Monday, 13th June, 1949

Volume VIII

16-5-1949
to
16-6-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, NEW DELHI-110 005

THE CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 13*th June,* 1949

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

DRAFT CONSTITUTION —(*Contd.*)

Article 216

Mr. President : We finished article 186 the other day. I am told we should begin with article 216 today.

(Amendment Nos. 2739 and 2740 were not moved.)

The question is:

"That article 216 stand part of the Constitution."

The motion was adopted.

Article 216 was added to the Constitution.

Article 217

(Amendment Nos. 2741 and 2742 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim). Sir, I beg to move:

"That in clause (2) of article 217, for the words 'next succeeding clause', the words, figure and brackets 'clause (3)' and for the words 'preceding clause', the word, figure and brackets 'clause (1)' be substituted respectively."

The only reason for moving this is that upon this a very important amendment depends. That is why I have given the initiative.

Shri T. T. Krishnamachari (Madras: General): May I move amendment Nos. 87-B and 87-C? They are only formal. I move:

"That in clause (2) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

and

"That in clause (3) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

Prof. Shibban Lal Saksena (United Provinces: General): I have also given notice of an amendment.

Mr. President : I have not seen any amendment.

Prof. Shibban Lal Saksena : I gave notice of it this morning. I beg to move.....

The Honourable Dr. B. R. Ambedkar : (Bombay: General): We have not got copies of his amendment.

Shri L. Krishnaswami Bharathi (Madras: General): We cannot follow what he is moving.

Mr. President : He gave notice of his amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

The Honourable Shri K. Santhanam (Madras: General): Sir, in a matter of importance like this I do not think anyone should be allowed to move amendments without proper notice. We do not propose to move amendment No. 2741 at all and I do not think any other Member has got the right to move our amendment.

Shri L. Krishnaswami Bharathi : If you give the right to Members to move amendments like this it will go on interminably and it will be sheer waste of time.

Shri K. M. Munshi (Bombay: General) : The amendment the Member wants to move is the same as the one which is not being moved by Members who have given notice of it. He wants to move what they have not moved.

Shri R. K. Sidhwa (C.P. & Berar: General): Sir, I do not object to what you may decide. But I want to draw attention to an amendment which I gave notice last week, but which you disallowed. I do not see why an exception should be made in this case.

Prof. Shibban Lal Saksena : Under the rules we are allowed to move amendments to amendments if we give notice before the session commences. This amendment only incorporates the idea contained in the note of dissent by Shri Alladi Krishnaswami Ayyar given at the end of the Draft Constitution. As this is an important matter I do think that if the Members who have given notice of similar amendments are not moving them, the article should not be allowed to be passed without discussion and without attempt at its amendment.

Mr. President : Why did you not give notice of it in time?

Prof. Shibban Lal Saksena : Sir, I gave notice in time, *i.e.,* "before the session commences". Further, it is only a reproduction of amendment No. 2741, and is proposed to be moved as an amendment to 2743.

Mr. President : Yes. I got notice of this before the session commenced. It took the office a little time to get it copied. So I could not disallow it.

Prof. Shibban Lal Saksena : Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them.

The Honourable Dr. B. R. Ambedkar : I would like to raise one or two points about this. This seems to be a rather important matter. The first thing I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

Mr. President : It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The honourable Member in his notice says that his amendment is an amendment to Nos. 2741, 2742, 2743, 2744 or 2745.

The Honourable Dr. B. R. Ambedkar : If it is to be taken as an amendment to No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

Shri Jaspat Roy Kapoor (United Provinces : General): Sir, may I submit that Dr. Ambedkar is taking in this matter a very narrow view. The position is this article 217 is under discussion. One Member wants it to be amended in a particular manner. Mr. Naziruddin Ahmad wants the article to be amended in another manner and confines himself to clause (2) of it. All the same the amendment is to article 217. My Friend Prof. Shibban Lal would be

in order if he says that rather than amending it in the manner suggested by Mr. Naziruddin Ahmad it should be done in the way he wants. That is obviously an amendment to the amendment of Mr. Naziruddin Ahmad. If a too narrow view is taken off these things by Dr. Ambedkar, I am afraid he himself would find it very difficult to move many of his amendments. He has done so in the past and he will find it necessary to do so also hereafter.

Mr. President : I treat this as an amendment to amendment No. 2743. I rule that this is in order.

Shri B. Das (Orissa: General): I do not follow you, Sir.

Mr. President : If Mr. Das will turn to page 285 of the Printed List, he will find amendment No. 2741. This is more or less a word for word a copy of that. There is no difficulty, you can follow it.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That for article 217, the following be substituted :—

'217. (1) The Legislature of the States in Part I, Schedule I, I shall have exclusive power to make laws for the States or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).

(2) The Legislature of any State in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.

(3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, or order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have the exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.

(4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.

(b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects:

Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.

(5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.

(6) When a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.' "

Sir, I am very sorry that an attempt was made to get this amendment disallowed. I would like only to point out that this amendment is word for word what Shri Alladi Krishnaswami Ayyar has suggested in the Appendix to the Draft Constitution on pages 212-213.

In fact in the Appendix Shri Alladi has stated that he differed from the majority of the Drafting Committee and he has stated that in his opinion the new scheme of division of powers between Parliament and the Legislatures of

[Prof. Shibban Lal Saksena]

the states should be as is given in this amendment. The amendment of which notice was given by the Honourable Mr. K. Santhanam was on the lines of the suggestion made by Shri Alladi in the Appendix. I suggest that the matter is of vital importance, on which one of the most eminent jurists of the country has differed from the Drafting Committee, and the article should not be allowed to be passed by the House without due consideration. I therefore thought it my duty to move this amendment. I would have preferred if Mr. Santhanam had himself moved it. I do feel that the House is entitled to know why the suggestion made by Shri Alladi could not be followed. The suggestion made by Shri Alladi is a very important one. In fact the Draft Constitution only reproduces word for word Section 100 of the Government of India Act, 1935. In the Appendix, Shri Alladi has given arguments to show why the change he has suggested is necessary. He has stated that at the time the Government of India Act was passed, it was not decided as to where the residuary powers should vest, whether they should be with provinces or with the Centre. Therefore it was necessary to frame the Section in the form in which it was framed. He has also pointed out that much litigation has been carried on on the meaning of the word "Notwithstanding", in the Federal Court. He has also stated that as it has been decided finally that the residuary powers shall belong to the Centre, the article should be redrafted in a different manner, in the manner he has suggested and as is given in my amendment. Firstly, we should not copy word for word the Government of India Act, 1935, which was a deed of our slavery. Now that we are now framing a new Constitution, we should not merely incorporate everything word for word from the old Constitution. One advantage of this is that we will not be reminded of our past slavery as we would be by copying, word for word, Section 100 of the Government of India Act, 1935. Secondly, Sir, this is a more logical form to say that the various States shall have exclusive power to make laws in relation to matters falling within the classes of subjects specified in List I, and that List II shall contain subjects in which both the States and the Union shall have concurrent power to make laws, and then to say that whatever remains shall belong to the Union. List I at present gives the powers of the Union Parliament. Shri Alladi has suggested that whatever is contained in the Union List should be by way of illustration only and that whatever remains should belong to the Centre. The more logical form will be to say that such and such powers will belong to the States, such and such powers will belong both to the States and the Union and then to say that whatever remains shall belong to the Union. This kind of division given by Shri Alladi is a more logical division and a much better division in every way. The suggestion made by him is a very important one and the House should take note of the reasons why he prefers this arrangement to the Draft which only copies Section 100 of the Government of India Act. The Drafting Committee itself says on page 100 of the Draft Constitution—

> "Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in Parliament begin with the legislative powers of the States, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement."

I cannot understand why the Drafting Committee does not feel this is a more logical form. The mere fact that the Government of India Act had it in that form is no arrangement to have it in that form. I therefore suggest that the form suggested by Shri Alladi is an improved form and is less open to litigation and far more clear.

Then, Sir clause (5) says :—

> "The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature."

Shri Alladi has pointed out that this clause follows the Australian and American Constitutions. He has stated that in the Draft Constitution there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. This clause (5) gives that power. This makes the article complete and brings it in conformity with the provisions of the Australian and American Constitutions. The form suggested by Shri Alladi is superior in form as well as in content and also fills a lacuna in the draft article. Sir, I move my amendment and commend it for the acceptance of the House.

(Amendment Nos. 2744 and 2745 were not moved.)

Mr. President : Does anyone wish to say anything?

Shri L. Krishnaswami Bharathi : Nobody, Sir.

Shri M. Ananthasayanam Ayyangar (Madras: General): We do not want the amendment to be moved.

Mr. President : I will put the amendment of Prof. Shibban Lal Saksena to the vote. The question is:

"That for article 217, the following be substituted :—

"217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).

(2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.

(3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.

(4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.

(b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects :—

Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.

(5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.

(6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.' "

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 217, for the words 'next succeeding clause', the word, figure and brackets 'clause (3)' and for the words 'preceding clause', the word, figure and brackets 'clause (1)' be substituted respectively."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 217, as amended, stand part of the Constitution."

The motion was adopted.

Article 217, as amended, was added to the Constitution.

Article 218

Shri T. T. Krishnamachari : Sir, this article is not considered necessary in the light of subsequent revision by the Drafting Committee. Therefore, the article may be put to the House, so that it can be negatived, if the House desires.

Mr. President : The question is:

"That article 218 stand part of the Constitution."

The motion was negatived.

Article 218 was deleted from the Constitution.

Article 219

Mr. President : We shall take up article 219.

(Amendment No. 2749 was not moved.)

The question is:

"That article 219 stand part of the Constitution."

The motion was adopted.

Article 219 was added to the Constitution.

Article 220

Shri T. T. Krishnamachari : May I suggest that articles 220, 221 and 222 may be put together because the Drafting Committee does not consider these articles as necessary?

Mr. President : I will put them separately.

(Amendment Nos. 2751 and 2752 were not moved.)

The question is:

"That article 220 stand part of the Constitution."

The motion was negatived.

Article 220 was deleted from the Constitution.

Article 221

Mr. President : There is no amendment to this article.

The question is:

"That article 221 stand part of the Constitution."

The motion was negatived.

Article 221 was deleted from the Constitution.

Article 222

Mr. President : There is no amendment to this article also.

The question is:

"That article 222 stand part of the Constitution."

The motion was negatived.

Article 222 was deleted from the Constitution.

Article 223

Mr. President : There are several amendments to this article.

(Amendment Nos. 2754 to 2759 were not moved.)

The question is:

"That article 223 stand part of the Constitution."

The motion was adopted.

Article 223 was added to the Constitution.

Article 224

The Honourable Dr. B. R. Ambedkar : I wish that article 224 and 225 be held over.

Mr. President : Articles 224 and 225 are held over.

Article 226

The Honourable Dr. B. R. Ambedkar : I formally move amendment No. 2775.

Then I move an amendment to this.

Sir, I move:

"That for amendment No. 2775 of the List of Amendments, the following be substituted :—

"That article 226 be renumbered as clause (1) of article 226, and

(a) at the end of the said clause as so renumbered the words 'while the resolution remains in force' be added; and

[The Honourable Dr. B. R. Ambedkar]

(b) after clause (1) of article 226, as so renumbered, the following clauses be added :—

'(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.' "

(Amendment No. 2776 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, this is a very contentious article and Dr. Ambedkar has tried to carry away some portion of its sting by his amendment, but I only want to say, Sir, that the amendment has made the article almost useless for the purpose for which it is intended. It was intended by this article that if a large number of provinces desired that in some matter there should be co-ordination among them and because they have not got singly the power to frame any such law for co-ordinating the efforts of those provinces, they may ask their representatives in the Council of States to pass a resolution by two-thirds majority giving the power to the Parliament to legislate on that subject also. For instance let us suppose that there is an emergency about food in four or five provinces. Unless there is some law relating to the control and distribution of food in all these provinces, it will be of no use for a single province to pass any law to meet the emergency, for food as such may be a provincial subject, and the Centre will then have no right to frame any legislation about it. Therefore, this article only gives power to the Upper House to pass a resolution by two-thirds majority to ask the Parliament to pass some law which might tide over the emergency and help those four or five provinces.

Now, Sir, this article as originally intended was to give this power without any limit of time and that means that until the emergency lasted, it could remain. But some people have seen in this article a limitation of the powers of Provincial autonomy, and therefore they resented the old article and the amendment of Dr. Ambedkar is to meet that view-point. By reducing the period to one year, I do not see how any emergency can really be met. So every year there shall have to be a vote of the Council of States and only if the Council agrees to extend the period by another year, the legislation undertaken by the Parliament in the Preceding year will continue. On the off-chance of having that vote, I do not think any major schemes can be undertaken. I think therefore it is much better, instead of saying that every year a new resolution will have to be passed to state that at least in the first instance, the resolution of the Council of States will confer power for three years and after that, it could be extended year by year, until the emergency is over. Therefore, I think that if the purpose for which this article is put in is to be achieved, then, the period of one year should be changed to three years in the first instance and then one year afterwards. That would give Parliament power to make laws for three years in the first instance and their life may be extended year by year by two-thirds majority of the Upper House. There can be no comprehensive planning for one year. It is quite possible that in the next year there may be a new election of one-third of the members' and they may not pass that law, and it may so happen that the whole of the money spent in the first year may become a waste. This fixing of the period of one year may work as a serious handicap.

I would therefore request Dr. Ambedkar himself to amendment by saying three years in the first instance, which period will be extended from year to year if required. In fact in, America where Parliament has got no power to legislate on subjects which are within the jurisdiction of the States, it has been felt that there is very great difficulty in meeting such an emergency and they are able to carry on their schemes which require the concurrence of the States by a sort of allurement to finance the schemes. This article was intended to overcome that difficulty. I therefore request the House that even at this late stage the period may be fixed as three years, as the article as it stands at present is meaningless.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, this is a very important article and I think it deserves more attention so far as the question of the powers of the States are concerned.

With reference to the provisions which we have already passed, we have three lists. (i) the Union List which contains the subjects which are entirely within the jurisdiction of Parliament to pass laws regulating them; (ii) the Concurrent List regarding which both the States as well as the Parliament can legislate, and in that connection, legislation of Parliament will certainly prevail as against the legislation passed by the States: (iii) the States List, that is, one regarding which the States alone will have jurisdiction to pass legislation. I would also like to draw the attention of the House to the fact that with respect to what remains outside the purview of any of these lists, these matters are being handed over to the Union Parliament, that is, all the residuary powers are with the Union Parliament. Therefore, the only power that will be left with the States will be those that will be included in what will be later on determined as the States list.

It would be open to the House looking to the condition in the country to reduce the number of subjects that will be included in the States List. This may have to be done for various reasons. There is the acute problem of food which is not only confronting us, but also many other countries of the world. It may become necessary that the matter should be taken over by the Union Parliament. Similarly, there may be other subjects, like those necessary for the peace and security of the country. It may become necessary that some of the subjects which were originally included in the States List will have to be included in the Union List. Under these circumstances it is a matter for serious consideration whether we should now enact this article 226.

It may be argued that there are cases in which the State can legislate only in respect of the area which is included in its jurisdiction and a problem may arise which requires that there should be legislation applicable to more than one State and in that case certainly it becomes necessary that the Union Parliament shall pass that legislation as the State will have no power to pass such legislation. But for that, we are making provision in article 229, that if the State Assembly and the Council, if one is there, together so decide, the Union Parliament will be given power to legislate even in respect of State subjects. That also, to my mind, is necessary. But it has to be considered seriously whether power under article 226 is necessary, and what is its implication. Article 226 says: "Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members, present and voting that it is necessary or expedient in the national interest that Parliament should make laws....." The main ground on which this power is proposed to be given is that in the national interests, the Parliament should make laws for the States. If it is really a matter of national interest I do not understand why the State itself will

[Shri H. V. Pataskar]

not either pass the legislation itself or be willing to consent to legislation by Parliament. Why should we presume that the State will assume such an anti-national attitude? There are other provisions in the Constitution under which on the ground of national interest, emergency, etc., Parliament can interfere. Particularly the wording in article 226, "in the national interest, Parliament should make laws" is something which implies that that the Centre requires legislation by Parliament in a matter of national importance, which the State is not prepared to pass. In respect of the meagre subjects which are left for legislation by the States, I think such cases are likely to be very rare. I do not think that article 226 is at all necessary. Of course, as I said, this deserves to be discussed before we come to a particular conclusion. I do not say that I am opposed to it; I would be prepared to accept it; for after all, one may come to a different conclusion. After considering the other side's views, I only wish to point out that to allow this article to be passed without considering all the aspects will not be happy from any point of view.

Shri O. V. Alagesan (Madras: General): Mr. President, Sir, I see great mischief in this article. It is contended on the other side that this is only an extended and indirect version of article 229 that is to follow. If it is so innocent as that, my feeling is that it is redundant. This article provides for interference in matters contained in the States List by the Central Government through the agency of the Council of States. The saving feature is, it is said, that in the Council of States the representatives of the various States are going to sit and they are not likely to overlook the interests of the States concerned and to reinforce this, matters like food are brought into the picture. In matters like food it will be in the interest of the States concerned if the Centre steps in and comes to their rescue. In such cases the States will certainly avail themselves of the provision made in article 229. They will have the good sense to request the Centre to step in and legislate in such matters which will be beyond their power or capacity to deal with. Now, I should like to put a pointed question to Dr. Ambedkar. For instance, now there is a situation prevailing in the State of Hyderabad and in Madras Presidency. In some of the border areas in these two States there is disturbance of public peace. Now I would like to ask whether it will be proper, under similar circumstances, for the Centre to intervene and take over the entire portfolio of law and order from the two States concerned and step in. Sir, I am sure that it will be a mockery of provincial autonomy if such a thing happens. So, my point is that this article, if it is only an extended version of article 229, is superfluous but if there is something behind it, if it is intended that the Centre should go beyond what is contained in article 229, then it is surely mischievous and need not find a place here. Dr. Ambedkar's original amendment has provided for three years. I should like to know from my friends who have contended that it is necessary that this provision of three years should be there, whether an emergency can be called an emergency if it is going to last for three years and more. Then it will cease to be an emergency and become a permanent feature. So the present amendment has tried to modify the vigour of this section which has great potentiality for mischief to interfere with provincial autonomy. I would request Dr. Ambedkar even at this late stage, if it would be possible for him, to withdraw this article and assure that there will be no interference with provincial autonomy.

Shri T. T. Krishnamachari : Mr. President, Sir, the amendment moved by Dr. Ambedkar to article 226 undoubtedly requires some explanation. I heard

with attention the remarks of my honourable Friend Mr. Pataskar and also of my Friend Mr. Alagesan. The House will realise that the article as amended by Dr. Ambedkar's amendment seems totally different to the article as it originally stood in the Draft, and the article as it originally stood in the Draft was intended to cover any lacuna that might exist in the distribution of powers wherein it is necessary that the Centre should co-ordinate the activities of the provinces quickly without going through the process indicated by Article 229 and also to cover cases where there is a certain amount of overlapping. The article as it stood originally had also this disadvantage *viz.,* that it sought to put the power over the particular subject which the Centre was attracting, to itself by means of a resolution passed by the Council of States and, so to say, placing it permanently, for ever, in the Concurrent List; that was its main defect. When a particular action was taken and the field of provincial autonomy was encroached upon; very necessarily perhaps there must be a time limit for the continuance in force of such action. It is no use putting that subject permanently in the Concurrent List. I have no doubt that it is this aspect of the matter that made Dr. Ambedkar give notice of a previous amendment *viz.,* limiting the scope of action that might be taken by Parliament by the authorisation provided in the manner indicated in 226 to a period of three years. There would according to that scheme be no objection to renewing it for a further period of three years and also to renew it thereafter provided a certain amount of time is allowed to lapse between lapsing of that particular resolution and a fresh resolution to be moved on the same lines. I do see the force of the arguments of my honourable Friend Mr. Pataskar and the previous speaker in the objections raised by them to the scheme of this article. I am one of those who believes and believes very firmly that wherever we assign to the provinces a certain field in which they could act, we must leave the provinces entirely in sole charge of that field, not because of any rigid adherence to theoretical reasons that the federalism adopted by us should be pure and we should not have a mixed kind of federalism such as exists in Canada, but merely because I feel that the responsibilities of Provincial Ministers must be laid squarely on them and there should be no opportunity provided for them to take shelter under the plea of divided responsibility between the Centre and the Provinces. Sir, on this particular point I hold strong views and I do feel that when we consider this whole chapter of distribution of powers we must have that particular fact in view all the time. It does not matter if the powers that are given to provinces do not cover a very wide range. It may be necessary for the Centre to have a larger amount of powers. That does not really interfere with the provinces working smoothly so long as within the scheme of powers allotted to provinces there is no interference from the Centre. Looked at from that point of view, 226 as it originally stood was undoubtedly objectionable that notwithstanding the fact that the Centre is empowered by the Council of States in which the component States are adequately represented and that act of empowering the Parliament is by a two-thirds majority which implied that the States agree to the Centre attracting to itself that provincial power. I do feel that it might conceivably be the thin end of the wedge of the encouragement of the Centre attracting to itself greater powers from the provinces, so that in this process of integration of powers at the Centre for the purpose of uniformity of action in avowedly important matters the general idea that the Centre must have larger powers would come to be accepted. Looked at from the other point of view *viz*., from the economic objectives to which we are wedded, economic intervention of the Centre becomes more than a formal necessity—all these facts will undoubtedly work for larger aggregation of powers in the Centre at the expense of the States and it is also true that in the other Federations or quasi-Federations as they exist today like U. S. A., Australia and Canada, we find the process of the Centre attracting to itself powers to a greater degree as time goes on is going on rapidly whether constitutionally or by reason of Judicial pronouncements or by the exigencies of time, so much so that we have found a check to this movement of attracting powers to Centre by the adverse vote on the referendum passed by the people of Australia in respect of

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a demand made by the Federal Ministry for greater powers to Centre for the purpose of executing their post-war plans. There is a lesson to be learnt for us from what has happened in Australia even while the referendum has been backed not by one party but by both parties. Both parties wanted greater power to the Centre but the referendum has unfortunately been negativated. Therefore it seems to me that in this scheme of distribution of powers which will be supplemented by the financial powers following in a later Chapter, then ultimately by the scheme in the three parts of Schedule VII, we should be very careful to leave to the provinces or as it is now called to the States, certain amount of power intact. I would at the appropriate time suggest that where it is necessary for the Centre to have powers to co-ordinate action by the various units for vital reasons, it is better to put that subject in the Concurrent List rather than leave it in the States List and at the same time make in roads into this field by various other devices. Not merely by the device envisaged in this article but there are other devices as well and there will be time enough for me to deal with those devices at the appropriate time and suggest safeguards against these being used. Therefore while I do hold that article 226 as it originally stood was objectionable and—if I may borrow a word from the previous speaker—even mischievous, and one that sought to detract from the States the full quantum of responsibility that ought to be with them, I feel that the amendment takes away the substance of this objection against article 226. Again, I can see the argument of my Friend Mr. Pataskar who perhaps might appreciate the necessity for a provision like article 226 but fails to see the necessity for a provision similar to the one that the amendment envisages, particularly in view of there being a subsequent article 229. I am afraid, Sir, that Mr. Pataskar has not appreciated the scope of article 229 which, as will be realised, is a reproduction of a similar section, *i.e.,* section 103, of the Government of India Act. And it is worthwhile, even at this stage, as a comparison has been made between 226 and 229, to find out on how many occasions the provisions of a similar section of the Government of India Act have been used. I do recollect that some time in 1939 Resolutions were moved in the various provinces empowering the Centre to undertake legislation in respect of drug control. I also remember, two years back before the Centre embarked on this Damodar Valley Corporation enactment, two Governments—Bihar and Bengal—had to pass legislation under the powers vested in them under section 103. So article 229 provides for co-ordinate action in matters in which the provinces are primarily interested, and more often than not, it will happen that only two provinces are interested and an enabling provision is provided so that there may be co-ordinating legislation by the Centre. And it has to be remembered that this process also takes a lot of time. To get a province to move, you want the co-operation of the executive, you want the co-operation of the members of the legislature; and it takes a lot of time. And if it did happen that the Centre wanted some powers in respect of an urgent matter where the provisions of the emergency sections need not and could not be involved, naturally there should be some method by which the Centre could act. It may be that some lawyer here might say that since residuary powers are left to the Centre the precedent created by the judgment of the Canadian case—Attorney-General of Ontario *versus* Canada Temperance Association—might probably be utilised because of the fact that the residuary powers are left to the Centre in this Constitution like the Canadian constitution. But again there is this difficulty, as Prof. K. C. Wheare, an authority on federalism, has pointed out, the very idea of precisely delineating powers that has been undertaken in Schedule 7 of the Government of India Act which we have followed closely and further improved upon in Schedule 7 of the Draft Constitution would not permit room for taking advantage of an interpretation of the residuary powers as meaning that the Centre can interfere in a matter which is avowedly within the province of the State and where the Centre has really no business, except in the public interest, to interfere. So I do believe that there is

some utility in article 226 as amended by the amendment moved by Dr. Ambedkar which takes away all the sting that might have been attached to the original article or as the article would have been as altered by Dr. Ambedkar's original amendment. The position as it would be if the article is accepted in its present form is that the matter will have to be brought before the Council of States every year; by way of a resolution so as to keep the Parliamentary enactment made under the authority of the resolution alive. And we have not put a time limit. There is no question of the whole thing lapsing at the end of three years or six years. If the emergency continues one can take it that the Council of States will be responsive enough to realise the need for keeping alive legislation enacted under cover of this Resolution and go on extending the life of such enactment by a fresh Resolution year after year. We have had experience on the other side of the House of certain enactments which have economic implications being extended year after year by a resolution of the House; and I do not suppose that except for asking questions there has been any serious opposition to giving Government these powers, provided Government convinces the House of the necessity of retaining those powers. At the same time it preserves a certain amount of freedom of action on the part of the States. If after the first year perhaps a snatch vote or something like that enables the Centre to undertake legislation which infringes ostensibly and avowedly into the field of provincial autonomy, there is enough scope for the provinces or States to tell their representatives in the Council of the States that when it came up for renewal next year they should not renew it. And if at all there is any mischief, it would be only for one year. But it is very unlikely, when the powers are so restricted and are conceded for a year and are to be renewed year by year by a Resolution of the Council of States, that Parliament or the central executive will embark on any action under article 226 without fully satisfying themselves of the need for emergent action, and also at the same time providing against treading on the corns of the Members of the State Legislatures and the executive Government of the States. I feel, Sir, that the balance of advantage seems to be in retaining a provision of this nature as amended by Dr. Ambedkar's amendment No. 194. The mischief, if at all there is any, is restricted to a very limited period; and the very fact that it is limited to a very short period itself offers no temptation for the Centre using it as a means of augmenting its own power; and if it is used at all, it will be used for a valid and definitely useful purpose to which by and large the component States are not likely to object. I felt, Sir, that even though I was taking the time of the House in a matter which did not seem to provoke very much of a controversy at this moment, it is very necessary, in order to dispel mistaken ideas that might exist in the States, that this Draft Constitution has been so framed that it tends to help in attracting all the powers to the Centre, that the field of provincial autonomy left was very restricted. It is to counter this idea that this particular article has been carefully considered, the *pros and cons* have been fully canvassed and this amendment has been introduced as being such as provides for minimum interference with provincial autonomy and only in cases where the emergency is very great and the safeguards against any mischief are contained in the provisions of the amendment itself. I do hope that the House will accept Dr. Ambedkar's amendment and the people of this country at large, will be convinced of the *bonafides* of us in this House whose intentions are to preserve provincial autonomy as far as possible, and to

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the extent that we have conferred provincial autonomy on the States, to keep those powers intact without undue interference. Sir, I support the amendment.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to support the article as it stands for two or three reasons. I do not regard this article as designed to cover any period of emergency; there are other emergency provisions in the Constitution for that purpose. It is clear that when a subject has assumed the proportions of national importance the Central Government should interfere. A provincial subject can become a central subject if it has assumed the proportions of national importance. When our national economy is in the incipient stage of development, we cannot make a water-tight or rigid distinction between central and provincial subjects. There are no central and provincial subjects. All subjects must remain integrated. I think that, whatever the intentions of the members of the Drafting Committee may be, this article may utilised for the purpose of constitutional amendment.

When the people at the Centre realize that it is no longer feasible and proper to keep a subject under the Provincial List they can make it a Central subject without undergoing the cumbersome procedure of a Constitutional amendment. The procedure laid down is that the Council of States by a two-thirds majority can recommend to the Government to take the administration of that subject into its own hands. I do not think that this procedure is proper. I feel that the duty of determining which subject has assumed the proportion of national importance should be left to the leaders at the Centre and not in the hands of the members of the Council of States. They are in far better position to take a detached view of things. There is a world of difference between a provincial capital and Delhi. The People at Delhi can know whether a subject has assumed the proportions of national importance or not. People living in the Provinces are engrossed with provincial problems; their outlook is narrow and circumscribed. Therefore, to leave it to the representatives of the Provincial Legislatures sitting in the Council of States to move such a resolution is really nullifying the good that can accrue to the Centre if the power to move such a resolution is vested in the House of the people.

I feel that the period which has been prescribed in the amendment, namely that such a step can be taken only for one year is not proper. How can a subject which has assumed the proportions of national importance become a provincial subject again after a period of one year? Today it is a subject of national importance, but tomorrow it becomes a subject of provincial importance I think people have no vision of what they are going to do. In a developing economy I am quite sure that most of the subjects that have been placed in the Provincial List will become Central subjects. It is no use frustrating and creating obstacles in the way of the Central Government. Let us not emphasize centrifugal tendencies.

Shri B. M. Gupte (Bombay: General): Sir, I am inclined to oppose both the original Draft and the amendment moved by Dr. Ambedkar. I certainly concede that the amendment moved by Dr. Ambedkar takes away some of the rigour of the original proposition. But in my opinion it yet remains objectionable.

My first objection is that it is not proper to allow only one House, namely the Upper House to amend the Constitution which has got a sanctity of its own. There is the article 304 which lays down particular provisions with some definite kind of majority, for amendment of the Constitution. Of course it is desirable to have some elasticity. Therefore, I would not have minded if the continuance of the resolution had been secured by a vote of the State

Legislatures concerned. As it is, borrowing the phraseology used in another context, I might say that if the resolution really reflects the opinion of the State legislatures it is useless. But if it does not reflect the opinion of the State legislatures it is mischievous. If it reflected the opinion of the State Legislature there was no difficulty at all in getting the item passed in the various State Legislatures. If, on the other hand, it did not reflect their opinion then of course we were going counter to the wishes of those who were responsible according to the Constitution for these subjects. I do admit that there might be a time when such a power to the Centre is required. Then, provided for a definite emergency like that. But in the absence of any emergency, to amend the Constitution by such a resolution is not proper. The Council of States' resolution stands for one year. Why not make it renewable on this definite condition that before the expiry of that period a majority of the State Legislature should pass resolutions asking for the continuance of that resolution say for two years or three years? Thereafter, if the amendment is to continue, then it should be done by the usual manner laid down by article 304. In view of these fundamental objections of allowing only the Upper House without Parliament having any say and without the Legislature of the State having any say in the matter, I suggest it is worthwhile considering whether the article should be maintained in this form.

Shri Mahavir Tyagi : (United Provinces: General): Sir, I think the original article was much better worded and was more useful than the amendment proposed. although the amendment does not substantially change the meaning or the motive, the original article was quite sufficient for the purposes for which we are providing. There is a tendency in the country as well as in this House and people still feel that the Provinces will enjoy autonomy, that the States will be autonomous States or something like that. They have enjoyed this feeling for sometime past. Although the whole country has now become independent and autonomous they do not yet feel the pleasure of enjoying this all-India autonomy and of merging their own entity into this all-India autonomy. So there is a sort of orthodox feeling of clinging to some powers as if the Provinces can do better.

The States are analogous to various parts of the human body. Each part cannot go absolutely separate and become autonomous; it is a connected whole. The manner in which we have been making our Constitution so far also proves that we agree to the idea of constituting our States as one whole and constituting these various Provinces and States as limbs of that one body. The very fact that Parliament will enact laws whenever and with regard to whichever province it is necessary to get laws enacted from the Centre shows that this exception to the routine shall be taken only when there is some necessity and that too when the Council of States themselves by two-thirds majority decide in its favour. Suppose there is some financial crisis of a very dangerous or severe type in one province. Suppose the resolution requested Parliament to enact a law in this respect for six months. According to the amendment of Dr. Ambedkar, after six months the law will lose its force. So after six months the Council of States has again to sit and extend the period so as to enable Parliament to extend the law. This is a cumbersome process.

What is the harm, why should we suspect the motive even if the period, six months or one year, is not mentioned at all? A body which can enact a law can also de-act it. Especially when particular care is taken to see that there is no encroachment on the rights of the subjects, there is no reason to think that there will be occasion for interference. If a neighbouring State feels that the situation in the adjoining State is adversely affecting its administration it should move the Centre to intervene, by such legislation as will improve the peace and prosperity of the whole of India. I submit that the original clause seems to be much better than the amendment moved by Dr. Ambedkar. The

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amendment of Dr. Ambedkar does not improve the meaning of the article or the intent of the Constituent Assembly. If the period is to be first six and then another six months it will needlessly lead to extra expenditure and delay matters.

Sir, there is a feeling in some big provinces which are financially well off that they must have full autonomy and that there should be no interference by the Centre. There are certain provinces in which a certain class of people are in a majority: they desire to be independent of the Centre. This is but the same old conception of the Muslim League days. A certain community which was in the majority in a certain province wanted to have full autonomy so that nobody could interfere with it, even though that interference might be in the interests of India as a whole. That was the old tendency. I do not want to criticise them. But it is a fact that some provinces, that have enough revenues at their disposal, recent interference by the Centre even though it is necessary in the interests of the whole of India. In Russia too the Centre has such powers of interference even though the villages there have autonomous powers even in matters judicial. But then all that power is dependent on the Central Government approving the exercise of those powers. The direction of the supreme policy is vested in the Centre. Our Union can be strong only when the Centre is fully empowered to make laws uniformly applicable to the whole of India. With these words I support the original article.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I think that the article as it stands encroached upon the powers of the Provinces. However, it would have been in the fitness of things if, in cases of emergency, the Centre has the power to legislate for the whole of India. But the wording, as it is used, seems to be much wider than is required for emergencies. It says: 'When it is necessary or expedient in the national interests.' The national interest give much wider scope than emergencies. As this is so, the arguments in favour of the Centre legislating for emergencies do not apply. It seems to me the power given here is wider than is necessary.

The Honourable Shri K. Santhanam: The 'emergency' is dealt with in the next article.

Shri V. S. Sarwate : If that is the case then this is unnecessary here. I would further submit that the idea behind empowering the Council of States to pass a resolution seems to be this. Supposing a case arises when it is necessary that the Centre should legislate. If this provision be not there, the alternative would be for all the Provinces and States to pass a resolution that the Centre should legislate in that particular emergency. To avoid that cumbrous process the Council of States which is mostly composed of representatives of the States has been empowered to pass a resolution. On the first occasion it may be proper for the Centre to take appropriate action, based on that resolution.

But on the second occasion, i.e. when an occasion arises for repeating the resolution, it could have been better left to the provinces to pass a resolution it should be left to the provinces to decide whether an emergency exists or not. If the provinces are satisfied that an emergency exists, they will pass a resolution that the Centre should legislate for the whole of India. So, in my judgment, it seems that to empower the Council of States to pass such a resolution again and again is unjustified. In the first instance, it may be justified. It may in such cases be proper. But if the same state of things continues, it should be left to the provinces to judge of the circumstances and to pass the necessary resolution. What I mean to say is this: The Council of States should have power to pass a resolution only once. It should not have the power to pass a resolution again. In that case it should be left to the provinces to pass a resolution. With this observation, I support the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I support article 226. Article 223 gives residuary powers to the Parliament. Article 227 gives powers to the Parliament in cases of national emergencies, when an Emergency Proclamation is in force, and article 229 gives powers to the provinces to pass a resolution in their legislature asking the Centre to take action. Article 226, when a question assumes national importance or becomes a matter of national interest gives a speedier procedure than what is contained in article 229. Much of the mischief that was originally contained in the original article has been taken away by the recent amendment moved by Dr. Ambedkar and Mr. T. T. Krishnamachari. If a resolution is passed year after year by Parliament, where is the harm? After all, who are the members of the Council of States? They are representatives elected by the Lower House of the provinces. If really such a resolution were to be against the interests of the States, the States legislatures can represent to the Centre that such a resolution is against the interest of the States. In fact, there is no question of encroachment of the provincial powers at all here. It is only in cases of real national emergency, when a question has assumed national importance, a speedier remedy is provided under 226. If a resolution passed by the Council of States is against the interests of any State, that State can be expected to pull up their members and to make sure that such a resolution is not passed at the next session after one year. A resolution passed under 226 normally continues only for one year and only when a national emergency continues to persist year after year, a further resolution for one year can be passed. Giving such power to the Council of States is very necessary under the circumstances and I heartily support this article, Sir.

Shri M. Ananthasayanam Ayyangar : The question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : Before I put the amendment to the vote, do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Much has already been said. Unless you desire me to speak, I would rather not say anything.

Mr. President : That is your choice.

The question is:

"That for amendment No. 2775 of the List of Amendments, the following be substituted :—

"That article 226 be re-numbered as clause (1) of article 226, and,

(a) at the end of the said clause as so re-numbered the words 'while the resolution remains in force' be added; and

(b) after clause (1) of article 226, as so re-numbered the following clauses be added :—

'(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period."

The amendment was adopted.

Mr. President : There is no amendment to this article.

"That article 226, as amended, stand part of the Constitution."

The motion was adopted.

Article 226, as amended, was added to the Constitution.

Article 227

Mr. President : There is no amendment to this article.

The question is:

"That article 227 stand part of the Constitution."

The motion was adopted.

Article 227 was added to the Constitution.

Article 228

Mr. President : There is one amendment of which notice has been given by several Members, No. 2779.

Shri T. T. Krishnamachari : It is not necessary to move it, Sir.

Mr. President : The question is:

"That article 228 stand part of the Constitution."

The motion was adopted.

Article 228 was added to the Constitution.

Article 229

(Amendments Nos. 2781 and 2782 were not moved.)

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, I move:

"That in clause (2) of article 229, for the words 'but shall not' the words 'and may also' be substituted."

Article 229, clause (1), lays down that if it appears to any provincial legislature that any matter over which Parliament has power to make laws for that province should be regulated in that province by Parliament by law and a resolution to that effect is passed by the provincial legislature, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and that Act shall apply to the province concerned. Clause (2) of article 229 lays down that an Act passed by Parliament as mentioned in clause (1) can be amended or repeated by an Act of Parliament but shall not be amended or repealed by an Act of the provincial legislature. My amendment seeks that any Act so passed by Parliament may be amended or repealed by Parliament and may also be amended or repealed by the provincial legislature concerned. Section 103 of the Government of India Act of 1935 lays down that the Provincial legislature concerned can amend or repeal the Act made by Parliament concerning that province. My amendment is entirely based on section 103 of the Government of India Act. Previously what used to happen was that the provinces used to send a resolution to the Central Legislature and the Government of India accordingly made an Act concerning that province and that Act or law could be amended or repealed under section 103 of the Government of India Act by the province concerned. But now according to this article 229 (2), it cannot amend. I submit, Sir, it is a great hardship. I would submit in the alternative if this House is not prepared to agree with my amendment—although I believe my amendment is very reasonable—I would request this House to amend this article in such a way that in those provisions which were passed by the Central Legislature at the request of

the Provincial Legislature, the provinces should have power to amend that Act. I may be able to appreciate this point that in future this House wants that if any Act is passed concerning a province at the request of that province, that Act cannot be amended by that province and that it can only be amended by the Centre. I may appreciate, although I do not appreciate, but I would request Sir, that in regard to those Acts which were passed previously by the Central Assembly and the Council of State at the request of a particular province concerned, there should be some provision—I thought of it just now—that the provinces concerned may be allowed to amend or repeal that Act. I hope my honourable Friend, Dr. Ambedkar has listened to me and he will appreciate what I have said.

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

"That with reference to amendment Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted:—

> '(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislature of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.' "

I would like to explain this amendment in a few brief sentences. The original article as it stood said: "if it appears to the Legislature or Legislatures of one or more States to be desirable, etc." The new amendment said "if it appears to the Legislatures of two or more States to be desirable etc." Under the new amendment it would be open to invoke the aid of Parliament to make a law only if two or more States join, and send a resolution. The other changes in sub-clause (1) of article 229 are merely consequential to this principal amendment, namely, that the power can be invoked only if two or more States desire, but not by a single State.

Prof. Shibban Lal Saksena : I am very glad that this clause is put in the Constitution. I would give an example of sugar legislation in the two provinces of United Provinces and Bihar. These two provinces have got about 80 per cent. of the factories in the whole country and it was felt in 1937 when the industry was on the verge of collapse that unless the two provinces acted in co-ordination the industry might be ruined in both the places. What did they do? There was no such power in the Constitution by which the Centre could make laws for only two provinces and so what they did was that each province passed the same law and by mutual agreement and conventions they began to act together and they formed a joint Sugar Control Board and all that. But I think under this clause in the Constitution it is possible for several states to come together andn act jointly. Similarly take another example, the Damodar Valley Authority. Parliament has made a law which is really applicable to the whole country but actually in this case the Provinces of Bihar and Bengal are concerned. There may be cases where three or four provinces are involved and if they pass resolutions, then the Parliament can pass that law. I think this article in the Constitution makes a very healthy provision by which several States can co-operate and carry out schemes which are for the benefit of all the provinces jointly and the Parliament is empowered to legislate according to the recommendations of the legislatures of those States. Sir, I support this wholeheartedly.

The Honourable Shri K. Santhanam : Sir, I merely wish to draw the attention of the House to clause (2) of this article. It makes an important variation from the original article in the Government of India Act. Section 103 in the Government of India Act, as adapted, in the later part, reads: "that the State Legislature or the Provincial Legislature shall be able to repeal or amend the Act passed according to clause (1)." Now the provision of clause (2) is: "any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adapted in like manner, but shall not as respects any State to which it applies be amended or repealed by an Act of the Legislature of the State." This variation has been adopted deliberately, because when the rights and responsibilities have been incurred by two or more States in pursuance of any law made by one, it should obviously not be possible on the part of a single State to withdraw from such obligations and responsibilities. At the same time, I am afraid that the existence of clause (2) may prevent or discourage all States from making use of this section. I wish it had been possible to put it that if all the States concerned wanted the law to be amended or repealed, Parliament should do so accordingly. As things stand, the whole clause may become inoperative because no State would like to get into a noose from which it cannot get out at all. As things stand, they can hand over the power to Parliament; but once the Act is passed, then the State becomes practically powerless even though the matter is one with respect to which it has power. This is rather unsatisfactory. I think some opportunity must be taken to reconsider the implications of clause (2) as it stands.

The Honourable Dr. B. R. Ambedkar : Sir, I quite appreciate the point raised by my honourable Friend, Mr. Santhanam; but I think he has not carefully read sub-clause (2). The important words are: 'in like manner', so that if the State legislatures in whose interests this legislation is passed in like manner, that is to say by resolution, agree that such legislation be amended or repealed, Parliament would be bound to do so.

The Honourable Shri K. Santhanam : "May be amended".

The Honourable Dr. B. R. Ambedkar : 'May' means shall. There is no difficulty at all.

Mr. President : The question is:

"That with reference to amendment Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted :—

> '(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislatures of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.' "

The amendment was adopted.

Mr. President : The question is:

"That article 229, as amended, stand part of the Constitution."

The motion was adopted.

Article 229, as amended, was added to the Constitution.

Article 230

Mr. President : The motion is:

"That article 230 form part of the Constitution."

(Amendment No. 2784 was not moved.)

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

"That in article 230, for the words 'for any State or part thereof', the words 'for the whole or any part of the territory of India' be substituted."

(Amendment Nos. 2786 and 2787 were not moved.)

Mr. President : The question is:

"That in article 230, for the words 'for any State or part thereof' the words 'for the whole or any part of the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 230, as amended, stand part of the Constitution."

The motion was adopted.

Article 230, as amended, was added to the Constitution.

Article 234

Mr. President : The motion is:

"That article 231 form part of the Constitution."

(Amendment Nos. 2789 and 2790 were not moved.)

Mr. President : There is another amendment No. 196.

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2788:

"That clause (2) of article 231 be deleted."

Sir, this more or less on the lines of the amendment which we have already adopted.

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

"That with reference to amendment No. 2788 of the List of Amendments, in clause (2) of article 231, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, when the Draft was originally prepared, there was no intention of placing the States in Part III on the same footing as the States in Part I of the first Schedule. In fact, it is a quite recent idea that the States in Part III should be brought into line with the States in Part I in regard to the power of Parliament to legislate and necessary amendments are being incorporated in the various articles that we are dealing with. When we came to article 225, that article was held over. That relates to the general right of Parliament to legislate for the States in Part III and consideration is held over because evidently the relations between the Centre or Parliament and the States in Part III have not been fully settled. That is all right; but what I wish to point out is this. In regard to law making, till now, the right of the Central legislature did not extend to States in Part III. The laws in

[Shri A. Thanu Pillai]

States like Travancore and Mysore have all along been made by the local legislature. I wish to bring to the notice of this House the fact that there is a lot of difference between the laws in the States and in the rest of India. For instance, I may say that in Travancore, we have abolished the death penalty for murder. Now, that subject would come in the Concurrent List; so also various other matters. How are you going to reconcile that fact with the provisions in article 231, namely, that all existing laws, not only laws to be enacted by the Central legislature till now, will prevail whenever there is conflict between the laws of the States and the Central laws? It would be a tremendous task to bring into line these two sets of laws and to reconcile them. Until that is done, the enforcement of article 231 in respect of the States in Part III will be well nigh impossible. I do not find any provision regarding the way in which the difficulty is proposed to be met. I only wanted to bring this to the notice of the House so that this serious difficulty may be got over and suitable provisions made in the Constitution. A lot of work will have to be done in bringing about uniformity. Generally Indians laws will have to be adopted in the States. But in some cases, the law in the States will have to be introduced in the whole of the country. For instance in regard to the death penalty, Travancore cannot be asked to go back to the old order of things and re-impose death penalty for murder. Wherever we find more progressive legislation existing in the States than in the provinces, that legislation will have to be accepted by the Indian Parliament and uniformity will have to be brought about. I wish to know from Dr. Ambedkar how the difficulty is proposed to be got over. I hope that uniformity will be brought about and that those that are now striving for it will succeed in inducing those that are responsible for administration and legislation in the States to agree to have uniform legislation in regard to matters affecting the whole country. If we pass article 231 without realising the magnitude of the difficulties that face us in regard to this matter, it would be wrong step. I wish to bring this matter to the notice of the House and particularly of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I agree that Mr. Thanu Pillai's point requires explanation. Now the explanation is this. I am sure he will agree that the rule regarding repugnancy which is mentioned in article 231 must be observed so far as future laws made by Parliament are concerned. He will see that the wording in article 231 is 'whether passed before or after'. Surely with regard to laws made by Parliament after the commencement of this Constitution, the rule of repugnancy must have universal application with regard to laws made both by the States in Part I and by the States mentioned in Part III. With regard to the question of repugnancy as to the laws made before the passing of this Constitution, the position is this. As I have said so often in this House, it is our desire and I am sure the desire of the House that all articles in the Constitution should be made generally applicable to all States without making any specific differentiation between States in Part I and Part III. It is no good that whenever you pass an article you should have added to that article a proviso making some kind of saving in favour of Sates in Part III, although there is no doubt about it that some savings will have to be made with regard to laws made by States in Part III. That is proposed to be done, as I said, in a new Part or a new Schedule where the reservation in respect of States in Part III will be enacted, so that so far as laws made before the Constitution comes into existence are concerned, they would be saved by some provision enacted in that special form or special Schedule. I should like to add to that one more point *viz.*, that while it is proposed to make reservations in that special part in favour of Part III States, nonetheless that reservation could not be absolute because the reservations made therein, at any rate some provisions in that special part, will be

governed by article 307 which gives the President the power to make adaptations. Now that adaptation will apply both to States in Part I as well as to States in Part III. Therefore so far as regards laws made by Parliament or the Legislatures of States in Part III before the commencement, they will in the first instance be saved from the operation of article 231 but they will also be subject to the provisions of article 307 dealing with adaptation.

Mr. President : The question is:

"That with reference to amendment No. 2788 of the List of Amendments, in clause (2) of article 231, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 231, as amended, stand part of the Constitution."

The motion was adopted.

Article 231, as amended, was added to the Constitution.

Article 232

Mr. President : We take up article 232.

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

"That the heading to article 232 'Restriction on Legislative Powers' be omitted."

With your permission I move my new amendment:

"(i) That after the word and figure 'Part I' the words and figures 'or Part III' be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :

'(aa) where the recommendation required was that of the Ruler, either by the Ruler or by the President.' "

Now Sir, I have come to understand that there is some sentimental objection to the use of the word 'ruler'. I am prepared to yield to that sentiment and what I therefore propose is that the House should accept this amendment for the moment and leave the matter to the Drafting Committee to find a better word to replace the word 'ruler'. Otherwise the whole of the article would have to be unnecessarily held over for no other reason except that we cannot find at the moment a better word to substitute for the word 'ruler'.

Mr. President : The question is:

"That the heading to article 232 'Restriction on Legislative Powers' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in article 232—

(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :

'(aa) where the recommendation required was that of the ruler, either by the Ruler or by the President.' "

The amendment was adopted.

Mr. President : The question is:

"That article 232, as amended, stand part of the Constitution."

The motion was adopted.

Article 232, as amended, was added to the Constitution.

Article 233

Mr. President : We take up No. 233.

(Amendment Nos. 2794, 2795 and 89 of List I of 5th Week were not moved.)

Mr. President : The question is:

"That article 233 stand part of the Constitution."

The amendment was adopted.

Article 233 was added to the Constitution.

Article 234

Mr. President : We take up No. 234.

(Amendment Nos. 2796, 2797 and 2798 were not moved.)

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

"That the following new clause be added to article 234 :—

'(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Mr. President : The question is:

"That the following new clause be added to article 234 :—

'(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

The amendment was adopted.

Mr. President : The question is:

"That article 234, as amended, stand part of the Constitution."

The motion was adopted.

Article 234, as amended, was added to the Constitution.

Article 235

(Amendment Nos. 2800 and 2801 were not moved.)

Mr. President : The question is:

"That article 235 stand part of the Constitution."

The motion was adopted.

Article 235 was added to the Constitution.

Mr. President : Articles 236 and 237 are held over.

Article 238

(Amendment Nos. 2805 and 2806 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I formally move No. 2807:

"That in the proviso to article 238, for the words 'under the terms of any agreement entered into in that behalf by such State with the Union' the words 'under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of the Constitution' be substituted."

I move further:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words 'by law' the words 'made by Parliament' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

Mr. President : The question is:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words 'by law' the words 'made by Parliament' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 238, as amended, stand part of the Constitution."

The motion was adopted.

Article 238, as amended, was added to the Constitution.

Article 239

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

"That in article 239, before the word 'State' where it occurs for the second time in line 29, the word 'other' be inserted."

(Amendment No. 2810 was not moved.)

Mr. President : The question is.

"That in article 239, before the word 'State' where it occurs for the second time in line 29, the word 'other' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 239, as amended, stand part of the Constitution."

The motion was adopted.

Article 239, as amended, was added to the Constitution.

Article 240

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

"That for clause (1) of article 240, the following new clauses be substituted :—

'(1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.

(1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may dreem necessary for the purposes of such investigation.' "

(Amendment Nos. 2812 to 2815 were not moved.)

Mr. President: The question is:

'That for clause (1) of article 240, the following new clauses be substituted:

(1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.

(1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation.' "

The amendment was adopted.

Mr. President : The question is:

"That article 240, as amended, stand part of the Constitution."

The motion was adopted.

Article 240, as amended, was added to the Constitution.

Article 241

The Honourable Shri K. Santhanam : I move:

"That in article 241, for the words "in any State" the words 'in any other State' be substituted."

I think it is necessary for the same reason as the amendment which was moved by Dr. Ambedkar to the previous article. I want to give him an opportunity to consider whether it is not necessary. If it is not considered necessary I am not going to press the amendment.

(After some consultation) Sir, it does not seem to be necessary and I request permission to withdraw the amendment.

Mr. President : Has the honourable Member the leave of the House to withdraw his amendment?

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

Mr. President : The question is:

"That article 241 stand part of the Constitution."

The motion was adopted.

Article 241 was added to the Constitution.

Article 242

Mr. President : The question is:

"That article 242 stand part of the Constitution."

The motion was adopted.

Article 242 was added to the Constitution.

Articles 243 to 245

Mr. President : Then we come to article 243.

Shri T. T. Krishnamachari : In any event article 244 will have to be held over because we have not considered the chapter containing the provisions governing financial relations between the Centre and the States. I am told by Shri Alladi Krishnaswami Ayyar that the language of article 243 would also require some revision so we might hold over articles 243, 244 and 245.

Shri M. Ananthasayanam Ayyangar : Article 245 need not be held over.

Mr. President : It refers to articles 243 and 244.

Shri M. Ananthasayanam Ayyangar : In whatever manner the other two articles are amended, we might take up article 245.

Shri T. T. Krishnamachari : Perhaps we might even choose to drop article 245. When we have not decided on articles 243 and 244 this might also be held over.

Mr. President : I think it is better to hold it over.

There is notice of an amendment that a new article should be added after article 243. It is by Shri Prabhudayal Himatsingka. We shall hold that also over.

Article 246

(Amendment Nos. 2828, 2829 and 2830 were not moved.)

Mr. President : The question is:

"That article 246 stand part of the Constitution."

The motion was adopted.

Article 246 was added to the Constitution.

Mr. President : Now we come to another Part. Shall we take it up?

Shri Mahavir Tyagi : We have gone at a fast pace—much faster than we expected. I do not think people have studied the provisions—I at least have not prepared myself for this.

Mr. President : Then let us go back and repeat some of the past lessons.

Shri T. T. Krishnamachari : We can take up the provisions which we have left over in the Chapter relating to High Courts.

Mr. President : Shall we take up the question of Appeals in criminal cases to the Supreme Court which we left over—112-B? There is a forest of amendments there. The other day we held it over in the hope that probably some agreed solution would be found and that there would be only one amendment. But I find that day to day the amendments are growing in number. Shall we take it up?

Pandit Thakur Das Bhargava (East Punjab: General): Provisions relating to High Courts—from article 207 may be taken.

Mr. President : My fear is that some more amendments will come in because I have been receiving amendments up to this moment.

New Article 111-A and 111-B

Mr. President : Mr. Bhargava may move amendment No. 12 of which notice has been given in the First List of the Fifth Week.

Pandit Thakur Das Bhargava : Sir, before moving this amendment I would made a brief reference to its past history. When I gave notice of amendment No. 1927 in the Printed List for the addition of a new clause after clause (2) of article 111, the position was different. Thereafter, when article 110 was under discussion . . . . . .

Shri Mahavir Tyagi : Please read out the amendment you are referring to.

Pandit Thakur Das Bhargava : The amendment which Mr. Tyagi wishes me to read runs thus:

"That after clause (2) of article 111, the following new clause be inserted :—

'(3)An appeal shall lie to the Supreme Court against the judgments of the High Courts in the territory of India in the exercise of its criminal jurisdiction in the following cases :—

(a) convicting accused persons as a result of acceptance of appeals against their acquittal.

(b) sentencing to or confirming the sentence of death or transportation for life.

(c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.' "

That was the original amendment on the basis of which there was prolonged discussion under article 110 when the question was whether the words "as to the interpretation of this Constitution" should be deleted or not. Then it was pointed out in this House that if this amendment was accepted and appeal in respect of sentence of death provided it would entail very large amount of work on the Supreme Court. Thereafter amendments began to pour in taking away the right of appeal as regards sentence of death and then the pendulum swung to the other side and the scope of the amendment was narrowed down considerably. Ultimately new amendments seeking to narrow down the scope to about 50 or 60 cases a year were sent in. Now the feeling in the House is that the appeals in such cases where the High Courts have passed sentence of death for the first time under their appellate or original jurisdiction should at least be provided in the Constitution.

Prof. Shibban Lal Saksena : Which is the amendment you are moving?

Pandit Thakur Das Bhargava : Amendment No. 15 in List I of Fifth week.

Mr. Naziruddin Ahmad : May I suggest that, as there are a large number of amendments relating to the same matter, all amendments may be first formally moved and then general discussion may begin. It would be more convenient to do so.

Pandit Thakur Das Bhargava : I would like that all the amendments before the House—14 to 41 were placed at once before the House.

Mr. President : The other day we postponed discussion of this to enable members to come to some understanding. But unfortunately that has not come about so far. Therefore the only course left is to take all the amendments together and take a vote on them. The result may well be that it will be something not wanted by anybody.

Shri L. Krishnaswami Bharathi : Sir, Dr. Ambedkar's amendment may be moved and then the other amendments may be moved. If that is done we may be able to concentrate on amendment No. 24 of Dr. Ambedkar.

Mr. President : The other amendments will have to be moved all the same unless the Members express their desire not to move them.

Shri L. Krishnaswami Bharthi : They may make speeches on Dr. Ambedkar's amendment, so that attention may be concentrated on that, instead of every Member speaking on his own amendment only. They need not be prevented from speaking. All the amendments may be moved and they may all speak.

Shri Alladi Krishnaswami Ayyar (Madras: General): May I say that if we adopt the suggestion made by Mr. Krishnaswami Bharathi it will be convenient? That will enable the general question of the criminal jurisdiction being discussed. At the same time, if in any particular case a Member wants that even now criminal jurisdiction may now be provided, that can be discussed later and that would not prejudice the amendment of Dr. Ambedkar that Parliament is to be entrusted with the power of conferring criminal jurisdiction to the Supreme Court. The question may be discussed in the abstract whether Parliament is to be entrusted with this power in future or not. If here and now we want certain specific powers, it may be dealt with later on as distinct from the general question of Dr. Ambedkar's amendment.

Mr. President : Then I will ask that all the amendments may be moved and then general discussion may follow. Pandit Bhargava may move formally all his amendments.

Pandit Thakur Das Bhargava : They are too many and they deal with different aspects of the question. Anyhow I move.

"That for amendment No. 1927 of the List of Amendments, the following be substituted:

'That the following be inserted as new article 112-B :

112-B. An appeal shall lie in the following cases to the Supreme Court in the exercise of its criminal jurisdiction:

(a) convicting accused persons as a result of acceptance of appeals against their acquittal.

(b) sentencing to or confirming the sentence of death or transportation for life.

(c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.' "

"That with reference to amendments Nos. 1927 and 1923, after article 111, the following new article be inserted :

'111-A. An appeal shall lie to the Supreme Court from the judgment of a High Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

(a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.

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(b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentences him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower Court by more than five years' imprisonment or ten thousand rupees fine.

(c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.' "

"That in amendment No. 16 above (Fourth Week), for the proposed new article 11-A, the following be substituted :

'111-A. (1) An appeal shall lie to the Supreme Court from the judgment of a High Court in the territory of India in the exercise of its criminal jurisdiction—

(a) if the High Court certifies that the case is a fit one for appeal;

(b) if the High Court sentences and person to death on appeal from an order of acquittal or in its revisional powers of enhancement or in the exercise of its original jurisdiction;

(2) The Parliament may by law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "

"That in amendment No. 16 above, in clause (b) of the proposed new article 11-A, the words 'and sentences him to more than five years' imprisonment or ten thousand rupees fine' be deleted, and for the words 'by more than five years' imprisonment or ten thousand rupees fine' the words 'and sentences the person so convicted or whose sentence is so enhanced to death' be substituted."

"That with reference to amendments Nos. 1927 and 1923, after article 111, the following new article be inserted :

'111-A. An appeal shall lie to the Supreme Court from the judgment of a Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

(a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentences him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower court by more than five years' imprisonment or ten thousand rupees fine.' "

"That in amendment No. 19 above, the following be inserted as clause (c):

'(c) When the High Court sentences to or confirms the sentence of death.' "

"That in amendment No. 20, above, the following be added at the end of the proposed clause (c):

'or transportation for life.' "

"That in amendment No. 23 above, in sub-clause (b) of clause (1) of the proposed new article 111-A—

(i) after the word 'acquittal' the words 'or enhancement' ; and

(ii) after the word 'original' the words 'appellate or revisional' be inserted."

"That in amendment, No. 23 above, after sub-clause (b) of clause (1) of the proposed new article 111-A, the following new sub-clause be inserted:

'(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

"That in amendment No. 24 above, for the proposed new article 112-B the following be substituted :

'112-B. (1) An appeal shall lie to the Supreme Court from the judgment

of a High Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:

(a) when the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal or when the High Court enhances the sentence awarded by the lower court.

(c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.

(2) Parliament may by Law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "

"That in amendment No. 34 above, in sub-clause (b) of clause (1) of the proposed new article 112-B, after the word 'acquittal' the words 'and sentences him to a period of more than 5 years' imprisonment or to a fine of more than Rs. 10,000' be inserted."

"That in amendment No. 34 above at the end of sub-clause (b) of clause (1) of the proposed new article 112-B, the following words be added:

'by more than 5 years' imprisonment or Rs. 10,000 fine.' "

Then Sir, I have given notice of another amendment some fifteen minutes ago.

Mr. President : Which is that?

Pandit Thakur Das Bhargava : I move:

"That with reference to amendments Nos. 14 to 41 of List I (Fifth Week), the following be substituted as 111-A :

'111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of High Court in the territory of India if the High Court certifies that the case is a fit one for appeal :

(2) The Supreme Court shall have appellate criminal jurisdiction to hear appeals from any judgment, sentence or final order of a High Court or such other court as may be prescribed by law the Parliament subject to such condition and limitations as may be prescribed by such law.' "

Therefore, Sir, I would submit that these amendments range from providing appeals even in cases in which punishment was originally given for five years or more to the last amendment which I have just moved that only in cases where the High Court certifies that the case is a fit one for appeal, an appeal shall lie to the Supreme Court, in addition to other cases in which Parliament may by law confer jurisdiction to entertain or hear appeals on the Supreme Court. Now, Sir, I beg to submit that according to the theory of Law as I understand it, it could be argued that the entire scope of the Supreme Court's jurisdiction was restricted. I maintain that so far as the High Courts are concerned, they are the final word so far as the properties and lives of the people of the particular States are concerned. I can understand that.

Mr. President : You can speak on the general discussion.

Shri Jaspat Roy Kapoor : Sir, I beg to move :

"That in amendments Nos. 16 and 19 above, for the proposed new article 111-A, the following be substituted :

'111-A. An appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if by such final order any person has been sentenced to death for the first time in the case; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

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

"That for amendment No. 23, the following amendment be substituted :—

'That after the new article 112-A, the following article be inserted :—

Conferment on the Supreme Court of Appellate jurisdiction with regard to criminal matters.

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

Mr. President : Is there any article 112-A?

Shri T. T. Krishnamachari : 112-A has already been passed by the House.

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

"That for amendment No. 23 above, the following amendment be substituted :

'That after article 112-A; the following new article be inserted:

112-B. The Supreme Court shall with such exceptions and subject to such regulations as may be prescribed by law of the Parliament have appellate jurisdiction to hear appeals from any judgment, final order or sentence of a High Court or such other court as may be prescribed by law of the Parliament in the territory of India in the exercise of its criminal jurisdiction.' "

Dr. Bakshi Tek Chand (East Punjab: General): There are three amendments standing in my name. The first is No. 26, the second is No. 27 and the third is an amendment to amendment of which I gave notice to the Secretary only this morning. With your permission, I will move all the three.

Sir, I move:

"That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted:

'(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India—

(a) if the High Court has, on appeal or revision, reversed the acquittal of an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involved a substantial question of law or is otherwise a fit one for appeal to the Supreme Court.' "

The next amendment is No. 27 of which notice has been given by Dr. P.K. Sen, Dr. P.S. Deshmukh, Mr. K.M. Munshi and myself, and is as follows :—

"That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted:

'(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India :—

(a) if the High Court has, on appeal or revision reversed the Order of acquittal of an accused person and sentenced him to death, or has in any other case enhanced the sentence passed on an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court.' "

Then there is the third amendment of which I gave notice this morning. It is a more modest one.

Sir, I move :

"That in amendment No. 23 of List I (Fifth Week) for the proposed new article 111-A, the following be substituted :—

'An appeal shall lie to the Supreme Court from a judgment or an order in a criminal proceeding of a High Court in the territory of India :

(a) if the High Court has, on appeal, reversed the order of acquittal of an accused person and has sentenced him to death; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Sir, I do not think I need speak in support of the last amendment at this stage but will reserve my remarks to a later stage when the general discussion takes place.

Shri Jaspat Roy Kapoor : Sir, I move :

"That in amendment No. 23 above, for clause (j) of the proposed new article 111-A, the following be substituted :—

"(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case of the High Court either in appeal or revision from any order passed by the High Court to any other Court; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Mr. President : You do not move the alternative?

Shri Jaspat Roy Kapoor : I move the alternative, Sir, but I need not read it. It may be taken as having been read.

"(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if the High Court either on appeal reversing the order of acquittal or in revision enhancing the sentence, or in a trial by itself under Chapter 44 of Criminal procedure Code (Act V of 1898) has sentenced any person to death;

(b) or if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Kazi Syed Karimuddin (C.P. & Berar : Muslim) : Is it necessary to read my amendment No. 29, as amendment Nos. 28 and 29 are the same?

Mr. President : It is not necessary.

Kazi Syed Karimuddin : I will formally move it. I move :

"That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted :—

'(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case by the High Court either in appeal or revision from any order passed by the High Court to any other court; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

(Amendment No. 32 was not moved.)

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

"That with reference to amendment No. 23 above, after article 111, the following new article 111-A be inserted :

'111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in any criminal proceeding in a High Court in the territory of India or in any criminal proceeding in any tribunal in the said territory from which no appeal, revision or other proceeding lies to the High Court—

(a) against any sentence of death passed or confirmed by the High Court in appeal or revision, or passed by such tribunal; or

(b) if the High Court or the tribunal certifies that the case involves a substantial question of law or that it is otherwise a fit case for appeal to the Supreme Court.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment or final order of a High Court or other tribunal in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such conditions and limitations as may be specified in such law.' "

Shri Jaspat Roy Kapoor : Sir, in place of amendment No. 37, I would like to move another amendment of which I have given notice this mornings. That seeks to substitute amendment No. 37 and it runs as follows :—

"That in amendment No. 24 above in the proposed new article 112-B, for the words 'Parliament may' the words 'Parliament shall within a year of the commencement of this Constitution' be substituted."

Mr. President : Amendment No. 38 is also in your name.

Shri Jaspat Roy Kapoor : I am not moving it, Sir.

I beg to move :

"That in amendment No. 24. above in the proposed new article 112-B, the following new proviso be added :

'Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if *by such final order* any person has been sentenced to death for the *first time* in the case; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Then, Sir, follow three alternatives :

"Provided, however, that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if *by such final order* any person has been sentenced to death for the *first time* in the case.";

or, alternatively,

"Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if by *such final order* any person has been sentenced to death in reversal of the order of acquittal."

or, alternatively,

"Provided, however, that an appeal shall lie to the Supreme Court for a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if the High Court certifies that the case is a fit one for appeal to the Supreme Court."

Kazi Syed Karimuddin : Sir, I move :

"That in amendment No. 24 above, the following proviso be added to the proposed new article 112-B :

'Provided however that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction—

(a) if by such final order any person has been sentenced to death for the first time in the case; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Mr. Naziruddin Ahmed : With your permission, Sir, I would like to move amendment No. 41 in the First List introducing article No. 112-A as article No. 111-A. I think that instead of after article 112, it should be inserted after article 111. The change is only in a matter of detail. I beg to move :

"That with reference to amendment No. 1932 of the List of Amendments, after article 111, the following new article be instead :

'111-A. Any person against whom any judgment, sentence or order has been passed by a High Court in the territory of India in any criminal proceeding or any proceeding relating to contempt of Court, or from any judgment, sentence or order of any other tribunal exercising criminal jurisdiction which judgment, sentence or order is not liable to be set aside or modified in appeal or revision by any such High Court, shall have a right of appeal in the following cases, namely;—

(a) against any sentence of death;

(b) against any other judgment, sentence or order of such High Court or tribunal as the case may be, where the judgment, sentence or order involves a substantial question of law; or

(c) in any order case where the High Court or the tribunal as the case may be, certifies that it is a fit case for appeal.' "

Mr. President : There is an amendment of which I have received notice from Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Which, Sir?

Mr. President : You have given notice of this amendment :

"The following be substituted as 111-A :—

An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India if the High Court certifies that the case is a fit one for appeal...."

Prof. Shibban Lal Saksena : This is the one which with your permission, I have already moved.

Pandit Thakur Das Bhargava : It has been moved already.

Mr. President : Then, I think these are all the amendments. There are certain amendments to various articles and I suppose they are all covered by the amendments which have been moved and I do not take any of the amendments in the printed list. Now all the amendments have been moved and the whole question is open to discussion. I hope we shall be able to get something out of all this forest of amendments.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. President, the point before the House is rather an important one. It is necessary that the House should give very close consideration to the various amendments that have been moved. The question is whether there shall be a right of appeal to the Supreme Court in criminal cases, and if so, in what circumstances.

I think there is a consensus of opinion that the Supreme Court shall have the power of appeal in certain cases. Even Dr. Ambedkar has moved an amendment, No. 24, which says that Parliament may make provisions for appeals in criminal cases. The other amendments which have been moved go a little farther and say that in certain specified cases, even the Constitution should provide for appeals and that is the real question before us, whether the matter should be left entirely to Parliament or whether the Constitution itself should provide for appeals in certain cases. That is the first question before the House.

The second question is : if the House accepts the principle that even this Constitution should provide for appeal in criminal cases, what are those cases in which an appeal shall lie? If we analyse the various amendments, we find that all the amendments suggest, firstly, that in cases where the High Court itself feels satisfied that an appeal should lie, an appeal shall lie. When the provisions about the Civil cases were being discussed before this House, Dr. Ambedkar said, and very rightly, that it is an inherent right of the High Court to say whether

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a case is a fit one for appeal or not, and if there is a certificate to that effect, then, a civil appeal shall be allowed. My submission is that the same principle with equal force applies to criminal appeals. If there is an appeal decided by a High Court and the High Court itself considers that the case is a fit one for appeal, there is no reason why such an appeal should not be allowed. On that matter, I think there cannot be any two opinions that the Constitution itself should provide for appeals on such cases, namely, in cases where the High Court itself certifies that the case is a fit one for appeal. This is one of the provisions which is sought to be inserted by some of the amendments. I am personally of opinion that such a provision must exist.

The second suggestion is that an appeal shall lie as a matter of right if the case involves a substantial question of law. Prima facie, there is great force in this suggestion also. But, it may be said at this stage that we do now know what will be the effect of such a provision as to the number of appeals that are likely to come forward. Therefore, I think, personally, that we may leave this question to Parliament.

The third suggestion is that three should be a right of appeal as a matter of right where a sentence of death is passed by the High Court for the first time. I think this is a very reasonable suggestion. In civil cases we have provided for many appeals; it is but natural that there should be at least one appeal here. If one court acquits the accused and the High Court in appeal reverses the finding and sentences him to death, I think prudence requires that the accused should be given an opportunity to appeal to the Supreme Court. At least one court has found him not guilty. There is a possibility of error of judgment on the part of two Judges. I can give you many instances where a Government files an appeal and two Honourable Judges have come to the conclusion that really the man is guilty. In such cases, there is always a likelihood of error of judgment and this error of judgment can be remedied only if an appeal is allowed. This is a second case in which I think a provision for appeal should be made as a matter of right.

The amendment lastly that we should give the right of appeal even in those cases where the sentence imposed on the accused for the first time exceeds five years. Much can be said in favour of this amendment as well. But, I personally feel that if the other clause stands, namely, that Parliament can make provision for other appeals, this thing can wait.

Therefore, I feel that this Constitution should provide for three things : firstly, there must be an appeal as a matter of right in cases where the High Court deciding the case certifies that the case is a fit one for appeal; secondly, there must be a provision where in appeal or revision a sentence of death is passed by the High Court for the first time, there shall be a right of appeal as a matter of course; thirdly, Parliament shall have power to make provisions for appeal in other cases. If Dr. Ambedkar's amendment No. 24 along with the amendments moved by Mr. Jaspat Roy Kapoor, No. 39, and similar amendments moved by Mr. Karimuddin, amendment No. 40, and the last amendment moved by Dr. Bakhshi Tek Chand, are accepted, I think the public will be satisfied and the Constitution would have made enough provision for criminal appeals. I personally feel that in these two cases, namely, where a sentence of death is passed for the first time by the High Court, and where the High Court certifies that the case is a fit one for appeal, there cannot be any doubt that an appeal shall be allowed. The argument of those who want to leave it to Parliament to make provision for criminal appeals is this, that the matter requires to be discussed in detail and that this House is not in a position to enumerate exhaustively those cases in which an appeal may lie to the Supreme Court. There is

some substance in this, but not entire substance. Because, if there are cases wherein there cannot be any doubt as to the necessity or even the desirability for appeal, there is no reason why such cases should be left to Parliament to pass an enactment subsequently. My submission would be that in so far as these two cases are concerned, where a death sentence is passed for the first time by the High Court, and where a case is certified as a fit one by the High Court, there cannot be any doubt that an appeal shall be allowed in such cases, and there is no reason why in such cases the Constitution should remain silent while it has made provisions in regard to civil cases. My submission is that this House should accept amendment No. 24 and the three amendments moved by my honourable Friends Messrs. Karimuddin, Jaspat Roy Kapoor and Dr. Bakhshi Tek Chand.

Mr. Tajamul Husain : Mr. President, Sir, I feel that I must support the amendment moved by my honourable Friend, Bakhshi Tek Chand. He wants two things to be done. He says in the first place that if the High Court certifies that it is a fit case to be hears by the Supreme Court, the case must be sent there. I agree entirely. When the High Court itself passes an order and is of opinion that that order may be changed and there is a Supreme Court which can very that order, that should go up to the Supreme Court. There cannot be two opinions on this. The next thing is if the High Court upsets and order, *viz*., if acquittal has been passed by a Sessions Court and the High Court on appeal from Government has passed an order of death sentence or rather upsets the previous order of the Sessions Judge and finds the accused guilty, in that case an appeal should be allowed to go to the Supreme Court. I would go a step further. I say that in any case where there has been an order of acquittal by Lower Court and that order has been upset by the High Court then appeal can lie to the Supreme Court. My reason is that you have got two decisions before you, one of a Sessions Judge who is trying a case with the help of a Jury. The Jury is of opinion that it is a fit case for acquittal and if the Judge agrees with the Jury then the matter ends. There can be no appeal against acquittal. That is the general law but if there has to be an appeal it must be preferred by Government itself not by private individuals. It is only an Advocate General acting on behalf of Government who can do it. When that appeal goes up, surely one set of people—the Jury and the Judge have said in the one hand that this person is not guilty. The High Court says that that person is guilty. In my opinion when there are two opinions before you there must be a third and final opinion. Therefore all cases, where an acquittal has been upset must be allowed to go to Supreme Court. Now there is a principle of law that once a person has been acquitted, he should not be tried for the same charge. In England you will find very rarely there is an appeal against acquittal. Therefore I submit that I want in all murder cases where both points of law and fact are involved, appeals from the High Court should go to the Supreme Court. Murder cases are very important cases and these should finally be decided by the Supreme Court if there is an appeal.

My third point is that all cases, which involves important questions of law or the country needs a decision on an important question of law, must go to Supreme Court, and my last point is when a sentence has been passed by the Session Judge and it goes to High Court and the High Court enhances it, it must be allowed to go in appeal up to the Supreme Court. It has happened and my experience is in one case there were four accused who were sentenced to two years R. I. each. Three appealed and one did not appeal. The High Court asked them to show cause why the sentence should not be enhanced and actually it was enhanced. The High Court asked the one accused who did not appeal also to show cause why his sentenced should not be enhanced and finally all the

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sentences were enhanced to transportation for life. A matter like this where a sentence has been passed by the Sessions Judge and it comes up to the High Court which increases the sentences, an appeal to the third court—the Supreme Court of India—should be allowed to the accused. With these words, I support the amendment and I want to add these things also and these may be taken into consideration by Dr. Ambedkar.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I have moved several amendments but I would like to continue my remarks particularly to amendment No. 39 which runs thus :—

> "That in amendments, No. 24 moved by Dr. Ambedkar, in the proposed new article 112-B, the following new proviso be added :—
>
> 'Provided, however, that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of Indian made in the exercise of its criminal jurisdiction—
>
> (a) if by such final order any person has been sentenced to death for the first time in the case; or
>
> (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Sir, the other day while dealing with article 110 there was a long and elaborate discussion on the subject as to whether the Supreme Court should have the right of hearing appeals in criminal cases or not. That discussion was not very relevant to the discussion of article 110, but no objection was raised to that and you also were pleased not to object to that discussion. The reason obviously was that everyone of us realised that a discussion on that question was very necessary and that we should have a preliminary discussion on that subject before article 112-B which has now been moved today by Dr. Ambedkar should come up for discussion so that a solution could be found which might cover the various view-points that were raised that day. That discussion served the useful purpose for which it has been initiated and we found that when we came up to 112-B on the following day, Dr. Ambedkar suggested that its consideration might be held over and on the following day we found to our satisfaction that Dr. Ambedkar had given notice of an amendment which now appears as amendment No. 23. Not only that, but on the following day we were still more happy to find that even Mr. Munshi had given notice of another amendment which now appears as No. 27 according to which the scope of amendment No. 23 standing in the name of Dr. Ambedkar was extended to some extent *viz*., that while Dr. Ambedkar's amendment No. 23 conceded the right of appeal only in such cases in which sentence of death had been passed by the High Court in appeal against acquittal, Mr. Munshi's amendment further extended the scope to also those cases in which death sentence was passed by the High Court even in revision.

Secondly, Mr. Munshi's amendment also laid down that if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court an appeal shall lie.

But all of a sudden we find that Dr. Ambedkar wants to give up the position he wanted to take up in amendment No. 23 and has now gone back to the original position he took that no appeal shall lie to the Supreme Court except in accordance with legislation that might be passed by Parliament. Sir, Dr. Ambedkar while replying to the debate the other day on article 110 said that he had an open but not a vacant mind. I am prepared to concede that he had not only an open but a receptive mind : I only wish his mind had been retentive also. For although he received various suggestions in the course of the debate and they remained in his mind for a day or two, which induced him to give

notice of amendment No. 23, all these suggestions vanished from his mind after the couple of days; so that his mind was not only open but too wide open and could certain things for any length of time.

Now it is suggested in the proposed amendment No. 24 that Parliament may by law confer criminal appellate powers on the Supreme Court. It is not conceded that Parliament must necessarily confer on the Supreme Court the right of hearing appeals in criminal cases, for the word used is "may" and not "shall". It is, therefore, intended that it should be left open to Parliament to pass legislation or not conferring on the Supreme Court the right to hear criminal appeals. The implication of this amendment also is that once this right is conferred on the Supreme Court by legislation, the Parliament may on a subsequent date, if it so chooses, amend, annual or revoke such legislation. That means that so long as Parliament finds that the Supreme Court is passing judgments in appeal which find favour with Parliament, which means the party in power, which again means the Cabinet for the time being, the Supreme Court shall continue to exercise that right. But when the judgments of the Court are not liked by Parliament the right will be withdrawn. This is a dangerous proposition; it means that the Supreme Court in order to retain that right must act in a manner so as not to displease Parliament. We have been crying for the independnece of the judiciary and Dr. Ambedkar has been a stout champion of this independence. But when we come to frame legislation relating to the powers of the Supreme Court which is the highest judiciary in the land we are trying to lay down provision which will virtually strike at the root of the independence not only of the judiciary but of the supreme judicial tribunal in the land. I submit we should not be a party to this. The independence of the Supreme Court in civil cases is not of much consequence; its independence in criminal matters is of vital importance. It matters little if a case involving a paltry sum of Rs. 20,000 is decided this way or that; but if in deciding a criminal case, which sometimes may be of an important political nature, the Supreme Court has to act in accordance with the linkings of Parliament in order to retain the power to hear appeals, that is a serious encroachment on the independence of the Supreme Court. In view of all this I submit that we should legislate here and now that the Supreme Court will have power to hear appeals; we should not leave it to the sweet will of Parliament to legislate or not to legislate to that effect. We are in this Constitution providing for a Supreme Court, for the seat of the Court and the salary of the judges and other things in detail. But on the important questions of the right to hear criminal appeals we are leaving it to Parliament to decide as it likes. And which Parliament is going to deal with this? It is the present Parliament or the one which will come hereafter after the new Constitution comes into force? If it is the latter it means another couple of years. If it is intended that the present Parliament should pass this provision, why should we not do it here and now? The present Parliament consists of members who are present here today. Or, I may say that by the convention we have established it consists not even of the members present here now and who are entitled to take part in these deliberations. Therefore, I think this Constituent Assembly, as the constitution making body, is more representative than the present day Parliament and such an important question should be decided by this body rather than be left to a body which functions as the Parliament. If one likes to be uncharitable an inference may be drawn—though I hope it is not a fact—that some members who are members of this body but under the convention do not attend the Parliament are thought to be so inconvenient that this legislation should be taken up in Parliament where they are not present. We have established a convention that members of the provincial legislatures will not attend this Parliament. Now we wish to tell them that they should agree not to have a say in this matter and should agree to let this matter be decided by Parliament in their absence.

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But if it is intended that not this Parliament but the Parliament which will come into being after the new elections should deal with the legislation, it means that the whole thing will be kept in abeyance for at least two years. Even when that Parliament comes into existence, it will have many legislations of immediate importance to deal with and its time will be occupied with enacting those more important pieces of legislation. That means that for three or four years to come this whole thing will remain in abeyance. The question arises as to what will be the fate of those unfortunate persons who are condemned to death for the first time by final order or the High Court. My honourable Friend Dr. Ambedkar and others of his way of thinking might perhaps say that we need not bother about the fate of those few unfortunate persons.

They might say so callously if they are so inclined. But I hope that Dr. Ambedkar and his other friends who are partners in this business of depriving the Supreme Court of its right of hearing criminal appeals—I mean Mr. T.T. Krishnamachari and Mr. Munshi—none of them would be so callously inclined as to suggest that. I know that Dr. Ambedkar, though he some times presents a rough exterior has a very soft and, if I may say so, a loving heart too. As for Mr. Krishnamachari he is all sweetness. And of course Mr. Munshi is all softness. I am sure, therefore, that not one of them would ask us to deal with human life and liberty in such a light-hearted manner. I, therefore, submit that we should make a definite provision here and now in the Constitution conferring on the Supreme Court the right to hear criminal appeals.

But then I must concede that there is considerable substance in the arguments of Dr. Ambedkar and Mr. Munshi as they put them forward on a previous occasion, namely, that if there is an unrestricted right of appeal vested in the Supreme Court the case work would be a very huge one. True. I do not wish to suggest, nor have I suggested in my amendment, nor perhaps has anybody else suggested in his amendment, that there should be an unrestricted right of appeal to the Supreme Court. all that we want is that it should be confined to a few specific cases the number of which would not be very large—perhaps the number would not go beyond sixty or seventy or at the outside hundred in the year in the whole country. Let the right of appeal be confined firstly to those cases in which the sentence of death has been passed by the High Court for the first time by its final order which only means this and nothing more that if a person has been condemned to death for the first time he should have one little right of appeal. That is what my amendment implies and nothing more. In such cases where the man has either been acquitted by the lower court, or by the first order of the High Court or Sessions Court he has been sentenced not to death but a lower sentence has been inflicted on him, the accused has the advantage of one judgment in his favour either of acquitted or of a sentence lower than death; and that judgment may have been passed in the first case by the Session Judge who may be duly qualified to be a Judge of the High Court and who, if luck favours him, may on the day following his pronouncing the judgment be promoted to the High Court. In the other case an order of acquittal may have been passed by a Judge of the High Court himself—a Judge very competent, learned, very reliable and trustworthy. The question is when an accused has a first judgment in his favour, should or should he not have even one right of appeal against the sentence of death passed in him for the first time by the High Court? I submit everybody will agree that an accused person must have much a right and the Supreme Court must have the right to hear an appeal from such an order.

The other part of my amendment is that if the High Court certifies that the case is a fit one for appeal it should to in appeal to the Supreme Court.

You may not trust anybody but at least do trust your High Court Judges and do not think that they will lightly grant such a certificate. If the Judges of the High Court are inclined to give such a certificate, then what reason on earth could you have for saying that even in such cases there shall be no right of appeal to the Supreme Court? I submit that in view of these considerations it is necessary and desirable that such a power should be conferred on the Supreme Court.

In none of these suggestions of mine are acceptable, at least one suggestion must be acceptable and that is the suggestion contained in my amendment No. 37 as amended by another amendment which says :

> "That in amendment No. 24 above, in the proposed new article 112-B, for the words 'Parliament may' the words 'Parliament shall' within one year of the Commencement of this Constitution' be substituted."

Either it is our intention that Parliament shall enact such legislation or it is our intention that it may not enact such legislation. If we are in doubt about it today it is another matter. But if our solemn intention is not to shut out criminal appeals and the intention is merely that these things may be dealt with by Parliament then make it obligatory on Parliament to enact such legislation, that such legislation must be enacted at the outset, within a year of the enforcement of this Constitution. For, otherwise, as I have already submitted if you let the word "may" remain here, it will be open to Parliament to enact or not to enact such legislation and even after having enacted such legislation to repeal or amend it, with the result that this sword will always continue to be hanging on the Supreme Court, warning them that they must behave in a manner which may be to the liking of Parliament. Sanctity of life and liberty is of the essence of democracy and it should not be ignored by depriving it of the protection of Supreme Court.

Mr. Naziruddin Ahmad : Sir, all the amendments which have been moved centre round one important question, that is, whether or to what extent and appeal shall be allowed to the highest Court in the land in criminal cases. I submit that the matter is one of great constitutional importance. We are enacting a Constitution for a Sovereign Democratic Republic. We are erecting one of the finest democracies in the world. But the implication of democracy must be squarely faced. Democracy means a rule of law as opposed to a rule of force. In autocracies and in Totalitarian States the law is not supreme. But democracy means supremacy of the law where no one, be he the highest individual, is above the law. We should therefore all respect law and should be law-abiding citizens in order to inculcate that sense of law-abidingness wherein lies the safety of democracy. We should ourselves follow democratic principles, democratic methods and respect the law. The other day, when this matter was discussed in connection with article 110,111 and 112, I pointed out that there was a lacuna so far as criminals appeals to the Supreme Court were concerned. It was this disclosure that prompted the House to discuss the matter regarding the rights for criminal appeal to the Supreme Court. You were pleased to allow that discussion. It would therefore in my humble opinion be utterly wrong to characterise that discussion as irrelevant. In fact that discussion has brought to light some of the weaknesses of the Draft Constitution necessitating so many amendments.

Sir, in the welter of amendments moved in the House there are some common points which are of fundamental importance. We have allowed under article 111, appeals in civil cases where substantial question of law is involved, subject to a pecuniary limitation. The question is whether we would be right in putting any limitation on people's life and liberty. Can we distinguish the life and liberty of the meanest individual in the State from those of a rich man? In criminal law in a civilised State no distinction can exist between the rich and the poor, between the great and the small. In civil cases there is not much harm

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done to society if wrong decisions are passed in individual cases. But if you have one innocent man robbed of his liberty, untold mischief will follow. In fact it is only by allowing recourse to the highest Court of law that the supremacy of law can be fully established. The safety of a State lies in the people's faith in the rule of law. The Court of the last resort should be the ultimate tribunal which would decide questions of legal rights in criminal cases. The points that arise in this connection are, (1) whether any right of appeal should be allowed and, (2) if so under what conditions and with that safeguards. The further question is whether the provision should be inserted in the Constitution itself. I submit that the matter is of great constitutional importance. If a man's life and liberty are not matters of concern for this Assembly I think nothing would be worth considering at all. As the question which have been raised by these amendments are of fundamental importance, I think, rights of final appeal, whatever they are, should be embodied in the Constitution itself. There will be no justification for this Honourable House for shirking its responsibility in defining rights of appeal in criminal cases when it has with such meticulous care defined rights of appeal in civil cases. I think that the matter should not be left to the Parliament. In fact that means the next Parliament, not this Assembly sitting in another place as Legislative Assembly, but the next Parliament after the next general elections or even a subsequent Parliament. There is no justification for this House suspending its activities and leave a void to be filled in by a future Parliament of unknown composition and disposition. We have no right to refuse to define the law and thereby to ensure substantial justice in criminal cases. We should therefore define the law in the Constitution itself. We have entered in the Constitution so many comparatively unimportant matters and we should not hesitate to include this important provision therein.

The first question is whether you would allow any right of appeal in criminal cases to the highest court. I would draw the attention of the House of the existing state of the law. In fact there is a right of appeal to His Majesty in Council in criminal cases on a substantial question of law or in cases where grave injustice has otherwise been shown to have been done. In these circumstances I submit that, if we do not grant any right of appeal under similar terms in criminal cases to our Supreme Court, we would be taking away a right which now exists in criminal cases. Sir, a study of the criminal appeals before the Privy Council for the last forty years will show that this right of appeal is a great necessity as many cases of undeniably wrong convictions have been set aside. Especially in murder cases it often happens that a man is convicted on account of local prejudices and suspicions as a substitute for evidence. In this way sometimes innocent men are even hanged. The decisions of our Courts are sometimes guided or clouded by extraneous considerations. If such decisions are taken in appeal to the highest Court they take a dispassionate view of things and decide them on their merits and on proper consideration of evidence. I submit therefore that the right of appeal should be given in criminal cases on suitable grounds. Now what are those suitable cases? I submit that the suitable cases would be cases involving substantial questions of law. In fact we are establishing a rule of law or democracy. Therefore if any man has been convicted on a substantial error of law, I think that should be a good ground for allowing an appeal. Substantial questions of law have always been held to be sufficient ground for interference by the Privy council and we should not at least take away or indefinitely suspend that right which has been so much valued and in existence for over a century. I submit, therefore, that substantial question of law should be a good ground. There is some fear in certain sections of the House that if we allow appeals on substantial question of law, the authority of the government, the

authority of the executive, will be weakened. In fact I have heard it whispered that there should be many convictions so that thereby the authority of the executive may be upheld, that if we allow too many appeals, the authority of the executive would be undermined and the safety of the State will be endangered. But I feel just the other way. If we allow the supremacy of the law to be maintained by an independent tribunal, that would be the basis of the safety of the State. The contentment of the people, their faith in the administration of justice, would be a paramount factor in making the State safe. If the ultimate jurisdiction of our highest Court in criminal cases is taken away, the dissatisfaction created thereby will go underground and will be a menace to the State. It is quite possible that sometimes the executive too would be disregarded by the Court of law, but that is why the Courts of law exist, *viz*., to administer justice irrespective of political considerations. If the executive feels that in a particular class of cases, political or otherwise, there should be no appeal, or there should be some sort of curtailed procedure, or there should be special rules of evidence, the executive can always apply to the legislature. It is for the legislature to say what law should be passed. The independence of the legislature is also to be guaranteed and an independent legislature may prescribe the laws of evidence, laws of penalty and laws of procedure applicable to criminal cases in a particular manner. There should however be nothing to prevent appeal to the highest Court. If we allow right of appeal to the Supreme Court on substantial questions of law, that will be a guarantee of the independence of the legislature in framing any law it pleases. If the legislature passes any law which would practically prevent the right of appeal on grounds of law, it is for the legislature to do so. The executive, by virtue of having a majority, can always approach the legislature with their point of view, and in this way the supremacy or the independence of the executive can maintained, but within the limited of law that the legislature lays down, the Supreme Court should always have the power to give substantial justice according to its best lights. It is for this reason that I say that the right of appeal should be allowed on substantial question of law. There can be no logical escape from this proposition. I submit, therefore, that we should not leave the matter to the next Parliament. Supposing a man is ordered to be hanged by the High Court for the first time and suppose that the decision of the High Court is wrong. It often happens that local prejudices have forced a verdict of death being passed on the unfortunate man. May I ask what should this man do? Should we ask him to wait in patience till a suitable law is passed by the next Parliament? Is he to hang in the meantime? Is he to hang in the expectation of a proper law being passed by the next Parliament? I think that the consequences would be too serious and too revolting to allow of this procrastination. I submit, therefore, that the right of appeal should there and now be given to an accused person in criminal cases to the Supreme Court on substantial questions of law. A case was recently taken to the Privy Council on a very small matter. A man was convicted by a Deputy Magistrate for a petty offence. He was acquitted in appeal by the Sessions Judge. The Government preferred an appeal to the High Court which convicted him. The accused appealed to the Privy Council. The Privy Council with rare clarity pointed out substantial infirmity in the evidence and acquitted him. It was argued that this was a petty case and so should not be worthy of interference by the Privy Council. Their Lordships, however pointed out that it was a case of improper conviction and he must be acquitted. So if we do not allow appeals on substantial questions of law the result will be shirking our responsibility. There will be no justification for allowing people to rot in jail or to hang pending legislation later on. Therefore we should here and now introduce an article which would prevent men being convicted wrongly.

Then, Sir, there is another kind of safety in allowing appeals in criminal castes on substantial questions of law to the Supreme Court. At present there are in the High Court differences of opinion of matters of law. That is inevi-

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table because legislation deals with general principles and its application to concrete cases leaves room for difference of opinion amongst the different High Court. My submission is that is different High Court are likely to hold conflicting views on points of law, that would be a ground for allowing appeals to go to the Supreme Court, for in that way alone the law can be made uniform and harmonious. It has many times happened that in the Privy Council accused persons have obtained special leave on the ground of conflicting opinions among the High Court which must be settled in the right way. Their Lordships have in such cases granted special leave, although they were not *prima facie* fully sure that on the facts of that particular case any prejudice had actually resulted, but they gave the benefit of the doubt and granted special leave pending a more detailed consideration. Ultimately the decisions of the Privy Council in those cases have thrown new light on important principles of law in criminal cases. A perusal of the Privy Council in those cases have thrown new light on important principles of law in criminal cases. A perusal of the Privy Council judgments in criminal cases during the last thirty or forty years will show many cases which have settled many difficult and complex questions of law and have made the law uniform. If the law is made uniform the result would be contraction in the number of criminal appeals in the Sessions Courts and the High Courts and there would be economy in the long run. In these circumstances, I submit that the question of law should be regarded with some amount of veneration, and at least on substantial question of law we ought to allow a man to invoke the intervention of the highest Court. What would be the Supreme Court worth, if it is not supreme in matters of criminal law? I think the supremacy of the law must be really guaranteed by making the Supreme Court really supreme in these matters. I submit, Sir, that we have already accepted article 112. That empowers the Supreme Court to grant special leave in all cases included.

An Honourable Member : The time is up.

Mr. President : Will you take long?

Mr. Naziruddin Ahmad : I shall take some more time.

Mr. President : Then the House adjourns till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Tuesday the 14th June 1949.