Volume IX

30-7-1949
to
18-9-1949

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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Constitutional Adviser:

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Joint Secretary:

MR. S.N. MUKHERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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Volume IX—30th July to 18th September 1949

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 30*th July* 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :—

Maulana Mohd. Hifzur Rahman (United Provinces: Muslim).

Seth Govind Das (C.P, & Berar: General) : *[Mr. President, before we proceed with our business, I would like to draw your attention to one matter. Since the day of our arrival here we have been hearing various rumours about our National Language. It is said that the question of National Language would now be left for Parliament to decide. Sir, you have said here repeatedly that not only would the question of our National Language be decided by us here, but that our Constitution too would be adopted in our National Language. Now we are holding the final session, and I have learnt that the Translation Committee appointed by you for preparing the Hindi translation of the Draft Constitution has already translated the articles so far adopted by this Assembly. I would like you, Sir, to contradict these rumours and make a definite announcement that the question of the National Language would not be left to the Parliament but that it would be decided by the Constituent Assembly. Unless it is so done, in my opinion, our Constitution would remain incomplete. I would also like you, Sir, to fix the dates when questions of National Language, National Anthem and the name of the country would be taken up here so that the people, may come to know of the dates when these questions would be decided.]

Dr. B. Pattabhi Sitaramyya (Madras: General) : I thought it had been understood that whenever any Member wanted to raise a point which was not on the agenda, he should speak to the President in the Chamber. May I know whether such a procedure has been gone through in this case.

Mr. President : No.

Dr. B. Pattabhi Sitaramyya : To spring such a subject upon the, audience all of a sudden and to make a long speech is against all order and procedure.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Hear, hear.

Mr. President : The question as to whether the question of language should be left for the Parliament depends entirely upon the decision of this House. It is for this House to consider that question and come to any decision that it likes. I do not think any further question arises and when that article is reached and a decision is taken, we shall act accordingly.

Seth Govind Das : *[Mr. President, my second point that a date should be fixed remains yet unanswered.]

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*[ ] Translation of Hindustani Speech

Shri T. T. Krishnamachari (Madras : General) : Mr. President, may I draw your attention to an irregular act on the part of the Assembly Staff. I would like to know, Sir, whether you have given any member of the staff disciplinary jurisdiction over the Members of the Constituent Assembly so that they can punish them for what they think is non-compliance with their request. A member of the staff has written to me to say that I would not get petrol coupons for a particular week because of something that I have not done in the past. I do not know whether he is entitled to do so and if you have authorized him to do so, and I think the whole action is perfectly irregular.

Mr. President : It is evident I could not have given any authority like that to any member of the staff; however, I shall look into the matter.

We shall now take up article 79-A.

DRAFT CONSTITUTION—(*Contd.*)

New Article 79-A

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, I move:

That in amendment No. 1 of List I (First Week) of Amendments to Amendments for the provisions of any law made under the said clause."

Secretariat of Parliament " 79-A. (1) Each House of Parliament shall have a separate Secretarial Staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may. after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such pi provision ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the, Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative

Department being appointed to act as the Secretary of the Legislative Assembly with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be, made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made pro-tempore by the President in consultation with the Speaker of the House, of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

Shri H. V. Kamath (C.P. & Berar: General): Sir, May I move all the amendments standing in my name or am I to take my chance after Prof. Shibban Lal Saksena ?

Mr. President : All at once.

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

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words 'shall be, construed as preventing the words 'shall prevent' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A. for the word 'or' occurring in line 4. The word 'and' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A. for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'the House of the People or the Council of States' the words 'each House of Parliament' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, all the words after the words 'Council of States' where they occur for the second time, be deleted."

Mr. President: Are not all these amendments more or less of a verbal nature ?

Shri H. V. Kamath : No, Sir. I shall however speak on the more substantial ones. If you deem fit you may kindly say which are verbal and I shall abide by your ruling, Sir.

Mr. President : No. 72 is verbal.

Shri H. V. Kamath: Nos. 72 and 73 go together. Coming to amendment No. 69, the object of this amendment is to eliminate unnecessary verbiage. We in this proviso to clause (1) I do not find any parallel in any other proviso which provisos have been moved and adopted. I have closely examined various provisos of articles that this House has adopted in the past, and for the words occurring in this proviso to clause (1) I do not find any parallel in any other proviso which we have adopted earlier. I shall refer to two or three articles that we have already passed. I shall invite your attention to article 22. The proviso to clause (1) says:

"Provided that nothing in this clause shall apply to an educational institution etc."

It does not say:

"Provided that nothing in this clause shall be construed as applying etc."

This is unnecessarily cumbering the Constitution with needless, redundant, superfluous verbiage.

I therefore feel that the meaning of this proviso could be adequately conveyed by merely stating that nothing in this clause shall prevent the creation of posts common to both Houses of Parliament. If the House is desirous of referring to other articles of similar nature, I shall invite its attention to article 42 clause (3) sub-clause (b). There again it says :

"Nothing in this article shall prevent Parliament from conferring by law functions on authorities other than the President."

The proposed article, article 79-A, has a very clumsy construction, in my judgment, and no useful purpose would be served by the addition of the words " shall be construed as preventing".

I therefore submit that our object will be adequately served by merely stating that:

"Nothing in this clause shall prevent the creation of posts common to both Houses of Parliament."

Then I come to amendment No. 71 which relates to recruitment and conditions of service of persons appointed to these posts—the secretarial staff or others of either Parliament.

Mr. President : Would you not leave the wording to the Drafting Committee ? I am sure the Drafting Committee will consider these.

Shri H. V. Kamath: It is in my judgment more or less substantial and I would crave your indulgence to let me speak.

Mr. President : If it is put to the House it may be lost.

Shri H. V. Kamath : That will be after my speech. I leave it entirely to the judgment of the House which I do not wish to fetter. I only wish to place my views before the House and it is open to the House to either accept or reject them. I submit that should not affect the moving of my amendments at this stage.

Amendment No. 71. This clause (2) if this new article refers to recruitment and conditions of service. Now for any staff, secretarial or otherwise or any

body of public servants, various questions arise. Recruitment is the first, without which there is no body of public servants. Then conditions of service arise. But to my mind the conditions of service do not include the salaries, emoluments and other allowances that will be paid to those servants. I remember covenants that used to be signed by members of the all-India services. Various conditions of service were laid down in those covenants that used to be executed between officers of all-India services and the Secretary of State. Notably, I remember personally the Indian Civil Service. There various conditions of service were laid down, but there was no reference at all to salaries and emoluments of the servants of that category. I am sure in every other Department, in every other field of service, Government or otherwise, a similar rule will hold, and that is salaries and emoluments are matters apart from conditions of service. I have no doubt on that point and I do not know whether the House will hold the same view, but from my experience in this line salaries and emoluments are something quite apart from the conditions of service; but I am sure so far as this new article is concerned this House will desire that Parliament should regulate not merely questions of recruitment and conditions of service but also the other question of emoluments, that would be paid to the Secretarial staff of our future Parliament.

Therefore, in my judgment, it is very necessary that this article should make it clear that Parliament shall regulate not merely the recruitment, the cadre or strength of the staff and conditions of service, but also the other cognate matter of salaries and allowances that may be paid to the members of the staff. Already we have passed several articles, notably the articles pertaining to the Speaker, Deputy Speaker and similar other articles where we have definitely and explicitly, referred to the salaries and allowances that will be paid to these various dignitaries of Parliament. Therefore, it is necessary, in my judgment, that these words should also be included in this article so as to make it quite clear that salaries and allowances also should be regulated by Parliament.

Coming to my next amendments Nos. 72 and 73, I have to say only one word about them. We have already had it stated in the article moved by Dr. Ambedkar where the proviso states "nothing in this clause shall be construed. As preventing the creating of posts common to both Houses of Parliament." Therefore, it is conceivable and also likely that there will be certain posts common to the House of the People and the Council of States. If that be so, then the possibility, nay, the desirability of creating certain posts common to both Houses of Parliament will certainly arise. The contingency will be inevitable that the President will have to consult not merely one or the other, the Speaker or the Chairman, but he must consult both of them. He will have to consult the Chairman of the Council of States as well as the Speaker of the House of the People, before creating posts common to both, and obtain the views of the Chairman and the speaker as to whether it is necessary to make the posts common to both Houses or leave them otherwise. If we adopt the proviso, then the contingency which I have referred to will arise of the President having to consult both the Speaker and the Chairman.

Once the House accepts this amendment of mine, then the subsequent few words—"as the case may be" drop out automatically, because when you say "Chairman and the Speaker" then there is no valid reason for retaining the words "as the case may be." Therefore, amendments Nos. 72 and 73 go together.

Amendment No. 74 is identical with No. 71 and I have already stated the reasons for moving amendment No. 71 and so I do not propose to speak on amendment No. 74.

[Shri H. V. Kamath]

Coming to amendment No. 75, it refers to clause (3), *i.e.,* with a view to bringing this into conformity with or in line with clause (1) of the proposed new article. Clause (1) refers to each House of Parliament. I desire that the article should end on a note Similar to its beginning, that it should conclude in the same manner as it has begun. It begins with a reference to "Each House of Parliament" and there is no reason why, without detracting from the meaning of the article or this particular clause we should not merely say "each House of Parliament" at the end also, instead of repeating the words "House of the People or the Council of States." I have already said in amendments 72 and 73 that the President will consult both Houses of Parliament and not merely the Chairman or the Speaker. Therefore it follows *ipso facto* and quite logically enough, that it will suffice if we merely state "each House of Parliament" and not repeat the words 'House of the People or the Council of States."

Then there remains the last amendment, *i.e.,* No. 76. Here it is slightly more than verbal, and the point of substance in it is this. It touches on the authority and power of Parliament, *vis-a-vis* the rule-making power of the President. The article lays down that "any rules so made shall have effect subject to the provisions of any law made under the said clause." Now if this clause is studied carefully, it will be realised that this power is given to the President only until Parliament meets to deliberate thereon, and only so long as provisions in this regard are not made by Parliament. That is to say, they do not overlap. There is to be no overlapping of the authorities of the Parliament and the President, at any point. Until the new Parliament meets and deliberates on these matters, it is obvious that no rules, no provisions in this regard can be made, by Parliament. So, for that interim period, for the interregnum, power is given to the President to make rules in this respect. Once Parliament sits and deliberates and makes provisions in this regard on these various matters, the President's authority vanishes. The rules made by him have no power or force afterwards, once Parliament has made provisions in this regard. Therefore, in my judgment, to say that any rules made shall have effect, subject to provisions made under the said clause is wholly futile and fatuous, and I do not know how such a clause, such a provision could have at all found a place in this article. I wonder why this slip has been committed by Members and otherwise men of the Drafting Committee and other experts who have been grouped round them. To my mind this article makes it clear that Parliament shall make provisions, and until it does so, the President shall make rules. Then, what is the point in saying that these rules will be subject to any law made under the clause. Once Parliament has made provision in this regard, then the other rules have no authority; they die thereafter, and these rules will not govern in any manner the secretarial staff's recruitment, conditions of service and other matters connected with the staff of Parliament. But between now and the session of Parliament, for that period, the President will be empowered to make certain rules, but once Parliament meets and makes provisions, then the President, according to me, has no *locus standi* at all in this matter. Therefore it is absolutely pointless and purposeless and even derogatory to Parliament's dignity and authority to say that even after Parliament has met, the provisions in this regard made by the President will have effect subject to, etc., etc.

Clause (2), if it is read with and studied closely with clause (3), will make it quite clear to honourable Member that the last portion of clause (3). . .. "and any rules so made shall have effect subject to the provisions of any law made under the said clause" must be deleted.

Shri Mahavir Tyagi (United Provinces: General): We are now more than convinced by the honourable Member's arguments that these words are not necessary.

Shri H. V. Kamath: If my friend Mr. Tyagi is convinced, I am very happy. I am not so sure that my other colleagues are equally convinced, but I am Certainly very glad to know from Mr. Tyagi that he has been convinced by my arguments, and I am glad that at least one Member of the House is with me, if not any others.

I therefore move these various amendments and commend them for consideration of the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I move.

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted."

I have added the word "strength" because the present article does not specify this. If you add this word, it will remove a lacuna. As far as the article itself is concerned, I believe that at one time our revered leader, the late Mr. Vithalbhai Patel, had to fight the battle of independence for the secretariat of the then Central Legislative Assembly with the then bureaucracy and it is a happy day today that we are incorporating this principle to ensure the independence of the secretariat staffs of our Parliament in the Constitution.

I support this amendment of Dr. Ambedkar and I hope by including the word "strength" you will remove the lacuna, which I think is present there.

Mr. President : All the amendments have now been moved. Does any Member wish to speak ?

Shri R. K. Sidhwa (C.P. & Berar: General) : Sir, I welcome this article. The Speaker's secretariat ought to be quite separate from the executive. It is a recognised fact everywhere. But I have noticed, Sir, that when men, with the best of intentions, come into power, they do not want to part with the power which is not due to them. Therefore, many persons had to fight for this right in the past. I can give you illustrations, Sir, that in the Municipal Corporations also the secretariat branch is mixed even now with the executive. When I was the Mayor of Karachi I had to fight very hard with the secretariat department and the secretariat executive department did not like to budge an inch and part with any power. Ultimately, they had to yield and today, in pursuance of the resolutions passed by the All-India, Burma and Ceylon Mayors Conference, at Bombay, Calcutta and Madras there are separate secretariats for the Mayors. Therefore, it is in the fitness of things that the Speakers of all the provinces who met the other day under the chairmanship of the Speaker of the Parliament, decided that they must have a separate secretariat. I can cite you an illustration, Sir, that when the Speaker's secretariat wanted pencils for the Members the executive refused to give them. I know of a province where at the instance of the House, Members complained that stenographers did not take down the proceedings properly, and therefore it was necessary that an additional stenographer should be added, but the executive refused to grant the additional stenographer even with the consent of the House. These conditions prevail even today and I am so glad that this article has been brought and has been put into the Constitution. If our executives, I mean the Ministers, had been reasonable, this article would not have been put into the Constitution and Parliament would surely have taken note of it. But when it is seen that even popular Ministers are not prepared to part with that power, there is no other alternative but to put such an article into the Constitution.

Coming to the service staff, the language is quite different from the original article in the List at page 11, as proposed at that time by the Honourable Dr. Ambedkar. He has made a certain improvement which I like. But I wish to make it clear that the staff of the secretariat should be quite, different from

[Shri R. K. Sidhwa]

the staff of the executive. The staff of the Speaker, I mean the Legislature, should be chosen from persons who are amiable, social, kind, useful and helpful to the Members, and not that kind of staff which exists in the Secretariat. I know that in our Parliament today we have got a stall who are helpful, kind, and always ready to help the Members in matters like the preparation of Bills, resolutions and questions. This is the kind of attitude that prevails also in the House of Commons. But if you go to the Central Secretariat, you will find quite a different type of staff. The practice in the House of Commons is that no staff shall be allowed to be, recruited unless the Clerk of the House—whose post is equivalent to the Secretary of our Parliament—certifies that he is fit to be sent to the Public Service Commission. Then he will be allowed to sit for an examination by the Public Service Commission. That Clerk of the House keeps that man who aspires for a post in the secretariat, gives him a trial for a couple of months and sees whether he fulfills all the qualifications which I have mentioned. I can tell you from first-hand knowledge that the Clerk of the House of Commons is very careful to see that though an Additional Secretary, or an Assistant Secretary or an assistant clerk may be very good in the English language or in other matters, if he is not helpful, and kind and of an amiable nature, he is ruled out. Therefore he has no direct approach to the Public Services Commission either through the Ministries or the various departments until the Clerk of the House certifies that this man should proceed for the examination of the Public Services Commission. I would have preferred the original article which was moved by Dr. Ambedkar in that connection. In modification I had moved an amendment. I shall be pleased to have this clause put into the Constitution before the next Parliament comes in as I do not want the staff to be tampered with by anyone.

In the House of Commons the entire staff of its secretariat is appointed by the Clerk of the House and not even by the Speaker. Only as a matter of courtesy the Clerk of the House of Commons informs the Speaker that he is appointing so and so and the Speaker says it is all right. That is the practice. In May's Parliamentary Practice you will see that it distinctly lays down that the Clerk makes the appointment of the entire staff of the House of Commons. I therefore hope that a similar provision will be made by Parliament to that effect. I want to make it clear that, while we do not want the executive to interfere with the appointment of the staff of the Legislatures, it should not be understood that that power should go to the Parliament. It would be negativing the very object of this amendment if Parliament takes upon itself to make appointments. Once a fit Secretary is appointed in the interest of discipline we must see that he makes all other appointments subject of course to the approval of the Speaker. The Speaker should have a voice because we are in the initial stage and I therefore desire, unlike in the House of Commons, that the Speaker should have a voice in the initial stage in the appointment of the staff. I do maintain, as I have already stated, that unless we have the proper type of staff of the kind I have mentioned we shall not be doing justice to Parliament and it will not serve the purpose of the article that we are providing in the Constitution. With these words I heartily support the amendment moved.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support the new article 79-A moved by the Chairman of the Drafting Committee. I recognise the necessity of a separate staff for the Parliament, but there is one thing which is proposed to be done which I do not like. Questions relating to appointment, promotions and other conditions of service have been left to be determined by Parliament. The amendment which I wanted to move, but did not, suggested that it should be clearly laid down in the Constitution that all questions relating to appointment, in fact all appointments, must be made by the Federal Public Service Commission and not by the Speaker or the Chairman of the

Upper House. Having due regard to the facts of our political life, when there is hardly a ministry in the provinces which is not being condemned for patronage, for undue favour, for provincialism, it is not safe to vest this power or leave it in a nebulous state or to ask the Parliament to regulate these things. The Parliament's power must be circumscribed in this sphere; and if we want that the position of the Speaker should be above suspicion it is necessary that no patronage should be vested in his hands. We want a separate staff not just for the sake of dignity; simply because other Ministers have got their separate secretariat, therefore the Speaker must also have a secretariat so that his position and dignity may be in line with that of the other Ministers. We want this because it is a necessity; but there is no reason why the power of appointment, promotion and disciplinary matters relating to the services should be left in the hands of the Parliament, which will vest these powers in the hands of the Speaker. Sir, I have nothing more to say.

The Honourable Dr. B. R. Ambedkar: Sir, nothing that has been said, in my judgment, calls for a reply.

Mr. President : The question is:

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words shall be construed as preventing' the words 'shall prevent' be substituted."

The amendment was negatived.

Mr. President : The question is

"That in amendment No. 42 of List II, in clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, for the word 'or' occurring in line 4, the word 'and' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, the words as the case may be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, for the words 'recruitment and the conditions of service of persons appointed to, the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted".

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of the proposed new article 79-A, for the words 'The House of the People or the Council of States' the words 'each House of Parliament' 'be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, all the words after the words 'council of States' where they occur for the second time, be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (First Week) of Amendment,% to Amendments, for the proposed new article 79-A, the following be substituted:—

Secretariat of Parliament. "79-A. (1) Each House of Parliament shall have a separate secretarial staff :

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The motion was adopted.

New article 79-A was added to the Constitution.

Article 104

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

That for article 104, the following article be substituted:—

Salaries etc. of Judges "104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word "privileges" has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri Brajeshwar Prasad : Sir, I do not want to move any of the three amendments standing in my name.

Mr. President : As regards Mr. Sidhva's amendment No. 79 this was with reference to No. 2 but since Dr. Ambedkar has moved amendment No. 77 from which the words which Mr. Sidhva wanted to omit have been omitted, his amendment does not arise now.

[Amendment No. 80 of List III (First Week) was not moved.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, I beg to move:

"That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104, the following new provision be added:

'Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would-have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the judges of the Federal Court'."

Sir, the amendment moved by Dr. Ambedkar provides that the rights of a judge in respect of pension shall not be varied to his disadvantage after his appointment. I should therefore like to explain why I have thought it necessary to move my amendment. It is true that so far as existing incumbents are concerned, no change will be made in their pensions if article 104 is passed in the form proposed by Dr. Ambedkar. But we have to provide for the future too. Dr. Ambedkar proposes that the question of leave of absence and allowances and pensions should be dealt with by Parliament by law after the passing of this Constitution by the Assembly. There are so many matters to be dealt with in this connection that it is not possible to provide for all of them in the Constitution; they can be provided for either in the appropriate Schedule or in a parliamentary statute. Now Dr. Ambedkar himself has proposed that the salaries of the judges should not be left to be determined by Parliament and that they should be fixed by the Constitution. The salary provided for them in one of the Schedules will be lower than it is at present, and this has been done because judges of the Supreme Court have been given under article 308 the option of resigning should the salary and conditions of service suggested in the, Schedule not be acceptable to them. I shall discuss this matter when the Schedule is placed before the House. I may, however say that I personally think that the salaries provided for the judges of the Supreme Court are lower than they should be. Our effort should be to attract the best legal talent in our highest courts of justice and the conditions of service therefore should be such as to induce men with the best qualifications and with the highest reputation at the bar to accept judgeships of the Supreme Court. That, however, is not a matter that I can go into any detail at present but my amendment proposes that whatever changes may be made in future they should not affect the pensions that the judges are now entitled to get. The last proviso in Dr. Ambedkar's amendment protects only the judges now holding office. But, so far as the future is concerned, Parliament will have the power to reduce the pension. Considering the present economic situation and also the fact that judges of the Supreme Court will not be allowed to plead or act in any court in the country, I think that, the least that we can do, is to provide that they should not be given a smaller pension than what they are entitled to now. It may be desirable in theory to leave everything in this respect to Parliament, but I think the question of pension is as important as that of salary. If you are not going to allow a judge of the Supreme Court after retirement to practice in any court in India, I think it is only fair that the present pension should not be reduced. It is not very high even at present; it is not very attractive to persons at the bar who enjoy a good practice. But if it is lowered further, there is a danger of making the judgeships unattractive to the best legal talent in the country.

This, Sir, is the justification for the amendment that I have moved. If it is accepted the effect will be to protect the Pensions not merely of the existing but also of the future judges of the Supreme Court in the same manner as their salaries will be protected.

(At this stage Mr. President vacated the chair, which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.)

Shri R. K. Sidhwa: Mr. Vice-President, my attention was drawn by the Honourable President that my amendment has been accepted by my honour-

[Shri R. K. Sidhwa]

able Friend, Dr. Ambedkar as per his amendment No. 77 which he moved against his original amendment in List I No. 2. So far it is all right; but I find from clause (2) that the question of every judge's allowance, privileges, and rights are referred to the Parliament. Now I want this matter to be made, very clear whether Parliament will have the right to give a furnished house to the Chief Justice if this House is not in favour as is indicated from the acceptance of my amendment by the honourable the Mover. May I know whether in contravention of this House's decision when we refer the other matters of allowances to Parliament, would they be in order to pass any kind of law whereby the Chief Justice of the Supreme Court is allowed a furnished house ? Again if you refer to Part IV of Schedule 2, clause (11) relating to provisions as to the Judges of the Supreme Court and of the High Courts, it states :

"The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judges of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty etc. etc."

Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because that complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Pandit Kunzru, and I think there are two valid objections which could be presented to the House for rejecting his amendment. In the first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accrued to him, and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter, I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled. In pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court Judge if he, is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The amendment, therefore,

is premature. If the House accepts the proposition for which my Friend Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhwa : The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar : We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

Mr. Vice-President (Shri T. T. Krishnamachari) : The question is:

"That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104. The following new proviso be added:

'Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the Judges of the Federal Court.' "

The amendment was negatived.

Mr. Vice-President : The question is:

That for article 104, the following article be substituted:—

Salaries etc. of Judges. "(1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

The motion was adopted.

Article 104, as amended, was added to the Constitution.

New Article 148-A

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

That after article 148 the following new article be inserted :—

Abolition or creation of Legislative Councils in States. " 148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting.

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

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

[The Honourable Dr. B. R. Ambedkar]

As honourable Members will see, this new article 148-A provides for two contingencies: (i) for the abolition of the Second Chamber in those provinces which will have a Second Chamber at the commencement of the Constitution; and (ii) for the creation of a Legislative Council in a province which at the commencement of the Constitution has decided not to have a Legislative Council, but may subsequently decide to have one.

The provisions of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

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

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A.—

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution' be deleted;

(ii) to clause (1), the following proviso be added:—

"Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be, discussed in Parliament unless at least 14 days' notice of the same has been given.' "

Sir, I was one of those who was opposed to the formation of Upper Chambers altogether. But, the principle has been accepted by this House when it passed article 148 and we have provided for Second Chambers in some provinces—Madras, West Bengal, etc. Therefore, I welcome this provision which enables the Assemblies to abolish those Chambers. In my amendment, I have only provided that once a resolution under this article is brought before the Assemblies, due notice of it must be given. I have therefore said that no such resolution shall be considered by the Legislative Assembly in any State, nor any corresponding Bill shall be discussed in Parliament unless at least fourteen days' notice of the same has been given. It is quite possible that a resolution may be passed without adequate notice. It may be within the knowledge of Members that some times in Parliament, the order papers are received only a day in advance and it is quite possible that unless a fortnight's notice of such a vital amendment is given, some Members may be absent during its consideration for want of notice. I therefore think that it would be better if this principle is accepted; no harm would be done thereby. In fact, I would have wished that we had not made any provision at all for Second Chambers and left it entirely to the Assemblies to decide whether they wanted to have one. What we have done is, we have provided for Second Chambers and also for their abolition.

I commend my amendment for acceptance by the House.

Shri H. V. Kamath : Mr. Vice-President, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A, the words 'or for the creation of such a Council in a State having no such Council' be deleted."

Sir, the new article which by way of an amendment has been just now brought before the House by Dr. Ambedkar deals with the vexed question of second chambers. It provides that the future Parliament may by law provide for the abolition of the Council in a State which has such a Council or provide for the creation of the Second Chamber where there is none.

The House will recollect that we have adopted article 148, I believe some time during last year in the November or January session of the Assembly, and after the adoption of this article by the House, the representatives of various provinces were called upon to meet separately and decide for themselves whether their province will have a second chamber or not. I now stand before the House as a representative of a province which happily, voted against a Second Chamber.

(At this Stage, Mr. President resumed the chair)

I believe, that of all the provinces in our country, only three, namely, Central Provinces and Berar, Assam and Orissa have voted against the creation of a second chamber in their provinces. The other provinces, I think, have asked for a second chamber. Now, this article which has been brought before us by Dr. Ambedkar seeks to provide for the creation of a second chamber where there is none, of course, if the Assembly of that State decided upon such a course. I personally feel that to this extent this is a reactionary, a retrograde proposal. To provide for the creation of a second chamber where there is none already seems to me to be by no means a progressive measure. We are proud of asserting that ours is a democratic, progressive State. We are now living in the twentieth century when powers of second chambers have been drastically curtailed, where they have not been completely abolished. Even in Great Britain, from whose Constitution we have borrowed so much, the wings of the House of Lords have been clipped to a considerable degree, and the House of Lords today is not what it was twenty or thirty years ago. Here, Dr. Ambedkar wants this House to pass this article which provides that the future Parliament may provide for the creation of a second chamber where there is none. I agree with him in so far as Parliament is empowered to abolish the second chamber where there is already one; but I cannot subscribe to this proposal of his that where there is no second chamber, you might as well create one.

What after all are the arguments for the creation of second chambers ? There are three or four main reasons adduced by the protogonists of second chambers. Firstly, there is the force of tradition in some countries. Happily for our country we have no such tradition. The British, for their own convenience perhaps, introduced this system of second chambers and I hope with the quittal of the British this system also will leave our shores. There is no tradition so far as our country is concerned. There is another reason given *i.e.,* for the adequate representation of interests not sufficiently represented in the Lower House. In this Constitution we have already dispensed with any special representation in the Lower House which obtained in the Government of India Act and earlier enactments. We have provided for a uniform mode of representation and from this new standpoint there is no reason whatever for the creation of second chambers. Another reason given is that it is a check on hasty legislation. Do we really want checks now a days at all ? After all we are well aware that legislation in the modern world is a very cumbrous and elaborate affair—in a democratic world I mean—and a very dilatory process at times. Every Bill has got to pass through various stages, the introductory stage, select committee stage, second reading, third reading, etc. and so many months lapse. We have already experience in this House sitting as Parliament that some Bills have taken as much as more than a year for their enactment and during this period which is prolonged to one year or so, the public at large—not only the House—have got adequate time at their disposal

[Shri H. V. Kamath]

to reflect on the Bill. So there is no necessity for any check on hasty legislation because in a democracy legislation is always well thought out and deliberated upon and has to pass through many stages before a Bill becomes law. Then there is also a fourth argument *viz*., it is a sort of protective armour for the vested interests. We certainly are not going to allow vested interests to influence our economy and to that extent I feel the creation of second chambers is a retrograde proposal. In short, I feel that the second chamber is either superfluous or pernicious as the French politician-philosopher Abbe Sieyes once observed : he said that "if the second chamber agrees with the first chamber it is superfluous and if it disagrees with the Lower House, then it is pernicious." In either case to my mind there is no case whatever for the creation of second chambers and therefore, I plead with this House that this part of the proposed article 148-A which provides for the 'creation of second chamber in a State where there is none may be deleted and the article without that portion be adopted. I move therefore Amendment No. 86 of List III (First Week) and I hope that the House will see its way to accepting the same.

Shri R. K. Sidhwa : Mr. President, the amendment in my name reads thus:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A, the words 'of the total membership of the Assembly and by a majority of not less than two-thirds' be deleted."

The object of this amendment is to delete the words in the original article as proposed by Dr. Ambedkar to the effect "of the total membership of the Assembly and by a majority of not less than two-thirds". My amendment seeks to say that if a bare majority states that there shall not be a second chamber it shall be accepted. When we passed this article 148 the decision was taken in a rather peculiar manner. It was left to the group or each province to decide. The House as a whole did not decide for each province; but whatever that may be the decision has been taken and I am glad therefore that the new article has been added with the object that if the Parliament decides that a second chamber is not wanted, they need not operate upon article 148 which we have passed.

In the country it is the opinion that in the provinces there should not be second chamber and I am very glad that the Drafting Committee has taken note of it, but I am also sorry that they have not got courage to scrap article 148. If they had done so, it would have met the wishes of every one. The second chamber is again a great addition to our finances and it is not in the interests of the country at the present stage to add to our finances which are in a peculiar—I do not use any other word—condition today. Therefore while welcoming this amendment I do not want to fetter the Parliament by two-thirds of the members of the Assembly present and voting or by majority of the total membership. If the members present in the House even by a majority are against the second chamber it will be nullified by the total number of members of the House. I therefore contend that if it is the desire—and it is very clear from this additional article that has been brought by the Drafting Committee that then own views are changed because they are also flabbergasted as to what should be the composition of the second chamber and they could not come to any decision and so they felt 'Throw it to Parliament and let it decide what it likes.' All right, that is the lesser of the two evils. I am prepared to accept it because the House has accepted 148 and we do not want to change the article already passed by the House. It will be a bad precedent. But I do not want them to fetter the Parliament. If the House takes interest, six hundred members will be present; let them decide. Why insist upon two-thirds majority of the total members ? It is very clear that you are not now as strong

as you were before for the second chamber. I can understand second chamber for the Centre. It is very useful and needed. I am in favour of it because all India Bills will be passed and a second chamber is needed; but in the provinces it is an old anachronism and I feel that it should not exist and therefore my amendment seeks that by a bare majority if the House desires that the second chamber should not be there, it should not be there, and it should not be two thirds majority of the total number of members. With these words I move the amendment.

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

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, for clause (3) of the proposed new article 148-A, be deleted."

Sir, I could not understand why this clause was being added. The explanation that has been given now, that it is to facilitate the procedure that might be required for abolishing or creating Second Chambers, has not convinced me of the utility of this clause. Already provision was made in clause (2) of article 304 that :

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose."

and so on.

In the first instance, I do not see that there is much difference between this provision in clause (2 of article 304 and the one now proposed, except that in article 304, a Bill was to be initiated by the Legislature of the State, and then a majority of total membership was required, and then ratification by Parliament by a majority of total membership was needed. What is desired now is that a resolution instead of a Bill has to be passed by the State Legislature and it should have the majority of total membership, and then again, "law of Parliament" by a bare majority instead of "ratification by a majority of total membership". That is the difference which is now sought to be introduced.

Now, with this clause, we are, I must say, opening out large discretion for the Parliament or for the party in power to use this procedure capriciously, and at any time that it likes. Why should this be left to the whims and caprices of the party that whenever it sees that the Legislative Assembly is suitable to it, it might eliminate or abolish the Second Chamber, and whenever it seems that it is not desired, or when it seems that the Legislative Assembly is not prepared to co-operate with it, then it might create a second chamber so easily as is sought to be done now by a bare majority ? Even if the procedure now laid down in the fresh article 148-A be taken up, that the Bill should be passed by a bare majority, even then, this could be a substitute for clause (2) of article 304, and there is no need for putting this clause (3) that it shall not be considered as an amendment of the Constitution. In my opinion, we should not allow these changes to be made so easily. Once a second chamber is created, it should not be easily abolished. Therefore, my amendment before the House is that clause (3) of this article be omitted, that it should not be left to the discretion or caprice of Parliament to create or abolish it at any time that it likes, this part of the Constitution.

Dr. P. S. Deshmukh (C.P. & Berar: General) : Mr. President, Sir, I support the point of view that has been urged by several Members before me, that the provision for second chambers in the States is completely out of date and an anachronism. However, we have to take notice of the fact that certain States have already been given second chambers. Now the question is whether we should legislate and have an article in the Constitution for either

[Dr. P. S. Deshmukh]

the abolition or the creation or introduction of second chambers in the remaining States also. As has been pointed out by Sardar Hukam Singh just now, there was already contemplated a provision in the Draft—article 304 clause (2), by which it was possible to consider this question at a later stage, both by the Legislative Assemblies of the States and then after it was considered by them, a recommendation was to come before Parliament. Now, in addition to the various reasons that have already been advanced by my Friend Mr. Kamath, Mr. Sidhwa and Sardar Hukam Singh, I would only like to say that there are a few additional reasons why this article should not be incorporated in the present Constitution, and one of the principle reasons which I want to advance is that after all, the provision of second chambers was intended for the safeguarding of vested interests. But while this Constitution is being fashioned here, we are not sitting still. We are as a Government pursuing policies and giving effect to our intentions in various ways. The rulers of Indian States have been removed, zamindaries and jagirdaries are on their way to dissolution, and other vested interests are also rapidly being put into the melting pot. The second chambers were intended for some such so-called stable elements in society—some vested interests—which it was considered would work as a salutary check against radical changes in the Government or the policies of the State which would be more harmful and less beneficial to the State as a whole. But my contention is that there is no such person now who will adequately represent this orthodox or so-called stable elements in the society, these vested interests, which would contribute to the stability of the State. That being so, it is not surprising that when we discussed who should compose the second chamber, who should sit as representatives in these second chambers, we were really at our wist end, and all that we could think of were representatives elected by the various local bodies and Assemblies to be given seats in the second chambers. The municipalities, Local Boards, Gram Panchayats, etc., it was proposed should elect on their own behalf, certain representatives and they it was thought, will be proper members to sit in the second chambers. As a matter of fact, we have not, we will progressively have, none of those special interests to sit in the second chambers, as could be deemed proper and desirable. That being so, I think the proposed provisions in this respect in the present Constitution and the policy that we are pursuing should be considered a little more carefully, and I feel that that consideration will lead the House to the conclusion that there is no room anywhere for second chambers. If this is not acceptable, then I would make a second suggestion and that is that let the evil, be allowed to rest where it is, and it should not be allowed to spread and enlarge, and from that point of view, I support the amendment moved by Mr. Kamath, that there should be no provision for the creation of a second chamber where it does not at present exist. Let there be a provision for the abolition of second chambers, but there should not be any provision for their creation. I hope this point of view would be acceptable because otherwise we would probably be accused of taking away by one hand the powers that we are anxious to give to the masses by the other. It may be' argued that the second chambers have not proved detrimental to the cause of the progress of the people so far and since we have had some experience of the second chamber existing in the last twelve years nobody has very seriously complained against them. But I do not think that would be the situation when we work the new Constitution. I am sure every time they will be used for various purposes that will impede the progress of the nation. The one fact which will make this difference is that we are introducing adult franchise. The composition of our Lower House hereafter is going to be totally and radically different from what we have at the present day and the policy that would be pursued by these representatives sitting in the Legislative Assembly will be considered harmful by a certain set of people. If this set of people happen to be in the second chambers there will be a lot

of impediment, lot of harm to the interests of the masses as a whole. I hope therefore that in any case the evil will not be permitted to enlarge itself and that the provision should be confined only to the abolition of those second chambers which have already been provided for.

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, I would like to accord my support to the adoption of article 148-A. I thought the adoption of this article would have gone a long way to satisfy those of us who were opposed to the introduction of Upper Houses in the provincial Legislatures. But I am surprised to find today that such friends of ours are now opposed to the adoption of this article. We have already adopted article 148 laying down that in the provinces which are mentioned therein there shall be a second chamber. Article 148-A gives even to such provinces the liberty at any subsequent date to abolish those chambers if they consider it necessary and desirable in the light of the experience which they may gain in course of time. This article should, therefore, have been welcome to those friends of ours who were opposed to the introduction of Upper Houses in those provinces which have been mentioned in article 148 as providing them another opportunity to move for their abolition in the Legislative Assembly concerned. This article is good and useful even for those provinces who have not so far decided to have an upper chamber. If subsequently, in the light of the experience gained, they consider it necessary and advisable to have for their provinces Upper Houses this article will enable them to have an upper chamber too and come in line with the other provinces which have decided to have an upper chamber. Therefore, from every point of view the incorporation of this article is a useful one. But I do wish that it were possible for the Honourable Dr. Ambedkar to accept at least one part of the amendment which has been moved by my Friend Prof. Shibban Lal Saksena. In part 2 of his amendment (No. 85) he desires that a proviso be added to this article which runs thus :

> "Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given."

What Mr. Shibban Lal Saksena suggests is nothing very novel. We have already, while dealing with several previous articles, accepted the procedures suggested in this part of his amendment. The resolution relating to the abolition or creation of an Upper House in a particular State is obviously in the nature of an extraordinary resolution and as such it is necessary that such a resolution before being made in the Legislature must be given due notice of. In this connection I would like to draw the attention of my honourable Friend Dr. Ambedkar to article 50 which we have adopted and which deals with the impeachment of the President. With regard to that, we have laid it down that a resolution whereby the President is to be impeached must be given notice of at least fourteen days before the date on which such a resolution can be discussed in Parliament. Article 50(2) says:

> "No such charge shall be preferred unless the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice in writing etc."

Similarly, in article 74 we have laid down a similar condition with regard to the moving of a resolution relating to the removal of the Deputy Chairman of the Council of States. Yet again, under article 77 which deals with the removal of the Speaker or the Deputy Speaker of the House of the People it has been laid down that a resolution demanding the removal of the Speaker or the Deputy Speaker must be given notice of at least fourteen days in advance of the day on which the resolution would be discussed. There are other similar

[Shri Jaspat Roy Kapoor]

provisions in the Constitution which we have already adopted wherein we have adopted the procedure contained in part (2) of Mr. Shibban Lal Saksena's amendment (No. 85). It may be said that it is not necessary to provide such a safeguard in this article because even if a resolution to this effect is passed by the Legislature of a State it will have absolutely no effect unless and until legislation to that effect is enacted by Parliament. True, it is so. But then why should we leave a loophole like this ? If by giving only two or three days' notice as an ordinary resolution under the ordinary procedure governing the business of the Assembly of any State such a resolution dealing with this subject on which opinion is considerably divided is brought up and passed by a snatch vote at a time when the House is thinly attended, will it not lead to great squabbles between members of that Legislature? The only remedy open to the losing party will be to approach the Parliament and represent that the recommendation of the Assembly should not be accepted and that no Bill to that effect should be proceeded with in Parliament. Well, Sir, we should not leave such a loophole. We should not fail to make a provision like the one which has been suggested by Shri Shibban Lal Saksena lest we throw open a ground for squabbles and quarrels between the members of any particular Legislative Assembly.

There is no point of principle involved herein, to which my honourable Friend Dr. Ambedkar, should object. I consider that it is necessary and desirable that the suggestion contained in part 2 of Shri Shibban Lal Saksena's amendment should be accepted.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the new article 148-A as moved by Dr. Ambedkar. But I am not in favour of the provision that Parliament may by law provide for the abolition of the Legislative Council where it has such a Council. It is all right to vest it with the power to create a Council in a State where there is no such Council. I do not think that the establishment of a second chamber is necessarily a retrograde step. It all depends on what kind of powers you are going to vest in this body. It also all depends on what kind of members you are going to bring into the Legislative Council. Personally, I feel Sir, that having due regard to the political facts of our life, realizing fully well that for the first time in our political history we are going to have an adult franchise which is a leap in the dark, and which I consider to be a complete subversion of all that is good and noble in Indian life, and which I consider to be dangerous to the stability of the State. I consider the establishment of a second chamber as desirable and useful for all purposes.

Sir, it is utter simplification of politics to say that if the second chamber agrees with the Lower House, it is superfluous : if it disagrees then it is pernicious. These two words "superfluous" and "pernicious" do not exhaust the entire universe of discourse in politics. There are other shades which must be kept in view.

Sir, I shall speak more when I come to article 150.

The Honourable Dr. B.R. Ambedkar : I do not think any reply is called for.

Mr. President : I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

The question is

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A—

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution be deleted;"

The amendment was negatived.

Mr. President : The question is:

"To clause (1), the following proviso be added:—

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A the words 'or for the creation of such a Council in a State having no such Council' be deleted."

The amendment was negatived.

Shri R. K. Sidhwa : Sir, I beg leave to withdraw my amendment.

(The amendment was, by leave of the Assembly, Withdrawn)

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments clause (3) of the proposed new article 148-A be deleted.' "

The amendment was negatived.

Mr. President : The question is :

"That new article 148-A be adopted."

The motion was adopted.

New Article 148-A was added to the Constitution.

Article 150

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

That for article 150, the following be substituted :—

"Composition of the Legislative Councils"

"150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five percent. of the total number of members in the Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe."

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not, go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain a principle which has already been abandoned in tile composition of the Upper Chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now, I must confess, that the Drafting Committee could not come to any definite conclusion as to the

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composition of the upper chamber. Consequently they decided-you might say that they merely decided to postpone the difficulty—to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing sub-clause (2) of article 150. That, as I said, also creates an anomaly, namely, that the Constitution prescribes that certain provinces shall have a second chamber, as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment there is no method of resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved.]

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

"That in amendment No. 5 of List I (First Week) of Amendments to Amendments, in clause (2) of the proposed article 150, for the words 'the qualifications to be possessed for being chosen' the words 'qualifications and disqualifications for membership of the Council' be substituted."

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167, for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to this Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strength of the Council shall not exceed one-fourth or 25 per cent. of the total number of members in the Lower House. It also lays down further in a proviso "Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance we have adopted article 148.....

The Honourable Dr. B. R. Ambedkar: I would ask the honourable Member to read article 167, again.

Shri H. V. Kamath : I am talking of the next point.

The Honourable Dr. B. R. Ambedkar : What about the first point. Do you favour it?

Shri H. V. Kamath : I am not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications.....

The Honourable Dr. B. R. Ambedkar : Both for the Assembly and the Council of States.

Shri H. V. Kamath : In this particular article which Dr. Ambedkar has brought forward today he has thought fit to refer to the qualifications only. Why repeat this and not the other ? I am not convinced of the logic of the argument at all. If Dr. Ambedkar agrees that this article lays down only the qualifications why not then refer to the disqualifications as well ? That disposes of the point which I raised earlier.

On the second point I would only say that this provision regarding one-fourth of the members and not less than 40, might create difficulties in particular cases. We have passed today article 148 which provides that in certain provinces and States which have no second chamber they can have a second chamber if the Assembly of that State is desirous of having a council for the State. Assam and Orissa are provinces which have a population of less than ten millions and therefore the lower chamber will consist of less than a hundred members. According to this article which has been brought forward by Dr. Ambedkar the total number of members in the upper house should not be more than one-fourth and not less than 40. 1 wonder how these two will be reconciled by the wise men of the Drafting Committee. Article 150 as it stood in the original Draft was much better. It merely said that it shall not exceed one-fourth or 25 per cent. of the total number of members in the Assembly of that State without stating what the minimum should be. For as I have already said there are provinces like Assam and Orissa and States like Mysore and others which have acceded to the Union and become a part of India with a total population of less than ten million; The Assembly of those States would contain less than a hundred members. If you want to have a second chamber of not more than 25 per cent. of the lower House and not less than 40 I cannot understand this arithmetic,. It is not the arithmetic which I learnt in school or college; we are devising a new kind of arithmetic—lower or higher mathematics. I hope this difficulty when it arises will be met squarely by the Drafting Committee and a suitable way would be devised for getting out of the difficulty. If it means—I do not know what it means—that irrespective of the strength of the lower House it will not be less than 40, whether it be more or less than one-fourth of the total strength of the lower House, then it will make sense. In that case, I would like to plead that in Orissa, Assam or Mysore which has a lower House of less than one hundred (perhaps eighty or ninety) I do not think that an upper House is called for. The Lower House itself is seventy or eighty and I do not think we should have an Upper House of 40 members. Therefore in my judgment this article is not necessary and particle 150 as it stood in the original Draft was a much wiser provision and I move that the original article 150 be considered and the new article rejected by the House.

Mr. President : We had a number of amendments to the original article 150. Does any Member wish to move those amendments which are printed in this additional list ?

Prof. Shibban Lal Saksena : Mr. President , I was surprised to hear the speech of Dr. Ambedkar when he confessed that there was an anomaly in his having to move this amendment. We have provided for second Chambers in the States and yet we are leaving the composition of those Chambers to be divided by the Parliament. I first of all object to the very principle that Parliament should make any part of the Constitution. In fact when we are making the Constitution, we must complete every portion of it. We have laid down that only by two-third majority can it be changed. If the Parliament makes some law it will be changeable always by the majority and there will be no finality to it. I therefore think that leaving anything about the Constitution to Parliament is a very wrong procedure. Then there is no reason why we cannot come to some agreement on this question of the upper Chamber. Once we leave accepted this retrograde step. Let us provide in the Constitution provisions for making these chambers really revising chambers where they can review the working of the lower chambers and

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where they may be able to point out what mistakes the Lower House has made: I think that the original article 150 should be amended in part (2) only. I agree with my honourable Friend, Mr. Kamath, that the number of members in the Upper House must not exceed 25 per cent. of the strength of the Lower House. To have 40 members in an Upper House where the number of members in the Lower House is only 60 or 80, is, I think, a very wrong principle. Clause (1) of article 150 says:

"The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent. of the total number of members in the Legislative Assembly of that State."

I think this should remain and the fixation of the minimum limit at 40 or 50 will be a further retrograde step. For clause (2) of article 150, I want my amendment No. 133 to be substituted, which runs as follows :—

That with reference to amendments Nos. 2268, 2270, 2271, 2272 and 2273 of the List of Amendments, for clauses (2), (3), (4) and (5) of article 150. The following be substituted :—

"(2) Of the total number of members in the Legislative Council of a State—

(a) 15 per cent. shall be elected by an electoral college comprising all the members of the District Boards in the State;

(b) 15 per cent. shall be elected by an electoral college consisting of all the members of the learned professions and specialists in any branch of earning;

(c) 10 per cent. shall be elected by an electoral college consisting of all the persons holding the Bachelor's degree of any university in the State or holding a degree recognised by the Government of the State to be equivalent thereto;

(d) 5 per cent shall be elected by an electoral college consisting if all the members of. the Senates or the Courts of the various universities' in the State;

(e) 5 per cent. shall be elected by an electoral college consisting of all the members of the Municipal Boards in the State;

(f) 5 per cent. shall be elected by an electoral college consisting of all the members of the trade Unions in the State registered with the Government;

(g) 5 per cent. shall be elected by an electoral college consisting of all the members of the various Chambers of Commerce recognised by the Government of the State;

(h) 30 per cent. shall be elected by the members of the Legislative Assembly of the State; and

(i) the remainder 10 per cent. shall be nominated by the Governor.

(3) All elections in clause (2) of this article shall be in accordance with the system of proportional representation by means of the single transferable vote.

(4) the qualifications of voters and other details necessary for the formation of the electoral colleges for the elections mentioned in clause (2) of this article shall be defined by an Act of Parliament."

I want to submit to this House that now that we have accepted the principle of second chambers, the only proper function of the Chambers can be to revise what the Lower Chambers have done and to give them expert advice on problems on which they legislate. Therefore, I think Sir,, that the Upper Chamber must be composed of the intelligentsia of the provinces. Of course, the representatives of the intelligentsia must also be popularly elected. Therefore, I have provided in my amendment for the election of 15 per cent. of the members by an electoral College comprising of members of the District Boards in the State. Every district Sir, has got a District Board which will now be elected by adult suffrage and in these District Boards we shall have the intelligentsia in the rural parts of our districts, and if they allowed to elect 15 per cent. of the members, they will take more interest in their work and they will also be properly represented in the Legislatures. In fact local

bodies have to play a big part in the future Swaraj Government and I therefore think that all these local bodies should be allowed to have a say in the legislation which will govern the provinces. I therefore think that representation for the District Boards is very important and should be provided. Then Sir, come the learned professions and the specialists in any branches of learning, and for these there is 15 per cent. representation in my amendment, this means the professors, doctors, engineers, lawyers, and other professions containing learned men who can think how a particular measure will affect the interests of the State will be adequately represented in the upper House. These learned men will be able to contribute their expert and learned advice which will be of help in revising the legislation passed by the Lower House. Then, Sir, the graduates of universities are given 10 per cent. I think we all realize that today many of the intellectuals in the country are dissatisfied in that the representatives in the legislatures do not generally come from that class and it is important that we should not lose their co-operation. Therefore, Sir, I think that at least in the Upper Chambers, they should be provided for, so, that they can help us with their learning in revising the Acts passed by the Lower House. Then, Sir, the senates and courts are also given 5 per cent. We do want that universities should make a contribution to our future legislation and. therefore they have been provided for. Then, Sir, the municipal Boards in the States have been given 5 per cent. The Municipalities of the provinces will thus have a voice in the State Legislatures and they can put forth their demands and. their needs. Then, Sir, 5 per cent. is given to Trade Unions. Here, Sir, I will point out that in our Constitution we have not given any special representation to labour. We know in India they cannot have popular representation in this manner because the numbers of Trade Unions are not concentrated in any particular areas in any of the States. We are therefore not giving any representation to the members of Trade Unions in the Lower House. Probably, except in Bombay, Calcutta, and some such big centres, labour will not have any big influence in the elections. I therefore think that labour should have some representation in the Upper Chamber. I have given the same representation to the Chambers of Commerce also, so that nobody may complain that we have been partial and they have not been represented. The Assemblies of the States have been given 30 per cent. representation under my Amendment and the remaining ten, per cent. of the members of the Council will be nominated by the Governor so that people who are, specially fitted to help the Council in revising the legislation passed in a hurry in the lower House and rivision may Sometimes, legislation, is, passed, in a hurry in the Lower House and revision may be necessary. If the people in the Upper House-are drawn from all the sections of the State who form the intelligentsia, they will be in a position to discharge their duties satisfactorily. Therefore I suggest that instead of leaving this lacuna of not providing the Constitution of the upper chambers in the Constitution the existence of, which Dr. Ambedkar himself has, admitted, these provisions, may be made in the Constitution regarding the composition of the Upper Houses. I hope this amendment will be acceptable to the House.

Mr. President : Do you wish to move any other amendment standing in your name?

Prof. Shibban Lal Saksena : No, Sir.

Mr. President : I take it that no other amendment is being moved. The amendments and the article are now open to discussion.

Shri Mahavir Tyagi : Sir, I have to make a very small comment on article 150. I have been noticing a tendency which is slightly unfortunate. He have been seen whenever opinions have sharply varied between Members, the tendency

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of the House is to leave things to the responsibility of the Parliament. My feeling is that the Constituent Assembly, by passing this clause as it is now proposed by Dr. Ambedkar, will really shove the responsibility which was really our own.

Now, a Constitution without defining the shape of the Upper House of the States will be extremely incomplete. If we cannot finally decide the issue as to how the Upper Houses in the States will be composed, and from what elements, from what groups, and from which classes of people members would be drawn and by what method. I am afraid, we shall be failing in the task allotted to us. There are so many other important things which we have postponed. The tendency has been to postpone decision on all such points which require wisdom or consideration. Whatever is controversial has finally to be decided by this august House; otherwise, the Constituent Assembly would have no meaning. A Constituent Assembly means that on matters controversial it takes final decisions for good, and that ends all controversy. The more controversial a matter is, the more we are warranted to come to a decision. Constituent Assembly cannot sit every year. I am afraid that by shoving this responsibility on Parliament we are shirking our responsibility and also neglecting our duty. As it is, the article says : "The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe." Parliament could prescribe for everything. Every controversial point could be safely entrusted by the nation to its Parliament. After all, Parliament will also be a quite responsible elected body. But still they have left it to the Constituent Assembly to do the job. We have gone into very minor and frivolous details, about pay and allowances, houses and many other sundry details, which no other Constitution provides for—indeed ours is a unique Constitution which has all the details as if we were enacting some penal code or a civil code. On this basic point of the Constitution, however, namely, the manner in which the Upper House in the States shall be constituted, we are shrinking a decision. This would I am afraid, give an impression that the Constituent Assembly had a vacant mind. After all, having prescribed for the existence of the Upper House, is it not for us to explain the genesis of it? We should have given to the nation an idea, an argument, as to why we sanctioned the constitution of an Upper House in the States. We should have stated that the members of the Upper House will come from such and such classes and we should have thereby given an idea that the Constituent Assembly was of the view when they passed the Act that such and such classes of people should be represented in these Houses so that full benefit could be had from their representation in the Upper House. In the absence of these details I do not know why an Upper House has been suggested at all. I could understand the original Draft; it was on the lines of the Irish Constitution. It had some meaning. Some, classes were given there from the panels of which the Upper house would be elected. We could say that we created the Upper House in various States just to bring in such persons as would otherwise not enter the arena of political fight. For, sometimes political parties and factions degenerate themselves to such a pass that gentlemen mostly learned, those who are men of opinion, do not like to enter into the dirty pool of politics. If we had, chosen to Prescribe details about the composition of the Upper Houses, we could say that they were meant to rope in such elements of the Society as the real intelligentsia men of opinion, who would otherwise not contest the elections. We should have a way of bringing them in and taking advantage of their learning, their experience and their opinion. I can understand the creation of an Upper House to bring in such

elements, and have the benefit of their advice, while the future States make their legislation. But, we have failed to give any hint to the future generation, as to what our motive is in creating the Upper House in the various States. I would therefore request Dr. Ambedkar to kindly throw, some light as to why he has left it ambiguous and why he has shirked this. Dr. Ambedkar is the bravest among us; he faces, all controversies; he is a man of controversy, and a successful man too. Why should he shirk this small matter? I want him to come out with what he has really at the back of his mind in shirking this responsibility, and why the whole composition of the Upper House has been left to the various States.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Sir, I desire to oppose the proviso, to clause (1) of the proposed article 150. This is a most anomalous proviso and almost contradicts the body of clause (1). It is a strange survival of a most anomalous situation arising out of the history of development of this article. This article as it stood in the original Draft Constitution was good, but the Drafting Committee wanted to make it better and then for six months they kept on the agenda an amendment which was to say the least the height of mathematical absurdity. Even up to yesterday the amendment as it stood was highly absurd. It was on sometime during yesterday that the Drafting Committee or some vigilant draftsman was suddenly awakened from a deep slumber of six months and then found there was a serious anomaly and then there was a last minute attempt to repair the mistake and the present article is the result which is, even now, shorn of its mathematical absurdity, highly anomalous. In the draft amendment as it stood yesterday clause (1) was like this :

> "The total number of members in the Legislative Council of a State having such Council shall in no case be more than 25 per cent. of the total number of the members of the Assembly of that State or less than 40."

This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honourable Dr. B. R. Ambedkar: Sir, I rise on a point of order. My Friend is criticising a draft which is not before the House.

Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state of affairs in today's amendment arose.

The Honourable Dr. B. R. Ambedkar : It is not before the Members.

Mr. Naziruddin Ahmad : The draft provided that the number of members of the Legislative Council shall never be more than 25 per cent. and never less than 40. The anomaly was this that in article 149 which we have already passed, in proviso to clause (3) we have provided that the number of members in the Legislative Assembly of a State shall never be more than 500 and never less than 60. Take the minimum 60. If the minimum number in a State is 60, the 25 per cent. rule would mean that not more than 15 members shall be the number of members of the Council but then the later portion of clause (1) of the amendment in question was that it should be never more than 25 per cent., i.e., it would never be more than 45 and never less than 40. The maximum was 15 but the minimum was to be 40. In fact up to yesterday the clause stood like this that the minimum far exceeded the maximum.

Mr. President : Is it any use considering a clause which existed yesterday and which does not exist today?

Mr. Naziruddin Ahmad: Sir, I am coming to my point at once. There has been a last minute attempt to repair the blunder and I ask the House to kindly consider how the matter stands. In clause (1) as it stands today, normally, the number of members of the Council shall not be more than 25 per cent. Confining our attention to an Assembly of 60, according to present clause the number should not exceed 25 per cent. *viz*., 15. Then the proviso says that it shall never be less than 40. The minimum in the proviso is about three times the maximum in the body of the clause. I ask the House to consider the anomaly. Though the mathematical absurdity has been attempted to be repaired, still the practical absurdity remains. What happens is that in a State where the Legislative Assembly consists of 60 members, by virtue of this proviso the number of members of the Council shall be at least 40. The strength of the Lower House is 60 but that of the Upper House would be 40. So there would be an utter disproportion between the number of members of the Legislative Assembly and that of the Council. In fact the great purpose of clause (1) of the present article 150 is to reduce the number of the members of the Council. The great point in reducing the number was that an Upper House must be a small House to be an effective revising House but in comparing, the case of a State having a membership of 60 in the Assembly, the minimum number of members in the Council would be too large. It will be 60 in the Assembly and 40 in the Council. I ask the House to consider the effect of this disproportion in a joint sitting. If there is a joint sitting of the two Houses the Upper House could easily turn down the opinion of the Assembly. I therefore submit that either the minimum number in the proviso should be reduced or it should bear some kind of proportion to the number of members of the Legislative Assembly. As at present it is a survival of an illogical past. 40 is rather too much in many cases and only when the Lower House consists of 160 members the 25 per cent. and the minimum 40 will agree, but if it is less than 160 then the minimum stated in the proviso would be too large. That is why I was trying to trace the history of this anomaly. I submit either the minimum number should be reduced or abolished altogether.

Shri V. I. Muniswamy Pillay (Madras: General) : Mr. President, while I generally agree with the amendment that has been brought before this sovereign body by the Expert Committee, I would like to draw the attention of the makers of this amendment in regard to certain representation of the minorities. The original draft that was presented to us contained abundant provision for such of the communities that may not find a place through the general election and moreover the Governor himself has been given the power of nomination. With the adult franchise and the reservation that have been accepted by this House, a certain proportion of the Scheduled Castes will naturally came to the Assembly and, providing the system of proportional representation by means of the single transferable vote; it was possible for the Scheduled Castes to get a certain percentage of representation in the Council of States. But in this amendment, I may point out, the power of choice and also the fixation of qualifications entirely go to the Parliament the composition of which of course we know and as far as the Scheduled Caste representation in the Council is concerned it is nebulous. So I would like to know from the members of the Expert Committee or rather I would wish to have an assurance from that body that the interests of the Scheduled Castes will not suffer by the acceptance of this amendment, because my only fear is that the reservation that has been fundamentally approved by this House as far as Scheduled Castes are concerned must be given a chance, that these classes should be given a chance to serve in the Councils of the States. I am sure the Honourable Dr. Ambedkar will make this point clear and also assure me that the representation of the Scheduled Castes in the future Councils of the States will be well protected.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, Sir, I find it difficult to congratulate the Drafting Committee or its Chairman on its latest performance with regard to the provision of second chambers. The House is aware that on this specific subject, different provinces were called upon to take a decision as to whether they were going to have second chambers in their respective provinces. Each province met separately. The Members of the Constituent Assembly hailing from each province met separately and came to certain decisions. I think six out of nine provinces came to the decision that there should be a second House,—Bengal, Bihar, United Provinces, Madras, Bombay and East Punjab. That was then decided. But the whole trouble arose over the composition of the second chambers which were proposed to be installed in these Provinces. Sir, it is a very sorry tale that on this matter no decision had been reached in spite of attempts being made more than once, here and elsewhere. On slight points of difference the whole thing was jettisoned. And today what do we find? The Drafting Committee with all its ingenuity has found a way out of this impasse, and that is, they are asking or rather they are authorising the Parliament of the country to settle the composition of these, Chambers. Am I correct, Dr. Ambedkar?

(The Honourable Dr. Ambedkar indicated assent.) Sir, I fail to understand this position. The Drafting Committee say they have chosen the line of least resistance. Yes, they have. But do not forget that you are providing the Constitution of the country, and I have, yet to know a constitution in which the composition of the Council or a Chamber of the Legislature does not find a place. Our Draft Constitution is becoming a bulky volume and containing all manner of provisions, provisions regarding the Secretarial, the Auditor-General, the salaries of High Court Judges and things which should not normally find a place in the Constitution, in my humble opinion. All manner of extraneous matters have been put into this Constitution, but in the matter of composition of legislature which is the back-bone of any constitution—in fact the Government of the country has got to function through the legislature—even when certain provinces have decided that they are going to have second chambers, cannot find it possible to provide a solution. That is really amazing. If we cannot make any provision for it now, what is your prospect of doing it within the next three months in the Parliament? For, before the Constitution comes into effect, you have to decide one way or the other, whether you are going to give any composition to these Councils or not. If the House was minded not to have second chambers, it should have boldly and fairly faced that Situation, and said, "No Second Chambers". One could at least understand that position. When the majority of the provinces of India had decided on second chambers why should you find it so difficult to decide on the composition, and in desperation abandon the idea of making a provision for its composition, in the Constitution? This I cannot understand. I do not at all feel happy over this article. You are only going to postpone the evil day. That is all the advantage you are going to have for the present. But mind you, before the Constitution comes into effect, you have got to take a decision on this; but certainly this Constituent Assembly would have been the best authority to decide on the composition of the Legislature and not Parliament. I therefore, say that this has not been a happy performance. The Drafting Committee should have found a way out as it is not only a question of anomaly, but it has created a lacuna; in any case, it is an unjustifiable and undignified performance.

Prof. N. G. Ranga (Madras: General): Mr. President, Sir, I am sorry to say that I cannot agree with the stand taken by my Friend Mr. L. K. Maitra. I think on the whole, the Drafting Committee has made a wise suggestion, that we should not here and now go into all these details, as to who should be represented within this quota of 25 per cent. in the Upper Chamber and to what extent and so on. I may say that I am not in favour of second chambers, at all. But now that the House has decided to have second chambers, and also,

[Prof. N. G. Ranga]

in favour of giving special representation to certain classes of people or groups of people or categories of people in our society in these second chambers, it is much better to leave these details, and the detailed settlement of this question, to Parliament where we have quite a leisurely procedure, so that it would be possible for the Members to make their suggestions and get due considerations of their suggestions by Parliament.

Secondly, Sir, it is very easy for people to say that such and such groups of intellectuals or urban classes should be represented in the Upper Chamber and it is also equally easy for them to quote a number of precedents from various other countries. But it is very necessary to see that no one class of people comes to be given too much weightage in the second chamber. Already it is a notorious fact that all over the world second chambers have acted more as a reactionary influence and have prevented the passage of progressive legislation in due time. Therefore, we cannot be too careful to see that the second chambers are not loaded, specially with those people who are interested in the *status quo* or who are interested in preventing any kind of progressive legislation of progressive administration being developed and established. Therefore we were in favour of the Statement on page 4 of List III where certain categories of our society have been enumerated.

I think in another place and on another occasion we had a more or less detailed discussion of this particular matter and a number of us had agreed on this proposition that (a) literature, arts, science, medicine, (b) agriculture, fisheries, cooperative cottage industries and allied subjects, (c) engineering, architecture and building (d) social services and journalism, all these should be given this kind of special representation in the upper chamber. But on second thoughts we came to the conclusion that it is better to leave it to be decided by Parliament at a later stage. My honourable Friend, Pandit Maitra, is rather apprehensive that if we leave it to Parliament it might delay the coming into existence of these second chambers. I do not think there need be any such delay at all. Between now and the general elections that are to come next, and also even after the formation of the lower chambers in all the provinces there is plenty of time within which it may be possible for Parliament, to take up this matter seriously and settle all these details, although they are, not such details, as could be disposed of in this House in such a summary fashion as can be done at this sitting. That is why I appeal to my honourable Friend, Pandit Maitra, not to be very particular about his own objections and to be generous enough to agree with us in accepting Dr. Ambedkar's amendment.

Shri T. T. Krishnamachari : Sir, I am afraid the debate over. This particular article on the amendment moved by Dr. Ambedkar has taken the form of a criticism against the Drafting Committee for not having provided a ready-made solution for this problem of representation in, the upper House of the provinces but leaving it to Parliament to decide, this issue. I feel here that there is no need for the Drafting Committee to apologist for not having placed a complete solution other than the one that is contained in the amended article that is placed before the House. In fact it may be that in a case I like this second thoughts are the best, and the Drafting Committee, after having taken into account the opinion of the Members of this House as indicated by the innumerable amendments that have been tabled to the original article 150, thought that they should review the position that they had taken up in the original draft. In fact one of the basic plans in the-scheme envisaged in the original draft was the question of selection of candidates for the upper House by means of panels, a system which was borrowed from the Irish example. But we were led to understand subsequently both from the first-hand experience our Constitutional Adviser who visited Ireland and also from the literature that was made available. To us that the Irish system of electing panels and select members therefrom to represent the country in the Upper House has not passed as successful as it

was originally thought it would. Sir, I would ask members of this House to go through the various amendments to article 150 that are given in the various lists of amendments. Is there any indication, therein of any unanimity of opinion in the manner in which the members of this House want candidates to be chosen or they want the electorate to be created? I think the very baffling nature of the various suggestions made and the fact that no particular suggestion made by any one member has any particular merit as against any other suggestion made by any other member of this House has made us think whether without further and deep investigation it would be worth while asking this House to accept a proposition which has been cursorily decided on and which might in effect defeat the purpose of the creation of an Upper House for the various States enumerated in the previous article.

Pandit Lakshmi Kanta Maitra : But how can you solve the question of the Council of States?

Shri T. T. Krishnamachari : I have the greatest respect for the judgement of my honourable Friend Pandit Maitra with whom I have had the pleasure and privilege of working in the legislature for a number of years. But, I must say that in this instance he has allowed his temper to outrun his usual discretion. Let me here explain that the Upper House of Parliament has to be elected on the basis of representation of States, the Lower House has to be elected on the basis of adult suffrage. The Lower Houses of the provincial legislatures are to be elected on the basis of adult suffrage. This decision does not want any investigation and any great thought; except a decision on the principle all that it wants further is how to delimit the constituencies.

Pandit Lakshmi Kanta Maitra : You could have done that if you had applied your mind; you did not do that.

Shri T. T. Krishnamachari : We had, applied our mind to the end that we only wanted to provide representation for the States; it is the type of representation which is provided for the Upper House in all federal constitutions.

Pandit Lakshmi Kanta Maitra : Your practice has been that whenever there has been any difficulty you pass it on to the future Parliament; you offer no solution.

Shri T. T. Krishnamachari : I do not plead guilty to that charge because I think the honourable Member has not taken into account the difficulties of the Drafting Committee, particularly when the inquiry into the date available was insufficient or that data before us was inadequate to make up our minds. Let me take my honourable Friend who objects to this method of deciding this issue to what happened before the 1935 Act was passed. There was a Franchise Committee, I believe it was the Lothian Committee, and subsequently there was the Hammond Committee, both of which, visited the whole country. They went to every province and in the latter case co-opted members, there; it made detailed inquiries only because even for the Lower House the franchise had to be, decided and for the Upper House also it had to be decided likewise. In the particular instance before us owing to various circumstances for which neither the leaders who guided us nor the Drafting Committee were responsible, we had to depend on our own limited resources to frame proposals for an electorate for the Upper House of the States. And this is a very important matter. I think the generally accepted idea is to have an Upper House which will act only as a revising body, help the Lower House to make up its mind in difficult matters, which will provide that limited amount of delay which is necessary for people to make up their minds or to revise any matter where they have made up their minds already. If the intention is to have a proper type of Legislative council it could only be, created after proper inquiry into facts; and I can say without any sense of guilty or an attempt at an apology that the Drafting Committee or those concerned in the framing of this constitution have not had

[Shri T. T. Krishnamachari]

before them the full data that is necessary for providing a suitable electorate for an upper House and to meet the different circumstances existing in the various provinces. It may be that in the United Provinces some representation for the local bodies, the universities and perhaps the Chambers of Commerce would be thought necessary, whereas similar conditions perhaps do not exist in a province like Madras where the position of the local bodies is undergoing a change and we do not know in what shape or form they will ultimately remain. It may also be that if we provide particular constituencies for electing members to the Upper House the strength of those constituencies will not be the same a few years hence. So it is very necessary that we should not bind down the mechanism for ever by making a provision in the Constitution but must provide for the changes that might be necessary from time to time in the matter of either the electorate for the Upper House or in the matter of qualifications of candidates to be made without the elaborate process of an amendment of the Constitution but rather leave it to Parliament to vary the terms, if and when it is found necessary, by a Parliamentary Act. It has been asked, if that be done, how can the elections for these Upper Houses be held? I think it is a perfectly easy thing to visualise that there will be a time-lag between the promulgation of this Constitution and the elections taking place. The time-lag may be a few months or a year. Within that period the Parliament, which will be this House or its successor will certainly be seized of the fact of providing a proper type of constituency for the Upper Houses, the qualifications of the electors and those to be elected and all that is envisaged in the amendment of Dr. Ambedkar. And an Act of Parliament will certainly satisfy my honourable Friend Pandit Maitra far more than any gerrymandered device that we might place before him at the present moment. That is why we are not placing entire scheme before him today.

I think there is therefore no need for apology. Parliament will in due course ask provincial Governments to submit their own proposals. Prior to the Draft Bill coming up before Parliament the government of the day will perhaps appoint a committee to scrutinise the suggestion of the Provinces. I think the draftsman who has to draft the Bill will have the resources and the initiative to vary if necessary the terms and conditions of representation provided for each of the provinces that want an Upper House. All this can be done at leisure and after an exhaustive enquiry with more care and attention that we can give to it now. The proposal put up by Dr. Ambedkar is the only proper, reasonable and just proposal that can be placed before the House now without making this House commit itself to do something which will not be proper or which has been decided in haste in a haphazard manner.

And what is the amendment of Mr. Shibban Lal Saksena about the claims of which he urged the House to consider? Five per cent. for this group of persons, five per cent. for something else and so on. It looks as though he is trying to make up the total of one hundred per cent. by bits here bits there and bits somewhere else. Even granting that the scheme suggested by him is adequate so far as United Provinces is concerned, it seems to me that it is completely inadequate and out of place with regard to provinces about which I gave some knowledge. Therefore, without any apology I ask this House to accept the amendment moved by Dr. Ambedkar, which I think is the only proper course to adopt in the circumstances.

The question of having an Upper House or not does not come into the picture at this stage. We are already committed to that proposition. We have provided solutions against difficulties arising from the acceptance of this proposition, namely that the various Legislatures of provinces can do away with the Upper House if they choose, and the resolution of conflicts between the two Houses and so on. Having provided Parliament with the power of accepting a

resolution of the Lower House in a state to create an Upper House where it did not exist I think it is only fair that we should give Parliament entire power in regard to varying the composition, and determining the composition of the House in the initial stage. Sir, I support the amendment.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, Sir, I do confess that dealing with these articles regarding the Upper House, not knowing as to what is going to be the composition of the Upper House does put us in some difficulty. We passed article 148 as many of the provinces did agree to the creation of an Upper House mainly depending on the kind and nature of the House and we did it on the assumption that it would be something of the kind based upon the Irish model, a model which was supplied to us by the secretariat of the Constituent Assembly. We were always of the opinion that an Upper House could perform the very good and useful function of being a revising body, and that, while its views may count but not its votes, it should not be a House of vested interests. It was felt that those who could not enter into the rough and tumble of active politics could by their good offices advise the Lower House. Such people could get an opportunity to revise, or amend legislations of the Lower House and would thus be performing a useful function. But, now by these articles, when we leave the entire composition to the future Parliament and yet vote for an Upper House we are actually groping in the dark. I do not agree with my Friend Mr. Brajeshwar Prasad that it is because we are afraid of adult franchise which we consider a leap in the dark that we want to provide for Upper Houses. It was our experience in the Legislative Assemblies that it was useful to have associated in our governmental activities and in our legislative activities such useful people as were doing useful work for the country, people doing social service, service among Harijans or backward classes, some representatives of labour who were not organised or were not to be found in such large numbers as to form a constituency by themselves or members of a co-operative association, men of letters or some such people whose advice would count, who would not be actuated by any motive to with hold any legislation which is good for the nation but whose voice may have a good effect upon us—it was for such an Upper House we voted and not for an Upper House whose nature and composition we do not know. For the moment we know that the present Upper Houses in the various Legislatures are Houses of vested interest as it is people having a certain amount of property qualification and people with large bank balances who are elected to the Upper Houses. Now, when we have left the entire qualifications to the future Parliament, we do find some difficulty when this Constitution-making body is yet required to vote these articles. I do not know if Dr. Ambedkar can give an assurance,—for what his assurance will count—that it will not be a House of vested interests or of people with large properties who would stay any legislation which is necessary in the interests of the country. With these words, I hope that our views expressed in this House will be taken into account in the future Parliament and that an Upper House which will be only of a revising nature, which would be neither pernicious nor useless would be brought into being and that the possession of large properties by persons will not be considered a qualification entitling them to membership of the Upper Houses.

Shri Brajeshwar Prasad : Mr. President, Sir, I am thoroughly opposed to the article moved by Dr. Ambedkar. Professor Ranga characterised this proposal of Dr. Ambedkar as a very wise one. It would have been far better to entrust the entire task of making the future Constitution of India to the future Parliament of India. That would have been the wisest thing on earth. I hope everybody will realise that this is the proper place as it has been convened to frame, a Constitution for India. To ask a Legislature to frame the constitution of an important organ of the State is a mistake.

[Shri Brajeshwar Prasad]

I am coming to the proposal embodied in amendment No. 89. It says:

"The total number of members of the Legislative Council of a State having such a Council shall not exceed twenty-five per cent. of the total number of members in the Assembly of that State."

I do not see any reason why the number of members of the Legislative Council should be reduced. I feel that the total number of members should be equal to that of the number in the Lower House. If the future Parliament is going to be entrusted with the task of allocation of seats, the manner of choosing persons and, the qualifications to be possessed, why not also entrust it to Parliament to determine the total number of members as well? Why fetter the discretion of Parliament in this matter? Personally I am of opinion that the membership should be equal to that of the Lower House, that the Legislative Council should not be nominated body, nominated by the President or the Governor in his discretion. I do not want this matter to be left in the hands of provincial Ministers I agree with my sister, Shrimati Purnima Banerji, when she says that if should not be a House consisting of vested interests. I do not want that the members should come from the capitalist classes or the landlords or the satellites or the, Ministers. I feel that it should be a body consisting of the wise men of the province. The dominant theme of Indian history has been that we have been ruled by wise men. Our law-givers were not legislators, Parliamentarians or democrats. They were wise men. Under the present circumstances it is difficult to find men of the type that have been envisaged in Plato's Republic. But we, can approximate to that idea. We can lay it down clearly in the Constitution that only those persons who are graduates can become members of this Council and, the number of members shall be determined by the President or the Governor in his discretion. They shall be nominated for life. It shall not be a body which would undergo radical changes in composition after every three or five years. I feel, Sir, that having due regard to the political facts of our life, knowing fully well the dangers that confront the State and the elements of instability that are growing up in this country, we have done well in chalking out a line of defence in the measure that we have adopted, namely, that the Governor shall be a nominated person by the President. I feel, Sir, that the Legislative Council should be also a nominated body. This should be a second line of defence. I feel, Sir, that the consideration of this article should be postponed for some time, and before we adjourn, a proper constitution for the Upper Chamber should be determined and decided in this House.

Dr. P. S. Deshmukh : A number of honourable Members of this House have already advanced the plea that it is not proper that such an important item, as the constitution of the second chambers in the States, should be left to Parliament. I also rise to support this point of view. Since our Constitution is a written Constitution, it should be complete in itself and it should not be necessary to have recourse to partial legislation from time to time which will be a sort of supplement to the Constitution that we are passing. I am also apprehensive of the facts that more and more recourse is being had to this device. Wherever we find there is no unanimity or where certain complications arise, we try to throw the burden on Parliament, and this Parliament has then to pass legislation on the particular item which we do not want to tackle here. I feel, Sir, that it would be neither in the interests of the dignity nor respect which this Constitution should have and evoke in the minds of the people, to leave such important matters for future legislation.

So far as this item is concerned, it is bound, after all, to come before this very set of honourable Members sitting as legislators, because unless the constitution of the second chambers is complete I do not think the Constitution can come into force or be really put into practice. That being so, we are

merely playing for time in order to consider and finally approve of an arrangement by which these second chambers would be constituted. There is only going to be a difference of a few months if we make a provision of this kind for Parliament to decide about membership, composition the qualifications of the various Members etc. I think, Sir, this should not be permitted. I feel I must express my dissatisfaction with the way in which we are trying to really undermine the dignity and the position of the Constitution we have been sitting here to frame. As a matter of fact, Mr. T. T. Krishnamachari gave away his whole case when he said that he was not sure as to how the second chambers should be composed : and if that is the state of mind of the members of the Drafting Committee, the more honest method would have been to scrap the second chambers altogether. If the members of the Drafting Committee themselves do not know which interests should be represented in these Houses, and if in spite of two and a half years of deliberation they have not yet made up their minds as to which are the interests which require protection, which are the representatives which are likely to stabilize our Governments in the future Constitution, then it is time that the whole idea of second chambers was given up.

I therefore submit that this is not a very satisfactory state of affairs—that we should talk of having second chambers and yet not know what they should be composed of. On the other hand, we hope somewhat vaguely that after a lapse of two months we shall come across some brain-waves by which we should know what should be done with regard to qualifications for members sitting in second chambers. I do not think this is in keeping with the dignity of the House nor of the Constitution that we are framing.

The Honourable Dr. B. R. Ambedkar: Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand ‘that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority, of the Lower House. That I think. completely disposes of the first point of comment raised by my honourable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honourable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why

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should you leave it to Parliament? How can it be left to Parliament? I think the answer that I can give to him, at any rate, so far as I am concerned, is ,quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a ,constructive proposal for the composition of the Upper House in the Constitution itself. If my honourable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which Is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated, from all blame that might be attached to it by reason of not having made any effort to solve this difficulty; they did try, but they did not succeed. My honourable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers ,of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath : Is Dr. Ambedkar sure that Parliament will be presented with less multiplicity?

The Honourable Dr. B. R. Ambedkar : If my honourable Friend will give me time, I will reply to that part also.

My honourable Friend Pandit Maitra, said : How is it conceivable that a part of the Constitution of so important an institution as the Upper Chambers could be left to be decided by Parliament and not be provided in the Constitution ? I think my honourable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Centre. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Centre, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honourable Dr. B. R. Ambedkar : Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with the various provincial

Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via, media* which might be put into law. Therefore, in putting forth this proposal I think we are not making any very serious departure from the principles we have already adopted and as my honourable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

Mr. President : I confess to a sense of disappointment at the Drafting Committee not being able to find a solution for this question. (Some honourable Members : Hear, hear). It is an important matter in the Constitution that the composition of the Chambers of the legislature should be laid down definitely and I should have thought that it would be possible to come to some conclusions which would be acceptable to the House as a whole, but unfortunately that has not happened. I do not blame the Drafting Committee for it. As Dr. Ambedkar has pointed out, there has been such a jumble of amendments suggested so many view-points put forward, that they find it impossible to reconcile all these and they take the line of least resistance of putting it off till the Legislative Assembly meets and decides the question. If it is at all possible, I would at this late stage suggest that the question might be referred back to the Drafting Committee. (Many honourable Members : Hear, hear). The Drafting Committee could make another attempt to solve this question and bring before this House a resolution of this problem; but it is, of course for the House to decide. I leave it to the House to decide.

Pandit Govind Malaviya (United Provinces: General) : I move, Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal,

The Honourable Dr. B. R. Ambedkar : I have no objection. We can have another go at it.

Mr. President : Then I take it that Members are agreed that this article should be held over.

Honourable Members: Yes.

New Article 163-A

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

"That in amendment No. 12 of List I (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted:—

'163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff :

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both House of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council. as the case may be, make rules. regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.' "

This article is merely a counterpart of article 79-A which we considered this morning.

Shri Brajeshwar Prasad : I am not in a position to move any of the amendments standing in my name.

Shri H. V. Kamath : Mr. President, Sir, I do not propose to speak on the amendments which I am formally moving before this House. I would only like to remark in passing that I have noticed today an unfortunate tendency on the part of Dr. Ambedkar not to reply to points of substance raised in the course of the debate. Of course, he is free to act as be likes. I would only request him, in fairness to Members who raise points of substance, that he might at least attempt to answer them. Whether he would answer them satisfactorily or convincingly is another matter; but the House is entitled to this much from him. Honourable Members who raise points of substance that he might at least know the point of view of the Drafting Committee. In articles 79-A and 148-A, points of substance were made out by various amendments by my honourable Friend, Prof. Shibban Lal Saksena and myself. But when his turn came, Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honourable Dr. B. R. Ambedkar : I said no reply was called for.

Shri H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the fore-knowledge of the fact that when he says, 'yes' he will carry the House with him. It is of course up to him to decide what he will reply to and what he will not. But, the House is entitled to hear his view. If he is too, tired, too fatigued, he may ask one of his wise colleagues.....

The Honourable Dr. B. R. Ambedkar : Who is to determine whether the points are points of substance ? If the President gave a ruling that the point is one of substance, I should certainly reply, I cannot leave the matter to be determined by Mr. Kamath himself.

Shri H. V. Kamath : You, Sir, are following the wise ruling laid down by you that the amendments which did not raise points of substance would not be allowed by you.

Mr. President : Are you moving the amendments ? What are you discussing now ?

Shri H. V. Kamath : I am moving them. Before doing so, I would like to say that when an amendment is allowed to be moved by you, it means under the rules we have made recently, that it has a point of substance. Any way, I move amendments numbers 92, 94, 96, 97, 98, 99 and 100 of List III (First Week). I do not think I should take the time of the House in reading the amendments. If you want, I shall read them.

Mr. President : Not necessary.

Shri H. V. Kamath : They are more or less on a par with the amendments that I moved earlier today, I formally move these amendments and commend them for the careful consideration of the House.

I move.

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of, the proposed: new; article 163 A, for the words 'be construed as preventing the word 'prevent' be substituted.

That in amendment No. 48 of List II (First Week) of, Amendments to amendments, in clause (2) of the proposed new article 163-A for the words recruitment, and the, conditions. of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, inclause (3) of the proposed new article 163-A for the word 'or' occuring in line, 4 thereof, the words 'and, where necessary,' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to amendments, in clause (3) of the proposed new article 163-A, the words 'as the case may be' be deleted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the, proposed new article 163-A, for the words 'recruitment, and the conditions of service of persons appointed to, the words 'recruitment to the salaries and allowances. and the conditions of service of' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'the Assembly or the Council' the words 'the House or each House of the Legislature of the State' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

Shri Lakshminarayan Sahu : (Orissa: General) : *[Mr. President, Sir, I move :]

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10-7-1949, the following proviso be added to clause (2) of the proposed new article 163-A :—

'Provided that the Governor may, in consultation with the speaker or the Chairman, as the case may be, by rule require that in such cases as may be specified in the rule no person not already attached to the House of the Legislature shall be or to either House appointed to any office connected with the House, or any of the Houses of Legislature, save after consultations with the State Public Service Commission.' "

Mr. President : How does this amendment fit in with the article as it has been now moved?

Shri Lakshminarayan Sahu : I want the following proviso to be added to clause (2) of the proposed article 163-A. Clause (2) says : "The legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of the House or Houses of the Legislature of the State."

*[I wish the following proviso to be added :—

"Provided that the Governor may, in consultation with the, Speaker or the Chairman. as the case may be, by rule require that in such cases as may be specified in the rule, no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House or any of the House of Legislature save after consultation with the State Public Service Commission."

In this connection I want to say that we have made a provision for, the Public Service Commission in order that fairness may be observed in regard to the services. We should ask for advice of the Public Service Commission in the matters relating to all the services. It would not be proper to entrust other people with this work. The Public Service Commission has not yet gained in our country the same status as it has in other countries, where there are democratic institutions. In the Dominion Parliament we do not accept the suggestions of the Public Service Commission as much as we ought to. It only recommends whether we can employ a candidate or not. But in countries like Canada and South Africa, Where the democratic form of government is prevalent, the Public Service Commission has great powers. Therefore I want that whatever action is taken in this respect, it should be on the recommendation of the Public Service Commission. Appointments should be made after consulting them. So long as we do not do this in a clean way, there will always be the doubt that there has been something wrong with the appointments. It is heard from all quarters that the recommendations of the Public Service Commission are turned down and different appointments are made. Therefore I think that this healthy proviso will

*[ ] Translation of Hindustani Speech.

[Shri Lakshminarayan Sahu]

help to improve matters. I have, nothing more to add in this connection but I would like to point out that I seek to insert this proviso in this place while it is given as No. 149 in the printed List of Amendments.]

Mr. President : Does any Member wish to say anything?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything ?

The Honourable Dr. B. R. Ambedkar : No.

Mr. President : I will then put the amendments to vote. The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of the proposed new article 163-A, for the words 'be construed as preventing' the words 'prevent' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of" be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10-7-1949, the following proviso be added to clause (2) of the proposed new article 163-A:—

'Provided that the Governor may, in consultation with the speaker or the Chairman as the case may be, by rule that in such cases as may be specified in the rule, no person not already attached to the House-or to either House of the Legislature shall be appointed to any office connected with the House or any of the Houses of Legislature, save after consultation with the State Public Service Commission.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new. Article 163-A, for the word 'or' occurring in line 4 thereof, the words 'and where necessary,' be substituted."

The amendment was negatived.

Mr. President : The question is

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, the words as the case, may be deleted."

The amendment was negatived.

Mr. President : The question is

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of be 'substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the Proposed new while 163-A, for the words 'the Assembly or die Council' the words 'the House or each House of the Legislature of the State' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 48 of List II (First Week) of Amendments in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

The amendment was negatived.

Mr. President : I put the article 163-A as moved by Dr. Ambedkar to vote.

The question is:

"That New Article 163-A, do form part of the Constitution."

The motion was adopted.

New Article 163-A was added to the Constitution.

Article 175

Mr. President : Shall we take up 172 now ?

The Honourable Dr. B. R. Ambedkar : We shall keep it back for the moment.

Mr. President : Shall we take up No. 175 ?

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

Shri H. V. Kamath : What about 127-A ?

Mr. President : That will come up along with 210.

Let us take up now 175. Them are some amendments to it.

(Amendments Nos. 16 and 17 were not moved.)

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

that:

"That for the proviso to article 175 the following proviso be substituted :—

'Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.' "

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right of return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore the new proviso deletes the word 'In his discretion'. Similarly it is felt that this right to return the Bill should not be

[The Honourable Dr. B. R. Ambedkar]

extended to a money Bill and consequently the words 'if it is not a money Bill' are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be made use of in all cases even where the Legislature of a province is bicameral.

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one and I hope the House will accept it.

Mr. President : I have notice of some amendments which are printed in the Supplementary List. Does any Member wish to move any of the amendments ? They are in the names of Shri Satish Chandra, Shri B. M. Gupta and Prof. Shibban Lal Saksena.

(The amendments were not moved.)

Does any Member wish to speak on this ?

Honourable Members : Yes.

Mr. President : Then we shall have discussion, but no amendments on this.

Shri Satish Chandra (United Provinces : General) : Sir, whether I move my amendment to this article or not, depends on the shape in which article 172 emerges from the House. But article 172 has been for the present held over. There is no amendment to first paragraph of this article, and only one to the proviso has been moved by Dr. Ambedkar. So I may have to move my amendment to bring the language of this article in line with article 172, or the Drafting Committee may consider this point.

Mr. President : We shall consider that matter on Monday next. The House now stands adjourned till 9 o'clock on Monday. From Monday we propose to sit from 9 a.m. to 1 p.m. instead of from 8 a.m. to 12 noon.

The Assembly then adjourned till Nine of the clock on Monday, the 1st August, 1949.