Monday, 14th November, 1949

Volume XI

14-11-1949
to
26-11-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed at JAINCO ART INDIA, New Delhi.

THE CONSTITUENT ASSEMBLY OF INDIA

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SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 14*th November* 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. President : I understand that there are two Members who have to take the Pledge and sign the Register.

The following Member took the pledge and signed the register:—

Shri M. R. Masani (Bombay General).

DRAFT CONSTITUTION

Mr. President : We have now to take up the consideration of the Draft Constitution.

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. President I wish to draw your attention to the Resolution I have given notice of in connection with the sending of a message by the Constituent Assembly to the people of Indonesia for their having achieved their freedom after a great struggle. I think the proper body to send such a message is the Constituent Assembly of India who have achieved freedom and are preparing the Constitution. The Indonesian people are also preparing their Constitution. Sir, if my Resolution is not to taken up here, I request you as President to send a telegram of congratulation and felicitation.

Mr. President : I propose to place the notice of that Resolution before a meeting of the Steering Committee and take such steps as we are adviced by that Committee.

We have now to take up the consideration of the Report of the Drafting Committee together with the amendments made by the Drafting Committee and other amendments of which we have received notice. I propose to explain the procedure which I wish to follow in this connection. After the motion for the consideration of the Report has been passed, the amendments will be taken up. Those amendments of which notice has been given by the Drafting Committee will be taken as moved and there will be no formal motion with regard to the amendments included in the Report of the Drafting Committee.

As regards the amendments of the Drafting Committee, they are of two kinds. Many amendments have been incorporated in the Report and printed in italics in the copy of the Constitution which is now in the hands of the honourable Members. There arc certain other amendments of which we have received notice from the Drafting Committee but which are not included in the Report or printed in the Draft Constitution. So far as those amendments arc concerned which are included in the Report and indicated in italics, the Members have had an opportunity to send in amendments and they have given notice of amendments to them. But so far as these new amendments of which the Drafting Committee has given notice now are concerned, the Members have had no notice and no opportunity of giving notice of amendments. I would allow amendments to those amendments which are now included in the Second List of Amendments till we start work tomorrow morning. Honourable Members will thus have time to consider these new amendments and give notice of amendments, if they wish, till tomorrow morning. As regards the procedure to be followed in considering the amendments, under the rules which were adopted in the last session, I think no amendment which does not arise out of any

[Mr. President]

amendment which is moved on behalf of the Drafting Committee will be in order. So I propose not to take those amendments unless in the case of any particular amendment I find that there is any special reason to make an exception. The rules have given me that discretion and I shall consider any particular amendment which does not come under the rules but which I consider to be reasonable and necessary and permit it to be moved. At present I must say that I do not feel it advisable to admit any of those amendments which are outside the rules. But I am open to consider the matter further and if any honourable Member draws my attention—not in the House but in writing—to any particular amendments to which he attaches special importance, I shall consider that amendment specially and allow that to be moved or not as I deem fit.

When an amendment to an amendment is moved, I do not know whether Members would like to discuss each separately, but then we have a limited time at our disposal and all this process of disposing of all the amendments must be finished by one o'clock day after tomorrow. Under the rules I could give only two days for this business, but I have stretched the point in favour of the Members by fixing the time up to one o'clock on Wednesday. I have done this because I feel that the previous consideration of the motion might take a little time today and it would not be fair to the Members to give them less than two days for considering all the amendments. Therefore I would suggest that if any Member wishes to speak about any amendment of his own, he will confine his remarks to the barest minimum possible, so that we may have more time for other Members.

I hope all the amendments to the amendments of the Drafting Committee, except those contained in List II, will be moved in the course of this day and tomorrow we may take up the amendments to List II of Amendments. We may have a discussion of all the amendments tomorrow. I must put them all to vote day after tomorrow, say by about twelve of the clock, and finish the voting by one of the clock day after tomorrow. This is the procedure which I propose to follow. I trust this will give an opportunity for all important amendments to be discussed and also for expediting the work.

Shri R. K. Sidhwa : I want to know whether we will have two sittings today.

Mr. President : We shall sit every day from tomorrow from 10 o'clock to 1 o'clock and from 3 o'clock to 5 o'clock.

Shri R. K. Sidhwa : Why not today also.

Mr. President : Yes, today also.

Shri H. V. Kamath (C. P. & Berar : General) : With regard to the time fixed for the consideration of the amendments to the Draft Constitution as revised, under the rules adopted in the Assembly last time you have powers to relax or suspend any of the rules.

Mr. President : I am not inclined to extend the time beyond 1 o'clock day after tomorrow. Within that time I shall be prepared to relax any of the rules which I consider need relaxation.

Shri Mahavir Tyagi (United Provinces : General) : Sir, are you going to take the amendments in italics article by article ? If you do, it will be difficult for us to finish the work within the prescribed time. Moreover, in certain cases, the changes are such that they are absolutely new and which we have not discussed before. Some changes have been introduced which were not discussed in the House at all. In such cases Members may like to oppose those amendments.

Mr. President : Members may depend upon my discretion to decide such cases.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I have a point of order.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : How can a point of order be raised on the observations of the Chair ?

Mr. Naziruddin Ahmad : I have nothing to say against the observations of the Chair.

Shri R. K. Sidhwa : How can a point of order be raised when there is nothing before the House ?

Mr. President : I think the honourable Member only wants to make some observations as some other Members have done.

Mr. Naziruddin Ahmad : I do not want to obstruct the proceedings. Sir, you have kindly observed that the amendments put before the House today during this session should be relevant to the amendments made by the Drafting Committee. That I submit, should apply not only to out amendments but also to the amendments proposed by the Drafting Committee. If any amendment of ours is outside the scope of being relevant to the amendments already suggested by the Drafting Committee, it should go. I quite agree; but along with it, I think, must also go the amendments proposed by the Drafting Committee which were circulated last night. Amendments to amendments again must be governed by the same rules. Our rules do not make any distinction between further amendments to be moved by the Drafting Committee and the amendments to be moved by the Members. So they should either sink or swim together. I ask you whether you would consider the later amendments suggested by the Drafting Committee on the same basis as our amendments.

So far as the amendments suggested by the Drafting Committee in the revised draft are concerned, in some cases the changes have not been indicated in the text. In some cases they have been shown in italics, In some cases important changes have not been indicated at all. So, it would be extremely difficult for you and for the office to find out whether our amendments are relevant amendments to the amendments made. This is a very difficult matter. I ask you to consider all these.

Then I should like to make a suggestion that amendments which may be strictly outside the scope of the rules may be considered by the draftsmen. I would like the draftsmen to consider them and in case they are agreeable, I submit that those amendments, although they are strictly outside the rules, may be allowed to be moved. I submit that they may improve the text and they should not be allowed to be ruled out on mere technical grounds. I think these things should be carefully considered.

Mr. President : As regards the first point raised by Mr. Naziruddin Ahmad with regard to the amendments of which notice has been given by the Drafting Committee now and which are contained in List II, I think the discretion given to me under the rules is intended to cover such cases and I shall use my discretion in regard to those amendments and also in regard to other amendments too, but naturally the amendments of which notice has been given by the Drafting Committee have a certain value which does not attach to every amendment of which notice has been given by every private member. Subject to that, I shall consider those amendments also and use my discretion. If I find that any amendment really does not arise, I will rule that out.

Mr. Naziruddin Ahmad : What about my other point, Sir, that the draftsmen should consider all formal amendments and if they are acceptable to them they should be allowed ?

Mr. President : As regards those amendments, I expect that the Drafting Committee has been considering all these amendments and if they have not done so up till now, they will do that. It is for that reason that I do not wish to put any amendment to the vote now but put them to the vote only day after tomorrow so that in the meantime the Drafting Committee may have time to consider those amendments on their merits. If it is inclined to accept any of them, they may be accepted, or if the Drafting Committee is inclined to accept any of the amendments which do not come under the first class of amendments but are amendments to amendments, they can do so. I shall take up on Wednesday all these amendments at one time. For this reason I think I would not put to the vote any amendment at this stage, in order to give time to everybody to consider the amendments so that we may have the best consideration given to each amendment.

Now, as regards the time for moving any amendment, I would not like to ,give more than five minutes. If on the other hand, as has been pointed out by Mr. Mahavir Tyagi, there is any amendment which is a substantial amendment and which goes beyond the decision of the Constituent Assembly in its previous session, probably I might give a little more time for discussion. I might allow some speeches on those amendments.

The Honourable Shri K. Santhanam (Madras : General) : Members should not make speeches on merely formal amendments.

Mr. President : I hope that Members will not insist on delivering speeches because they will remember, as I have already said, that we have got to finish by I o'clock day after tomorrow. If they insist on making speeches on amendments which are of an inconsequential or unnecessary nature, they will be only taking up the time of the House which should actually be reserved for discussion of the more important ones.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the amendments of the Drafting Committee leave one rather cold in respect of some matters. The Drafting Committee has gone beyond its powers in putting forth amendments which are against the considered verdict of the House. The House defeated some amendments but those amendments have been re- incorporated. My humble submission is that in the third reading it is beyond the powers of the Drafting Committee so to arrange matters that the previous amendments which were carried by the House are tampered with. My humble submission is that those amendments which were defeated before and which were the subject matter of discussion in the House should not be touched in the third reading at all.

The Drafting Committee were only allowed to make formal and consequential amendments and such amendments which were absolutely necessary. Necessary amendment does not mean that they sit as a revising body over the considered verdict of the House, and therefore my humble submission is that so far as these amendments are concerned, they ought to be ruled out as inadmissible. When the amendments come, it must be decided on merits whether those amendments should be allowed or not.

Mr. President : As I have said, I shall consider each amendment on its merits and Mr. Thakur Das Bhargava has not said anything which requires any further reconsideration. What he has said is covered by what I have said already.

Shri H V. Kamath : Is Wednesday I o'clock absolutely final ?

Mr. President : Yes, it is final.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir. I have to present the report of the Drafting Committee together with the Draft Constitution of India as revised by the Committee under rule 38-R or the Constituent Assembly rules. Sir, I move—

"That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration."

Sir, I do not propose to make any very long statement on the report or on the recommendations made by the Drafting Committee for the purpose of revising or altering the articles as they were passed at the last session of this Assembly. The only thing that I wish to say is that I would not like to apologise to the House for the long list of corrigenda which has been placed before the House or the supplementary list of amendments included in List II. In my judgment it would have been much better if the Drafting, Committee had been able to avoid this long list of corrigenda and the supplementary list of amendments contained in List II, but the House will realise the Stress of time under which the Drafting Committee had been working. It is within the knowledge of all the Members of the House that the last session of the Constituent Assembly ended on the 17th of October. Today is the 14th of November. Obviously, there was not even one full month available for the Drafting Committee to carry out this huge task of examining not less than 395 articles which are now part of the Constitution. As I said, the Drafting Committee had not even one month, but that even is not a correct statement, because according to Rule 38-R and other rules, the Drafting Committee was required to circulate the Draft. Constitution as revised by them five days before this session of the House. As a matter of fact the Constitution was circulated On the 6th of November, practically eight days before the commencement of this session. Consequently the time available for the Drafting Committee was shorter by eight days. Again, it must be taken into consideration that in order to enable the Drafting Committee to send out the Draft Constitution in time, they had to hand over the draft they had prepared to the printer some days in advance to be able to obtain the copies some time before they were actually despatched. The draft was handed over to the printer on the 4th of November. It will be seen that the printer had, only one day practically to carry out the alterations and the amendments suggested by the Drafting Committee. It is impossible either for the printer or for the Drafting Committee or the gentleman in charge of proof corrections to produce a correct copy of such a huge document containing 395 articles with in one day.

That, in my judgment, is a sufficient justification for the long corrigenda which the Drafting Committee had to issue in order to draw attention to the omissions and the mistakes which had been left uncorrected in the copy as was presented to them by the printer on the 5th. Deducting all these days, it will be noticed that the Drafting Committee had barely ten days left to them to carry out this huge task. It is this shortness of time, practically ten days, which in my judgment Justifies the issue of the second list of amendment now embodied in List II. If the Drafting Committee had a longer time to consider this matter they would have been undoubtedly in a position to avoid either the issue of the corrigenda or the Supplementary List of Amendments, and I hope that the House will forgive such trouble as is likely to be caused to them by having to refer to the corrigenda and to the Second List of Amendments for which the Drafting Committee is responsible.

Sir, it is unnecessary for me to discuss at this stage the nature of the amendments and changes proposed by the Drafting Committee in the Draft Constitution. The nature of the changes have been indicated in paragraph 2 of the Report. It will be seen that there are really three classes of changes which the Drafting Committee has made. The first change is merely renumbering of articles, clauses, sub-clauses and the revision of punctuation. This has been done largely because it was felt that the articles as they emerge from the last session of the Constituent Assembly were scattered in different places and could not be grouped together under one head of subject-matter. It was therefore hold by the Drafting Committee that in order to give the reader and the

[The Honourable Dr. B. R. Ambedkar]

Members of the House a complete idea as to what the articles relating to any particular subject-matter are, it was necessary to transpose certain articles from one Part to another Part, from one Chapter to another Chapter so that they may be conveniently ground together and assembled for a better understanding and a better presentation of the subject-matter of the Constitution.

The second set of changes as are described in the report are purely formal and consequential, such as the omission of the words "of this Constitution" which occurs in the draft articles at various places. Sometimes capital letters had been printed in small type and that correction had to be made. Other alterations such as reference to Ruler and Rajpramukh had to be made because these changes were made towards the end when we were discussing the clauses relating to definition. The other change may be compendiously called 'necessary alterations.' Now those necessary alterations fall into two classes, alterations which do not involve a substantial change in the article itself. These are alterations which are necessary because it was found that in terms of the language used when the articles were passed in the last session, the meaning of some articles was not clear, or there was some lacuna left which had to be made good. That, the Drafting Committee has endeavored to do without making any substantial change in the content of the articles affected by those changes. There arc, however, other articles where also necessary changes have been made, but those necessary changes are changes which to some extent involve substantial change. The Drafting Committee felt that it was necessary to make these changes although they were substantial, because if much substantial changes mere not made there would remain in the article as passed in the last session various defects and various omissions which it was undesirable to allow to continue, and the Drafting Committee has therefore taken upon itself the responsibility of suggesting such changes which are referred to in sub- clause (d) of paragraph 2, and I hope that this House will find it agreeable to accept those changes. As to the substantial alterations that have been made, in regard to some of them sufficient explanation has been given in paragraph 4 and I need not repeat what has been said in the report in justification of those charges.

Sir, I do not think it is necessary for me to add anything to the report of the Drafting Committee and I hope that the House will be able to accept the report as well as the changes recommended by the Drafting Committee both in the report as well as in List II which has already been circulated to the Members of the House.

Amendments of Articles

Mr. President : Dr. Ambedkar has presented the report and the motion now before the House is that the amendments recommended by the Drafting Committee, and the Draft Constitution be taken into consideration . . . . . .

Shri H. V. Kamath : I have got an amendment, Sir.

Mr. President : I think it is only a verbal amendment.

Shri H. V. Kamath : This is with reference to Rule 38-R and I shall take only half a minute.

Mr. President : I shall be looking at the clock; take half a minute.

Shri H. V. Kamath : Sir, I shall not read the amendment* to the House. While moving this amendment. I would only endorse the remarks made by my

*That in the motion, for the words "the amendments recommended by the Drafting Committee in the Draft Constitution of India," the words "the amendments to the Draft Constitution of India, as recommended by the Drafting Committee under sub-rule (1) of Rule 38-R of the Constitutional Assembly Rules," be substituted.

honourable Friend Pandit Thakur Das Bhargava and state before the House that so far as the amendments suggested by the Drafting Committee are concerned, they have more or less acted like, may I say, chartered liberties. I would therefore request you, Sir, to be so good as to exercise your discretion generously so far as the amendments suggested by us other than to those recommended by the Drafting Committee are concerned. That is my only submission.

Mr. President : You have not spoken anything about your amendment to this motion. Well . . . . . .

Mr. Naziruddin Ahmad : May I know, Sir, whether the amendments include also the huge number of corrigenda and whether they have also to be read as part of the Constitution?

Mr. President : Corrigenda are corrigenda and they are included.

Since Mr. Kamath has insisted upon moving his amendment, I would put his amendment first to the vote.

Shri H. V. Kamath : Since it is more or less of a drafting nature, I do not press it.

Mr. President : I put the motion moved by Dr. Ambedkar .

The question is :

"That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration."

The motion was adopted.

Mr. President : We shall now take up the amendments. Preamble. There is no amendment by the Drafting Committee to the Preamble and I cannot take up any amendments to the Preamble. Then, we go to article 1. There is an amendment by Mr. Naziruddin Ahmad and by Mr. Kamath*. Mr. Kamath, do you wish to move and do you require to make any speech ?

Mr. Naziruddin Ahmad : Sir, so far as my punctuation amendments are concerned, I should rather leave them all to the draftsmen.

Mr. President : (*To Shri H. V. Kamath*) It is only a punctuation here also. You will remember that you are taking the time of more important amendments.

Shri H. V. Kamath : I should like to know whether the Drafting Committee is accepting it.

Mr. President : Nobody is accepting or rejecting any amendment.

Shri H. V. Kamath : Sir, the Draft as passed by the House reads, "India, that is, Bharat . . . . . ". The revised draft presented to the House says, "India, that is Bharat . . . . . ". That I do not think is what was intended by the House when we accepted article 1. What was meant was, India, that is to say, Bharat. That is why two commas were inserted and the phrase was interposed. I does not mean, "India, that is Bharat,". This is wrong English, so far as the meaning intended is concerned. I think the original was perfectly correct and it was absolutely wrong on the part of the Drafting Committee to change the wording.

Mr. Naziruddin Ahmad : Sir, I should rather suggest that some of my formal amendments may be put to the draftsmen and if they agree to accept, shall move them; otherwise, I am not moving.

Mr. President : Let them consider and if they are inclined to accept, they will accept them even without being moved.

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*That in clause (1) of article 1, after the words 'that is' a comma be inserted and the camma after the word "Bharat" be deleted.

[Mr. President]

We now pass on to article 5. There is no amendment by the Drafting Committee and these amendments do not arise.

Shri B. Das (Orissa : General) : I am not moving the amendment. (Amendment No. 15).

Mr. President : It is covered by article 9.

Article 13 : Sri Raj Bahadur, amendment No. 33.

Shri Raj Bahadur : (United State of Matsya) : Sir, I move:

"That in sub-clause (a) of clause (3) of article 13.

(i) after the word 'having' the words 'the force of law' be inserted;

(ii) after the word 'India' the words 'or any part thereof' be inserted; and

(iii) the words 'the force of law' be deleted.'

It is obviously for the purpose of making the object of the article clearer that I beg to move this amendment.

Mr. President : We pass on to article 14 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not wish to move it formally; I only wish to point out one or two things for the consideration of the draftsman. So far as the definition of a State is concerned, in article 12 as well as in article 36 the word 'State' has been defined as "the State". That binds the two words in a rather tight union. As a result of this, we have to use the expressions, the State has this right, the State has that and so forth. Remembering that the expression "the State" as defined in articles 12 and 36 includes not only the Government of India, but also the Government of the Provinces, the Government of the States, District Boards and 'Municipalities, Local Boards, and Union Boards and others, there will be hundreds of thousands of similar institutions which would be comprehended within the expression "the State." As we have defined the expression used in Part IV beginning with article 37 up to article 50, we have always used the expression. "The State shall, etc."

The word "the State" would be really appropriate if there was only one State to which we refer. But in view of the multiplicity of States which would be meant and in order to enable us to use freely the expression, 'this State', 'that State', 'any State', 'every State' and so forth, in order to give us full latitude to use any article or word that may suit the context, the word 'the' should be separated from the definition. The words 'the', 'any' or 'every' must depend on the context and should not be prejudiced by the definition. I do not want to move the amendment but, as I have suggested, this is a matter of drafting and can be more profitably left over to the Drafting Committee for consideration, and if they agree, then these things can be taken as moved.

Mr. President : Amendment Nos. 35 and 36 are not moved. We pass to article 18.

I think No. 54 is covered by what you said just now, Mr. Naziruddin Ahmad ?

Mr. Naziruddin Ahmad : Yes.

(Amendment No. 55 was not moved.)

Mr. President : We pass on to article 22. Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, in clause (4) and clause (7) I have some amendments. I beg to move :

"That in clause (4) of article 22, for the words 'No law providing for preventive detention, the words, brackets. letters and figure 'Nothing in sub-clause (b) of clause (3)' be substituted; and at the end of sub-clause (b) of clause(4), the following be added:—

'authorising such longer detention."

My other amendment is :

"That in clause (7) of article 22, the words 'for a period longer than three months' be deleted."

I only want that the phraseology of clause (4) should be improved and in clause (7) I want that the words 'for a period longer than three months' should be deleted. Parliament must have the power to make laws for shorter as well as longer detention periods.

Mr. President : Mr. Saksena, as regards No. 82, does it not go against a previous decision?

Prof. Shibban Lal Saksena : That means Parliament can make law for less than three months or more than three months. I do not want to restrict the power of Parliament only to periods above three months. I do not want the Executive to use the power.

Mr. President : How will it stand if it is read along with clause (4) ?

Prof. Shibban Lal Saksena : It will read—

"Parliament may by law prescribe the circumstances under which and the class or clause of cases in which a person may be detained under any law providing for preventive detention etc."

What I want is that Parliament should have power to legislate authorising Government to detain persons either for less than three months or more than three months. According to this Parliament will not have power to make laws for less than three months.

(Amendments Nos. 83 and 84 were not moved.)

Mr. President : We proceed to article 31.

(Amendment No. 115 was not moved.)

Mr. Naziruddin Ahmad : Sir, in connection with my amendment No. 116, I wish to draw the attention of the House, the Drafting Committee and especially the draftsman to the use of the word 'Government of India'. In fact this is to distinguish this expression from Dominion of India'. I would submit that the word 'Dominion of India' really covers the period from 15th August 1947 up to the 25th January, 1950. Before that we had the expression Government of India', the expression 'Government of India' should be confined to Government before the 'Dominion' stage came in. After the Dominion stage is over, I submit that the expression 'Union Government' or the 'Government of the Union' should be used. This would be in accord with what we have done. We have already used "The Union of India' in article 300 clause (i) and in other places. Then we have used in some articles the expression 'Affairs of the Union.' We have also used in other places the expression 'the Union'. So we have already described the Government of India as the Union. So I submit that instead of using the expression 'Government of India', which would also include the Government before the Dominion stage, there should be some distinctive expression which may be fittingly described as the Union Government or the Government of the Indian Union. We have already in article 1, said that India shall be a 'Union' of States. So in the new set-up things instead of the expression 'Government of India', the expression Union Government or 'The Government of Indian Union', or similar expression should be used. I have suggested some amendments, only desire that this may be considered by the Drafting Committee.

Mr. President : No. 117—Mr. Sidhwa.

Shri R. K. Sidhwa : I understand that the word 'otherwise' as suggested by the Drafting Committee covers the contention of my amendment. Therefore I do not propose to move the amendment.

Mr. President : Then I come to amendment No. 118, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 118, it is merely a drafting amendment, and I should leave it to the draftsman.

Mr. President : Then I come to article 34 which is a new article, and we have a number of amendments to it, Mr. Das. That is for deletion.

Shri B. Das : Sir, I do not move it.

Prof. Shibban Lal Saksena: Sir, I Want to move it.

Mr. President : You want to move for its deletion ?

Prof. Shibban Lal Saksena : Yes, Sir, this article 34 is a new article. It says that when martial law is declared, then Parliament will have the power to indemnify the officers. I think that this new article should be ruled out of order. it was never passed by the Assembly before. Secondly, I think the provision of this article will encourage officers working in the martial law area to commit excesses and hope for indemnification by an Act of Parliament. Therefore, I say it is not proper. Martial law whenever proclaimed, should be proclaimed according to the law about it. It should not be permitted to go beyond the law. So I think this article is not necessary and it should be removed from the Constitution, and also as I said, it is out of order. I move :

"That article 34 be deleted."

Shri. Brajeshwar Prasad (Bihar : General) : May I speak on this amendment, Sir.

Mr. President : We shall have all the amendments first, and then Members can speak.

Amendment No. 122, Mr. Kamath.

Shri H. V. Kamath : May I know move all the three amendments together ?

Mr. President : Yes.

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 122, 123 and 124.

"That in article 34, the words 'or any other person' be deleted."

"That in article 34, for the word 'order' the words 'public order' be substituted."

And the last one is No. 124 which says—

"That in article 34, for the words 'done under martial law' the words 'done by such person under martial law' be substituted."

Sir, at the very outset, let me make it clear that I would welcome the deletion of any reference to martial law in the Constitution, as suggested by my Friend Prof. Shibban Lal Saksena. There are sufficient provisions in the Constitution for the maintenance of public order and peace and tranquility in the country. We have also adopted Chapter I dealing with emergency provisions in the Constitution. But once we accept, or assume that a situation may arise when martial law will have to be proclaimed, then certain consequences follow. There are certain acts done during the administration of martial law. We are all very well aware of the operation of marital law, and there are acts done by persons in charge, or in authority which strictly under the law of the Constitution may be illegal, and so those persons may have to be indemnified later on so as to safeguard their position against any undue penalty or punishment for acts done by them. It is with a view to this that I submit these amendments to the House.

Article 34, as moved by the Drafting Committee, seeks to indemnify any person in the service of the Union or of a State, and any other person also. I do not desire that we should go so far as to indemnify any person, whoever he may be. We may make an exception of persons who arc in the service of the Union or of a State. But the change proposed is to insert a provision with

regard to all persons. Such a change is far too sweeping, and must not be allowed to find a place in the Constitution. Therefore, I have moved this amendment, that the words "or any other person" be deleted. If we indemnify at all, we should indemnify only those persons who are in the service of the Union or of a State during the administration of martial law in any area.

The other two amendments are, more or less, formal ones. The first one seeks to bring article 34 in conformity with the phraseology of article 33, where the words used are "public order" and therefore, I have suggested that this article also may be on the same lines as article 33 and the word "order" be replaced by the words "public order".

The last amendment follows from the wording of the first part of article 34. When we refer to acts done by any person in the service of the Union or of a State, it is necessary to make it specifically clear in the latter part of the article as well, when we refer to the acts of such persons. Therefore, the word "such" in my judgment, is necessary so as to avoid any confusion with regard to acts done by any person other than the public servants referred to in the first part of the article.

Sir I move amendments Nos. 122, 123 and 124 and I commend them to the House for its earnest consideration.

Mr. President : As this is a new article altogether, the question arises whether I should allow it to be moved by way of an amendment. I think in all Constitutions, either written or unwritten, I do not know, but my idea is that all Constitutions allow such indemnity Acts to be passed after martial law has been in force; and difficulty might arise if there was no specific provision in our Constitution for indemnifying acts done during the period of martial law, if we do not have a specific provision here. And therefore, I allow this amendment of the Drafting Committee.

As regards the other amendments which have been moved, they are now for discussion. Members, if they wish, can speak now on this article as well as on the amendments which have been moved.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support this new article. I will not traverse the ground already covered, or repeat the arguments in favour of it, as you have, Sir, already admitted this article. The Drafting Committee had the power to suggest the necessary amendments. Therefore, I think that they have not gone out of the scope of their jurisdiction. I think, that when a revolutionary situation has arisen in the country, then the Government may be forced to resort to martial law. And extraordinary situations cannot be tackled by the ordinary law of the land. It is only when a revolutionary situation has arisen that martial law is enforced. Revolutionary situations can only be tackled by revolutionary methods. The danger that all officers will escape scot-free is not a real danger or a serious danger at all. I say this because Parliament has got the power to review such cases. If an officer has acted without jurisdiction, if he has exceeded the requirements of the martial law, then Parliament will not indemnify those officers. Parliament has got the full right to review the conduct of these officers who have acted in an arbitrary manner. But it is only in an arbitrary manner that you can tackle the situation which has arisen in the country when martial law has been enforced. I support this provision not merely on the ground that similar provisions exist in other Constitutions of the world but also because it is a necessary and desirable, provision. Having due regard to the facts of our political life, I heartily support this article.

Mr. President : Any other Member wishes to say anything about this ?

Mr. Naziruddin Ahmad : No.

Mr. President : We shall now pass on to the next article. I think Dr. Ambedkar will reply to this at the end.

We come to article 35, and Mr. Kamath's amendment. But that, I think, is only a verbal amendment?

Shri H. V. Kamath : Yes, Sir I leave it to the discretion of the Drafting Committee.

Mr. President : Then we have to pass on now to article 47. Mr. Kamath and Mr. Naziruddin Ahmad have their amendment No. 140 to this article.

Shri H. V. Kamath : As far as I am concerned, I shall leave it to the Drafting Committee.

Mr. President : So that is left over.

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

"That in article 48, for the words 'improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

Here again there is a substantial alteration in the original article as passed by this House. Sir, the original article stated:

"The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock."

So the original article is that "the State shall prohibit the slaughter of cows". The present article has been watered down. It says:

"The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall in particular, take steps for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter."

So it does not say "That the State shall prohibit the slaughter of cows." Here it says "It shall take steps to improve the breeds of milch and draught cattle including cows and for prohibiting their slaughter." Here it is said that it shall prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle. This is a very substantial alteration and I do not think the Drafting Committee was authorised to make such an alteration on such a fundamental thing on which there were strong discussions and it was agreed to after a very prolonged debate. I do not think anyone has the authority to change things in this manner and to substitute the original. I appeal that the original should be kept. It is out of order because the Drafting Committee was not permitted to make any such alteration as in this article.

Mr. President : Pandit Bhargava, is not your amendment more or less covered by the amendment of Prof. Shibban Lal Saksena?

Pandit Thakur Das Bhargava : It is partly covered but there are other things. With your permission, as my amendment No. 142 is not exactly the same as Prof. Saksena's, I beg to move:

"That in article 48, for the words milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'cattle and pohibit tile slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

With your permission I also beg to move:

"That in article 48, for the words 'for prohibiting their slaughter', the words 'prohibit the slaughter of such cattle' be substituted."

or, alternatively,

That in article 48, for the words 'and for prohibiting their slaughter', the words 'and prohibit their slaughter' be substituted"

In dealing with this article I would first of all beg to remind the House that this article was fairly hotly debated in this House. This article has the sanction of the whole House and of the largest party in the Assembly. Moreover, Sir, this article, if I am not encroaching upon any privilege, I may say, is one which was approved by the Chairman of the Drafting Committee. The original wording was quite different but we took good care to see that the drafting was done by such hands that no one could possibly take exception to it. Previously it was a much stronger one, but ultimately it was drafted in this form. When it was debated by the House, full reasons were given why these words were selected. My submission is that in a matter of this kind, when a particular article has been passed, after being supported or opposed, there is no reason why the Drafting Committee should tamper with the wording of such a section like this. Moreover, if the House will remember, there were many other amendments moved in this House to this article. Seth Govind Das moved an amendment from the religious point of view, but it was not accepted. My submission is that every word in this article is to my mind a sacred one, in this sense that it has got the imprint of the whole House. Secondly, I submit that on the basis of this article, some of the Provincial Governments have taken action. They have gone further and prohibited the slaughter of cows. Therefore, when this article has practically been acted upon by some of the provinces, it is not fair now to tamper with it.

Coming to the article which is sought to be amended as it is now before us I would beg of you to consider it. Now the article runs:

> "The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular take steps for improving the breeds of milch and draught cattle including cows and calves . . . . . ."

The original words were: ". . . for preserving and improving the breeds of cattle . . ."

May I submit that "improving the breeds of cattle" is different from "preserving and improving the breeds of cattle. ..". It may be said that no breed can be improved unless it is preserved but I think it is wrong to think so.

It may happen that a breed has to be practically destroyed for the purposes of improvement. It may be argued by some that cattle of a certain breed should be destroyed so that there might be subsequent improvement in regard to others. Now this is a matter of very delicate importance.

Shri Brajeshwar Prasad : What about "prohibiting" ? It means preservation!

Pandit Thakur Das Bhargava : In times of famine it is the duty of the Government to preserve certain breeds though it may not be improving them. Therefore, these words have a special meaning and they should not be tampered with.

Now to turn to the point of Mr. Brajeshwar Prasad to which he has drawn my attention. He says that the word "prohibiting" is there and therefore it would include "preservation". If he reads into the section he will find that this "prohibition" has been tampered with in this way, the words now being:

> "..... the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter."

If this "their" refers to cows and calves, then what about bulls and bullocks and buffaloes and he-buffaloes? If it refers to milch and draught cattle, then the question will have to be gone into as to what is a milch cattle. Then again "dry" cattle is not milch cattle. Then what is draught cattle? There are bound to be difficulties about all this. In my humble submission, a fair reading of article 38-A would mean that so far as cows and young stock are concerned, there is absolute prohibition. The words are "and shall prohibit the

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slaughter of cows." This usefulness of the cattle relates to drought cattle. The useful cattle should not be slaughtered. Now the question is what is a useful cattle? In the amendment the word "useful" does not appear. The House remembers that the Government appointed a Committee and the report of the Committee was accepted by the Government. The Government is now committed to the preservation and the prohibition of slaughter of useful cattle. There are Bills pending before the Legislative Assembly in regard to these kinds of cattle.

If you compare the wordings, it would appear that in the original article it was:—

". . . . take steps for preserving and improving, the breeds of cattle and prohibit the slaughter of cows and other useful cattle, specialty milch . . . . . ."

Now these words shall go away and be replaced by :—

". . . . . for prohibiting their slaughter". My humble submission is that though there may not be a violent difference between the two, all the same the emphasis on the word "shall" which made this directive principle almost as an imperative article in the Constitution disappears. I beg of you not to tamper with it but allow it to remain in its present form. The first thought which Dr. Ambedkar gave to this provision was a right one and now if he wants to improve the wording. I submit the meanings also are altered. In view of this, I would beg of the House not to tamper with this article. It is a very delicate matter. We have practically substituted this article for the article which other Members wanted from a religious point of view. It is now simply a utilitarian measures but still a measure in which the religious sentiments of crores of people are involved.

I would submit one word more in regard to amendment No. 144. The words "and their slaughter" are capable of more than one meaning. They might refer only to cows and calves, they might refer to milch and draught cattle. Whether they refer to one or both meanings, it is objectionable in both ways. I would beg of you to consider the more extensive meaning of the original section 38A which includes both these meanings. No doubt if falls short of the expectations of the general populace but it was a measure on which the House was agreed as a compromise. This compromise ought not to be interfered with.

Mr. President: Mr. Naziruddin.

Mr. Naziruddin Ahmad : I am not moving my amendment.

Mr. President : Does anyone wish to say anything about this article or the amendments?

Then we shall pass on to article 53. Amendment No. 151, Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move, Sir, amendments Nos. 151 and 152.

151 to the effect—

"That in clause (i) of article 53, for words 'this Constitution' the words 'the Constitution' be substituted."

Then amendment No. 152 to the effect—

"That in clause (i) of article 53, after the words 'Constitution' the words 'and the law' be added."

If the amendments moved by me were accepted by the House, this clause (i) of article 53 would read as follows:—

"The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with *the* Constitution *and the law*."

This was the form in which we adopted this article during the last session of the Assembly. I see no reason why the changes that are being sought to be made by the Drafting Committee should be at all made in this clause of the article. I see no point whatever in the changes that have been suggested by the Drafting Committee. Let us examine it a little more closely. If the reference in this clause had been only to the President of the Union, then perhaps there is some force in not referring to the law of the land, because so far as the President is concerned he is bound to act under the Constitution, and we have also a provision for impeachment of the President for any violation of the Constitution. But during the last session these words were specifically added—suggested by the Drafting Committee and accepted by the House. What were those words?

"President..... either directly or through officers subordinate to him".

We fought against those words, we suggested that these words were absolutely unnecessary, but the Drafting Committee had its own mind and carried its point through and inserted these words which even now I feel are unnecessary. But this phrase "through officers subordinate to him" has been accepted by the House and if that addition stands then I for one feel that the law must be specifically mentioned. The House will see that in clause (2) also of the same article there is a reference to the supreme command of the Defence Forces by the President and the exercise of the command shall be regulated by law. In the Constitution itself we have left so many things to the law-making power of Parliament. Our Constitution has not decided everything; so many things are left to Parliament to be regulated by law, and therefore it is absolutely necessary to say, when you refer to exercise of power through officers subordinate, that it will be regulated by the Constitution and the law.

The first amendment is merely a verbal one, because I feel that whenever the Constitution is referred to we need not specifically say "this Constitution" every time; "the Constitution" means the Constitution of India. I do not know why the Drafting Committee has tripped in this fashion about this clause. I commend amendments 151 and 152 to the House for its earnest consideration.

(Amendment No. 153 was not moved)

Mr. President : Does anyone wish to say anything about the amendments which have been moved by Mr. Kamath?

Then we pass on to the next article No. 57.

Mr. President : Amendment No. 156*, Mr. Kamath.

Shri H. V. Kamath : That is merely formal, Sir, I leave it to the good sense of the Drafting Committee.

Mr. President : Very well. Then we go to article 69. Amendments Nos. 188 and 189, Mr. Kamath.

Shri H. V. Kamath : Sir, I move Amendment Nos. 188 and 189. 188 is to the effect—

"That in the form of oath or affirmation in article 69, the words "as by law established" be deleted."

And No. 189—

"That in the form of oath or affirmation in article 69, for the words 'the duty upon which I am about to enter' the words 'the duties of the office upon which I am about to enter' be substituted."

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*That in article 57, the words 'subject to the other provisions of this Constitution', be deleted.

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Taking the article as suggested by the Drafting Committee, I think the changes suggested by me are very necessary. Taking the first amendment first, the oath as suggested by the Drafting Committee refers to the "Constitution of India as by law established". It is wholly redundant to say that the Constitution is established by law. As a matter of fact the law flows from the Constitution and not *vice versa*. We adopt the Constitution and whatever laws we may make flow from the Constitution subsequently. This is a supreme, sovereign Assembly and certainly this not necessary for us to say that the Constitution that we have enacted here has been established by law.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the Third Schedule uses this phrase?

Shri H. V. Kamath : May I point out to Mr. Santhanam that the article about the oath of the President does not mention "the Constitution by law established" ?

The Honourable Shri K. Santhanam : It is different altogether.

Shri H. V. Kamath : It is quite the same, in my judgment. Mr. Santhanam may differ but if he refers to the oath for the President in article 60, he will find this reference to "the Constitution by law established" is not there. The Constitution is not established by law. The Constitution is there for what it is worth. If Mr. Santhanam does not see this fine point, I am sorry for him. In article 60, the oath for the President reads:

"I..... will faithfully execute the office of President..... and will to the best of my ability preserve, protect and defend the Constitution *and the law*."

"And the law" is a different matter, but the Constitution is not established by law. That is my point.

The Drafting Committee may look into the amendment and I hope they will see their way to accepting amendment No. 188, because there is a distinction between "the Constitution established by law" and "the Constitution as framed by a sovereign Assembly." It is redundant to say that it is established by law.

As regards my second amendment I am sorry for the bad English used by the Drafting Committee. The Committee is composed of several experts, legal, constitutional and linguistic. I fail to understand why that Committee made such a mistake, so far as the English language is concerned. The House will see that a person enters upon "the duties of *his office*." He does not enter upon his duty. It is the "duties *of the office*" that should be referred to. If the House will turn to article 71 clause (2) the English used there is correct "duties of the office of President or Vice- President". I will just refer to another previous article, article 68, last part of clause (2) where the words used are "from the date on which he enters upon his office". The correct English is the "duties of the office upon which he enters" and I think all sensible persons will agree that that is correct English. If my amendment is accepted by the House the form of oath or affirmation will read as follows:

"I, A.B., do swear in the name of God that I will bear true faith and allegiance to the

solemnly affirm

Constitution and that I will faithfully discharge the duties of the office upon which I am about to enter."

I move the amendments, and commend them to the acceptance of the House.

Mr. President : As Mr. Santhanam has pointed out, the same expression occurs in Schedule III.

Shri H. V. Kamath : That will have to be changed consequentially.

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

"That in clause (2) of article 71, for the words 'the date of the decision', the words 'the time of the decision' be substituted."

Sir, this amendment deals with the termination of the tenure of office of the President by reason of the setting aside of his election by the Supreme Court. The question is whether the tenure of office ends with the date of the decision or the time of the decision. If the decision is given at twelve o'clock, it should be in accord reason and logic that the President should function up to 12 o'clock and cease to be the President after that hour. If we allow the language to remain as it is, it would mean that if the decision is passed at twelve o'clock then the President ceases to function with effect from the previous midnight. The effect of that would be to invalidate all acts done by the President from the midnight of the previous night up to twelve o'clock.

The Honourable Shri K. Santhanam : There is already an amendment to that effect (No. 448).

Mr. Naziruddin Ahmad : The difficulty with these amendments is that most of these amendments have been practically taken from the amendments of Members. I am of course interested in the correction, but there has been wholesale 'lifting' of amendments of Members and their being passed on as, those of the Drafting Committee. I do not grudge them this distinction. This is not the first time that this has happened. I have been hinting it all through the second reading stage. They will not openly accept our amendments, but move them as their own.

Mr. President : I do not think the Drafting Committee will grudge any credit to other Members for their amendments.

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

"That clause (3) of article 77, be deleted."

This again is a new provision, which is an infringement on the responsibility of the Ministers and should not be allowed to be there. This is either redundant or mischievous and should not be there.

Shri R. K. Sidhwa : Mr. President, Sir, I beg to move:

"That in clause (3) of article 77, for the word 'President' the words 'Prime Minister' be substituted."

Sir, this article relates to the conduct of Government business and Government business means the functions of Ministries. The Head of the Ministries is the Prime Minister, and while I know that all orders are made in the name of the President, this particular article has nothing to do with the President. It is the internal affairs of the Ministry for which the Prime Minister, in consultation with the Ministry, itself, is responsible. Therefore, the word "President" should be substituted by the words "Prime Minister".

I do not dispute the fact that under law all the orders are made in the name of the President. But I do make a difference in this for the reason that this has nothing to do absolutely with the rules relating to the internal working of the Ministry and therefore Parliament has no voice in this. Of course Parliament can criticise it. But this is an internal matter for which the Minister is responsible and therefore, the Prime Minister should make rules, in consultation with the

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Ministry and not the President. The Prime Minister should be the signatory to that.

Shri H. V. Kamath : Mr. President, Sir, I move amendments No. 203 and 204.

"That in clause (3) of article 77, for the word 'shall' the word 'may', be substituted."

"That in clause (3) of article 77, for the words 'more convenient' the words 'efficient and convenient' be substituted".

or, alternatively,

"That in clause (3) of article 77, the word 'more' be deleted."

I do not agree with my Friend Professor Saksena that there is no need for a provision of this kind. It is necessary so far as the transaction of the business of the Cabinet is concerned that there should be certain rules. And who is to make these rules? The question is whether Parliament should make it or the President. The Rules of Business should be left to the President, acting upon the advice, as the Constitution has laid it down, of the Ministers. Therefore, there is no force in Professor Saksena's amendment, because when the word "President" is mentioned, it always means President acting on the advice of his Council of Ministers.

Prof. Shibban Lal Saksena : But there is nothing to that effect in the Constitution.

Shri H. V. Kamath : That point was raised by me in the last session, and Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar assured us that there was no necessity for a specific provision of that kind.

As regards the amendment moved by me for substituting 'may' for 'shall' the reason is that 'shall' is somewhat inapt there. As we have 'may' in several other articles, we may have it here also. It has often the force of 'shall'. 'May' is more appropriate here and conveys the sense of the article much better.

My second amendment. No. 204, seeks to change "more convenient" into efficient and convenient". I believe this clause has been bodily lifted from the Government of India Act which fortunately or unfortunately has served as a guide and beacon to the wise members of the Drafting Committee on almost all occasions. They have told us that such and such is the language used in the Government of India Act and asked us whether we dare sit in judgment upon the English used by Sir Samuel Hoare and his cohorts: and who are we, mere Indians, to find fault with their English? It is now, however, admitted all over the world that Indians are better linguists than Englishmen. There is a story that a certain eminent person in England once said that there were only two persons in the world who spoke perfect English, and they were Indians. This was said some years ago. (Shri R. K. Sidhava: Who are they?) As Mr. Sidhva seems to be inquisitive about their names, I may say that the reference was to the late Srinivasa Shashtri and Sarojini Naidu. When this is the case, if Indians speak perfect English, why should we swear by the English of the Government of India Act and take it as one hundred per cent. correct? It would be wiser to correct the English found there and it would be more sensible if we say instead of "more convenient", "efficient and convenient". It is admitted on all hands that there has lately been some deterioration in efficiency. Let us therefore resolve that we will not merely arrange for convenient transaction of business, but also for efficient transaction of business. With these words I move these two amendments and commend them to the House.

Mr. President : We will now pass on to article 90, Amendment No. 215.

Mr. Naziruddin Ahmad : I wish to move Amendment No. 214.

Mr. President : That does not really arise.

Mr. Naziruddin Ahmad : Sir, I am not moving amendment No. 214. I want merely to explain an anomaly. I only wish to point out that the word 'the' has been misused in a large number of cases. In many cases where we speak of the Deputy Chairman, the Chairman or the Speaker and so on, we have not uniformly used the word 'the'. I have tabled amendments to make them uniform. That may be taken into account.

I am not moving amendment No. 215.

Mr. President : We will now take up article 96.

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

"That in clause (2) of article 96, for the words 'and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes', the words 'but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings' be substituted."

My next amendment which I move reads thus:

"That in clause (2) of article 96, for the words and figure anything in article 100' the words and figure 'anything contained in article 100' be substituted."

My second amendment is merely verbal and I leave it to the good sense of the Drafting Committee to deal with it as they deem fit or necessary. But the first amendment (227) is a consequential and substantial amendment. Clause (2) suggested by the Drafting Committee is new. There has been some distinction made between the procedure for the removal of the Speaker of the House of the People and the procedure for the removal of the Chairman of the Council of States. The Chairman of the Drafting Committee has made no speech before the House today why this distinction has been sought to be made.

If the House will turn to article 292 (2), honourable Members will find that so far as the procedure for the removal of the Chairman of the Council of States is concerned, he is not entitled to vote at all on a resolution for the purpose.

The Honourable Shri K. Santhanam : May I point out that the Chairman is not a member of the Upper House? He is the Vice-President.

Shri H. V. Kamath : The Vice-President of the Union is Chairman. On merits also I do not see why when there is a vote of censure or no-confidence, or other resolution seeking to remove him from office, he should be given the right to vote at all.

Shri T. T. Krishnamachari (Madras : General): His vote is not being taken away.

Shri H. V. Kamath : Mr. Krishnamachari may reply to the debate later on. He need not interrupt me unnecessarily.

When there is a resolution in the House for the removal of the Speaker, the Speaker can be present in the House, he can take part in the proceedings, he can defend himself but when it comes to the matter of voting it is absolutely against all canons of propriety and justice that he should vote. Certainly he can defend himself, but to allow him to vote is very unfair. The Drafting Committee may know better, but so far as I know, a Speaker who is sought to be removed

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from his office must not be given the right to vote. Supposing there is a close tie in the first instance, 55 and 56, the Speaker may by his vote re-instal himself in office, which is certainly not intended by the article. If the House is divided in that fashion, the Speaker by his single vote, by his own vote in the first instance, can re- instal himself in office, which certainly the House does not want to happen. Therefore I ask, Sir, that the Speaker should be divested of his vote during the proceedings for his removal from office. I move my amendment and commend it to the House for its serious consideration.

(Amendment No. 229 was not moved.)

Shri R. K. Sidhwa : Mr. President, Sir, this article refers to the discussion of the conduct of the Speaker in Parliament. Therefore, the new clause (2) is perfectly correct. Ordinarily the Speaker has no right to speak or take part in the proceedings of the House, but when his own conduct is being discussed, it is only fair that he should be given an opportunity to clear his own conduct, and therefore clause (2) is correct. I only want, Sir, a small change in the third line. I want to see that the convention that the Speaker in other cases shall not speak and shall not take part in the proceedings of the House be maintained. The clause says "shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal, etc." I want that the words "only when" should be substituted for the word " while". I want to make it more emphatic. It is a very healthy convention that the Speaker shall not speak and shall not take part in the proceedings of the House except when his own conduct is under discussion.

Mr. President : It means that as it is.

Shri R. K. Sidhwa : If that is so then it is all right. As regards voting, Mr, Kamath said that the Speaker should not have the right of voting. I think he must have the right of voting. After all, he is a member of the House and he should be allowed to vote in the first instance, but on the second voting he should not exercise his vote. He must have one vote.

Mr. President : We pass on to article 100. Amendment No. 231.

Shri T. T. Krishnamachari : In view of the Drafting Committee's amendment No. 452 in the Second List, honourable Members may please consider whether it is necessary to move their amendments.

Mr. President : As regards the amendments of which Mr. Kamath has given notice with reference to article 100, Mr. Krishnamachari has pointed out that there are certain amendments with regard to it which are sought to be moved by the Drafting Committee. They are in the Second List No. 452, and in view of those amendments perhaps it may be unnecessary for you to move yours.

Shri T. T. Krishnamachari : Many of them can be fitted into that except the one negative amendment.

Mr. President : Mr. Kamath, if you wish to move yours, you are at perfect liberty to move them. It is only pointed out that it might not be necessary for you to move them. All right, move them. I think it will save time if you move them.

Shri H. V. Kamath : Sir, I move amendment Nos. 231, 234, 235 and 238 of this List.

" That in clause (1) of article 100, for the words 'other than the Speaker' the words 'other than the Chairman or Speaker' be substituted."

"That in the second para of clause (1) of article 100, for the words 'acting as such,' the words 'acting as Chairman or Speaker' be substituted."

"That in the second para of clause (1) of article 100, for the words 'in the case of' the words 'in case of' be substituted."

"That in clause (3) of article 100, for the words 'until Parliament by law otherwise provides. The quorum shall, be one-tenth of the total number of members of the House.' The following be substituted as second para of that clause:—

'Until Parliament by law otherwise provides, the quorum shall be one-tenth of the total number of members of the House.' "

Amendment No. 235 is merely verbal with regard to the article "the". I leave it to the consideration of the Drafting Committee to be dealt with at the proper stage. Amendments Nos. 231 and 234 go together. They are similar and if the House will compare the draft agreed to in the second reading with the draft now presented, they will see the difference. I do not know whether it is a printer's devil or something else or whether it is deliberate. Clause (1) of this article 100 as now presented to the House, in the last part thereof, refers to "Other than the Speaker or person acting as the Chairman or Speaker."

The Honourable Shri K. Santhanam : He is not a member and so he is not given the vote.

Shri H. V. Kamath : Is it the position that when the Vice- President acts as the Chairman of the Council of States, he has no vote at all ?

Shri L. Krishnaswami Bharathi (Madras: General): Except the casting vote as Chairman.

Shri H. V. Kamath : Then it is all right.

I come to amendment No. 238. Mr. T. T. Krishnamachari has just now told us that the Drafting Committee has also thought over the matter and after bestowing due consideration on this clause they have suggested an amendment on the same lines. I have no desire to withhold from them the credit that is their due for the hard labour they have put in, and if they want the credit let them take it, but as the amendment stands in my name, I move it formally and commend it for the acceptance of the House.

Mr. President : The wording is somewhat different, but the substance is the same. However, I take it as moved. No. 232 standing in the name of Mr. Naziruddin Ahmad is a formal amendment.

(Amendment No. 232 was not moved.)

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 233, I wish to make this observation that article 100 has four different paragraphs. The first paragraph is marked as clause (1), the second paragraph does not bear any number at all, the third paragraph is No. 2 and the fourth paragraph is No. 3. I submit that paragraph 2 which is unnumbered is a very unusual thing in a legislative enactment. All paragraphs are either marked as articles or clauses or in the case of ordinary Acts as sections and sub-sections. It has never happened in my experience that a complete paragraph remains without any number. The object of numbering them is to identify them. Unless we number the second paragraph as No. 2, it will be difficult to refer to that paragraph in any judgment or any book or argument. One will have to say 'paragraph following clause (1)'; in order to obviate that I have suggested that paragraph 2 should be marked as clause (2) and the other paragraphs are re-numbered

[Mr. Naziruddin Ahmad]

accordingly. This has also occurred in article 189. Sir, I formally move the amendment.

"That in article 100, the second para of clause (1) be numbered as clause (2) and clauses (2) and (3) be renumbered as clauses (3) and (4) respectively."

Shri Raj Bahadur : My amendment No. 236 is covered by amendment No. 452 of the Drafting Committee. Let the credit for it be entirely theirs, but the pleasure is mine.

(Amendments No. 237 and 239 were not moved).

Shri R. K. Sidhwa : Sir, my amendment reads thus:—

"That in clause (3) of article 100, for the word 'one-tenth' the word one-sixth' be substituted."

Sir, I am referring to clause (3) in respect of quorum. We had discussed this matter threadbare in the last session and after mature consideration the House came to the decision that there should be one-sixth as the quorum in either House of Parliament. Now, Sir the Drafting Committee suggests one-tenth. My point is that in the provisional Parliament with a House of 300 one-tenth would mean 30 members only and 50 members in a House of 500 thereafter. I ask in all humility, do the members of the Drafting Committee want, in the name of 35 crores of people, laws to be made by 30 people ? This is most unfair. It may be that in the House of Commons there is a very small number compared with the 600 members of the House of Commons. That may be so, Sir. Some good laws of the House of Commons we have imitated and copied, but if there is a bad law, I do not want to copy it. On the contrary, you are telling the Members that they may remain idle, they may come here or they may not come and the House will manage with 50 or 30 Members. I do not want to cast any reflection upon any Member but I think it is most unfair that we should lay down such a small number for the conduct of business. On the ,contrary, there must be such a provision that Members should be asked to realize their duty and attend all the sessions, particularly when laws are made, and 1, therefore, contend that we should not be a party for putting in the Constitution a clause that there should be only 50 members in a House of 500 to make laws. That is not correct.

Dr. B. Pattabhi Sitaramayya (Madras: General): The rule does not say that there should be only 50 members.

Shri R. K. Sidhwa : It comes to that. We have our own experience also. I do not say that it says so. Many times we have seen this happening ourselves. May I ask how many members are present today ? My honourable Friend, Dr. Pattabhi Sitaramayya, knows it very well. When the Members are not there, we know the difficulty of having to hunt for them.

Dr. B. Pattabhi Sitaramayya : We do not want to put a premium on idleness and inertia.

Shri R. K. Sidhwa : The Members should also realize their duty and attend all the sessions. I do not think there should be a clause necessary to make them idle or not to attend the session. They have to discharge their responsibilities for they are elected by the people. They must also feel a sense of responsibility. 1, therefore, contend that we should have a reasonable number for conducting the business of the House. I do not want 600 members to be present ; I do not want 500 members to be present; I do not want 250 members to be present. I only want a reasonable number, i.e., 80 members to be present. Is that not fair ? I will ask my honourable Friend, Dr. Pattabhi Sitaramayya, whether he will be satisfied with 50 members. I know he is not

the only member. I ask him-out of 500 members is 30 a sufficient number ? It is no use quoting the House of Commons. This means 50 members in the permanent Parliament, but 30 members in the provisional Parliament and we have 300 and odd in the Provisional Parliament at least. The next year will be a year of great events and we shall provide in the Constitution that 30 members in the provisional Parliament will make laws. I express my feeling very strongly on this matter and if there is going to be a disqualification on the members for not attending session let it be there. Let there be a clause that those who do not attend regularly will be disqualified. If the Drafting Committee feels that there should be such a thing, we could appeal to them to attend. Let the members also show a sense of duty. After having been elected they should not be so careless or negligent of their duty that is imposed upon them by the people in the constituency from which they are returned. 1, therefore, feet, Sir, that the amendment that I have moved is an amendment. which was discussed and passed in the last session. It may be that because we feel there is the difficulty in getting a sufficient number in the House, a small number is suggested. I say on the contrary it is the greater reason, and one or two adjournments will bring their lack of responsibility to the notice of the public. They cannot remain absent for all time. They have to explain to the people and if once or twice the House is adjourned, wisdom will dawn upon them and they will attend the House more regularly for conducting the business for which purpose they are returned. I commend my amendment for acceptance of the House.

Shri Brajeshwar Prasad : Sir, I was just thinking what will happen if there is a walk-out from the House. We have not visualized all the political possibilities in the country. In case of a walk-out, the Constitution will come to an end. In order to have a smooth sailing, it is necessary that a low quorum should be fixed. It does not prevent the Members of the House from coming and attending. We are not passing any law to the effect that only 30 members should attend the meeting of the Legislature. We are merely fixing the quorum. If we want that there should be no deadlock, we should have a low quorum.

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I support the suggestion made by my honourable Friend, Mr. Naziruddin Ahmad, that all the paragraphs should be numbered.

There is one more suggestion I want to make and that is that the last portion of this article that "the quorum shall be one-tenth of the total number of members of the House" should precede clause (3), because in clause (3) we are determining what would be the consequences of want of quorum. As the article stands what is to be the quorum follows this. I think that is putting it in a wrong way. We should determine the quorum first and then the consequences should be stated. I think this is a small suggestion which should be acceptable.

Mr. President : That has been adopted in amendment No. 452.

Dr. P. S. Deshmukh : Secondly. I would supportely honourable Friend, Mr. Sidhva, in his contention that the quorum should be one-sixth and not one-tenth.

Mr. President : The House will adjourn now; we sit again at 3 o'clock.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We shall now take up the amendments to the remaining articles. Article 128.

Shri Jaspat Roy Kapoor (United Provinces: General): May I speak a word on article 100?

Mr. President : Yes.

Shri Jaspat Roy Kapoor : Mr. President, I am tempted to speak on the amendment relating to the fixation of the quorum by the timely warning which the ringing of the bell has just given us proclaiming that there was no quorum in the House and inviting people to rush to the House to make up the quorum. I have also been provoked to speak on this subject by the vehemence with which my honourable Friend, Mr. Sidhva, has spoken on the subject desiring that the quorum should not be reduced from one-sixth to one-tenth. The heat and vehemence with which he made his speech would make one feel as if an attempt was being made to reduce the powers and privileges and rights of the Members of this House, which is not a fact. The suggestion contained in the amendment that the quorum should be reduced is a very wise, necessary and a useful suggestion which must be accepted. It is based on our past experience not only in this House but also in the other House when we sit as the Dominion Parliament. It appears to me that all this experience has been wasted on my honourable Friend, Mr. Sidhva.

Shri R. K. Sidhwa : Is that a creditable experience ?

Shri Jaspat Roy Kapoor : That is an experience which should make us wiser and I do not think there is anything detestable in it either for the members or to the House. I think members should not be expected to come and be in attendance here all the time when the Parliament is sitting, whether they are interested or not in the particular subject that is being discussed on a particular day or time. It would be sheer waste of time of those Members and would be also unnecessarily taxing the tax-payer. I think that Members should be expected to attend this House only when they feel interested in the particular subject which is being discussed and otherwise they might profitably employ their time elsewhere in more profitable and useful engagements—not necessarily personal engagements—but engagements for the benefit of the country. Why after all is it expected that all the 500 Members should keep on sitting here from morning to noon and noon to eve all the year round or for a major part of the year ? For I think, during the next two years at least and may be even thereafter, if we have many Members of the views of Mr. Sidhwa—for Mr. Sidhwa has been frequently pressing that Parliament should be sitting for much longer days or period—then for eight to ten months in the year Parliament would be sitting; and to expect 500 Members to be spending all the time here whether they are interested or not in the various subjects that come up for discussion, is to ask them to neglect the more important duties.

Members who come here as representatives of the people will be all responsible persons who will have duties to perform, not only here in Parliament, but outside also, in the political sphere, in the country, and I should have thought that we would expect them to devote as much time as possible to constructive work in the country to look after as many public institutions in the country as possible, rather than come here and wait here and merely be silent spectators of things in which they may not be interested. This amendment which suggests that the quorum should be reduced to one- tenth does not encroach on the rights and privileges of the Members. Mr. Sidhva and any other member who wishes to occupy, as much time of the House as he likes, can very safely

do so. Any member who wants to inflict as many speeches as possible, or put as many questions as possible or bring in as many amendments as possible, or make speeches of any length or of any quality—good, bad and indifferent—will always be at perfect liberty to do so. But why should any one expect that when he is addressing or occupying the time of the House, he should always have a very full House? While he may enjoy that privilege, he cannot always have the satisfaction of having a crowded House, and I say that it is very necessary, both from the point of view of the Government, from the point of view of the tax-payer and from the point of view of the Members too, and from the point of view of solid substantial work for the country, that the quorum should be fixed at as low a figure as possible. It is so from the point of view of the Government, because it will be very embarrassing if any legislation is delayed for want of quorum. It is so from the point of view of the tax-payer, because if all the Members keep on attending all these sessions, it will mean a heavy expenditure in the shape of daily allowance, and also from the point of view of the Members, as I have already said, they should do as much constructive work outside the Assembly as possible, coming to the Assembly only when they are interested in particular subjects which may be before the House.

Dr. P. S. Deshmukh : Or go to Chandni Chowk. (*Laughter.*)

Shri R. K. Sidhwa : Hear, hear.

Shri Jaspat Roy Kapoor : Dr. Deshmukh can go to Chandni Chowk or to any other more interesting place where his attractions lie; but then, why should all members be in Delhi all the time? They may keep themselves busy in their respective places, and do more substantial, constructive, political economic and social work, rather than waste their time here. Therefore, I submit that the suggestion made to reduce the quorum from one-sixth to one-tenth is a very wise and very useful suggestion and must be accepted.

(Some Members rose.)

Mr. President : I do not think this simple amendment deserves so many speeches. Members know all about it, and they can either vote it down or vote for it. So we now go to article 128, and Pandit Thakur Das Bhargava's amendment No. 288.

(Amendment No. 288 was not moved).

Mr. President : Then amendment No. 289 of Mr. Kamath.

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

"That article 128 for the words 'the President may by order' the words 'Parliament may by law' be substituted."

If my amendment is accepted, the article would read as follows :

"Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, With the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court, to sit and act as the Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as Parliament may by law determine . . . . . etc., etc."

The article corresponding to this in the Draft Constitution as agreed to by the Assembly at the consideration stage is article 107, and the interpolation now made consists of the words—"be entitled to such allowances as the President may by order determine." If the House will turn to article 125, clause (2), my honourable Colleagues will see that that clause lays down that Parliament may by law determine the privileges, allowances and rights in respect of leave of absence, pension etc. which a Judge of the Supreme Court shall be entitled to. But here—of course this is a temporary measure, I realise that—but here the matter is left to the President of the Union to regulate. I do not see why this matter also could not be left in the hands of Parliament, to be

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determined by law. Parliament may provide that when Judges of the Supreme Court or the Federal Court, or retired judges—the articles deals with retired judges—when such persons are asked to or requested to sit and act as Judges of the Supreme Court, though they may not be deemed Judges of the Supreme Court, still Parliament may determine what allowance they will be entitled to. There will be no difficulty for Parliament to legislate in this matter. It can legislate generally as to what allowances the Judges shall be entitled to receive. Instead of the President doing it, Parliament may do so. With these words, Sir, I commend my amendment to the House.

Pandit Balkrishna Sharma (United Provinces: General) : Sir, if Mr. Krishnamachari would be good enough to enlighten us on the point, it would help us. My point is that we are told that in the future Constitution, we have abolished the office of additional Judges or temporary judges. Then how does this, article 128 correspond with that decision of ours, or that intention, if that intention be in the Constitution that additional judges should be abolished? In that case, how will this article stand.

Mr. President : It is not a case of additional Judges at all. A retired Judge may, for a temporary period, be requested to act for a particular period or for a particular case. It is a retired Judge and not an additional Judge at all. A person who has acted and held the post of Judge of the Supreme Court or Federal Court, a person like that, may be requested to attend.

(Amendment No. 290 was not moved.)

(Prof. Shibban Lal Saksena rose.)

Mr. President : We have to finish all the amendments in List I, and those that are not moved, may have to be left over altogether.

An Honourable Member : Will they lapse?

Mr. President : Yes. All these amendments which are in List I should be moved in the course of the day, and therefore I have been suggesting from the very beginning to Members to be as short as possible and not to insist on speaking or even moving amendments which are not of substance.

Prof. Shibban Lal Saksena : I wanted this thing to be deleted because it the President is permitted to fix the allowances of the Judges, it means they are subservient to the President and to the Executive. This is most undesirable. If Parliament does it, it is a different matter.

Sir, I then move:

"That sub-clause (c) of clause (1) of article 145 be deleted and before clause (1) of article 145, the following be inserted:—

'The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceeding relating to the enforcement of rights conferred under Part Ill.' and the subsequent clauses be renumbered accordingly."

Part III deals with fundamental rights. According to you, the rules and the procedure of the Court will be made by the President. I want that the Fundamental Rights should be within the purview of the Supreme Court. I have therefore put that this clause (c) should be deleted and that it should be quite independent and should come before it. This is most important. Fundamental Rights should not be within the power of the President to approve or disapprove.

Mr. President : But your amendment goes against the previous decision.

Prof. Shibban Lal Saksena : No. It is absolutely new. This is clause (c) of article 145.

Mr. President : No. It is clause (b) of the article.

Prof. Shibban Lal Saksena : This is clause (c) on page 58.

Mr. President : I see: you are referring to (c).

Pandit Thakur Das Bhargava : Amendments 308 and 309 are practically the same. I wish to speak on them. Originally I sent in an amendment to the Constitution, which appeared to the last of amendments as 109A, the first part of which ran as follows:—

"The Supreme Court shall have, in respect of the enforcement of Fundamental Rights guaranteed by the Constitution jurisdiction and powers to determine and regulate the manner and method of the appropriate proceedings mentioned in section 25 of the Constitution."

At the time this was moved, I requested you to hold it back and it was unfortunate that this amendment was ruled out by you on the last day of the second reading. I am glad that the Drafting Committee has been pleased to accept the principle which I wanted to embody in the second reading of the Bill. Though I am thankful to them for this rule (c), I must say that it is in its present form soulless. It is a mere shelf. If you kindly see the whole scheme of this Constitution, it will appear that these fundamental rights are of such a nature that they curtail the rights of the Executive as well as the Legislature. The Legislature as well as the Executive cannot temper with these rights, and in these rights, in my own humble opinion, resides the sovereignty of the common man. As long as these rights are enforced, every man is safe from every kind of tyranny. Therefore, I attach the greatest value to these Fundamental Rights. But now that these new provisions are there, we do not know how these rights will be worked. It is true that the Supreme Court has been invested with the jurisdiction to enforce these rights. Yet we have not yet determined how and in what manner the Supreme Court shall give effect to these rights. These rights are of a very peculiar and a very imperative character, and I do not know in regard to the jurisdiction of the other courts whether in regard to stamps or writs, etc., what course will be adopted by the Supreme Court. But the Supreme Court has been given power under article 25 to enforce these rights. As a matter of fact, what is given as an absolute right here is being taken away in the shape of power being given to frame rules. The Supreme Court alone should have the power to frame these rules. If this power is vested in the Legislature or the approval of the President is made indispensable, I am afraid that it is fundamental to tampering with these Fundamental Rights.

Now, Sir, we know that an attempt has been made by the Drafting Committee in the later stages to tamper with these Fundamental Rights. Right 16 has been taken away. Right 15 has been truncated and in regard to adaptation, power is taken which takes away from the efficacy of these Rights. What is important is, when the provisions relating to these rights have been passed, in the third reading we do not want to have such a drastic provision. These rights should be maintained in their original purity and in the Supreme Court there should be no other power which can take away these rights. There the House will see that what I wanted in my original amendment, 109A, is now given to us. I want that the Supreme Court alone should have the power to make these rules for regulating the method and manner of the enforcement of these rights and therefore I seek to take away sub-clause (c) from clause (1) and add another separate clause (2), so that the Supreme Court alone in regard to the matters referred to in Part I, may have the power to regulate the practice and

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procedure of the appropriate proceedings mentioned in article 25 which guarantees these fundamental rights.

Mr. President : Does any one wish to say anything on this article? Then we shall pass on to article 148. Amendment No. 312, Mr. R. Das.

Shri B. Das : I am not moving it.

Shri Raj Bahadur : I am also not moving it.

Mr. President : Shrimati Durgabai. She is not present. Then amendment No. 313, Mr. B. Das.

Shri B. Das : Sir, I move this joint amendment which stands in my name and in the name of my Friend, Mr. Raj Bahadur. I beg to move :

"That in clause (5) of article 148, for the words 'persons serving in the office' the words 'members of the staff' be substituted.-"

This is not my own amendment, this is what the House did pass after great ,deal of discussion and which the Drafting Committee, by some inadvertence perhaps, wanted to reduce to the present position. My grounds are the same as my Friend, Pandit Thakur Das Bhargava, has just now advanced about the status and dignity of the Supreme Court Judges. If we have to maintain the sovereign Government of India, we have to see that the Supreme Court, the Auditor-General and the Federal Public Service Commission are not interfered with in. any shape or manner by the permanent executive. The House took considerable time in discussing these articles—old articles 124 and 125, which have now become Nos. 148 and 149. The House determined that the Auditor-General should maintain the highest dignity of financial integrity by audit control and that there should be no interference by the permanent executive in any shape or manner in exercising the authority of the Auditor-General regarding the audit control of public finances of the Government of India.

We businessmen who are accustomed to business finance sometimes find that Boards of Directors of companies try to exercise influence over the auditors and sometimes wrong reports are published. That practice should not come into vogue in the Government of India. Unfortunately, under foreign rule, that practice was in vogue from 1921 up to 1947—only two years ago. The Auditor-General became almost a nonentity. There was no audit of public finances. The former British rulers even decided that unless the Auditor-General or members of his staff like the Accountant-General or the Director of Audit, agree with the spending authority such as the Secretary of the Department or the executive head of the department, the financial irregularity would not be reported to the Public Accounts Committee or Parliament. This thing happened some time in 1927 and that practice was very much in evidence during the second war. In order that a similar practice may not continue we wanted that the high status and dignity of the Auditor-General should be maintained. Therefore we do desire the House to pass this amendment substituting the words "members of the staff" in article 148(5) whereby every Accountant-General, every first class Accounts Officer is not subjected, for his promotion, to the sweet will of any departmental head or executive head of a spending department. I have been assured by the Drafting Committee that they will accept the amendment which I have just moved. Sir, I do not wish to speak any further on this issue.

Mr. President : Shrimati G. Durgabai, amendment No. 314. She is not here. No. 315, Mr. Das.

Shri B. Das : I am not moving it.

Mr. President : No. 316.

Shri Raj Bahadur : Sir, I am not moving it. But I want to speak on amendment No. 313.

It is obvious that by the very nature of the duties and office of the Auditor General, this officer must be quite independent of the executive. As a matter of fact, his position is somewhat analogous to the position of the Chief Justice of the Supreme Court. He is the custodian, if I may say so, the *chowkidar* of our finances. He stands between the executive and the taxpayer. It is he who can successfully prevent our finances from getting into any sort of corruption or debacle.

Sir, I would simply add this much to the observations made by the previous speaker that it has been a painful experience to those of us who have happened to be on the Public Accounts Committee that during the course of 1945 and 1946 or, should I say, prior to partition and independence there have been such serious defects and irregularities in the accounts of the country that we have come to the conclusion that in the best interest of the nation this officer must be completely independent of the executive. I would, in all humility suggest that he should be absolutely free from the control of the executive. I had tabled an amendment No. 312, that even his "allowances" apart from his salary should be decided hot by the President or by the Government but by Parliament. We find that in the case of the judges of the Supreme Court, their salaries and allowances are not in the gift or the Government but are constitutional matters. I would like to go a step further and say that it Should not have been left to the discretion of even the Parliament, and the Constitution itself should have provided for it, because it would be in the interests or the nation if this officer is made completely independent. At any rate, there should be no wall or screen between the Legislature and this officer.

In case he has to function effectively and properly, his staff also should be under him. If the members of his staff are placed under the control of the Cabinet or the executive and have got to look for their promotions and for their careers towards the Ministers. it is obvious that the Auditor-General would not be able to exercise an effective control over the members of his staff. It was therefore a sort of an unpleasant surprise when we found in the revised draft that the words "members of the staff" had been changed to "persons serving in his office", thereby restricting and limiting the control of the Auditor-General upon those persons who happen to serve at a given time in his Department as a whole. It was thought proper that the original words which were approved of by this Assembly during the previous stages should be retained. Hence this amendment.

Another point on which I want to lay some stress is that because the Auditor General happens to be one of the highest officials who hold a sacred trust of the people, it has been made incumbent on him that after having served his term of office he cannot be absorbed or employed on any other job in the Government. When that office has been placed so high, it is only meet and proper that the staff also is entirely controlled by the same office. With these words I commend this amendment for the. acceptance of the House.

Mr. President : Article No. 154, Mr. Kamath.

Shri H. V. Kamath : Sir, these amendments are identical with the amendments moved earlier in the morning and I leave them along with the morning ones for the consideration of the Drafting Committee.

Mr. President : So, I, take both 320 and 321 as not moved.

Then article 162, amendment No. 324 is a similar amendment.

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. President : Then amendment Nos. 328 and 329, Mr. Kamath-article 164. Amendment No. 328 does not arise. Mr. Kamath You may move amendment No. 329.

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

"That in the proviso to clause (1) of article 164 for the words 'Koshal Vidarbh' the words 'Madhya Pradesh' be substituted."

Shri T. T. Krishnamachari : May I suggest to the honourable Member that he may move this when we come to the Schedule? And when we accept that amendment, the consequential change may be made here as well.

Shri H. V. Kamath : Very well.

Mr. President : There are three amendments of which notice has been given by Sri A. V. Thakkar, namely amendments 329A, 330 and 331. The honourable Member is not here; so we may go to Article 166. (Amendment No. 332).

Prof. Shibban Lal Saksena : My amendment *(No. 332) may be taken as formally moved.

Mr. President : In regard to *333, *334 and *335, similar amendments have been moved in regard to the Central Government. I shall, therefore, take them as formally moved. It is hardly worthwhile moving 336 to 339. Let us, therefore, take up 340 and 341 of Mr. Kamath.

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

"That in clause (1) of article 172, after the words 'no longer' a comma be inserted."

"That in clause (2) of article 172, for the word 'possible' the word 'practicable' be substituted. "

As regards the first, as far as my meagre knowledge of English tells me, according to the rules or syntax, a comma is indicated after the word "longer."

As regards the second amendment (No. 341), I feel that the word "practicable" is more appropriate in this context than the word "possible." I think, in the former draft as agreed to by the Assembly at the consideration stage, the word used was "may be." But as between "possible", and "practicable" there is a fine distinction which will not escape the notice of the honourable Members of this House. Suppose, for instance, there are 32 members in the Legislative Council of a State. "As nearly as practicable one-third" will definitely mean eleven. On the other hand "possible" will admit of some ambiguity, because there is nothing that is not possible. For that matter everything can be made possible in this world, while "practicable" will have some relation to reality. We are here dealing with realities, and the word "practicable" will 'be preferable to the word "possible" for conveying the precise sense of this clause of the article.

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*332. "That clause (3) of article 166, be deleted."

*333. "That in clause (3) of article 166, for the word 'Governor' where it occurs for the first time, the word 'Premir' be substituted."

*334. "That in clause (3) or article 166, for the words 'more convenient' the word 'efficient' be substituted."

*335. "That in clause (3) of article 166, the words 'in so far as it is not business with respect to which the Governor is by or under this Constitution required to action his discretion' be deleted."

Mr. President. Amendments *343, *344, *345 and *346, I shall take as moved. Let us now take up Article 189 (amendment 347).

Shri H. V. Kamath : In regard to *347, I would like to make one observation. Sir, it is understandable that for a big assembly like Parliament a quorum of one-tenth of its strength may be fixed. But if this is extended to the States, it may. at times lead to ridiculous results. There are at present States where the lower House consists of perhaps one hundred or one-hundred and twenty members, and these are to continue till the New Constitution commences and they are reconstituted after the General Elections. For instance, the C.P. and Berar Assembly now consists of about 120 members. If the quorum is fixed at one tenth of its strength, it would mean that twelve members would be sufficient to pass any legislation. The argument has been trotted out that the quorum of the House of Commons is only one-fifteenth. It is understandable because the House has a strength of six-hundred members. But in the case of the Mysore Assembly, for instance, which will have a strength of, say, 70 members, the quorum would be seven: we are of course providing that if shall not be less than ten. Rather than take it to such a farcical extent, let us say, 'finis' to democracy and go home.

Sir, I personally feel that for legislatures which have a small strength of, say 60 to 120 members, we should fix the quorum at one-fifth or one-sixth, and not make ourselves the laughing stock of the world.

Shri R. K. Sidhwa : Sir, my amendment to article 189 reads thus:

"That in clause 3 of article 189 for the word 'ten' and 'one-tenth' the words 'twenty' and 'one-eighth' be substituted respectively."

My arguments in support of this are the same as those I put forward in connection with the question of quorum for the Union Parliament. I am not at all in favour of the arguments put forward by my Friend, Mr. Kapoor. On the contrary, it has to be remembered that the future Parliament will have to sit for at least nine months in the year. If members have other work to do, let them attend to it and not monopolise the seats in the Assembly and imperfectly do the work entrusted to them by the people. I. therefore, feel that after the next elections to Parliament, the Members who come here must confine themselves to their parliamentary work only. If they really want to do other work, they may do so, but let them not monopolise the parliamentary membership and also other political activities. It is high time that we decide this. At this juncture when we have an opportunity to frame the Constitution, especially this Part. As my friend said, I do not want 500 members to be present all the time. I am saying that at least one-eighth should be present, which would mean only 20.

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*343. "That in clause (2) of article 181 for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings be substituted."

*344. "That in clause (2) of article 181, for the words and figure 'anything in article 189' the words and figure 'anything contained in article 189' be substituted."

345. "That in clause (2) of article 185, for the words 'and shall, notwithstanding any. thing in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted".

*346. "That in clause (2) of article 185, for the words and figure anything in article 189' the words and figure 'anything contained in article 189 be substituted"

*347. "That in the second paragraph of clause (3) of article 189, for the words. 'The quorum shall. until the Legislature of the State by law otherwise provides' the words 'Until the Legislature of the State by law otherwise provides, the quorum shall be substituted."

Shri Mahavir Tyagi : Then the House will be composed of unemployed men only.

Shri R. K. Sidhwa : I am saying twenty. Do they not want twenty for the quorum? When the question of voting comes, the House should see that the Drafting committee's proposition is voted down and what the House decided on the last occasion is accepted.

I then move my next amendment, *viz*.

"That at the end of clause (1) of article 222, the following words be added:

'only when urgency arises'."

A judge should be transferred only when urgency arises.

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

"That clause (2) of article 222 be deleted".

This clause empowers the President to fix compensatory allowance for a judge of a High Court on his transfer from one State to another. I think it will be a wise rule for us to lay down that we shall not deviate from the provisions we have already made in the Constitution with regard to salaries and allowances of High Court Judges. There should be absolute uniformity in regard to this matter throughout the whole of India. That will conduce, though in a very small way, to the development of a united national sense throughout the country. If we make invidious distinctions between the salaries and allowances of a High court Judge in one State and those of a High Court Judge in another State it will lead to somewhat vicious results which I for one would not countenance or encourage. A High Court Judge whether in Madras or Bombay or the United Provinces should draw the same salary and allowances fixed for him in the Constitution or by Parliament. There is no need, in my view, to give him any compensatory allowance when a four figure salary is fixed for him in the Schedule. I do not see any reason why when he is transferred he should get compensatory allowance in addition to his Rs. 3,000 or 4,000. The judges and all our public servants are going to be good patriots and will no claim any sort of allowances when they are, in the public interest, transferred from one State to an other. The salaries and allowances already drawn by them ought to suffice. I commend my amendment to the House.

Dr. P. S. Deshmukh : I support with as much strength as I can command, the arguments advanced by my Friend, Mr. Kamath, but on a different and an additional ground in favour of the deletion of this sub-clause. In our desire to, protect the interests of the Judges I am afraid we are overdoing things. We have already made detailed provisions with regard to their right to leave, allowances, pensions and other things. We should not overburden our Constitution with so many and such details. If there is any necessity of granting any more allowances I do not think there is any constitutional difficulty in the way of the President granting the same or Parliament sanctioning it in the case of the Judges. I think this provision is absolutely unnecessary and should be deleted.

Pandit Thakur Das Bhargava : Sir, I am not moving my amendment No. 355 to article 224.

Shri H. V. Kamath : I have already moved an amendment similar to amendment No. 356 I am not, therefore, moving amendment No. 356.

Pandit Thakur Das Bhargava : I am not moving amendment No. 377. I wish to move amendment No. 383 to article 302.

I beg to move:

"That in article 302, for the words 'as may be required in the public interest' the words 'as may be required in the general public interest' be substituted."

or, alternatively

"That in article 302, after the words 'may by law' the words enacted by virtue of power conferred by the Constitution" be inserted.'

If you will kindly look at article 302, you will be pleased to find that after the words "Parliament-may by law" there are some (lots and these dots represent in the second reading the following words—

'enacted by virtue of the power conferred by the Constitution."

Now, this article 302 and the other articles 301, 303, etc. relate to trade, commence and intercourse within the territory of India. As a matter of fact originally there was a section in the Fundamental Rights which said that trade, commerce and intercourse shall be free in the whole of India. That article has been taken away and some other provisions had been enacted. These articles 303, etc. also existed in the original provisions but we understood that they were subject to article 16. Now, it so appears that article .302 seeks to give power to Parliament to impose restrictions on the freedom of trade, etc. Now, if you will kindly *see* article 19 (g) which we have already dealth with, it savs-

"All citizens shall have the right to practise any profession or to carry on any occupation trade or business."

And the restrictions which could be imposed are given in clause (6). It says—

"Nothing in sub-clause (g) of the said clause shall effect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by this section.."

My submission is that those fundamental rights as a matter of' fact constitute the minimum and fundamentally characteristic rights of any person living in India. Every inhabitant of India has got the right to trade in any part of India as an incident of his citizenship. This is only restricted by clause (6), whereas according to article 302 if the public interests require—and not the general public interests—then also restrictions could be put by Parliament. This is the difference between the two. What is quite clear in article 19 and what has been given there as Fundamental Rights is being taken away by article 302 when these words "in the public interests" are substituted. I do not want to take the time of the House in explaining the difference. The words used are "public interest" and not "General public- interest". Public interests may be sectional interests inherent in State subjects but general public interest denotes the interests of the whole general interests of Indians as such.

The Honourable Shri K. Santhanam : This particular amendment does not arise from any amendment moved by the Drafting Committee, and cannot be ,admitted under our rules.

Mr. President : I think you are right.

Pandit Thakur Das Bhargava : You may kindly hear me before deciding the matter. There are two amendments contained in No. 383, 'either add the words "enacted by virtue of the powers conferred by the Constitution" as this power is conferred by article 19(6) or you put in the words "in the general public interest". These amendments are as a matter of fact the same. There is no difference between the two. If these words are there, it means that this is subject to article 19. Therefore, I submit that either these words "enacted by virtue of the powers conferred by the Constitution" may be restored in their original form or the words

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"general public interest" may be put in. I should think that when we have passed article 19, there can be no other article which is in abrogation of the article which we have already passed. There is an inconsistency between the two and I beg the Drafting Committee and the House to consider this inconsistency and remove it.

Mr. President : Your argument is that the word "general" represents the same thing as the words which have been omitted. Either add the word "general" or restore the words which have been omitted.

Amendment No. 384.

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

"That in the proviso to article 309 the words "or such person as he may direct", wherever they occur, be deleted."

The House will see that the proviso to article 309 empowers the President in the case of the Union services and the Governor or the Rajpramukh in the case of the States services to make rules regarding their recruitment, their conditions of service and similar matters pending provision by Parliament or the State legislature, whichever may be the case, in this regard. I see no point in the amendment recommended by the Drafting Committee. The amendment is to the effect that not the President or the Governor or the Rajpramukh alone is competent but also such person as he may direct. This amendment to my mind is simply puerile. This morning when we considered an article with regard to the executive authority, we found that the executive power of the Union shall be exercised by the President either directly or through officers subordinate to him. It follows that even if it is not exercised by him directly, it can be exercised by officers subordinate to him. In this regard also the rule-making powers can be exercised by him or by persons authorised by him. I do not know why the Drafting Committee thinks that it is necessary to specify that it can be exercised by him or by such person as he may direct. Throughout the Constitution we have made it clear that whenever the President acts, he does not act on his-own but acts on the advice of his Cabinet, and may also delegate his authority to somebody else. These words are absolutely redundant, unnecessary and pointless, without any pur pose, and therefore I suggest that these words ought to be inserted "or such person as he may direct" in the case of the President as well as in the case of the Governor and the Rajpramukh should be deleted, because it is clear beyond any shadow of doubt that wherever the Governor or the Rajpramukh or the President is mentioned, he is not mentioned in his personal capacity but as a symbol of the executive authority of the Union or the State. Therefore I commend my amendment No. 384 to the House for its serious consideration.

Dr. P. S. Deshmukh : Mr. President, Sir, I once again find myself in complete agreement with the argument advanced by my honourable Friend, Mr. Kamath, we either give this power to the President or we do not. If we think that he will not be in a position to cope with the responsibilities in this respect because they are too detailed or too insignificant and it would be necessary for him to delegate these powers to somebody else, let us put, that somebody else here rather than put the President and then, allow him to delegatd this authority to somebody else. In fact, Sir, I totally 'disagree that the importance that has all along been attached to the protection of the interests of the services in the Constitution. I for one consider it a reflection of the days of the Secretary, of' State when he was the father of all the covenanted services serving in any part of the world. I think this is also a reflection of the idea that the services are

such an important part of the country that it is necessary that nobody else except the President shall interfere with their terms of appointment, etc. Sir, I think that either the power may be kept with the President although I would much rather that it should be delegated to somebody else; or the government of that particular State, whether of the Union or the State should be competent to do so or the President should be taken out altogether; but if we want to make of a President a sort of a Secretary of State in our Constitution, then, let the President remain without stating that we would have the power of delegation of this authority to any one. In fact the President does not mean that in every case he acts himself and personally. In most cases he will be acting through someone else. There will be notifications that the President is pleased to order so and so but actually it will probably be one of his under-graduate stenographers who will draft the notification in the name of the President. (*Laughter*).

(Amendment No. 387 was not moved.)

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

"That in clause (3) of article 311 for the words "reasonably practicable to give to any person an opportunity' the words 'practicable to give any person a reasonable opportunity' be substituted."

If my honourable colleagues will turn for a moment to clause (2) of this article they will see that the language employed in that clause is about "reasonable opportunity" being given to the person as aforesaid, etc., that is to say, that unless a person is give a reasonable opportunity to show cause, no action can be-taken against him but clause (3) introduces a slight change and we find here the opportunity is no longer "reasonable" but the practicability is made reasonable. That will, in my humble judgment, make a very appreciable difference to the means of the clause If the House accepts my amendment then the opportunity to be given will have to be a reasonable opportunity. My honourable Friend, Pandit Thakur Das Bhargava, who emphasized. the meaning of the word "reasonable" so very forcibly and vigorously with regard to the old article 13 will agree with me about the word 'reasonable' in this connection because it may be held that where the opportunity is not sought to be given by the person taking action against an officer concerned, if was not reasonably practicable. 'Practicable' means absolutely practicable. That is what I believe Dr. Ambedkar had in view when he moved this article at the consideration stage, and it means that when the officer is not to be found or his whereabouts are not known it is not possible, to give him any opportunity to show cause and only in that eventuality, in that contingency can an opportunity be denied to the officer concerned. Now what we seek to-do in this amendment sought to be moved by the Drafting Committee is that if the officer holds that it is not reasonably practicable to give an opportunity that means to say it may be Practicable, but it may not be reasonably practicable. Therein, lies the difference which my honourable Colleagues, I am sure, will understand and appreciate. We must definitely lay down that only when it is not practicable to give to the officer concerned a reasonable opportunity, the superior officer's decision shall be final in this regard. I feel that the Drafting Committee has taken uncalled-for liberties with the draft as approved by the Assembly in the last session and I feet that we must modify it so as to convey the sense of this clause exactly and completely. I commend my amendment No. 388 to the-House for its consideration.

Mr. President : Amendment No. 389.

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

"That in the proviso to clause (1) of article 316, for the words 'under an Indian State the word in an Indian State' be substituted."

I do not presume to be a master, an expert or authority on the English language and I move it for what it is worth. I hope the Member of the Drafting Committee who are far wiser than myself in this matter will have due regard to the meaning that they seek to convey in this proviso and in the phrase held

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office under an Indian state. Of course held office under the crown is a constitutional term, but I have not heard this phrase 'held office under an Indian State'. It should be either "under the Government of an Indian State" or "in an Indian State".

Shri T. T. Krishnamachari : May I tell my honourable Friend that it is contemplated to change, with the permission of the House. the words to 'under the Government of an Indian State'.

Shri H. V. Kamath : I am glad that my honourable Friend Mr. T. T. Krishnamachari, has seen his way to accepting this suggestion of mine and so I do not propose to press this amendment, Sir.

Mr. President : I do not think amendment No. 392 arises at all.

Shri T. T. Krishnamachari : May I suggest to the honourable Member to see if it finds a place in the corrigenda? The two commas are there.

An Honourable Member : The Drafting Committee have stolen the amendment.

Shri H. V. Kamath : The word 'stolen' may be unparliamentary; they have plagiarised the amendment. Amendment No. 392 is also mere punctuation and I leave it to the punctuating sense of the Drafting Committee.

Sir, I move:

"That in clause (c) of article 319, for the words 'other than a. Joint Commission' the words or as the 'Chairman of a Joint Commission' be substituted."

This article 319 refers to prohibition as to the holding of office by members of the Public Service Commission on their ceasing to be such members, that is members of the Commission. Certain restrictions have been laid down in this article with regard to members of the Public Service Commission when they cease to hold office either as Chairman or as member of a particular Public Service Commission. Clause (c) of this article refers to the restrictions laid upon a member other than the Chairman of the Union Public- Service Commission This goes on to say: "such a member on ceasing to hold office shall be eligible for appointment as the Chairman of a State Public Service Commission other than a Joint Commission." I see no reason why this taboo should be there, with regard to a Joint Commission. A person has ceased to be a member of the Union Commission. Just as there is no prohibition with regard to a State Commission, so it follows logically, at any rate to my mind, that there should be no prohibition with regard to his appointment as a member of a Joint Commission. The only prohibitions should be with regard to his membership of the Union Public Service Commission or Chairmanship of the Union Commission; but neither with regard to the State Commission nor with regard to a Joint Commission should there be any prohibition. I therefore move amendment No. 393.

Mr. President : We proceed to article 320.

Shri H. V. Kamath : This amendment, Mr. T. T. Krishnamachari tells us, has been accepted by the Drafting Committee.

Shri T. T. Krishnamachari : If my honourable Friend will move amendments 394 and 395, first alternative, that more or less finds a repetition here—we will accept his amendments.

Shri H. V. Kamath : I am happy; I move amendments 394 and 395, first alternative.

"That in sub-clause (d) of clause (3) of article 320, for the words 'Under an Indian the State the words 'under the Government of an Indian State' be substituted."

"That in sub-clause (e) of Clause (3) of article 320, for the words 'under an Indian State', words under the Government of an Indian State' be substituted."

Pandit Thakur Das Bhargava : Sir, I move:

"That in clause (4) of article 320, the words "the members of the Scheduled Castes or Scheduled Tribes or' be deleted."

If you will kindly refer to article 320, clause (4) it would appeal that it says :

"Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of the members of the Scheduled Castes or Scheduled Tribes or any backward class of citizens in the Union or States". These words "members of the Scheduled Castes or Scheduled Tribes or" have been added newly. Previously, these words did not exist. Now, so far as reservation is concerned, we find mention of this reservation in article 16, where it is said in clause (1) "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State," and in clause (4) "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the Services under the States." A perusal of these two sections would establish that as a matter of fact. there is only provision for this reservation in respect of the backward class of citizens which in the opinion of the State is not adequately represented in the services of the State. There is absolutely no provision for reservation so far as members of the Scheduled Castes and Scheduled Tribes are concerned. The safeguard given by law to this class is contained in articles 335 which says: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State." Therefore, one thing is absolutely clear, that no reservation was meant to be made for the members of the Scheduled Castes or Scheduled Tribes as such. I remember that in the Sub-Committee of the Minorities Committee, this matter came up and then we decided that there should be no reservation at all. Now, as if by the back-door, by smuggling, this reservation for the Scheduled Castes and Scheduled Tribes is being inserted in clause (4) of article 320. My submission is when there is a positive command of the Constitution to the members of the Public Service Commission which they must obey that he claims of the members of the Scheduled Castes and Scheduled Tribes must be considered consistently with the maintenance of efficiency of administration, this provision would be useless, and also, in a manner, I should say. this takes away the effect of article 335 to an extent. I am therefore, anxious that so far as the Scheduled Castes and Scheduled Tribes are concerned, their claims must he considered with regard to all appointments and not only with regard to reserved appointments. Because, if they are reserved, it means that the claims of other people for these appointments will not be considered, and their claims only will be considered. The likelihood is that their claims will be confined only to the reserved posts and in regard to other posts, their claims will not be considered.

Now, as the House knows, the provision contained in article 16 clause (4) is a sort of a negative provision to counterpoise the equality of opportunity for all citizens, some of whom are very Much developed and others not so developed, and provision is made that the State is not prevented from making any provision for the reservation of appointments or posts. I do not know whether the State is going to reserve any posts. Supposing no posts are reserved, this provision will neither benefit the backward classes nor any other class. When reservation of posts has not been decided by this House, I do not think we are justified in having in this clause (4) a contingency for which reservation could be made. When the House has decided once for all that no reservation is to be made, then these words would give rise to the impression that reservation is possible.

I am anxious that whatever rights have been given by the Constitution they should be enjoyed by the members of the Scheduled Castes and Scheduled

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Tribes and no more or no less In regard to article 335, I beg to submit that this is a very positive and extensive provision. It I were a member of the Public Service Commission, I would like to give every post to the members of the Scheduled Castes and Scheduled Tribes consistently with the maintenance of efficiency of administration for at least five or ten years so that they may have been.

Shri T. T. Krishnamachari. Will the honourable Member please say how article 335 could be implemented?

Pandit Thakur Das Bhargava. Can it only be implemented by reservation? it that is so, why did we not so decide? We decided against that; we were against that, The 'Drafting Committee is smuggling in some provision which is against the verdict of the Assembly. Why was this point not raised before? I think reservation is entirely a wrong thing. Under article 335, their claims can certainly be considered. After all, 'a Commission is to be appointed and welfare officers are going to be appointed. The President has to see whether the rights of these communities are safeguarded. We are all here to see that the rights of these communities will be safeguarded. I have no reason to believe that article 335 will not, be implemented. It -must be implemented; but this is not the way to implement it.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. Presider Sir, I think it is an irony of fate that hurdles of this sort are sought to be placed even in regard to the meagre facilities that have, been adopted in this House. I do not agree with my honourable Friend Pandit Thakur Das Bhargava's amendment since the implementation of article 335, which was formely article 296, is sought in this clause (4) of article 320. Sir, if I were to tell him, the backward communities which lie referred to is not a comprehensive term or adopted by all-the provincial Governments in India. In Madras, backward communities refer to certain sections, of the people and the Scheduled Castes and Scheduled Tribes form a separate class from the, backward communities. If it is the idea of my enlightened friend that the backward classes alone must remain in this Constitution for any reservation, the Scheduled Castes and Scheduled Tribes will not find reservation for appointments either in Madras or in some other provinces. So, I feel what the Drafting Committee has done for implementing and also making it clear what obtains in article 335 in clause (4) of article 320 is correct. My friend was saying that no reservation was made: but if he studies article 335, there is reservation services for Scheduled Tribes and Scheduled Castes. This clause (4) gives power of consultation with the Public Service Commission which is ultimately the authority that will be advising the Governors and the President of the Union on what basis the members of Scheduled Castes or Tribes are to be taken in service. So I feel very strongly that if my honourable Friend's amendment is accepted, it will mean that the Scheduled Castes or Tribes will not count for reservation in the So I oppose this amendment.

Shri Mahavir Tyagi : Sir, I propose that this may be held over. It is very controversial.

Mr. President : I would allow discussion of this. Those who wish to speak may speak now. Voting will be taken at the end, of course.

Dr. P. S. Deshmukh : I am glad the importance of this article is being appreciated by many honourable Members. It is certainly very very important. I for one do not oppose the changes made by the Drafting Committee in this article, but I would appeal to the Members and to the representatives of Scheduled Castes and Tribes that the should not also object to the insertion of the words "backward

classes" in article 335. It was very unjustly and unfairly omitted from that article and it was no gain to anybody, especially to Members representing the Scheduled Castes or Tribes. Just as in this article 320 we propose to add the words 'the Members of the Scheduled Castes and Scheduled Tribes and retain the words, 'Backward classes of citizens', similarly the words 'backward classes' should be added to article 335. That will be entirely fair and consistent and if that is accepted, I would strongly oppose the amendment that has been just moved. If, for the purpose of even carrying greater assurance to Members of Scheduled Classes, it is necessary to mention certain safeguards specifically, I do not think we should fight shy of it. We are trying too much to ask people to have faith in our liberal, intentions and generous motives but in many respects it is better to come down to practical politics and embody what we mean in a concrete shape, understandable by the ordinary citizen. If for that purpose the Drafting Committee has suggested the addition of the two classes of Communities in article 320, I for one would not quarrel with it. But I would appeal to the House and to everybody that the words "backward classes" should be added to article 335. There is a little history so far as this article is concerned and the omission is, I believe, as accidental as some other things that have happened in regard to the provisions in the Constitution. Backward classes were omitted from article 335 in this way. The omission was never contemplated. Mr. Munshi had attempted amendments of the proposed article several times, but in none of them "backward classes" was omitted. But suddenly at a very late stage, when unfortunately I happened to be out of Delhi, I discovered that these words happen to be omitted. The best solution which is acceptable to everybody is that the proposed addition to article 320 should stay and honourable Members of this House should insist that the words 'backward classes' should be added to article 335 and the *status quo* maintained which was deliberate, intentional and which was really the demand of everybody, especially of Members representing the backward classes and also, if I may say so, of the representatives of the Scheduled Castes and Tribes. There has never been any conflict of interests between the various groups of communities and I hope the Scheduled Classes and the Scheduled Tribes will not bring about this conflict which will be of evil consequences to the whole nation. I would, therefore, appeal that whatever has been embodied in article 320 should now stay and in article 335 the word 'backward . . .

Mr. President : There is no amendment for 335.

Dr. P. S. Deshmukh : I have given an amendment to that effect somewhat late. I was away from home and I was not able to table it in time but as soon as I got it, I sent the amendment in. I would beg of you that this amendment of mine may be permitted. It is No. 530. I have said "that in article 335 after the word 'members, the words backward classes' be inserted."

Shri H. J. Khandekar (C.P. & Berar: General): Mr. president, Sir, I stand here to oppose the amendment moved by my Friend, Mr. Thakur Das Bhargava. The draft that has been put forward by the Drafting Committee is with certain reasons. Because this House has adopted article 335 last time as article 296 and in order to give effect to that article, this article 324 has been submitted to the House. According to article 335 the seats have been reserved for members of the Scheduled Castes in services and posts, but that article does not give power to the Public Service Commission or the Federal Public Service Commission. We had to bring that article into effect and for this purpose this amendment has been moved by the Drafting Committee and then only the F.P.S.C or P.S.C. of the States will Consider the claims of the Scheduled Caste. I am very sorry to say that such amendments as have been moved by Shri Bhargava regarding the Scheduled Castes are being moved at this stage to bury down the Harijans. There are certain people in the country from the caste Hindus—I am not of course criticising them—but I would like to tell certain facts that they do not want to give facilities to us

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certain members of the Hindu society will only be satisfied when the Scheduled Castes and Scheduled Tribes are buried. I think, Sir, these amendments are brought with these motives. I, therefore, feel very sorry and pity for such caste Hindu friends. With these words, I oppose the amendment moved by my Friend, Mr. Bhargava.

Shri R. K. Sidhwa : Mr. President, all along during the discussions and start of this Constitution I have held the view that if anybody deserves protection of special rights or privileges, it is the Scheduled Castes only and I hold today the same view that none but the Scheduled Castes should have a special right for the reasons that I frequently stated that we have done certain injustice to that class and for the purpose of undoing that injustice, we specially gave them this protection. I have all along extended my support to this on this ground. I am not in favour of giving any protection to the so-called backward classes. Backward classes were introduced by the British Government, and I do not want that blot to be continued in this Constitution. Backward classes exist in all communities, and in the directive policy and the fundamental policy we have decided that within ten years everybody shall be made literate, and with literacy nobody will remain backward. I would like to know what is the meaning of "backward class".

An Honourable Member : Those not in service.

Shri R. K. Sidhwa : With education such service also will automatically come in. When proper education has been provided fro, automatically their rights to entry into the services will also come in. Therefore, I do not approve of my Friend Dr. Deshmukh's proposal to introduce the words "backward class" in article 313 which we have after full consideration decided should not be there. Therefore, I say that the amendment of the Drafting Committee is a perfectly correct one and that is the only amendment which we should support, without any other amendment. I do not think any one in this House would take away the powers or the rights which we have given to the Scheduled Castes. My Friend, Pandit Thakur Das Bhargava, said—I do not think he means it—that the word should be deleted. I strongly oppose it. Why should it be deleted when we have fundamentally accepted it in our Constitution. Therefore, I support the amendment of the Drafting Committee and I oppose any kind of amendment. Although the words " Backward class" are there, I am obliged to reluctantly accept it, and if I had my way, I would have said that there shall be no such thing as "backward classes". Within the next five years, I would make them all literate, so that they may be able to occupy any place in our society. We have to undo what has been done during the past 150 years, and we have to undo it as early as possible. Sir, with these words I strongly support the Drafting Committee's amendment.

Shri Mahavir Tyagi; Sir, I do not know whether I am really right in interpreting the procedure of the third reading of such Bills. As far as I know, in the Legislative Assembly of the Province, the third reading is only. .....

Shri R. K. Sidhwa : This is not a third reading.

Shri Mahavir Tyagi : What reading is it then? The second reading has been finished and only such amendments as are of a consequential nature or as accrue from our past decisions are to come at this stage. If, however, matters which were closed after protracted deliberations and heated discussions, were to be raked up again at this stage, I am afraid, your time limit for the discussion and decision will be rather very unfair. Sir, my submission is that all such matters, which were once discussed and closed here, and which were also discussed among Members mutually, either in the shape of different parties or groups, and particularly such matters which were as a result of

compromise resolved as unanimous decisions, were to be reopened for discussion, I assure you, Sir, that it will take a very long time and it will not be possible for you with due fairness, to finish the discussions according to the schedule which you have kindly prescribed. I submit that the amendment tinder discussion was neither consequential nor was there any necessity for introducing the question. of reservation of offices or posts for Scheduled Castes, here. Sir, the House ha,-, expressed itself a number of times in the past that our people do not want any reservations for anybody. And particularly in the case of the Scheduled Castes, the House had agreed, after heated discussions, and passed article 335, as it is at present numbered, to the effect that "the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of' appointments to services and posts in connection with the affairs of the Union or a State." That was quite enough and that was the last word unanimously agreed upon by the House. And the Members of the Scheduled Castes were also satisfied with this article. Why introduce the same communal virus into another article? Is not one enough? To bring it here again means raking tip the old controversy again. That representation of Scheduled Castes shall be so and so, the manner of giving it' shall be such and such, that the rules of giving this representation in the services or posts to the Scheduled Castes shall not be made in consultation with the Public Services and so on. All this. I say is absolutely unnecessary. and surely it does not benefit the Scheduled Castes people at all, Ever, article 335 was a matter of' controversy, and it was opposed. Some of us felt that the special reservation was forced against their wishes. But then we were told that it was only a directive article, and that it directs the policy of future Governments. The House agreed to have it only as a directive. And now you want to bring it in another article. The Constitution is in your hands and you can introduce controversial matters in any article and it will be discussed here as a basic proposal and then amendments will come in. Sir, I submit that you might kindly rule such matters as out of order. Matters once, twice and thrice discussed cannot be brought in again. How long can the House go on discussing these matters?

Shri Jaipal Singh (Bihar General): Mr. President, Sir, I feel I must come for ward to congratulate the Drafting Committee for having made a point more clear than it might have been had they not introduced the amendment in clause (4) of article 320, I must confess that I have been -very much surprised by the amendment that my honourable Friend, Pandit Thakur Da-, Bhargava, has been pleased to place before the House. My memory is not -very weak. Not many months ago, lie was the one who congratulated himself and the House for atoning for what had not been done for centuries, but, now, some-how or other, he swallows his words and tries to accuse the Drafting Committee and the Scheduled Castes and the Scheduled Tribes and any other backward classes of aligning ourselves as a communal group. The hint has already been made by my predecessor just now. Sir, we are not asking for this from any communal angle. We do not want anything. If you do not want to give it, do not give it. We are not asking for it. Do not give with your right hand and take away with your left. I have said every time that it has been my privilege to come and plead for the most backward group in our country, and made it quite emphatic and quite clear that I am not here with a beggar's bowl. If you give it, give it without any mental reservations.

As far as I can see, all that the Drafting Committee has done is to elucidate what were the intentions in the Fundamental Rights and the directive principles of the Constitution. Beyond that they have not gone. My friends will be the first to admit that the Scheduled Castes and the Scheduled Tribes are among the backward classes. Well, they have already accepted in their previous speeches and the previous consideration stage that the Backward Classes have to be brought

[Shri Jaipal Singh]

up to the general level. How else can you do it unless there is some way of implementing that intention? We have had enough or words. We have had them for centuries and centuries. In this Constitution we are providing the wherewithals for materialising those intentions. You have appealed to us not to talk at length. I have no desire to do so: all that I say is be generous and mean it.

The Honourable Shri K. Santhanam : I am afraid the scope of this particular clause has been widely exaggerated by almost every speaker. It does not prescribe by itself any kind of reservation or any privilege which has not been. given by the other articles of the Constitution, What all it attempts to. do is to decide whether the Public Service Commissions shall have anything to do with either the reservation of the Backward Class or of the Scheduled Tribes. If by the application of article 335 such reservation becomes necessary. No one will contend that in attempting to apply 335, in. considering the claims of scheduled castes, no reservations will be made. If any one comes to that conclusion that no reservation shall be made, I believe that 335 cannot be implemented to any extent. But whether in any particular service the Scheduled Castes should be represented and to what extent—all that may be a matter of argument, consideration and discretion. But to say that at no point whatsoever any reservations shall be made, is, I think, wholly inconsistent with either the letter or spirit of article 335.

Assuming that in some matters some kind of reservation will have to be made, the question here is whether it shall be done by the rules of the Public Service Commissions or by the Government directly. That is the short issue of this particular clause. It is our policy that the Public Service Commissions should be kept out of all these communal and other considerations.

Pandit Thakur Das Bhargava : May I know if the provisions of 335 are not binding upon the Public Service Commissions? They must take it into consideration.

The Honourable Shri K. Santhanam : Here the point is whether the rules to be made should be by the Public Service Commissions or by the Government. We do not want the Public Service Commissions to be brought into these matters, it only says that "nothing in clause 3 shall require the Public Services to be consulted."

Shri Mahavir Tyagi : Why not make it clear. Was it incumbent on the Government to consult the Public Services Commission, that you want to have an exemption?

The Honourable Shri K. Santhanam : My honourable Friend, Mr. Tyagi, is altogether wrong in thinking that this is a new insertion. This is purely consequential to article 335.

Shri Mahavir Tyagi : I want to put one question. Is there any compulsion on us that we must approach the Public Service Commissions for rules?

The Honourable Shri K. Santhanam : If he reads clause (3), he will find that for all these matters, the Public Service Commissions should be consulted. Therefore, if clause (4) were not there, then the Public Service Commissions would be involved in the controversy regarding the manner in which reservations should be carried out. We do not want our Public Service Commissions to be brought in. If any reservations are to be made, that should be done purely at the discretion and judgment of either the Central or Local Government. It is Only to prevent the Public Service Commissions from being brought into the controversy that clause (4) is brought in. Without it, if at any time reservations become

necessary, consultation with the Commission is also necessary and the public will begin to blame the Public Service Commissions either for the manner or the extent of the reservations. It is only to preserve the purity of the Public Service Commissions that this is inserted, and so whatever objections one may have to reservation is quite a different matter. One may contend that no Government should interpret 335 as getting them reservations. That is a matter for the Supreme Court and for anyone to argue out. It is not possible for the Drafting Committee or for this Assembly to assume that no reservations can be made under article 335 and, therefore, this preservation of the purity of the Public Service Commissions need not be undertaken. As a matter of fact, if the Drafting Committee had not put this forward they would have failed in their duty.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, the question before us has been discussed by those who have favoured the amendment made in clause (4) of article 320 by the Drafting Committee with reference to Article 335. I think, Sir, that we should refer to clause (4) of article 16 before we refer to any other article. It says: "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State." Under this clause, it is not necessary for the Central Government or the Government of a State to consult the Public Service Commissions with regard to the reservation of posts for any or all of the Backward Classes. The question then before us reduces itself to the proposition whether the Scheduled Castes and the Scheduled Tribes should be included among the Backward Classes or not. Now it may be said that these classes have been specially mentioned in various parts of the Constitution and that, therefore, they should not be included among the Backward Classes. It is hard for me to accept any such interpretation. The Scheduled Caste and the Scheduled Tribes have been specifically mentioned in several places because they are believed to the more backward than the classes called backward according to the official terminology of the Provincial Governments. That is the only reason, I believe, why they have been selected for special mention in several articles. It seems to me, therefore, that even if clause (4) of article 320 were not amended in the manner that it has been by the Drafting Committee, a State would not be under any compulsion to consult the Public Service Commissions with regard to the reservation of posts for the Scheduled Castes or the Scheduled Tribes. Article 335 has been referred to but that is of limited application. All that it says is that.....

Pandit Balkrishna Sharma : May I draw the attention of the Honourable Member to one point? He says the Government is not in duty bound to consult the Public Service Commission. but if he would only refer to article 320(3)(a) there he will find that the Public Service Commission should be consulted on all matters relating to the methods of recruitment to civil service and for civil posts, and this might be interpreted as involving the Public Service Commission in a sort of a controversy regarding the reservation of seats for Scheduled Castes, Scheduletd Tribes and other Backward Classes. In order to avoid that contingency, "that amendment has been brought in".

Pandit Hirday Nath Kunzru : I am aware of the provisions of clause (3) but what I meant to say was that the provisions of clause (3) must be regarded as subject to the provisions of clause (4) of article 16 which embodies a fundamental 16.

The Honourable Shri K. Santhanam : It is really supplementary.

Pandit Hirday Nath Kunzru : In any case what I have tried to say is that the amendment made in clause (4) of article 320 does not confer any power on

[Pandit Hirday Nath Kunzru]

the State with regard to the reservation of posts for any Backward Class that it did not have before.

Sir, I was referring to article 335. It merely says that the claims of the members of the Scheduled Classes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, etc. It may be found on examination that it is not possible to take the claims of the members of these classes into consideration without reserving a certain proportion of posts for them. Therefore. in my opinion, the more important article that we should consider in this connection is article 16. Article 335 seems to me to be of more limited application than article 16. We may draw an inference from article 335 that the State has the power to reserve posts for the Scheduled Castes and the Backward Tribes but I think that clause (4) of article 16 lays down very clearly and in express terms that the State has the power to make reservations of appointments or posts in favour of any backward class of citizens. Even if it be held that the amendment of clause (4) of article 320 is unnecessary, it is clear that it is in accord with or that it is consequential to the power given to the State by article 16.

Mr. President : We shall continue the discussion tomorrow:

I said at one stage of the proceeding this afternoon that I would like to finish all the amendments, but since this particular article has taken more time than we anticipated I would like to extend the time for moving the other amendments

Pandit Balkrishna Sharma : Sir, in List I there are certain amendments which are also connected with the amendments that have been received in List II therefore, I believe if the amendments are not reached during the time available you will kindly allow these amendments from List I . . . . . .

Mr. President : We shall consider that.

The Assembly then adjourned till 10 A.M. on Tuesday, the 15th November, 1949.