House and if that is not possible, if the House does not propose to do that, I would request that there should be at least a provision by which the lower Chamber in any province will be able to do away with the second Chamber by a simple resolution. As it is, sub-clause (2) of article 304 was quoted. Even there, the procedure is rather complicated. When the majority in the lower House is rather precarious, the Upper House, because it will naturally stand for its preservation, may defeat the purpose. Again, it has to be approved by Parliament to come into force. So, that provision should be altered so as to permit the lower Chamber to do away with the upper Chamber by a simple resolution passed by a majority of the lower House.

Sir, I have done.

**Shri T. T. Krishnamachari** (Madras: General): Mr. Vice-President, Sir, I have listened with the attention that a discussion on a matter like this deserves, to the speakers that spoke before me. Speaking for myself, I am in sympathy with many of those who opposed the idea of the introduction of a second Chamber in the provinces. It is a matter that has been debated all over the world ever since the idea of constitutions came into being, whether second Chambers are necessary or not, and it admits of a wide room for difference of opinion. I am not, Sir, today concerned with examining whether it is right to have a second Chamber for the provinces or not. What I wish to point out to this honourable House is that this House on a former occasion has accepted certain fundamental principles which were intended to serve as a guide for the Drafting Committee to frame the Constitution. The question is whether these principles could be given the go by by means of the negation of an article, without the whole thing being overhauled or upset in the proper way, namely by a proper number of people wanting a complete change in a decision made by this honourable House on a previous occasion, according to the rules made for that purpose.

Sir, it may be open to question what is a fundamental principle and what is not. For instance, if we had said that a President is not necessary for this Constitution, that would be going against a fundamental decision made by this House on the report of the Union Constitution Committee. Similarly, if we say that a Governor is not necessary for a State, that would, again, be going against a fundamental principle. It would not be, Sir, going against a fundamental principle based on a decision of the House if we say that the Governor is to be elected in such and such a manner or be nominated in such and such a manner or that the President is to be elected in such and such a manner. On the 18th of July 1947, this House accepted the broad outlines of the Provincial Constitution Committee's report, particularly in regard to Rule 19 which bears some relation to the article that is being discussed by the House.

The Honourable Sardar Vallabhbhai Patel moved—

"There shall for every province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

Actually, the provision was fairly carefully framed so as to give the maximum amount of latitude to each province to decide whether or not to have a second Chamber. Some of my honourable Friends have referred to the manner in which this decision was arrived at. Sir, after the particular rule was passed by this House, at the appropriate time the Secretariat of the Constituent Assembly sent summons for Members representing each particular province to meet on a particular day and arrive at a decision whether or not to have a second Chamber. Sir, I think it is not disclosing any confidence or making any breach of confidence if I say that I was one of those who stoutly opposed the introduction of second Chamber so far as Madras province was concerned in the meeting of the representatives of that province and I was outvoted, but I do not think that merely because the decision of a large number of Members who represented my province ran counter to my own views that I could take advantage of the discussion on this clause to go against not merely the decision of the legislators of my province but also against the decision arrived at by this honourable House on the 18th July 1947. Sir, the proper course undoubtedly would be, for such of the Members as feel that this is not the proper thing to do, to take advantage of Rule 32 of the Rules of procedure of the House and have the whole question mooted once again by getting the requisite number of Members to sign a requisition for reopening this particular question. That is the proper way to go about this business and I do feel that, though the House can ordinarily reject this particular article 148 either in its entirety or a portion of it,—there is nothing to prevent a sovereign House from doing a thing which it wants to do,—I think in all decency we cannot go against a principle which has been accepted on the 18th July, 1947, a principle which was further supported by meetings of the representatives of the various provinces meeting separately and deciding whether or not a particular province will have an Upper House. It is a different matter completely if this House should decide that the constitution of the Upper House should be different from what it was decided on the 18th July 1947, or what is mentioned in this Draft Constitution as drafted by the Drafting Committee. I shall have something to say about that at the appropriate time. But we are perfectly entitled to say that the Upper House shall be elected in entirety by the Lower House, that the Upper House should be nominated in its entirety by the Governor, that the Upper House should be elected from all kinds of mushroom constituencies, that the Upper House should only represent labour and not vested interests or conversely that the Upper House should only represent vested interests and not labour, or that there should be equal representation of both, and it may or may not have representatives of functional interests in the province—all these things are matters in which the House has got perfect liberty morally to go into and make appropriate changes if it so feels disposed. But I do feel that in view of the commitments that we have already entered into on 18th July 1947 and a further reinforcement of that commitment agreed to by the fact that representatives of provinces have to second Chambers in those particular provinces which have been enumerated by the amendment moved by my honourable Friend Dr. Ambedkar, I think it is not right for the House to go further into the original question as to whether or not a particular province should have an Upper House and the matter should therefore be left at that and the article should be accepted in the form in which it has been presented to the House.

**Shri Biswanath Das** (Orissa: General): I do not like to inflict on this House a review of the working of the Upper Chambers in various States in the world. That is a function beyond the possibility of the limitations in which I am here. Sir, enough to say that the sort of second Chamber that is called upon to be constituted in the provinces is in many ways different from the ones that you find in very many States today functioning in the World

[Shri Biswanath Das]

Enough we have got a second Chamber at the Centre. The second Chamber in the Centre is also shorn of the usual prestige and responsibility which is attached to it in advanced States like U.S.A. Nowadays it need hardly be stated that the Chamber which has an indirect election, and much less a Chamber having a nomination, has the least prestige and influence in the country and much less to arrest the progress of any legislation, be it hasty or revolutionary. Under these circumstances, the system that is being devised and kept ready to be utilized for the second Chamber in the provinces is not very helpful. We have in it a conglomeration of various things. You have in it an indirect election, you have in it a nomination, you have in it an admixture of election and panel again leaving to the will of the Ministries. Under these circumstances, the system that is devised for the second Chamber is not useful and I must say that is not going to be helpful. Therefore it cannot influence the decision of the Lower House of which it will be merely a reflection—a sad reflection. Sir, secondly, it cannot check hasty legislation if the Lower House is going to make any hasty legislation because of the limitation under which it is to work. Sir, under these circumstances the second Chamber that is devised for the provinces is not helpful and, need I say, will be a costly show. So far as our province is concerned, I must thank the honourable Members of this House and more especially those who are responsible for the decision of leaving this to the provinces. It is in the fitness of things that the delegates from the provinces are called upon to decide this question. I do not see how much could be said or stated against the point as was mentioned by Mr. Krishnamachari. True it is that it was left to the provinces. My friend says the provinces have decided. I do not know when they decided. I come from the Province of Orissa. We delegates from Orissa were never called upon to discuss this question except once and that decision was against the constitution of the second Chamber.

Sir, I have thanked, and I again thank the Committee as also the honourable Members of this House, for leaving this question entirely to the Provinces. Speaking for ourselves, we have taken extraordinary precautions in coming to the conclusion that we did. We intimated the Ministers, and also the Premier of Orissa who happens to be a Member of this honourable House, though he was absent. We also had the views of the Ministry, and we had before us the views of the Premier, and also those of the Member delegates. And to make ourselves doubly sure, we also invited the representatives of all the States who had merged into Orissa and also those of the States who intended to merge into Orissa; all these were invited and they were allowed to take part in the deliberations. Therefore, as a result of the combined deliberation of all these persons, unanimously we came to the conclusion, with the single exception of one Member, Mr. Sahu. We came to the majority conclusion that we shall not have a second Chamber. Sir, second Chambers are not useful. They are not helpful. As I have already stated, they are only ornamental. But if they were merely ornamental, that would have been something, because ornaments have their value, they make even things attractive. But here it is so very expensive, it entails such a heavy burden on the provincial exchequer, with no useful purpose, that it makes me feel that it is absolutely unnecessary and that it is an appendage which it is better if it is thrown out.

**Mr Vice-President:** Dr. Ambedkar.

**Shri H. V. Kamath** (C.P. & Berar: General): Mr. Vice-President,.....

**Mr. Vice-President:** Mr. Kamath comes from the C. P. which has no upper Chamber. (*Laughter.*)

**Shri H. V. Kamath:** That is exactly, Sir, why I would like to speak.

**Mr. Vice-President:** I think the point has been sufficiently discussed. Some four more honourable Members would probably like to speak, but we have already spent one and a half hours, and we have to make a definite progress every day. I offer my apologies to those gentlemen who have been disappointed; that is all I can offer in the present circumstances. Dr. Ambedkar,

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, I regret I cannot accept any of the amendments that have been moved to this particular article. I find from the speeches that have been made that there is not the same amount of unanimity in favour of the principle of having a second Chamber in the different provinces. I am not surprised at the views that have been expressed in this House against second Chambers. Ever since the French Constituent Assembly met, there has been consistently a view which is opposed to second Chambers. I do not think the view of those who are opposed to second Chambers can be better put than in the words of Abbe Seiyès. His criticism was two-fold. He said that if the upper House agreed with the lower one, then it was superfluous. If it did not agree with the lower House, it was a mischievous body and we ought not to entertain it. (*Laughter*). The first part of the criticism of Abbe Seiyès is undoubtedly valid, because it is so obvious. But nobody has so far agreed with the second part of the criticism of Abbe Seiyès. Even the French nation has not accepted that view; they too have consistently maintained the principle of having a second Chamber.

Now, speaking for myself, I cannot say that I am very strongly prepossessed in favour of a second Chamber. To me, it is like the Curate's egg—good only in parts. (*Laughter*.) All that we are doing by this Constitution is to introduce the second Chamber purely as an experimental measure. We have not, by the Draft Constitution, given the second Chamber a permanent place, we have not made it a permanent part of our Constitution. It is a purely experimental measure, as I said, and there is sufficient provision in the present article 304 for getting rid of the second Chamber. If, when we come to discuss the merits of article 304 which deals with the abolition of the second Chamber, honourable Members think that some of the provisions contained in article 304 ought to be further relaxed so that the process of getting rid of the second Chamber may be facilitated, speaking for myself, I should raise no difficulty (*hear, hear*), and I therefore suggest to the House, as a sort of compromise, that this article may be allowed to be retained in the Constitution.

**Mr. Vice-President:** I am now going to put the amendments to vote, one by one.

The question is—

“That for the existing clause (1) of article 148, the following be substituted:—

(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature and such request being duly made and received, Parliament shall pass the necessary legislation.”

The amendment was negatived.

**Mr. Vice-President:** The question is—

“That in sub-clause (a) of clause (1) of article 148 after the words ‘States of’ the word ‘Orissa’ be inserted.”

The amendment was negatived.

**Mr. Vice-President:** The question is—

“That for amendment No. 2231 of the List of Amendments, the following be substituted:—

‘That in sub-clause (a) of clause (1) of article 148, after the words ‘in the States of’ the words ‘Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab’ be inserted.’”

The amendment was adopted.

**Mr. Vice-President:** No. 2231, standing in the name of Shri L. Krishnaswami Bharathi need not be put to vote.

Now, the question before the House is:

“That article 148, as amended, stand part of the Constitution.”

The motion was adopted.

Article 148, as amended, was added to the Constitution.

#### Article 149

**Mr. Vice-President:** Then we come to article 149.

The motion before the House is:

“That article 149 form part of the Constitution.”

Coming to the amendments, I find that amendment No. 2234, and the first part of amendment No. 2235 are identical. No. 2234 may be moved.

(Amendment No. 2234 was not moved.)

Amendment No. 2235 may be moved, standing in the name of Mr. Lari.

(Amendment No. 2235 was not moved.)

Amendment No. 2240. The Member who has given notice of it is not moving it.

Amendment No. 2236 of Mr. Naziruddin Ahmad is disallowed as being verbal.

Amendments Nos. 2237 and 2238 are of similar import. The latter being the more comprehensive one may be moved. The Member concerned, is not moving it. Therefore amendment No. 2237 may be moved. This is also not moved.

Then we come to amendment No. 2239 standing in the name of Shri Damodar Swarup Seth. It may be moved. I understand that the Member is not in the House. It is not therefore moved.

Amendments Nos. 2241 and 2242 are identical. Amendment No. 2241 may be moved. It stands in the name of Dr. Ambedkar.

**An Honourable Member:** It is not being moved. (Voices: ‘Member not in the House’) (Laughter.)

**Mr. Vice-President:** (Seeing the Honourable Dr. Ambedkar coming into the Chamber) Honourable Members are at perfect liberty to go out to take a cup of coffee or have a smoke. They will kindly realise the difficulties of those who are accustomed to both these types of relaxation. Honourable Members will agree that Dr. Ambedkar is entitled to relaxation of that sort. The Chair has nothing to do but to listen to the debates, but Dr. Ambedkar has to listen to the debates and reply. (Laughter.)

I understand that Shri Lokanath Misra and Shri Nand Lal are not moving amendment No. 2242.

Amendment No. 2243 is disallowed as it is verbal.

Amendment No. 2244 and the first part of amendment No. 2245 are identical. The latter may be moved. As the mover Prof. Shibban Lal Saksena is not in the House, it is not moved. Therefore amendment No. 2244 may be moved. The members concerned are not moving it. The second part of amendment No. 2245 is also not moved for the reason that the Member is not in the House. The next amendment, viz., 2246, standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam, also is not moved, the Members concerned being absent.

Now, Prof. Shah may move amendment No. 2247, as also amendment No. 2248 immediately following.

Prof. K. T. Shah: Mr. Vice-President, as suggested by you, I shall move both the amendments now. I beg to move:

"That the following new clauses be added after clause (2) :—

(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate

No one who is unable to read or write or speak the principal language spoken in the State for a seat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.

(2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of election, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by the electors; and this arrangement shall hold good in the case of a General Election, as well as at a by-election, if and when one become necessary :

Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of Trade, Profession, occupation or interest recognised for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as a single constituency for the entire State."

and

"That clause (3) of article 149 be deleted and the following be substituted :—

"The representation in the State Legislature shall be on the basis of one representative for every lakh of population :

Provided that the total number of members in the Legislative Assembly of a State shall in no case be less than sixty."

There are several points in amendment No. 2247 which have, on an earlier occasion, been brought before the House. They refer to the disqualifications and qualifications which were stated while discussing the composition of the Central Legislature. The House apparently did not agree with me and, on that occasion, at any rate, rejected my proposal. I am again bringing it forward from the point of view now of the local legislatures, I hope with better fate.

The point, however, of great importance is that even if you cannot make all the voters literate within the time that the legislatures are constituted, you should certainly insist, in my opinion, upon candidates for the high office of the legislature to be qualified in certain ways, or not to suffer from disqualification in other ways.

[Prof. K. T. Shah]

The qualifications I have suggested are quite modest, not very exacting and in no way offend against the basic principles of democracy, that is to say, every individual should have the right to choose his representative. That being conceded, it may yet be desirable that those who offer to represent should at least have the minimum qualifications not of property, not of economic strength, not of any measure that indicates inequality as between citizens, but of capacity to render service, ability to understand the issues coming before them and honesty enough impartially to record their votes in the legislature so that you may have a fair legislation for the benefit of the country. I think that though it may be possible to have even between equally qualified and equally honourable men, differences on grounds of principle, we should differentiate between people who suffer from certain disabilities of the type I have suggested in this amendment. I put it to those who are responsible for this draft and to the House also that, even if we decide as we have decided and must insist upon that, without waiting for the coming of complete literacy, all the adult population should have the vote, we should nevertheless insist that the candidate must to start have certain qualifications and not suffer from certain disqualifications which I have tried to illustrate. These are only illustrations, not, so to say absolute qualifications or indexes of merit in themselves. I have stated nothing more than the minimum requirements for understanding the issues that would come before the legislature. As such I think it is but right and proper that at least in the case of the candidates we must insist upon these qualifications. Those who become Members should similarly be free from certain practices or convictions against them; that may be taken also as the common-places of constituting legislatures and should not require any further argument on my part.

There is a point which I have made in a part of this amendment that deals with proportional representation. I am afraid the House is not in favour of that idea and therefore I will not labour the point. It is liable to be ruled out of order and therefore I shall not myself press it.

The last point stressed in my amendment No. 2248 is that the representation in the State Legislature shall be on the basis of one representative for every lakh of population: Provided that the total number of Members in the Legislative Assembly of a State shall in no case be less than sixty. The former is I admit an arbitrary selection. It may be varied. I only put it forward because I thought it is indicative of the State Legislature being really representative of large numbers of the population at the same time keeping the membership within manageable proportions. A lakh is a large number. Adult voters in a population of one lakh would be about fifty to sixty thousand and as such the possibility of securing a clear verdict on the multiplicity of issues that may be placed before the provincial electorates at the time of the general election would be too great to enable a voter justly to say that every single issue before that electorate has been clearly voted upon by all the voters even if all go to the polls.

But while recognising the limitation, I have also in mind the practical requirements of having legislative assemblies of manageable sizes and as such, this kind of arbitrary selection is necessary. That can only be remedied, I think, if you continue the process of legislative organisation in units of smaller and smaller population, that is to say, carry it from your huge provinces down to some district or municipal level where perhaps you will have a much more direct representation and therefore direct self-government of the people. But as the provinces or States now stand, it seems unavoidable to select a figure such as the one that is selected and for that I claim no more merit than that

it is likely to give you a more direct and more full representation of the people than any larger number. For the rest, the second part of the amendment gives the minimum and not the maximum. I am against keeping a clause which gives the maximum number of representatives to be found in any province or any State on the ground that by fixing such a maximum, whatever the figure may be, you deny the larger electorate really speaking, the right to assert itself. It is not that you are disenfranchising, it is that you are combining them in such a manner that considerable portions may neutralise the effect of other portions and as such your representative body may not be truly representative. On these grounds I commend these two amendments to the House.

**Mr. Vice-President:** The next amendment is No. 2249 standing in the name of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, with your permission I wish to move the alternative amendment to this, i.e., No. 48 in List II as I think that in that form it may be acceptable to the House. Sir, I move:

"That for amendment No. 2249 of the List of Amendments, the following be substituted:—

"That in clause (3) of article 149, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

This principle has already been accepted in two other contexts. It is laid down in clause (3) that there should be one representative for every lakh of the population. It is stated also that that population will be found in the last preceding census. My point is that the figures of the preceding census may not be available and in that case we may have to go to the immediately preceding census of which figures are available. Some doubt has been expressed in the House whether it would be wise to depend upon the 1941 census, that is to say, that the 1941 census is already obsolete in view of the mass exchange of population. Not only in the case of West Bengal and East Punjab but other provinces also the population figures have been disturbed. So far as the next elections are concerned, I suggest that there should be a fresh census or some method of ascertaining the actual number of persons in each province and if communal reservations are allowed, we shall also need the figures on a communal basis. In any case, some method of ascertaining the population figures is absolutely inevitable. This principle has already been accepted.

(Amendment No. 61 of List IV was not moved.)

**Mr. Vice-President:** Amendment No. 62 of List IV standing in the name of Mr. T. T. Krishnamachari.

**Shri T. T. Krishnamachari:** Mr. Vice-President, Sir, I move: ..

"That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, for the words 'every lakh' the words 'every seventyfive thousand' be substituted."

Sir, as the House will understand, this amendment seeks to meet certain objections that may possibly be raised to fixing the figure at a lakh in the case of areas which are backward where the population is sparse but the area is very large. Such areas abound in the country in very many provinces. There are a good number of pockets where perhaps a whole taluk does not contain more than seventyfive thousand people. Actually in the Constitution we envisage that every voter should be able to exercise his vote, but distance happens to be a very important factor in the exercise of that vote. It might

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be that in an area where there are about seventyfive thousand people, if the total number of voters are roughly half of seventyfive thousand, because of the distance to the polling booth, even a fraction of the thirtyfive or thirtyseven thousand voters may not exercise their votes; and the problem therefore is that we must minimise those factors which will prevent the voter from exercising his vote. Actually, in the Constitution which is based on adult suffrage, we are making no provision with regard to transit for the voter to go to the polling booth. Distance will be a vital factor for a number of people in exercising their votes. Sir, it is a matter of common knowledge to Members of the House who have had to face elections that the person who has the largest number of conveyances is usually the person who succeeds in an election, though it often happens that people go in one person's conveyance but vote for another person: But, by and large, the person who is able to command the largest number of conveyances is able to secure the largest number of votes. If possible, we should minimise the effect of this particular factor operating in our future constitution. Having in view the peculiar conditions of our country, the peculiar conditions in the various provinces, it seems right that the limit ought to be lowered from one lakh to seventyfive thousand, though the sequel to it would be that there would be variations in the number of voters in constituencies, but we shall perhaps be able to insert provisions in this Constitution later on so as to minimise these variations to the lowest possible limit. Taking my own province, we may probably have six or seven such constituencies where the population will be seventyfive thousand, but this will not detract from the representative character of the legislature concerned or do any injustice to the areas which are more thickly populated. This is a saving clause which is very necessary in order to provide representation for the backward areas. I hope, Sir, the House will accept this amendment.

May I also move the related amendment which is No. 662.

**Mr. Vice-President:** You can do it later on.

**Mr. Naziruddin Ahmad:** I have a point of order. You will be pleased to find that in the notice sent to me with reference to amendments Nos. 2249 and 2250 that in the first place neither of these have been moved. Secondly, in place of 2249 I have moved another amendment and that has a reference to a different subject altogether. In fact it has a reference to the census but the present amendment deals with the number of units.

**Mr. Vice-President:** Kindly come up to the 'mike'. You are inaudible to me.

**Shri T. T. Krishnamachari:** May I suggest that the House has already agreed to his moving an amendment to his amendment No. 2249 and as such he may be restrained from raising any further point of order.

**Mr. Naziruddin Ahmad:** In raising this point of order I have nothing to say against the merits of the amendment. My point will be a technical one. It is said in this amendment that it is with reference to amendments Nos. 2249 and 2250. That is amendment No. 62 in List IV.

**Mr. Vice-President:** Wait, wait. Do not be in such a hurry!

**Mr. Naziruddin Ahmad:** This amendment is sought to be moved with reference to amendments Nos. 2249 and 2250. I have not moved the first one. But I have moved a substitute amendment with regard to No. 2250. If by implication a reference is being made to the substitute amendment that will be found to relate to a different subject.

**Mr. Vice-President:** Your contention is that it is not right to move amendment No. 62 in List IV here!

**Mr. Naziruddin Ahmad:** Yes, I want to clarify the position.

**Mr. Vice-President:** The position is quite clear and the commonsense view is that it should come here.

**Mr. Naziruddin Ahmad:** In that case we should also get an opportunity of coming in by reference to other amendments. In that case I shall be happy.

**Mr. Vice-President:** I shall try to accommodate you as I have done except in the case of verbal amendments.

Shall we now go on to amendment No. 2250, standing in the name of Dr. Ambedkar?

**The Honourable Dr. B. R. Ambedkar:** Not moving.

**Mr. Vice-President:** In that case amendment No. 59 in List III falls through.

Amendments Nos. 2251, 2252 and 2253 may be moved one after the other.

Amendment No. 2251 is passed over as the honourable Member is not in the House.

Amendment No. 2252 is in the name of Shri Rohini Kumar Chaudhari.

**Shri Rohini Kumar Chaudhari** (Assam: General): Sir, here I am, moving an amendment after all! Sir, I move:

“That in clause (3) of article 149, for the words ‘autonomous districts’ the word ‘State’ be substituted.”

I think, Sir, I have to cut short my jubilation because there is an amendment to this amendment and I think that it would be more acceptable. Therefore, Sir, I merely move this amendment so that the other one may be moved.

**Mr. Vice-President:** The amendment to this amendment stands in the name of the Honourable Shri Gopinath Bardoloi.

**The Honourable Shri Gopinath Bardoloi** (Assam: General): Sir, I move:

“That with reference to amendment No. 2252 of the List of Amendments, after the words ‘autonomous districts of Assam’ the words ‘and the constituency comprising the Cantonment and Municipality of Shillong’ be added.”

It will be seen, Sir, from the amendment that has been proposed by Mr. Krishnamachari, which I hope the House will accept, that the old formula of a lakh of population has been substituted by 75,000 population. That could apply I feel to all the places except the “autonomous districts of Assam” which the amendment of Mr. Krishnamachari contemplates. By this amendment we propose to exclude also the constituency comprising the Cantonment and Municipality of Shillong. That Constituency consists of about 38,000 population. At present it represents not only a constituency with a seat for a male, but also a female constituency. That is to say, a constituency of less than 40,000 people, represents two seats today. To exclude it altogether from the category of a constituency without allowing any representation whatsoever would in my opinion be very wrong. In view of that, I have tabled this amendment and I hope the House will accept it.

[The Honourable Shri Gopinath Bardoloi]

In connection with the amendment which has been tabled by Mr. Rohini Kumar Chaudhari, I want to add this only. What that amendment proposes to do, is to exclude altogether the Province of Assam from the operation of the clause about the lakh population. I feel, Sir, that with the acceptance of the amendment proposed by Shri Krishnamachari our difficulty about the number of seats will be easy to solve. What is more, the difficulties which might otherwise arise—the same sort of difficulties that have arisen in this Assembly over the number of seats—would be obviated if we accept a general formula. In my opinion the 75,000 formula is a good one. Therefore, I do not think there is any necessity for taking into consideration the motion of Mr. Rohini Kumar Chaudhari tabled in No. 2252. I therefore request the House to accept my proposal that the constituency comprising the Cantonment and Municipality of Shillong be excluded from the operation of this 75,000 clause proposed by Mr. Krishnamachari.

**Mr. Vice-President:** The next amendment No. 2253 is in the name of Rev. Nichols-Roy. As he is not in the House it is passed over.

(Amendment No. 2254 was not moved.)

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

"That for the proviso to clause (3) of article 149, the following be substituted:—

Provided that where the total population of a State as ascertained at the last preceding census exceeds three hundred lakhs, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of three hundred lakhs and not more than five members for every complete ten lakhs of the population of the State in excess of three hundred lakhs:

Provided further that the total number of members in the Legislative Assembly of a State shall in no case be more than four hundred and fifty or less than sixty."

**Mr. Vice-President:** There are a number of amendments to that amendment. Shall I call the movers one after another? There are amendments Nos. 31 to 34. No. 31 stands in the name of Mr. Sidhwa.

**Mr. R. K. Sidhwa** (C. P. & Berar: General): I am not moving it, Sir.

**Mr. Vice-President:** No. 32 stands in the name of Prof. Shibban Lal Saksena. The honourable Member is not in the House. Nos. 33 and 34 stand in the name of Shri Kamleshwari Prasad Yadav; he is not in the House. Then we come to No. 49 standing in the name of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad:** I beg to move:

"That in amendment No. 2255 of the List of Amendments, in the proposed first proviso, after the words 'the last preceding census' the words 'of which the relevant figures have been published' be inserted.

Sir, the principle has already been accepted.

**Mr. Vice-President:** Then we have amendment No. 63, standing in the name of Shri Jaspal Roy Kapoor.

**Shri Jaspal Roy Kapoor** (United Provinces: General): Sir, I am not moving it. Nor am I moving amendments Nos. 64 and 65.

**Mr. Vice-President:** Then we have No. 66 standing in the name of Shri T. T. Krishnamachari.

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

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'five hundred' be substituted."

This, I think, will not necessitate the House accepting the amendment of Dr. Ambedkar. Dr. Ambedkar's amendment seeks to explain why and wherefore the limit should be raised from 300 to 450; the logic of it is explained along with the manner how it is to be computed, but this is not necessary in view of the fact that there will be a body coming into being, whether constituted by the Provincial Legislature or by Parliament in whichever way the House might ultimately decide, which will definitely lay down how the maximum of the number of Members of each Lower House of the Legislature in a Province should be arrived at. Therefore, I think it is not necessary to go through the process of explaining in what manner the number is to be raised beyond the figure 300.

It is also felt that the figure 450 may not be adequate in the case of the larger provinces with a growing population, particularly, for instance, U. P. and Madras, where the population is much above the 50 million mark. Therefore it was felt that 500 will not be an unduly large number in view of the fact that the House itself has approved of this limit for representation to the House of the People so far as the Centre is concerned.

These factors have emboldened me to move this particular amendment which I think appropriately enough should be an amendment to Dr. Ambedkar's amendment and which I hope he would be good enough to accept and withdraw his own amendment, so that the House can decide straightaway whether it would like the figure to be raised from 300 to 500.

Sir, I move.

**Mr. Vice-President:** Then we come to No. 2256 standing in the name of Begum Aizaz Rasul.

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I move:

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted.

The House will remember that last year when the discussion on the different clauses of the Constitution was taking place, the House decided that the maximum number of Members in any House in the Provincial Legislature should not exceed 300. Later on, it became apparent that my Province, the United Provinces, stood to lose a great deal by this clause. The population of the United Provinces is over 55 million and it would be very unfair to that Province if the maximum number of Members for the Lower House was fixed at 300. I think this honourable House will agree that some amendment in that direction is necessary. The reason why I supported the maximum number of 300 members last year was that a House consisting of more than 300 Members would be a very unwieldy House and the discussions in a very big House on legislation would not give results that would be conducive to good working of a legislature in a State. But as I have made it clear, our Province stands to lose a great deal if this maximum number is adhered to and I am therefore moving this amendment.

I am glad to see that the Chairman of the Drafting Committee, the Honourable Dr. Ambedkar, has also seen the injustice and the unfairness of limiting the number of Members to 300 and is moving an amendment to that effect. My amendment, therefore, is strengthened a good deal by the amendment that has been moved by the Honourable Dr. Ambedkar. I hope that the number of 450 will be accepted. Though according to the population our number really should have been above 550, considering that a House of 550 or more would be an extremely unwieldy House, I feel that the number of 450 serves the purpose and we would be willing to make a sacrifice and have a lesser number of Members than our population demands. I hope, therefore, that this amendment of mine, if it is supported by the Honourable Dr. Ambedkar, will be accepted by the House.

[Begum Aizaz Rasul]

With these few words, I move this amendment.

**Mr. Vice-President:** There is an amendment to this amendment, No. 35 of List No. 1 standing in the name of Pandit Thakur Dass Bhargava. Is he moving it?

**Pandit Thakur Dass Bhargava** (East Punjab; General): I am moving another amendment, Sir.

Sir, I beg to move:

"That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, after the word 'census', the following be added:—

'except in the case of East Punjab and West Bengal where fresh census will be taken to ascertain the population before the first elections under this Constitution.'"

This is a very simple amendment and I need not take the time of the House for pressing it. The exodus has resulted in the variation of the proportion of the population in the Punjab and West Bengal and the population concerned is not so trifling as to be ignored. Therefore, it is absolutely necessary that fresh census should be taken. If fresh census is not taken, then some other means must be found whereby the population of these parts may be ascertained rightly. Unless this is done, the difficulty will be that in regard to reserved constituencies, such communities as for instance, the Muslims, who have gone away from here, five million of them, will get much more representation than would be allotted to the Hindus and Sikhs, who have come in in very considerable numbers—I think they are more than four millions. Therefore, my submission is that either fresh census should be taken or some other steps should be taken to see that these words "last preceding census" do not entail hardship to the rest of the population, who have come here.

I, therefore, submit, as was observed by me two days back that either a fresh list of electors should be so prepared and the population should be ascertained from that source if that is possible, but my humble submission is that it will be more or less a conjecture. The right thing would be to take a fresh census of these two Provinces before the first elections are held.

**Mr. Vice-President:** You may also move your next amendment.

**Pandit Thakur Dass Bhargava:** So far as this amendment is concerned, this relates to Amendment No. 2260 and I will move it after that amendment is moved.

(Amendments Nos. 2257 and 2258 were not moved.)

**Mr. Vice-President:** Amendment No. 2259 stands in the name of Pandit Thakur Dass Bhargava and two others and amendment No. 2263 stands in the name of Prof. Shibban Lal Saksena. These two amendments are of similar import. Amendment No. 2263 may be moved.

**Prof. Shibban Lal Saksena** (United Provinces; General): Mr. Vice-President, Sir, I beg to move:

"That for amendment No. 2263 of the List of Amendments, the following be substituted:—

"That after clause (3) of article 149, the following new clause be inserted:—

(3a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State."

Sir, if we glance at clause (3) of article 149 together with the amendment of Mr. Krishnamachari, just moved, in every Legislative Assembly, we shall

have the maximum of 500 and a minimum of 60, but there is no provision that every constituency shall be equal. In my Province of U.P. there may be one constituency of 25,000; there may be another constituency of 2 lakhs and a third even 3 lakhs. This is something which leaves a lacuna in the Constitution. I cannot understand how the constituencies can be so different, one having 1 lakh, another 2 lakhs and a third 5 lakhs. This is certainly a grave lacuna in this Constitution.

I only want to draw the attention of the House to sub-clause (c) of clause (5) of article 67, wherein we have provided, although it is one representative for every 5 to  $7\frac{1}{2}$  lakhs, that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India. It is provided that the constituencies shall be equal and that means if in the U.P. we decide to have constituencies of the average size of  $6\frac{1}{2}$  lakhs, then so far as practicable, the representation will be equal. But this will not be so in actual practice; one will be 5 lakhs and another  $7\frac{1}{2}$  lakhs. Therefore all the constituencies shall be equal and the same throughout India. Similarly I want in the States also the same and when there are various constituencies, they must be nearly equal. I think that unless this is provided for in some of the provinces, there will be grave consequences. There may be provincial jealousies which may play a role; some may get the upper hand and may be able to provide those seats. They may have more seats, having one for 10,000, and there may be others where they do not want to give more seats and they may provide one seat for 2 lakhs. I therefore think that what we have provided as safeguard in article 67 should be followed. I hope, Sir, this amendment will be accepted by the House, especially Provinces like East Punjab and West Bengal who will be particularly affected. Sir, I move.

**Mr. Vice-President:** Amendment No. 2259 cannot be moved, but it can be voted on. Does Pandit Thakur Dass Bhargava want that a vote should be taken on this?

**Pandit Thakur Dass Bhargava:** No, Sir.

(Amendments Nos. 2260 and 2261 were not moved.)

**Mr. Vice-President:** Amendment No. 2262. Verbal; disallowed.

**Pandit Thakur Dass Bhargava:** With your permission, Sir, I move an amendment to Mr. Shibban Lal Saksena's amendment number 67, which runs thus:

"That after clause (3) of article 149, the following new clause be inserted:—

(4) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the fresh census mentioned in clause (3) shall so far as practicable be the same throughout the East Punjab and the West Bengal Province."

In moving this amendment, Sir, I base my case on article 67 (3) which we have already passed. I have just heard an argument from my honourable Friend Mr. T. T. Krishnamachari who said that they want to arrange the constituencies in such a manner that such constituencies as have not got facilities of communication might be given a less number of electors whereas those constituencies which are developed in point of communication etc., may not have the same number of electors. My humble submission is that this will not be fair. If you do not make all the constituencies equal or so far as practicable equal in the provinces, there will be much confusion and bitterness. I understand the real notion of democracy is one man one vote and not a collection of men and a collection of votes. It is not areas which we are recognising, but

[Pandit Thakur Dass Bhargava]

the number of population which we are recognising for giving a candidate to a particular constituency. Therefore, my humble submission is, that the principle which the House has already accepted in relation to article 67 (3) is the sound principle. Otherwise it might happen that in East Punjab and West Bengal such constituencies might be formed as may not be equal for all the communities. This will engender a great amount of bitterness and confusion. Therefore, my humble submission is, so far as East Punjab and West Bengal are concerned, first of all a census must be taken and after that, it will be best to have as far as possible constituencies with equal numbers of population. If the original amendment of Mr. Shibban Lal Saksena is passed by the House, the difficulty in East Punjab and West Bengal would be that the last census is not accurate and does not represent the true percentage of the communities. Therefore, I have moved this amendment to bring it into line with the previous amendment that I have already moved that a census must first be taken and then the constituencies must be so arranged that they represent almost equal number of the population.

Sir, I move.

**Mr. Vice-President:** The article is now open for general discussion.

**Shri R. K. Sidhwa:** Mr. Vice-President, Sir, in clause (3) of this article, there was originally a proviso that the total number of Members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty. When this proviso came up for discussion last year, the House will remember, I opposed it very strongly; but, Sir, I did not carry the House with me. I am very glad that on second thought, the Drafting Committee have thought it themselves advisable to make an improvement on this proviso, and remove the words three hundred and increase it to four hundred and fifty. There is an amendment now proposed that the maximum should be five hundred. I am at least glad that though the fullest latitude and fullest opportunity according to the population,—one member for every seventy five thousand or one lakh of the population—will not be given even under this maximum, this deficiency which would have considerably come in the way of equal representation in the legislature has been removed.

Similarly, Sir, last year, when we were discussing one of the clauses regarding the term of the legislature which was proposed by the House as four years, I moved an amendment to extend it to five years; and the House did not accept it. But when our Constitutional Adviser went to foreign countries, he was advised that in Ireland and other countries, the term of a legislature was five years; and the proposal has come before us and that we have accepted. This shows that our amendments are not considered on merits, but on personalities. However, Sir, I do not want that credit to myself; but I am very glad that this amendment has been brought before the House today after mature consideration.

It has been stated, Sir, that the larger the number of members, it will be a cumbersome Assembly. I cannot understand this. If three hundred is not an unwieldy number, I fail to understand how the number five hundred could be regarded as cumbersome. Why should we be apprehensive of a larger number? Are there not in foreign countries legislatures of six hundred and seven hundred? You are copying the Constitution of the Parliament of England. Are there not 600 members in the House of Commons? I want to know where is the harm. If these provinces the United Provinces and Madras, which are the largest, are not going to accommodate and give an equal right of returning members to the legislature, then, they have no business to remain so large. They must be prepared for a partition if they are not going to take in 600 members according to their population. I am of the view, Sir, that if there is to be one member for every 75,000 of the population, the number of seats in the United Provinces

comes to 650, and why should they deny that right to 150 members. If you are afraid of a larger number of members in your province, you must be prepared to increase the limit from 75,000 to 1,25,000. That is a different matter. So long as you accept a certain percentage or proportion, then there must be uniformity and you should not deny the right of returning members because you are a big province. Provinces must be prepared to accommodate everybody; one should not say that he has no accommodation and therefore he is not prepared to increase that number. Similarly is the case of Madras. If there are five crores of population, there must be 500 members. But, with all that, I am really very glad, and I congratulate the Drafting Committee, that they have, though at a late stage, seen the wisdom of increasing the maximum number. Sir, I entirely support the amendment of my friend Mr. Naziruddin Ahmad about census and I go further than that and support my friend Pandit Bhargava. This matter has been repeatedly stated in this House that you cannot ignore the exodus and the number of persons who have migrated from one province to another and without taking a proper census, you cannot be really doing service to that class of people who have unfortunately come out. I know the Constituent Assembly has issued an order to the Provincial Governments that irrespective of residential qualifications, their names should be entered in the electoral rolls; but I know in certain provinces, e.g., in Bombay, it is not being fully followed. It is merely an executive order and the authorities are not going to take that into consideration seriously because they feel that it is a very expensive method and unless they are given sufficient money for the purpose, sufficient enumerators etc. it is not possible to put in the census all those refugees who have come out from Pakistan. I therefore feel, while there has been no official announcement on this matter, Dr. Ambedkar should make an official statement on this matter as to really what would be the position even under the amendment of Mr. Naziruddin which I understand is going to be accepted. It is stated 'latest census'. What is the meaning of that. Will it mean that all those who have come from Pakistan will be really enumerated in the electoral rolls? If that is so, the language is not very clear and some sort of declaration will have to be made, if we are not going to put that in the Constitution, that the provincial Governments should bear that in mind in preparing electoral rolls.

Sir, I am happy that an improvement has been made in the proviso that whatever the number, the members should be elected according to the population basis that we are going to accept, viz., 75,000. With these words I support, Sir, this article.

**Sardar Hukum Singh** (East Punjab: Sikh): Mr. Vice-President, Sir, I will confine myself to the amendment moved by Mr. Thakur Dass Bhargava and I fully support that. It is very essential that census must be taken before elections are held. Mr. Thakur Dass Bhargava has confined himself to two provinces and as we know, there has been mass migration from these provinces. If we were to rely on the previous or last census, certainly it would be very unfair to these provinces. I take this opportunity of bringing it to the notice of the Government that besides being unjust and unfair to the provinces, if this last census were to be relied upon, it will be particularly harmful to my community—the Sikhs. As is well known, they have not confined themselves after coming over from the West Punjab by settling in the East Punjab. They have gone further and in large numbers to the Provinces of Delhi and U.P. If we were only to depend upon the previous census, and for the present only fresh electoral rolls were to be prepared, then as we are proposing in the new constitution that seats would be reserved, as is so far provided in the Draft—and we do not know if this will be changed afterwards but so far we can safely say that seats are to be reserved on the population basis—then it will be very unfair. Mere preparation of electoral rolls would not give them sufficient representation because in Delhi and U.P.

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they would not get any representation if the last census were to be relied upon. My humble request to Government is that census should first be prepared and then elections should be held and particularly of these provinces, Punjab and Bengal because otherwise it would not only be simply unjust and unfair but would be definitely harmful to my community.

**Dr. Monomohon Das** (West Bengal: General): Mr. Vice-President, Sir, some apprehension appears before our mind about the word 'last preceding census' in article 149. This point was cleared by our Honourable Law Minister during the time of the discussion of some previous articles. Some of our friends have brought amendments to the effect that new census should be taken, at least in the provinces of West Bengal and East Punjab before the elections are fought. I like to add one point to the arguments that have been put forward for taking a new census before the elections. Sir, vehement propaganda by some political parties was carried on during the last census of 1941 in Bengal. The contention of the propaganda was that Hindus as a nation should not give any caste against their numbers. So about 44 lakhs of Hindus were mentioned with no caste mentioned against them. From the census it cannot be known how much or what part of the 44 lakhs of Hindus are from Scheduled Castes and what part are from Caste Hindus. Now a controversy has arisen between the Scheduled Castes of West Bengal and the Caste Hindus. The Caste Hindus claim that all these 44 lakhs of Hindus belong to Caste Hindus only and the Scheduled Caste people claim that a substantial part of this 44 lakhs are Scheduled Castes.

**Shri Mihir Lal Chattopadhyay** (West Bengal: General): May I know whether a person is bound to give his caste when the census is taken?

**Dr. Monomohon Das**: I am not speaking of the question whether he is bound to give his caste or not.

**Mr. Vice-President**: Will you please allow me to make a few remarks. There is a sense of grievance and as I have said, whatever the technicalities of the case be, let the sense of grievances be ventilated. Very often when a grievance is ventilated, it loses half its rancour or its passion. Remember that you wanted five minutes but you have already spent five minutes.

**Dr. Monomohon Das**: If a new census is to be taken before the elections, then we have nothing to quarrel but if for some reasons, the new census is not taken before the elections and the records of the 1941 census be taken as our guidance for the new elections, then this point must be solved by the Government. I mean, Sir, what part of this 44 lakhs Hindus are Caste Hindus and what part of them are Scheduled Caste. Sir, I thank you for this opportunity.

**Shri Rohini Kumar Chaudhari**: Mr. Vice-President, Sir, I hope honourable Members will excuse me if in this discussion I speak only of Assam and nothing but Assam.

Honourable Members will be pleased to recollect that a short while ago I read out an amendment in which I had asked for making an exception in the case of Assam. I wanted such an exception because there was this qualification of one lakh population for a constituency. If that condition had remained, a great mischief would have been done to the people of the province of Assam. But fortunately that condition has been removed by the amendment which the House was pleased to accept and which was moved by Mr. T. T. Krishnamachari. In order to make the position more comprehensible, I would like to draw the attention of the House to page 188 of the Draft Constitution, and Part I of the Table there. There, the autonomous districts have been enumerated. There are the Khasi and Jaintia Hills District, excluding the town of Shillong, the Garo Hills District, the Lushai Hills District, the Naga Hills, the North Cachar, and the Mikir Hills portion of Nowgong and Sibsagar Districts. Now, in the

**Khasi and Jaintia Hills District**, as also in the **Mikir Hills**, portion of **Nowgong and Sibsagar Districts**, there is a large population which does not belong to the tribal denomination; and if article 149 stood as it did originally, great harm would have been caused to these non-tribal people of these areas. If honourable Members will kindly look at sub-clauses (5) and (6) of article 294, they will find this—

“(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district.”

So if the position had stood as it was before, then a portion of the city of **Shillong**—the Cantonment and Administration of **Shillong**, will not come under the constituency of the **Khasi and Jaintia Hills District** at all.

In article 294, clause (6) it is stated—

“(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district . . . . .”

That is to say, if any portion which has a large population of non-tribal people is included in the autonomous district, that large portion of non-tribal people will be entirely disenfranchised. In that case, it is meaningless to have any right or franchise, if it does not take along with it the right to stand for election.

So far as **Shillong** is concerned, it has been excluded from the **Khasi and Jaintia Hills**, *vide* Part I of Table on page 188. If the population of **Shillong** is less than 75,000, then **Shillong** will not have any separate constituency. But by this amendment which was moved by **Mr. Bardoloi**, an exception has been made in the case of **Shillong**. If it stood as it was, in that case, the non-tribal people would not be included in the **Khasi and Jaintia Hills**, and they will be completely disenfranchised. The same difficulty would be felt in the case of the **Mikir Hills** also, because if the area which is inhabited by the **Mikirs** only are taken aside, then the non-tribal population in the **Mikir Hills** will not come to 75,000.

Now, one difficulty has been removed, by excluding **Shillong** from the operation of this 75,000 formula. My object in moving the amendment was that in order to remove all the complications Assam might have been made an exception altogether. In the past, Assam has been made an exception in various matters, both in favour of and against Assam, mostly against Assam. I think there was at one time exception made in the case of Assam being considered a province—that was recommended by the Cabinet Mission. Similarly, it might have been possible and it might have been better if Assam had been entirely excluded and my amendment accepted. But wiser heads have thought that my amendment had better not be moved, and I thought, Sir, that I had to agree to that.

**Mr. Vice-President:** But you have not thanked me, **Mr. Chaudhari**, for making an exception in your case and allowing you to speak, though you have not moved the amendment.

**Shri Rohini Kumar Chaudhari:** Thank you Sir; but I did not speak on my amendment.

**Mr. Vice-President:** That is all right. I only wanted to make my position clear to the House. I allowed the honourable Member to speak, in my own unconventional way; he only read out the amendment. The convention was broken because **Mr. Chaudhari** had something important to talk about areas in Assam which had not been touched upon by **Mr. Bardoloi**.

**Shri Raj Bahadur of Matsya Union.**

**Shri Raj Bahadur** (United State of Matsya): **Mr. Vice-President**, Sir, I regret I have to express my dissent from the provisions prescribing and restricting the maximum number of representatives provided for the Lower House

[Shri Raj Bahadur]

in the Provinces. It has been restricted to a maximum of 500, and it has been provided that for every one lakh or 75,000 there shall be one member. But this provision is bound to lead to a disparity and inequality in the right of representation allowed to the people from province and province. We can easily see that in smaller provinces the people would get better right of representation, and hence a better vote, as compared to people in provinces where the population is bigger. For instance, if we take Bihar and Orissa and compare it with Madras or U.P. the people of Bihar and Orissa will be getting one member for every 75,000 and the people of U.P. will be getting hardly one member for a lakh and 25 thousand or a lakh and 50 thousand. I submit it would have been better if the scale of representation had been universal and uniform for all the provinces. It is obviously desirable that in our Constitution, the scale of representation should not vary from province to province or from State to State. Even the argument that the House would become cumbersome if no maximum is fixed, does not, I think cut at the root of my suggestion. We can see that in the House of Commons in England there are as many as 640 members and during the course of an experience of 300 years that number has not proved cumbersome or unwieldy to the oldest democratic State in the world. Therefore, it cannot be unreasonable to suggest that the people of U.P. or Madras should be allowed the full quota of members which may be calculated on the basis of one member for every one lakh or 75,000, of their population. Sir, I am submitting all this because I am interested in this matter as a representative of a State vitally affected by the provision. The States which have merged or which are about to merge with the U.P. or other provinces are all interested in this question, because if you restrict the number of seats for example in U.P. or Madras to a maximum of 500, the people of such States which propose to enter these provinces will obviously stand to lose. The people of Bharatpur and Dholpur are eager to merge their identity with the people of U. P. because of their traditions, history, folklore, culture, and language, etc., etc. If the people of Bharatpur and Dholpur are allowed the right of self-determination, which, I am sure, no Member in this House would deny them and if they go to the U. P., it will not be fair if all the 500 seats are already taken up by the present population of the United Provinces and the people of Bharatpur or Dholpur or of any other State which joins U. P., are deprived of their right of representation in the legislature.

Secondly, there is the question of those States which would merge after the first elections. We know that the boundaries of our provinces are still in a ferment. From day to day experience, we might come to realise that certain provincial boundaries have to be changed and consequently the population of certain areas would be affected. There should be some provision by which the population of the affected areas are secured the right of representation. Therefore, I submit that if there had been no maximum fixed it would have been much better. When the power to de-limit the constituencies and to take decisions on other consequential matters have been left to the discretion of provincial Governments under articles 291 and 312, it would be proper if the right of fixing the maximum number of members in the legislatures is also left to the discretion of the provinces or the States concerned.

Next, I wish to submit that the grounds of disqualification of a voter as provided in clause (2) of article 149 have been made exhaustive. We notice that these grounds have been limited to certain conditions only, and I think that the powers and authority of the legislatures of the provinces, also have been restricted, in this respect to the grounds mentioned in the said clause. But it is possible that cases of high treason, sedition, undischarged bankruptcy or illiteracy may have to be included among these grounds. Hence it would

have been better if the list of these grounds is not made exhaustive but only illustrative.

Lastly I have to submit that so far as the amendment moved by Prof. Shah is concerned, I do not see any ground for its acceptance. To disqualify a voter no certificates of unsoundness of mind or body are needed. When the grounds of disqualifications are laid down in the Constitution or in the Provincial Acts, there should be no necessity for such a provision. To revert to my first two points, I may submit again that in view of the changing boundaries of provinces and States, my suggestions may still be considered.

**Pandit Lakshmi Kanta Maitra** (West Bengal: General): Mr. Vice-President, while we are in the midst of discussion of article 149, I think quite unexpectedly a matter of very great importance has been raised and, fortunately several honourable Members have realised the importance of the subject and given their views on it.

Sir, there are two things in particular which should demand the very serious consideration not only of the Members of the House but also of those who are in authority. In the present case by 'those in authority' I mean my honourable Friend Dr. Ambedkar, the Honourable Minister in charge of the Bill, I mean the Draft Constitution.

**Shri H. V. Kamath**: This is not a Bill.

**Pandit Lakshmi Kanta Maitra**: I quite realise that. But Dr. Ambedkar is the one Member who has been piloting this measure in this House and so all the credit and discredit go to him. And I want to warn him that if there are certain matters which are likely to bring discredit to his fair name, he should desist from talking for a moment and listen to me.

Sir, the two points to which I would confine my observations now are, one, the representation in the provincial legislatures based on certain figures of population and, two, the principle of uniformity. What is more important and pertinent to the point is that, besides the quantum of representation, there is the other vital principle involved, namely, that there should be absolute uniformity with regard to the scale of representation based on that population.

Two amendments have been moved in this connection, one by Pandit Thakur Dass Bnargava which seeks to further amend the amendment moved by Prof. Shibban Lal Saksena. When these two amendments are read together, it will be realised that what is sought to be done by these amendments is nothing extraordinary, but bare minimum justice, political justice to all concerned. In a democratic State, the mechanics of representation cannot be based on any haphazard or slipshod foundation. There must be a definite principle or principles on which the whole scheme of representation should be based. It should be based in such a way that the fundamental concept of democracy does not suffer. I think this proposition is beyond challenge.

Now let us see how it is going to affect certain parts of the Indian Dominion and certain States within that Dominion if article 149 is accepted by the House as it is. It is all very well to say that representation will be based on population which has been ascertained at the last preceding census. Theoretically it is absolutely unexceptionable, provided the Government is in a mood to wait for the elections till the normal general census in the country is taken. The decennial census would be due about the year 1950, a year hence. If it is to be held preparations must be set on foot from now on or six months hence if the census is to be taken very seriously and is to be conducted expeditiously before the year 1950 runs out. Now, on a previous occasion in connection with an earlier article, I explained at great length the dangers, the difficulties that certain provinces in India would have to suffer if the previous census figures, which for all practical purposes would mean the census figures of 1941,

[Pandit Lakshmi Kanta Maitra]

are acted upon in the case of West Bengal, East Punjab, Bombay and Delhi. The present amendment no doubt relates only to the two provinces, West Bengal and East Punjab. The House will remember that with regard to these four provinces including West Bengal and East Punjab, I emphatically declared—and I am glad that several members who followed me after that supported me—that it would be practically useless to depend on the census figures of 1941 with regard to representation in the new scheme of things. Who is there in this country, at least in this House, who does not know that the census figures of certain provinces were cooked up in 1941 with the object of getting political advantage in the succeeding stage of political reforms? That is all well-known, and is it necessary for me to repeat it in this House in season and out of season to those who are in authority? There should be a clear realisation of this position. Now, we are going to start on a clean slate. (At this stage the lights faded in the Chamber). It is all darkness. I see nothing but darkness for the province of West Bengal if this political injustice is done to them, as also in the case of East Punjab.

**Mr. Vice-President:** The needful will be done as far as possible. You please continue, Pandit Maitra.

**Pandit Lakshmi Kanta Maitra:** The difficulty is that I do not see whom I am addressing.

**Honourable Members:** You need not see our faces.

**Pandit Lakshmi Kanta Maitra:** Sometimes faces give encouragement. Sir, the House is aware that this principle of representation was accepted in the case of the Central Legislature, the Parliament of India, in article 67. The amendments now moved propose to bring the representation in the provincial legislature in line with that which has been provided and accepted by the House for the Parliament. Sir, the arguments I advanced on the last occasion need not be repeated now, but some of them will bear repetition here.

With regard to my ill-fated province of West Bengal and also East Punjab, I want the House to realise that the vast migration that has taken place in these two provinces should be officially recognised. It has been recognised for relief and rehabilitation to some extent, but for political adjustment, for granting political rights and franchise, this recognition is equally necessary. I deem it more necessary than the question of rehabilitation and resettlement. You cannot effectively rehabilitate and resettle people, unless at the same time you give them political rights and privileges for the coming governance of the country. Therefore, Sir, I think that this question should be decided by the authorities under pressure from this House. There should not be any further dilly-dallying or shilly-shallying with this question. The problem is very simple. It is this that the 1941 census figures have not been accepted by us with regard to the province of West Bengal. That is also true of East Punjab. West Punjab has been completely denuded of Hindus and East Punjab has been similarly denuded of Muslims. Therefore the census figures of 1941 are absolutely no guide to the real position of things with regard to East Punjab. With regard to West Bengal, I pointed out—and I point out this once again and, I hope, for the last time—that this migration started not from 1947 only. This migration started since the end of 1941 when Japan entered the war against Great Britain. Vast areas of East Bengal now comprising Eastern Pakistan were evacuated by orders of the military authorities for various military preparations such as the construction of airfields, aerodromes and other military installations. Those areas were completely cleared and the people were driven in quest of their livelihood to the province of West Bengal, particularly to Calcutta and Greater Calcutta, the industrial areas, where numerous production centres had been opened. Thousands and thousands of

people came over with their families to West Bengal from areas like Chittagong, Tippera, Chandpur, etc. for personal safety from the Japanese bombs which were dropped on those areas and which was not a pleasant experience to have. Then came the disastrous famine of 1943. My province has the unique distinction of having a number of calamities, one closely following another, and yet the province has survived. Do you want it to survive or do you want to give it a death blow and extinguish it for ever? Are you going to give West Bengal minimum political justice or not? I ask this simple question and want a straight answer. Sir, the famine of 1943 brought lakhs and lakhs of people to West Bengal from East Bengal in quest of food. Even today in West Bengal the price of rice per maund is Rs. 16 or Rs. 17, whereas it is about Rs. 50 in East Bengal, which is supposed to be the granary of Bengal. In those days, there was more chance of getting food in West Bengal and Calcutta than in the desolate corners of East Bengal. We do not know what is the population position now. The Famine Commission put the deaths at thirty lakhs. Every community claims that it is that community who suffered most.

**An Honourable Member:** It is the Scheduled Castes who suffered most.

**Pandit Lakshmi Kanta Maitra:** I have heard this statement from responsible quarters that it is the Scheduled Castes who suffered most. It is true. It is the women and the children who were the worst sufferers. The whole point of my contention is that in this province after the last census had taken place the situation had developed from year to year to such an extent that the whole equilibrium—if it existed at all—in the proportions that are given in the census figures, has been completely destroyed. Then came the division of the country and the partition of the Province of Bengal into East and West. The House is aware that the undivided province of Bengal got cut up into three parts—West Bengal, East Bengal and North Bengal: the districts of Jalpaiguri and Darjeeling were allotted to West Bengal. It had a tongue of Pakistan territory in between and migration has been going on both in the northern area from this area of Pakistan and throughout the southern portion.

**Mr. Vice-President:** What I am afraid of is that both of us coming from the same province, and I being in agreement with your views, Members may say that I am partial. That is an ordeal which I would like to avoid.

**Pandit Lakshmi Kanta Maitra:** I do not want to create any embarrassment for the Chair. So far as I am concerned, I am not a novice in parliamentary activities and I get the indulgence of the House. If the House so desires I will stop.

**Honourable Members:** Go on, go on.

**Mr. Vice-President:** Now it is all right. You can go on.

**Pandit Lakshmi Kanta Maitra:** This migration has been going on and it is perfectly open to the authorities, if they want to shirk any responsibility for the unfortunate victims from East Bengal, to quarrel about the figures but the fact is that migration is continuing. Does my honourable Friend, Dr. Ambedkar, the hero of this whole show, know that thousands of scheduled caste people are pouring into the Indian Union? I am sure he knows it. I look up to him to take a dispassionate view, because he is the one man whom we can get hold of here quickly, expeditiously and effectively perhaps! He is the one man who has to realise the gravity of this and to tell those who differ from him that this is a matter which must be tackled in right earnest. Some say the migration figures go into 15 lakhs. We have our own figures, but 20 lakhs is the official figure of West Bengal.

**Mr. Vice-President:** Today it is 20 lakhs!

**Pandit Lakshmi Kanta Maitra:** I can understand the position of the authorities to put down the figures as low as possible, but the fact is that at least 20 lakhs have been driven into the Indian Dominion by the very kind treatment of our friends in Pakistan, and more will continue to come; I am confident of that. But the whole question is: Are these people going to be left in the lurch? They have left their hearths and homes. They have left behind everything. I am talking of West Bengal, because the Punjab case is well known. They have all become destitutes and they have come over here. But there is less appreciation of what is happening there because the facts about it are being much less dramatised. Are these people not going to have any political justice and any representation, when they have cast in their lot with us in this Dominion and when they have settled down here and when they desire that they should be part and parcel of the Indian Union? They in their own way joined in this struggle for freedom and they made their sacrifices which are by no means negligible. It is all very well to say that if we want to take a census of East Punjab and West Bengal the elections will be deferred by one year. What does it matter? Are you going to deprive lakhs of people of their legitimate right of representation in the legislatures of the country? Do you want to have expedition at the cost of justice? That is a simple question you have to answer. Are we anxious to have expeditious elections at the sacrifice of these people? That is for you to answer. I am told that a rule of thumb has been invented by which the electoral roll will go on being prepared and thereafter it will be multiplied by two and the number of the population will be obtained. But why not go about it in a straightforward way and have a general census? With our resources will it not be possible to finish the census business and at the same time carry on the preliminaries for holding the elections? The Constitution has to be finalised and it cannot be finalised before August in any case: there is the Third Reading and all that: then there is the date for its coming into operation and then a date for the delimitation of constituencies. If you start now, you can hold a census for this province. In case you cannot do that, then some arrangement must be made for these unfortunate provinces of West Bengal and East Punjab. They cannot be made to fit in with your census figures because you demand that elections should be held forthwith.

Sir, the observation from an honourable Friend, who is closely associated with the honourable Member in charge of this Bill created some kind of consternation in our mind. His idea seems to be that the scale of representation could vary according to different parts of the country because some parts are well developed from the point of view of communications and others are not. This means that according to his idea—which, I believe, will catch the official mind, and I do not know whether it is a reflection on the official mind—that where 50,000 people can have representation by one Member, in another area 1,20,000 people will have one seat. This would be the height of injustice. Democracy demands that one man/one vote should have an equal value. There is a differentiation in value if 50,000 people are asked to elect one man and 1,20,000 people are also asked to elect only one man. There is a lot of difference. Therefore that will cause great discontent in the whole of East Punjab and West Bengal. This discontent borders on bitterness and I ask the Honourable the sponsor of this Bill, Dr. Ambedkar, to take steps to see how this can be eliminated so that we can go on in this business with perfect amity, concord and goodwill. Let no sense of rankling injustice be left in the minds of those who are clamouring for this bare modicum of justice. These two amendments provide that not only shall this representation be based on the figures of population but these figures must be the latest figures from a census to be held for the purpose, be it even an *ad hoc* census. In any case the census figures of 1941 will be no index of the real population of these areas. There has been a considerable change. That is one point.

The second point is that the sizes of the constituencies should not be made to vary from place to place in the sense that the population should not be made to vary. If you fix one seat for 75,000, or one seat for one lakh, by all means try to see that in every constituency throughout India the proportion is maintained—one lakh people having one representation or 75,000 people having one representation. But it will be a travesty of justice if 50,000 are given one seat and one lakh of people are also given one seat. There will then be enormous scope for jerrymandering. I think I should sound a final note of warning that this condition must cease. The authorities must make up their mind and make a declaration that so far as these two Provinces are concerned the census figures for 1941 will not be acted upon and that a fresh census will be taken or that a fresh mechanism for ascertaining the real population figure of these two Provinces—West Bengal and East Punjab—is brought into action before this particular article is implemented.

Sir, I support wholeheartedly the amendment of Prof. Saksena as sought to be modified by Pandit Thakur Dass Bhargava. I thank you, Sir, and I thank the House also.

The Assembly then adjourned till Ten of the Clock on Friday, the 7th January 1949.

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PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI INDIA.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA.

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CON. 2. VII. 35. 49  
2,600

Volume VII  
No. 35



Friday  
7th January  
1949

# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF INDIA

Friday, the 7th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

### Article 149—(Contd.)

#### DRAFT CONSTITUTION—(Contd.)

**Mr. Vice-President** (Dr. H. C. Mookherjee): We shall now resume discussion on article 149.

**Shri L. Krishnaswami Bharathi** (Madras: General): Mr. Vice-President, Sir, article 149 is under general discussion. Sub-clause (3) is very important. Mr. T. T. Krishnamachari has moved two amendments with a view to reduce the scale of representation to 75,000 per representative. The clause refers to a scale of not more than one representative for every lakh of the population, and further the proviso limits the number of members to a maximum of 500. The effect of the amendment of Mr. Krishnamachari, if accepted, will be to have not more than one representative for every 75,000 and the maximum of the total strength of the House will be 500. It is very difficult to understand whether an increase in the number of members to a particular legislature will add to the efficiency of the Assembly. But certain major provinces like the U.P. and Madras have desired this increase, and it is perhaps well that we accept it, but at the same time, I would like to impress the need for not filling up the total strength or the maximum fixed.

Sir, in America, though the scale of representation is fixed at about 30,000 per representative, I understand, actually it is ten times that number. If for every 30,000 a representative were to be elected, the Senate will be somewhere about 4,000, but really it is much less, and therefore, it must be borne in mind that this is only a maximum and it is for the Provincial Legislatures concerned to fix the number. Some honourable Members felt the need for adding certain more representatives if States accede or merge later on. I would submit it is not wise to exhaust the number—500—and then ask for more. The wiser course will be to reduce the number, say, to 450, at the initial constitution and then, if certain States merge later on after the Assembly is constituted, to provide for them. That will be a better course instead of adding further provisos to the clause.

Mr. Krishnamachari yesterday said that the idea of reducing the number to 75,000 is with a view to provide for backward areas, that is to say, the proportion in certain backward areas will be less; that is, in those areas there will be a representative for every 75,000 whereas in other areas naturally the proportion will be much higher. While I perfectly sympathise with the idea we should not, I feel, Sir, allow any loop-hole for gerrymandering later on. We have already had a similar provision in article 67, where we have stated that there shall be uniformity of representation throughout India. I would very much like, Sir, that within a province there must be uniformity, as far as practicable, in the scale of representation, that is to say, the variation ratio between the number and the total population in one particular constituency

[Shri L. Krishnaswami Bharathi]

shall as far as practicable, be uniform throughout, that particular State or Province. It is not absolutely possible to have mathematical uniformity. We cannot have 82,824 everywhere. It is necessary that we will have some variations, but that variation shall not be so great. It cannot be 75,000 in one constituency and two lakhs in another constituency.

**Shri S. Nagappa** (Madras: General): Not two lakhs but a lakh and fifty thousand.

**Shri L. Krishnaswami Bharathi:** There is no lakh and fifty thousand here. The principle of uniform scale of representation should be adopted. As far as practicable, there shall be uniformity. Sir, with the maximum of 500, I have certain figures. In the United Provinces the ratio of representatives will be a lakh and ten thousand per seat. In Madras it will be 98,682 per seat on an average, if we exhaust all the 500 seats, which is very unlikely; if the number is reduced, the proportion will be increased. I think though there is the scale of 75,000, both the U.P. and Madras cannot have the advantage because if they have 75,000, the maximum will be exceeded, and, therefore, we have a lakh and ten thousand in the U.P. and 98,682 in Madras, per seat.

Sir, no doubt Mr. Krishnamachari said that it is with a view to provide for certain backward areas. I am afraid that cannot be introduced into the Constitution with this principle I mentioned in view.

I must inform this House of certain important matters in this connection. Madras is a composite province, consisting of 4 linguistic areas, the Andhras, Tamils, Malabar and Canarese. Sir, there are five districts, known as Rayalaseema in the Andhra part, which are really backward and which deserve every encouragement. There has been some understanding between the two groups of Andhra areas with reference to this matter. Rayalaseema consists of five districts, Bellary, Cudappa, Anantapur, Kurnool and Chittoor. There is another group called the coastal districts consisting of five or six districts, Vizagapatam, East Godavari, West Godavari, Kistna, Guntur and Nellore. In 1937, there was a kind of understanding between these two groups under which Rayalaseema, the famine stricken area, shall have equal representation on the basis of district. Sir, it has to be mentioned that these districts are sparsely populated and they very rightly claimed weightage, and came to some kind of understanding. We have it from the report of the Linguistic Provinces Commission that this matter has not been finally agreed to by the two groups. I do not want to go into the details of the question. I am only submitting that it is only with a view to provide for these backward areas that this limit is reduced. So far as I am concerned, it must be entirely a matter between the Andhras themselves to decide and into which I shall not go. But so far as other areas are concerned, if these five districts, the famine stricken districts of Rayalaseema are given representation at the rate of 75,000 per seat, and other areas have to provide otherwise, the ratio will be 107,000 per seat. I have worked out certain figures. They will show that Rayalaseema will get 116 seats, the rest of the Andhras will get 118 seats, Tamil Nad will get 216 seats, Malabar 36 seats and South Canara 14 seats on this basis. On this scale of representation, the balance will be entirely upset by this. That is to say, the Andhra group will get 234 seats whereas Tamil Nad will get 216 seats; the population of Andhra is twenty millions and that of the Tamils is twenty-three millions. So, all these things will raise difficulties. It is not in this province alone that we come across this difficulty; I am told similar is the case in other provinces. An honourable Member was telling me that in Bombay there are certain areas which are backward. It is just possible that there are other backward areas also. If we introduce this kind of thing, it will bristle with difficulties and it is not very good that we have it in the Constitution. At the same time, we must have

this principle. If this cannot be introduced, at least, we must inform the proper authorities, the Delimitation Committee that as far as practicable, there shall be uniformity throughout the State. That is the most important thing and therefore though I have great sympathy with the backward areas I support the amendment moved by Prof. Shibban Lal Saksena.

**Shri Kuladhar Chaliha** (Assam: General): Sir, it is really difficult to follow the argument of the previous speaker. We have our own difficulties in our province. For certain reasons, the last census was made in a way which did not show exactly what the population was. It was manipulated in such a way that the party in power had the figures according to their wish. In fact, there was inflation of certain communities and the figures were manipulated in such a way that the correct figures did not come out properly. It was like this: the General community was so reduced that it became only about 39.2 per cent. We find that the Tribal community went up as far as 29 per cent., the Muslims about 22 per cent and the Scheduled Castes about five per cent. If a proper census is taken, probably, the General community would be further increased. Therefore, a census is necessary to be taken in Assam as well. I support Mr. Lakshmi Kanta Maitra that a new census should be taken in Assam; otherwise, the General community will suffer very severely and grievously.

It is necessary that in the fixing of seats and in the allocation of seats to different communities we should be fair and just to everybody. In the last census the figures were so manipulated that the General community has become a minority in Assam and if reservations are to be given with so-called minorities then, I think, they would be further reduced and they will have no proper place in the constitution. It is like this. The General community has already suffered in the last census taken by the party in power. If reservations are going to be given to the tribal and other people who have not got the necessary number, seats will be taken out of the General community and the majority will be reduced to such a minority that they will have to be protected and they will have to be given reservation. I therefore request the House to take this into consideration that a new census should be taken in Assam also.

Apart from that, there has been a certain amount of immigration from Eastern Pakistan and West Bengal. There are certain Scheduled Castes and members of other communities who have also to be properly enumerated. There are a certain number of people who just go there for a few months and come back from Eastern Pakistan. We should ascertain the number of these people who go there simply for the purpose of earning something in the tea estates and other places. If without ascertaining these things, seats are given then probably we will be doing an injustice to the General community and other communities. I request the House that proper census be taken for Assam also and Assam be included in the census for which an amendment has been given by Mr. Rohini Kumar Chaudhari.

**Shri S. Nagappa**: Mr. Vice-President, Sir, this is a very important point especially from the point of view of the representatives of Rayalaseema. I do understand according to the fundamental principles, one cannot ask for weightage but this is not a communal weightage. We are not asking as a matter of social backwardness or political backwardness but this is economically an area that has been backward for centuries and ages and that is why representation given to this area will enable the representatives of this area to fight for their betterment. That was one of the reasons why the people of Rayalaseema especially in Andhra Desa have agreed to a pact called the Sree Bagh Pact in 1937, and there they said the representation between Rayalaseema and the Circars will be in the ratio of 6:5. There are five districts in Rayalaseema and 6 in the Circars and these 11 districts have entered into a pact that representation should go, irrespective of population, on the ratio of 6:5 even in the Cabinet but that is a pact entered by only two sections of one and the same province.

**Shri L. Krishnaswami Bharathi:** Representation in the Cabinet is not in the Pact.

**Shri S. Nagappa:** We are not asking this representation from Tamil Nad. Now according to the principles laid down in the Constitution here the representation will be given to Madras province and out of that there will be an Andhra quota. Out of this Andhra quota between Rayalaseema and Circars we will have our own agreement. For instance, if the Circars get a seat for every 125,000, for 75,000 the Rayalaseema may get one representative. It solves our problem. Why we ask this is because Rayalaseema is two-thirds of Andhra Desa in area but the population is only one-third.

**Shri L. Krishnaswami Bharathi:** That is not correct.

**Mr. Vice-President:** Please do not interrupt the speaker.

**Shri S. Nagappa:** From the figures here I can give my friend if he wants, the population of Circars is two-thirds and that of Rayalaseema one-third, roughly, but the area in Rayalaseema is two-thirds of Andhra Desa.

This was the agreement we have entered into and I would request members to see that our agreement is respected. I do not claim this on broad principles; but it is due to the backwardness of the area economically and politically, that we have to claim this.

**Prof. N. G. Ranga (Madras: General):** Mr. Vice-President, we are all in favour of the general principle that so far as possible there should be no distinction within the same State, between one constituency and another, as far as its quota of representation in the local legislature is concerned. But at the same time there are certain special needs of certain areas based upon their social and economic conditions excluding communal considerations, religious considerations, any anti-national or unnational considerations, in regard to which certain special provisions have to be made to enable the peoples of the politically and economically backward or underdeveloped areas to stand on their own legs and minimise the distinctions between them and the other more advanced areas than if mere principles of uniformity were to be accepted. Sir, as Mr. Nagappa has just now told you, the representatives of these two sections of the Andhra Desa had met together in 1937 and come to an amicable settlement among themselves. I need not go into details in respect of population or their areas, but it is true that one area known as Circars is very thickly populated and the other area known as Rayalaseema is very thinly populated. The Circars is also economically a little more advanced and much less subject to famines than Rayalaseema. Therefore, these peoples have agreed among themselves that, from out of the usual quota of representatives that the Circars should be entitled to according to the principle of uniform representation as between one constituency and another, they would like to give away a portion and distribute it between these districts of Rayalaseema as per their own population basis. Now, this is an agreement that was reached when the Provincial Congress Committee was presided over by Dr. Pattabhi who happens to be the Rashtrapathi today of the Indian National Congress. I happen to be the President of the Provincial Congress Committee today, and I am bound to honour that agreement. It is the universal wish of all the Andhras to see that this agreement is put into practice and is honoured so far as practicable under the present conditions, constitutionally and politically. Small variations this side or that side may have to be made and the parties concerned will be quite agreeable to that, but this much of weightage we are all agreed to give to Rayalaseema. How it is to be given in terms of this Constitution is a ticklish problem. All these years we have been very much worried about it and it is because of this uncertainty the relations between these two areas have come to be a little strained, because it was felt by the representatives of Rayalaseema that quite possibly this House might stand in the way of the

implementation of the Sree Bagh Pact. But now that this House has already given its consent to the principle of a certain amount of variation in the total strength of the population as between different constituencies so far as the Central Legislature is concerned varying from 500,000 to 750,000 as between any two constituencies, there has arisen the hope in our hearts that quite possibly the House might be willing to make it possible for us to make a similar distinction between the constituencies of Rayalaseema on the one side and the Circars on the other. It is only reasonable on our part to ask for this much of consideration from this House for three reasons. One is, this distinction has already been agreed to so far as the Central Legislature is concerned. Another is, the people concerned in these two areas are within the Andhra Desa and have already agreed upon it and there has been no dissentient voice at all in regard to this matter and the acceptance of this will only be conducive to the development of better relations between these peoples and greater contacts between them; and after all this House is interested in fostering more and more co-operation between the different sections of people in any one State than in simply sticking to some dull principle of uniformity and then not swerving this side or that side and not making any special provision in favour of any one area within this country. Thirdly, this House also accepted the advisability of making such exceptions when it has made this exception in the case of Assam. Assam also is faced with a similar difficulty so far as the tribal people are concerned. There, in the so-called autonomous tribal areas certain special provisions are made in this Constitution in order to protect their interests and in order to safeguard or assure their orderly and speedy progress in the near future.

Sir, for the above three reasons, I appeal before this House, and also before those who are responsible for the drafting of this Constitution, and for helping us in drafting the various alterations we are deciding upon, to accommodate these special needs of Andhra, and thus to help us in looking after the special interests of Rayalaseema, and thus bring about greater harmony between these people.

Sir, I have to state only one more fact. The most important consideration that was placed before the Linguistic Commission which visited our areas recently is this. Some of the representatives of the Rayalaseema urged for the immediate formation of the Andhra Province and for the implementation of the Sree Bagh Pact, so far as it is practicable under the present circumstances, in the manner that may be accepted by this House and by Parliament so that it would be possible for the Rayalaseema people also to wipe out all the differences that there may be, between the Circars and the Rayalaseema. If you were to remove the difficulties that stand in the way of their coming together, then I can assure you that so far as this particular area is concerned—and it is notionally separated even now from the rest of the province or State of Madras,—it will be possible for the Central Government to create this Andhra province without any difficulty whatsoever,—social, economic, religious or financial or any other difficulty. Therefore, I urge most sincerely before this House the advisability of making a special provision in the case of this area, just as it has already agreed to make a special provision in the case of Assam.

Thank you, Sir.

**Shri Deshbandhu Gupta** (Delhi: General): Mr. Vice-President, Sir, my Friend Pandit Thakur Dass Bhargava has already given arguments in favour of taking census of East Punjab and West Bengal before the next elections take place. I do not wish to take the time of the House, therefore, by elaborating the arguments which he has already advanced yesterday. I only wish to point out that Delhi falls under the same category as East Punjab and West Bengal.

**Pandit Thakur Dass Bhargava** (East Punjab: General): I mentioned that also.

**Shri Deshbandhu Gupta:** Thank you. Delhi too is in the same category because not only has there been exodus of many Muslims from Delhi to Pakistan, but Delhi is particularly affected by the large number of people who have come from Pakistan and who are now living in Delhi. Perhaps, Delhi is the only city whose population has been almost doubled by these changes of populations. According to the last census, the population of Delhi was about nine lakhs, whereas it is believed that at present the population is somewhere near 19 lakhs; taking the city alone it is about 15 lakhs. It is only fair, therefore, that when this question is considered, Delhi's claim should not be ignored, and that it should be treated in the same manner as West Bengal or East Punjab.

Sir, I have nothing more to say, except that whatever assurances are given and whatever methods are adopted by Government for the satisfaction of East Punjab and West Bengal, for assessing the present populations of these areas which have been affected by the partition of India, the same methods should be made applicable in the case of Delhi as well.

**The Honourable Shri Gopinath Bardoloi** (Assam: General): Mr. Vice-President, Sir, I am speaking in reference to the amendment of Pandit Thakur Dass Bhargava, in respect of the census in East Punjab and West Bengal. I am sorry to point out that although in this House several references have been made regarding the population of Assam, the case of Assam was not taken into consideration along with those of East Punjab and West Bengal. Mr. Chaliha has just now spoken about the population position in Assam, under the last census. The last census was strongly opposed by the Congress Party in the Assam Legislature in 1941 on the ground that it did not actually represent the actual population strength of Assam. Now, things have very much changed under the partition arrangements and in the altered circumstances that have come into existence in the meantime. According to the official figures that we have got, about three to four lakhs people have come from East Bengal as refugees in the same way as large numbers have come from.....

**Mr. Vice-President:** May I ask the honourable Members there to take their seats?

**The Honourable Shri Gopinath Bardoloi:** People have come into Assam in the same way as people from West Punjab have come to East Punjab and people from East Bengal have gone to West Bengal. A population of four lakhs is not a small number, and to exclude them from any representation would, I believe, be a grievous wrong, and it would be unjust. I therefore, suggest that Dr. Ambedkar be pleased to accept, in the category of East Punjab and West Bengal, Assam also. It is more or less, a formal amendment and the facts I have submitted have already been placed before the House. I have only to repeat my request that Assam also may be included in the category of East Punjab and West Bengal. I consider that any attempt at representation, without taking into consideration the iniquity of the last census, as well as the populations that have come into Assam in the meantime, would be something which should not be tolerated. In view of this, Sir, I beg to submit that my proposal to include Assam with East Punjab and West Bengal be taken into consideration.

**Shri Kallur Subba Rao** (Madras: General): Sir, I wish to make a few remarks on this subject as I come from the Rayalaseema districts. If the constitution-makers had provided in this article for maximum and minimum population strength for a seat, as they have done in the case of representation of the States in the People's House, it would not have been necessary to speak on this occasion at all. You have provided 75,000 as the minimum, but

have not set any upper limit. The difference between the Rayalaseema people and the Andhras is only about this. The Ceded districts are famine districts and are known to be so from the beginning of history. They comprise mainly mountainous areas. I represent a constituency or a taluk which is the largest in area or size with the lowest number of people. Even if you fix the minimum at 75,000 population for a seat, the voters of a constituency like mine would have to go 15 miles to the nearest polling booth to exercise their franchise. That is why we want that, on the population basis, the Ceded districts must be given more representation. And they are economically and politically backward. This drawback of the population of the Ceded districts has long ago been recognised and an agreement reached between the Andhras of the Circars and the Rayalaseema people. This arrangement does not affect Mr. Bharathi or the people of Tamil Nad. We are not going to deny the right of representation of Madura to Mr. Bharathi. We are only considering the representation of the Andhra area and whether Rayalaseema should get more and Circars less under the agreement. That is why we request the House to make a provision for upper limit so that in the State that is going to be formed, there may be amicability and agreement. There is no question of Rayalaseema being against the Andhra province. But the difficulty is one of representation. The population of Rayalaseema is 60 lakhs and that of the Circars is 125 lakhs. I request the House to accept the amendment.

**Dr. B. Pattabhi Sitaramayya** (Madras: General): Mr. Vice-President, Sir, I am sorry to have to intervene in this debate which has proved to be a somewhat controversial one. But, as one intimately connected with that part of the country around which the controversy has centred, I feel it my duty to say what we all exactly feel in the matter. There appears to be a little more in the controversy than appears on the surface. Whenever a controversial issue arises it is our habit of mind to say to the parties that are involved in it to come together, sit round a table and convince each other by easy arguments of love and not refer it to a third party for arbitration or adjudication. That is a noble principle. This noble principle has been adopted by the Andhra people. They are the second largest community in India, next to the Hindi-speaking people. Even leaving out the 85 lakhs of our people in the Nizam's territory whom we do not want to absorb unless they want to come in,—let there be no misunderstanding,—we who form three crores in all are about eighteen millions in the Madras presidency in the northern part thereof. The Madras presidency has Madras as its capital and there, nearly half the population is Andhra and the other half is in the south of the city. They speak four different languages. In the Legislature of Madras, there is a babel of tongues. People do not understand one another. But that is a different matter.

Sir, we have been asking for a separate province for the last thirty-five years. We were asked to wait till a National Government came to power. Though that National Government has now come into existence it appears that the claim for the division of Andhras appears to recede much further than ever before. Whatever it be, we have come to some kind of understanding amongst ourselves.

When I was President of the Andhra Provincial Congress Committee—an office which was thrust upon me—during the regime of the first Congress Ministry, we came to an understanding with the Ceded Districts or Rayalaseema on certain principles and on a very good basis. There it was a question of give and take. The people of the coastal districts, who are more advanced and who enjoy deltaic cultivation, are in every way more prosperous and have got the better of the people of Rayalseema in trade, in commerce, in industry, in education and in public services, though the whole of the

[Dr. B. Pattabhi Sitaramayya]

Andhradesa itself is behind-hand, taken as a whole, when compared to the people of the southern part of the province. As between the two parts of the Andhradesa, the coastal regions are highly advanced and the other areas are highly backward. In these two parts, even the soil conditions are totally different. On our side you cannot even get a stone with which to drive away a dog, and on their side, you cannot get a clod of earth for any purpose whatsoever. That side is stony and mountainous and its three-fifths of the area is inhabited by only about one-third of the population; and the rest of the territory, two-fifths in area is inhabited by two-thirds of the total population. Apart from the cultural, social, commercial, industrial and economic advance, taking mere numbers into consideration, we are two times more numerous and more dense per square mile than they. If that be so, is it not a matter deserving the consideration of this House? Are you going to adopt your principles and your policies on the basis of the steam road-roller which levels down the tall oaks to the height of the short poppies? That is not desirable.

Sir, the other day, the case of Assam was presented to the House and the House was good enough to say, 'Well, we will make an exception in the case of Assam.' There are four kinds of areas there. Therefore the rule of thumb does not apply. We cannot apply the same measure of representation to all the provinces of India. India is a huge continent with a variety of climates as well as surface and soil and civilization more or less. Therefore there are different degrees of progress in different areas. In those circumstances there must be some kind of elasticity in the methods and measure of representation employed. And what is the elasticity that we plead for? It is only this: Do not put the basis of representation as high as one lakh. Have 75,000 as the minimum so that the sparsely populated areas of Andhradesa may get 90 seats. When they get 90 seats, and for the rest of the area you have the quantum as one lakh, we will get 120 seats. By this means the disparity in representation between the two areas can be brought down and it will not be easy for the people of one area to override the interests of the people of the other area.

Now take the administration in the two areas. There is a complaint that one part of the country has not received that amount of attention which it is entitled to and therefore it has remained in a backward state. There is no tank-water or well-water to drink in that part of the country and perpetually famine reigns supreme. Almost every three years it has to be declared a famine area and operations costing crores of rupees have to be taken on hand. It would have been of great help if constructive endeavours had been made in time to ensure water-supply and other amenities in those areas. But nothing of that kind is done. Nobody listens to them. When the Andhra province comes into existence pretty large sums will have to be spent in that area. It is not an easy matter. But even so we have to give them help in order to bring their representation to a higher level. What is the good of India having self-government if the States are lacking in equal representation? I never considered India free so long as one Unit was under a despotic ruler. We have fortunately tided over that condition. What is the good of a province being considered independent when half of it, nay two-thirds of it is backward, has no water to drink and no food to eat and is behind-hand both economically and educationally? We want to bring up the hilly areas of our country to the same level as ourselves, even if progress in that direction may be slow. When that is the case, what is the meaning in the framing of a rule which will arrest the progress of the country? Therefore I say an off-hand solution may not be found helpful and in this behalf I wish to appeal to Dr. Ambedkar who has taken so much trouble in order to push this draft Constitution through this House. He has been circumspect, reasonable and eloquent and he has brought a comprehensive judgment to bear upon these

matters. We agreed day before yesterday to grant a seat for every 75,000 of the population. Unfortunately I had to go to Amritsar yesterday evening and came back this morning. In the meantime this amendment has come up. This amendment is harsh on one portion of the area. If it is not there, it would be harsh on the Punjab, it is said. Therefore the case of the Punjab has to be considered, the case of Assam has to be considered the case of Andhra has to be considered. All these matters require attention. Make your rules therefore as elastic as possible. Give detailed attention to each of these subjects and then deal with them at leisure and not in a hurry. After all, for the preparation of the electoral rolls, all these details may not be necessary, though the furnishing of these details will greatly facilitate that task. Even if the electorates have to be formed, they can be formed in the month of May or June. We are in a hurry to prepare the electoral rolls and we must know the basis and we have passed a rule that twenty-one years should be the age limit. Therefore the provincial governments can go on with the preparation of their electoral rolls, but even if other points be necessary, I say, please take a little time and do consider and bring up this subject tomorrow so that we may have an agreed solution instead of trying to confuse the whole audience who may not be really able to grasp the full details or all the bearings of this subject. Beyond this, I will not say anything. When-

ever we bring up a question, it is said, "Oh, let the Tamils and the Andhras agree". We agree. Then you raise the question, "Let all the Andhras agree". We agree. Then you say, "No, this does not answer my rule of thumb." This kind of thing is meaningless and it looks as though the result, if not the intention, is to sidetrack the major problem. If the more advanced people say, "We do not want a seat for every seventy-five thousand or one lakh; we want a seat for two lakhs; we want to raise you to a position of equality with us", is it repugnant to your sense of justice? Is it repugnant to your political principles or administrative policy? I cannot understand that. Therefore please allow this matter to come up at leisure so that an agreed understanding may be arrived at.

**Mr. Vice-President:** So much goodwill has been shown to me by the House, so much kindness is bestowed on me that I suggest that I do not call upon Dr. Ambedkar to make his reply today but that we pass on to some other business, so that all the parties concerned may have an opportunity of putting their heads together and arriving at an agreed solution. After all, framing the Constitution is a co-operative effort and we must do all that we can to make it a success.

**Some Honourable Members:** Thank you, Sir.

#### Article 63

**Mr. Vice President:** We shall now pass on to article 63.

The motion is:

"That article 63 form part of the Constitution."

(Amendments Nos. 1339 and 1340 were not moved.)

Amendments Nos. 1341 and 1342 are disallowed as being merely verbal amendments.

Amendment No. 1343 standing in the name of Mr. R. V. Thomas. I understand that he is no longer a Member of the House.

Amendment No. 1344 standing in the name of Mr. Naziruddin Ahmad may now be moved.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. Vice-President, Sir, I beg to move—

"That for clause (4) of article 63, the following clauses be substituted, namely :

(4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.

(5) The Attorney-General shall receive such remuneration as the President may determine."

Sir, I have brought in this amendment to make this clause similar to a corresponding clause which appears in the provincial constitution. The House may be pleased to consider article 145. In article 145 there is provision for an Advocate-General for each State.

I feel that arguments which I may advance should be listened to by at least one Member upon whom so much rests, but with the lapse of time and experience one has to grow a little indifferent to the effect his speeches really produce in the House. In fact I find that Dr. Ambedkar is engaged in a very much more important conference, a subject which must be much more important than the subject matter of this amendment, but I think it will be needless or useless for me to wait upon the pleasure of Dr. Ambedkar's attention, and I think I should go on with the amendment, trusting that the House may by some chance accept my view.

Sir, article 145 deals with the Advocate-General who corresponds to the Attorney-General at the Centre. Clause (1) of article 145 deals with the appointment of the Advocate-General. Clause (2) corresponds to clause (2) of the present article. Clauses (1) and (2) of article 145 really correspond to clauses (1) and (2) of the present article. Clauses (3) and (4) of article 145 are really important. Clause (3) provides that "The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed." Clause (4) provides that "The Advocate-General shall receive such remuneration as the Governor may determine." The provisions of these two clauses do not appear in article 63. I submit, Sir, that the provisions of these two articles, 63 and 145, should be similar as they deal with two similar offices. One is the Attorney-General of India and the other is the Advocate-General of a State. The principle which I want to introduce by this amendment is that the position of the Attorney-General of India and that of the Advocate-General in the Provinces should stand on the same footing. In fact in the Provinces the Advocate-General is to form so much a part of the Ministry that on the fall or resignation of the Ministry he has also to retire. This is the principle in the U.K. where the Attorney-General has to retire along with the retirement of the Ministry. It is a wholesome principle that the Advocate-General forms part of the Ministry and stands or falls with the rise and fall of the Ministry. It is also necessary that the Advocate-General must function so long as he is not re-appointed or a successor to him is appointed, because routine work cannot otherwise be carried on by the Governor or any other officer, he being a specialist and his retention in office for that temporary period is desirable, and that he must receive a pay which the Governor may determine. I submit that a similar principle should apply to the Attorney-General of India. In fact he should also so much form part of the Government that he should also retire with the retirement of the Ministry. There is no reason why a difference should be made between the Attorney-General of India and the Advocate-General of a State. It may be, I do not know, that this difference was not intentional. It may be due to an accidental omission rather than deliberate policy. It is for this reason that I have attempted to draw the attention of the House to the difference and I suggest that the difference should be eliminated. As many honourable Members may not have any opportunity of considering individually

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the difference between these two articles, I have pointed out the difference and I hope they will give the matter due consideration.

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

"That in clause (4) of article 65, for the words 'as the President' the words 'as the Parliament by law' be substituted."

The amendment if adopted would change the article to read:

"The Attorney-General shall hold office during the pleasure of the President and shall receive such remuneration as the Parliament may by law determine."

I do not like even as it is the proviso of this article which would make the Attorney-General hold office during the pleasure of the President. But it may be that a convention would be established whereby the Attorney-General, as suggested in the preceding amendment, may form part of the cabinet, and may retire or take office along with the Ministry. If the constitution does not provide specifically to the contrary there is no bar to a convention of this kind developing and the Attorney-General ranking as the Chief legal adviser of Government, so that his office will technically be at the pleasure of the President.

So far as his emoluments are concerned, I think it would be proper if his emoluments are left not to be determined by order of the President, but by an act of Parliament as those of the Ministers. The President would, it is quite true, act on the advice of the Ministers; but even so the salary and allowances of the Attorney-General should be determined I think by an Act of Parliament, and should not therefore be varied in any particular term while a given individual holds office, to the prejudice of that individual. I think the ground is perfectly simple and I hope the amendment will commend itself to the House.

**Shri Prabhudayal Himatsingka** (West-Bengal: General): Sir, I beg to oppose the amendments moved by Mr. Naziruddin Ahmad and Prof. K. T. Shah. The article as it stands is what should be accepted by the House. There is certainly difference between the Advocate-General of a province and the Attorney-General of India. Sub-clause (4) provides that the Attorney-General shall hold office at the pleasure of the President and I think that should serve the purpose. If there is a change in the Ministry that necessarily need not mean the going out of office of the Attorney-General also, but in the provinces with the change of ministry the Advocate-General should be required to retire unless he is appointed again. Therefore, I oppose the amendments moved and I support the article as it stands.

**Mr. Vice-President:** Dr. Ambedkar:

**Mr. Naziruddin Ahmad:** He has not listened. He is getting his instructions, Sir

**Mr. Vice-President:** That is hardly a charitable remark to make.

**Mr. Naziruddin Ahmad:** It is not. I am forced to make the remark, Sir . . .

**Mr. Vice-President:** Will the honourable Member kindly resume his seat?

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Sir, I do not know whether any reply is necessary.

**Mr. Naziruddin Ahmad:** No, not at all! There has been no debate on the amendment. It would be unfair to the House to be called upon to vote without any reply. Rather than have the amendment put to vote without any consideration, I would beg leave of the House to withdraw it.

**Mr. Vice-President:** Has the honourable Member the leave of the House to withdraw his amendment No. 1344?

**Some Honourable Members:** No.

**Mr. Vice-President:** The question is:

"That for clause (4) of article 63, the following clauses be substituted, namely:

- (4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.
- (5) The Attorney-General shall receive such remuneration as the President may determine."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in clause (4) of article 63, for the words 'as the President' the words 'as the Parliament by law' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That article 63 stand part of the Constitution."

The motion was adopted.

Article 63 was added to the Constitution.

#### Article 64

**Mr. Vice-President:** We now come to article 64. The motion before the House is:

"That article 64 form part of the Constitution."

There are two amendments (1346 and 1348) standing in the name of Prof. K. T. Shah. He may move them one after the other.

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

"That in clause (1) of article 64, for the word 'President' the words 'Government of India' be substituted" and,

"That in clause (2) of article 64, for the word 'President', where it occurs for the first time, the words 'Government of India', for the word 'President', where it occurs for the second time, the words 'Council of Ministers', and for the word 'President' where it occurs for the third time the words 'Government of India' be substituted respectively, and the following proviso be added at the end of clause (2) :—

'Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry.'

The amended article would then read:

"All executive action of the Government of India shall be expressed to be taken in the name of the Government of India.

Orders and other instruments made and executed in the name of the Government of India shall be authenticated in such manner as may be specified in rules to be made by the Council of Ministers, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Government of India:

Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry."

While accepting that the President would be the head of the Government, I still do not quite understand why all the Government business should be carried on and orders issued in the name of the President. Even if you are following the practice in England, according to this draft, the orders etc. of the Government in England are by "His Majesty's Government". It is surely not so in India—at least I hope it is not intended that the Government in India would hereafter be described as "the President's Government". The Government is the Government of India, and I do not see why the impersonal and collective form should be substituted by the personal and direct form of the

President. In my reading of the Constitution this offends against every principle that this Draft Constitution is otherwise based upon and I see no reason why decisions of the Government of India in their executive sphere should be expressed in the name of the President. By the express provision of this Constitution the President is outside the turmoil of parties, while the Government of India is definitely going to be a party Government or even a coalition Government which may have varying fortunes. If so there is every ground to suggest that the orders of Government be in the name of Government themselves collectively and not in the name of the President. It is for that reason that the first amendment has been suggested.

The second amendment is consequential. Rules which will regulate the framing and issue of orders will of course be made by the Council of Ministers. The President should, therefore, not intervene at all in this direction and the orders will be expressed in the name of the Government of India. If by any chance or for any special occasion any Department has to issue, let us say, a circular or an ordinance or some particular orders relating to the doings of that particular Department, and the order concerned is expressed in the name of that Department or Ministry, that should not by itself invalidate the order merely because it is not spoken of as in the name of the Government of India. To me this procedure seems to be not only more simple but more in accordance with the theory of the Constitution, and therefore I hope the House will accept it.

(Amendment No. 1347 was not moved.)

**Mr. Vice-President:** The article is now open for general discussion.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, Prof. K. T. Shah who has moved the amendments Nos. 1346 and 1348 has tabled his amendments in accordance with a different scheme which he envisaged; and in pursuance of that he has tabled amendments almost to every clause, or to the majority of the clauses, in this Constitution. He wanted a different kind of Government in this country, namely, the Presidential system as opposed to the Parliamentary system.

**Prof. K. T. Shah:** On a point of correction, this is keeping the President outside the Presidential system that I wanted. It is on their Draft that I wanted to make the amendment.

**Shri M. Ananthasayanam Ayyangar:** I am glad that for once my friend has tried to help the other party. My friend, Prof. Shah will find that we have already given our seal of approval to article 66, which says:

"There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

Therefore the President of the Union becomes an integral part of the Parliament of the Indian Union. In another section, the executive power is co-extensive with the powers of the Legislature. Thus at one stage he becomes a necessary element and at another stage he ceases to be in the turmoil of the day-to-day administration. Prof. Shah wanted by an amendment to article 66 to do away with the President and restrict it only to the two Houses—he wanted only one House. But the amendment was lost and the President has become a permanent fixture. So far as Parliament is concerned, I do not see any reason why the executive authority ought not to be exercised in his name.

Let us turn to article 42. It says:

"The executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law."

That was also passed by this House. In view of articles 42 and 66, where in the one case the President is the executive authority and in the other the

[Shri M. Ananthasayanam Ayyangar]

President, with the two Houses, constitutes Parliament, the President has been firmly fixed up in both the places. This article, that is article 64, is only carrying out the substantive provisions of articles 42 and 66, by saying that "all executive action of the Government of India shall be expressed to be taken in the name of the President".

He is the chief executive authority. He is the first person and in case of dissolution of Parliament, who is the person to dissolve it? It is the President who is vested with the authority. During day-to-day administration, except in regard to legislative portions and legislative enactments, who is to sign in the absence of Ministers? If the Parliament is dissolved the Ministry also is dissolved. If an occasion arises like that, the President has to exercise the powers.

Let us address ourselves to another reason that has been given. My friend Prof. Shah wants that executive action should be taken in the name of the Government. The President means the President on the advice of the Ministers. He cannot act independently. Action is taken in his name though it is action of the Government as a whole, that is, consisting of the President and the Ministry. Thus it is impossible to get him out of the framework. The President is the chief executive authority and he is an important link in Parliament. It naturally follows that executive action should be taken in the name of the President.

I oppose both the amendments of Prof. Shah—Nos. 1346 and 1348—and request the House to pass article 64 as it stands.

**Shri Raj Bahadur** (United State of Matsya): Mr. Vice-President, Sir, I come here to oppose the amendment that has been moved by Prof. K. T. Shah. From the various amendments that he has been moving from time to time, I am led to think that he is moving according to a set plan and that he wants the Presidential system of constitution instead of the Parliamentary system of democracy for the country. But, with all respect to his erudition and experience, I see that he has not been consistent even in that. When we discussed article 42, by which the entire executive power of the Union is vested in the President, he himself moved two amendments, Nos. 1040 and 1045 to that article and one of his amendment reads as follows:—

"The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being."

By implication it means obviously that all executive actions should be taken by and in the name of the President, which is exactly the import, meaning and the implication of article 64, under discussion. I, therefore, fail to see any reason for Prof. K. T. Shah to go now behind the terms of his own amendment, which he moved to article 42. What we mean clearly enough is that the entire executive power of the Union vests in the President and all governmental orders, and instruments shall be made in the name of the President. It is no anomaly and no inconsistency under any known democratic principles to get the orders issued in the name of the President and as such, I submit, there is no reason for the House to accept the amendment which has been moved by Prof. Shah.

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, I do not think any reply is called for.

**Mr. Vice-President:** The question is:

"That in clause (1) of article 64, for the word 'President' the words 'as the Parliament by law' be substituted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That in clause (2) of article 64, for the word 'President', where it occurs for the first time, the words 'Government of India', for the word 'President', where it occurs for the second time, the words 'Council of Ministers', and for the word 'President' where it occurs for the third time the words 'Government of India' be substituted respectively, and the following proviso be added at the end of clause (2):—

'Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry.'

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That article 64 stand part of the Constitution."

The motion was adopted.

Article 64 was added to the Constitution.

#### Article 65

**Mr. Vice-President:** Amendment No. 1349 has the effect of a negative vote, and is, therefore, disallowed.

Amendment No. 1350 stands in the name of Shri H. V. Kamath and may be moved.

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

"That in clause (a) of article 65, after the word 'President' a comma and the words 'as soon as they are made,' be inserted."

This clause, as it stands at present, reads as follows:—

"It shall be the duty of the Prime Minister—

to communicate to the President all decisions of the Council of Ministers, . . . ."

If my amendment be accepted by the House, the clause, as amended, would read thus:—

"It shall be the duty of the Prime Minister—

to communicate to the President, as soon as they are made, all decisions of the Council of Ministers."

The amendment is more or less formal, and only makes for clarity of the meaning of the clause. In my judgment, there is no need whatever for such a clause in the Constitution and I think that it may as well be incorporated in the Rules of Business of the Cabinet. But somehow or other, it has found its way in the Constitution and any amendment which seeks to eliminate it would be disallowed as it seeks to negative the motion. Personally I should have wished that the article as a whole were not there, because it is merely some of the Rules of Business of the Cabinet; and what they should do in this matter must be purely a routine affair and must have been embodied in the Rules of Business of the Council of Ministers. But as it has come before us, I would only move this amendment, with a view to obtaining greater clarity of this particular sub-clause (a), because decisions of the Council of Ministers, if they are not communicated as soon as they are made,—it may be, of course, that they will be communicated very soon after that—but to make it absolutely clear, we might as well provide for this, that all the decisions of the Cabinet must be communicated to the President as soon as they are made, so that if a contingency arises, as visualized in sub-clauses (b) and (c), the President may call for information and if the President so requires, any matter which has been considered by the Cabinet already, may be re-opened by them, as provided for in sub-clause (c) of this article. Delay perhaps may be dangerous in this matter as in so many others, and therefore with a view to eliminate any

[Shri H. V. Kamath]

delay, any procrastination in these matters, I move, Sir, that decisions of the Cabinet must be communicated to the President as soon as they are made. I move amendment No. 1350 of the List of Amendments and commend it to the acceptance of the House.

**Mr. Vice-President:** There is an amendment to this amendment No. 71 of List No. V (Sixth week) standing in the name of Mr. R. K. Sidhva—Member not in the House.

Then we come to Amendment No. 1351 standing in the names of Shri A. K. Menon and Shri B. M. Gupte,

(The amendment was not moved.)

Amendment No. 1352 stands in the name of Prof. K. T. Shah.

**Prof. K. T. Shah:** This is a matter of detail and I would like to be excused from moving this amendment.

**Mr. Vice-President:** There is only one amendment now before the House and the clause is open for general discussion. Dr. Ambedkar, would you like to say anything?

**The Honourable Dr. B. R. Ambedkar:** No, Sir. I do not accept Mr. Kamath's amendment.

**Mr. Vice-President:** The question is:

"That in clause (a) of article 65, after the word 'President' a comma and the words 'as soon as they are made,' be inserted."

The amendment was negatived.

**Mr. Vice-President:** The question is:

"That article 65 stand part of the Constitution."

The motion was adopted.

Article 65 was added to the Constitution.

**Mr. Vice-President:** Ordinarily, we close at 1 P.M. in order to accommodate our Muslim brethren. Today, we close just now to accommodate ourselves. The House stands adjourned till 10 A.M. tomorrow.

**Shri M. Ananthasayanam Ayyangar:** May I request you, Sir, .....

**Mr. Vice-President:** The House has been adjourned; no further business can be transacted now.

The Assembly then adjourned till Ten of the Clock on Saturday the 8th January, 1949.