

Mr. President : I will put the amendments, one by one, to vote.

The question is :

“That for sub-clause (d) of clause (1) of article 83, the following be substituted :—

‘(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.’”

The amendment was adopted.

Mr. President : Then there is the amendment of Mr. Kamath No. 1585. But that does not arise now after accepting Dr. Ambedkar’s amendment.

There is then Mr. Gupta’s amendment No. 1587, that the word “and” should be deleted. Or has it to be substituted by “or”?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted “and” or substitute ‘or’ for ‘and’.

Mr. President : The question is :

“That the word ‘and’ occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted.”

The amendment was adopted.

Mr. President : Then there is Prof. Saksena’s amendment No. 1590.

Prof. Shibban Lal Saksena : Sir, I request leave of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is then No. 1589, in the name of Mr. Naziruddin Ahmad.

The question is :

“That sub-clause (e) of clause (1) of article 83 be omitted.”

The amendment was negatived.

Mr. President : These are all the amendments. I will not put the article.

The question is :

“That article 83, as amended, stand part of the Constitution.”

The motion was adopted.

Article 83, as amended, was added to the Constitution.

Article 84

(Amendments Nos. 1609 to 1618 were not moved.)

Mr. President : The question is :

“That article 84 stand part of the Constitution.”

The motion was adopted.

Article 84 was added to the Constitution.

(Amendment No. 1619 was not moved.)

Article 85

Mr. President : The motion is :

“That article 85 form part of the Constitution.”

(Amendments Nos. 1620-1624 were not moved.)

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

“That in clause (3) of article 85, for the words ‘as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution the words ‘as were enjoyed by the members of the Dominion Legislature of India immediately before the commencement of this Constitution’ be substituted.”

Sir, my knowledge of the various Constitutions is not as vast or as profound as that of Dr. Ambedkar, but relying on my meagre knowledge of these constitutions, I venture to state that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the constitution of another State. I see no valid reason why this should be done. It may be that the rights and privileges which we are going to confer upon the Member of Parliament of free India will be identical with, or more or less similar to, those enjoyed by the Members of the House of Commons in the United Kingdom. But may I ask, Sir, in all humility, “Is it necessary or is it desirable when we are drafting our own Constitution, that we should lay down explicitly in an article that the provisions as regards this matter will be like those of the House of Commons in England?”

It may be argued in support of this proposition that there is nothing derogatory to the dignity of our Constitution or of our State in making reference to the United Kingdom. It may be further reinforced by the argument that now that we have declared India as a full member of the Commonwealth, certainly there should be no objection, or any sort of compunction in referring to the House of Commons in England. But may I suggest for the serious consideration of the House as to whether it adds—it may not be derogatory, or detract from the dignity of the Constitution—but does it add to the dignity of the Constitution? We say that such and such thing should be what it is in the United Kingdom or in America. Will it not be far better, far happier for us to rely upon our own precedents, or our own traditions here in India than to import something from elsewhere and incorporate it by reference in the Constitution? It is not sufficient to say that the rights and privileges and immunities of Members shall be such as have been enjoyed by the Members of the Constituent Assembly or Dominion Legislature just before the commencement of this Constitution? Personally, I think, Sir, this would be far better. I venture to hope that my honourable Friends in this House will be inclined to the same view that instead of quoting or citing the example of the United Kingdom it would be far better for us to rely upon the tradition we have built up here. Surely, nobody will dispute the fact that the privileges and immunities enjoyed by us here today are in no way inferior to, or worse than, those enjoyed by members of the House of Commons in the United Kingdom.

As a matter of fact, I think most of us do not know what are the privileges of the member of the House of Commons. We know very well what our privileges at present are. Therefore, Sir, it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries.

With these words, I commend this amendment for the consideration and acceptance of the House.

(Amendment No. 1626 was not moved.)

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, I beg to move :

“That in clause (4) of article 85 after the words ‘a House of Parliament’ the words ‘or any committee thereof’ be inserted.”

After the insertion of these words clause (4) will read thus :

“The provision of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

The object of any amendment is to bring clause (4) in conformity with clause (2) of this article. According to clause (2) a member of Parliament is immune from any proceedings in a court of law in respect of anything which he may speak on the floor of the House and also in respect of whatever he may say in a committee of the Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a committee of the Parliament. I see no reason why this privilege should be restricted in the case of a non-member of Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. Generally I think we shall be calling in the assistance of experts to give us the benefit of their experience and knowledge on technical subjects. Often members of the learned professions and technical experts would be invited by sub-committees of the Parliament to give evidence before it, so that right decisions on important subjects may be reached. That being so, I think it is very necessary that whatever is said either in evidence or otherwise by persons who are invited by the sub-committees of Parliament to speak before them, whatever they say, must also be privileged. This is an important omission and hence my amendment which I hope would be readily accepted by the House.

(Amendments Nos. 1628 to 1630 were not moved.)

Prof. K. T. Shah : Sir, I move :

“That after clause (4) of article 85, the following new clause be inserted :—

- (5) In all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.’ ”

Sir, this is a simple proposition well known in constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority.

I am enunciating no new proposition that, by virtue of this Constitution, every House of Parliament should be the sole judge of its collective privileges as well as the privileges of its members, whatever they are; and that any breach of such privileges should be dealt with by the House concerned similarly, any sentence passed also shall be executed by its own officers or under its authority. Sir, I commend the amendment to the House.

Mr. President : The article and the amendments thereon are now open for discussion.

Prof. Shibban Lal Saksena : Sir, I wish to oppose the amendment moved by my honourable Friend Mr. Kamath. He said that instead of the privileges of the members of the House of Commons in the British Parliament we should enjoy the privileges of this Dominion legislature of India. So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted. Yet I do feel that

[Prof. Shibban Lal Saksena]

reference to the privileges enjoyed by the members of the House of Commons in our Constitution would not be desirable. Many members do not know what those privileges are. I, therefore, suggest that the learned Doctor who is in charge of the Draft Constitution should append some appendix containing the privileges of members of the House of Commons and those should be our privileges too. It may be a long appendix no doubt, but many Members are not aware of these privileges. Also it will not be proper for us to refer in our constitution to privileges of members of House of Commons which are liable to change. We can give ourselves these privileges as they exist at a particular point of time. The Parliament will of course have the power to frame its privileges but until it frames these privileges, Members should enjoy the privileges enumerated in the proposed appendix. We must therefore define the privileges enjoyed by the members of the House of Commons and put them as an appendix to our constitution, so that Members will know what these privileges are. I hope Mr. Kamath will not press his amendment in the present form which will only mean the nullification of all privileges of the members of this House for several years to come.

I want to draw attention to one other aspect of clause (2) of article 85, which says :

“No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.”

The privilege is given only in respect of publication “under the authority of either House of Parliament.” This is a very important thing. About ten or fifteen years ago an honourable Member of the Central Assembly, Pandit Krishna Kant Malaviya, had made a speech in the House which was suppressed by the papers but he published his speech in his paper at Allahabad. Prosecution was launched on the ground of this publication. If I make a speech and the Government sees that it is not published in the press and I publish it in my own paper I may become liable to prosecution. Whatever I speak in the House should be privileged. If the public is not to know what I said here, I cannot discharge my duties to the electorate which has chosen me. I want the privilege which is qualified in this clause to be absolute so that whatever is spoken in this House may be published in any paper and people may know what has been said here. In fact all that is said here will be published in Government publications and will be available to the public but very few people can read them. It is very important that journals and newspapers should have the privilege of publishing all that is said here. Sir, if any member of the House abuse his privileges as a member, the House has the power to remove him from the House. I do not think that any fear of abuse of such privileges need prevent us from granting such rights to members. If the President finds that any member is abusing his rights and privileges he will check him and expunge objectionable passages from his speech. I hope the learned Doctor Ambedkar will see that the privileges of the members are made absolute with reference to publication of their speeches both inside and outside and not confined to publications by or under the authority of Parliament. This is a matter of great importance to the Members.

Shri H.V. Kamath : A word of personal explanation, Sir. I may tell my honourable Friend Prof. Shibban Lal that the acceptance of my amendment will not be tantamount to no privileges. I may remind him that under the rules of procedure which this House sitting as the Legislature has tentatively adopted, there will be a Committee of Privileges which will go into the matter and define the various privileges of Members of the House.

Mr. Naziruddin Ahmad : I wish to draw the attention of the House to certain aspects of article 85. It deals with the privileges and immunities of Members. The first clause says that there shall be freedom of speech in Parliament. The second clause says that publication is also privileged provided it is a publication by or under the authority of either House of Parliament. It does not cover publication of speeches by the press outside. I think the right of a Member to speak anything in the House must be guaranteed—subject of course to the rules of procedure and the ruling of the President or the Speaker. It is very desirable that the speeches made in any of the Houses which are not objectionable and are not ruled out by the Speaker or the Chairman should also be fully published outside also without the authority of the Houses of Parliament. I submit that the freedom of the Press is a very important item among the rights of the people. If anything could be published by or under the authority of the House, the Press should have freedom to publish it. It is essential that the Press should be able to publish the proceedings of the House and also offer fair comments on them. It is somewhat anomalous that the Press could not publish what can be published by the authority of the House. This is a lacuna in the Draft Constitution which requires careful consideration.

With regard to clause (3) of the article I may say that the provision is vague. The privileges and immunities it provides for are of the vaguest description possible or imaginable. This clause has been bodily lifted from the existing Government of India Act enacted in England where the rights and privileges of the Members of the House of Commons are known and they have quite properly referred to them. I submit that, after Independence, we cannot relate our rights to those available to the members of the House of Commons. We should have our rights clearly and specially defined. In fact, the privileges of the Members of the House of Commons are not statutory. They are embedded in the Common Law to be found in the text-books which are many and also in case law which are scattered in many places. No one can tell us what the privileges are. Sir, to give Members here privileges similar to those enjoyed by the Members of the House of Commons is to give the Members practically no privileges at all. If a Member who wants to move about in his constituency desires to know his rights, he will have to take the help of an English attorney or Counsel to enlighten him. The Members of the House of Commons have freedom from arrest while going to or from Parliament and while doing work connected with Parliament. What about the many other undefined rights? These should all be defined and not left vague as at present. I suggest that at the end there should be added a Schedule defining the rights pending the House of Parliament making adequate laws in this respect. I submit we cannot leave the matter like this here.

As regards the amendment moved by Mr. Jaspat Roy Kapoor, I think it should be accepted. He wants to insert the words 'or' any committee thereof in clause (4) after the words 'a House of Parliament'. These words are there in clause (2). This is a vital clause. The rights and privileges of Members should not be left to be ascertained from next-books on English law. They are no longer applicable to us. These should be specially and clearly defined as suggested by me.

Dr. P. S. Deshmukh : Sir, I am constrained to express considerable sympathy with the point of view that the privileges should not be left vague as is now being done. The privileges of the Members of Commons are well understood and well defined and so there should be no difficulty in enumerating them in a Schedule. I think it is not very satisfactory to say that the privileges shall be that of such and such a person in such and such a place either the privileges are definite or they are vague. If they are well-defined

[Dr. P. S. Deshmukh]

and definite there should be no difficulty in stating them *in extenso*. If they are vague and indefinite it is wrong to console ourselves with a mere reference to such a thing. To say that the privileges shall be those of the members of the House of Commons in England is certainly vague. There is no use merely referring to some exterior body and the privileges enjoyed by that body or its members. It is better to make an effort to specify and define those privileges. Moreover, Sir, there should not be any difficulty in saying "as defined in the Schedule" and then set out the privileges actually in that schedule. I think, Sir, this point of view has considerable force and I hope my honourable Friend, Dr. Ambedkar, will oblige the House by finding a suitable solution for this. This article is most important and I am sure we will not allow it to be passed in a hurry because it embodies the privileges and rights of the members of Parliament.

So, far as the publication of the reports is concerned, I would like to support the point of view that has been raised by my Friend, Professor Saksena. We know the efficiency with which our printing office prints the official reports. If the members were entirely to depend or even the press were entirely to depend upon the speeches being published in the official reports, there would be nothing known outside the House of the happenings inside the House for months to come. That is the situation which actually obtains now. In spite of all efforts, we have not been able to rectify or remedy this state of things. So, I think that the privilege ought to be embodied somewhere, so that so long as a particular speech has been made in the House, there is no offence committed if it happens to be published in the papers.

These are two points of view which deserve consideration and I hope Dr. Ambedkar will feel inclined to agree with me.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges, unless they

went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no *infra dig* in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a bodge of sefdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

Shri H.V. Kamath : On a point of clarification, Sir, may I ask my honourable jurist Friend Mr. Alladi Krishnaswami Ayyar whether the Constitutions of Canada and Australia to which he has referred, whether those constitutions in providing for this matter which is under discussion make direct reference to the Constitution of the U.K. and the House of Commons in the U.K.?

Honourable Members : They do.

Shri Alladi Krishnaswami Ayyar : I said both in the Canadian and in the Australian Constitutions. The Canadian was earlier and the Australian was later. With regard to the Canadian constitution it was felt that there might be a lacuna and they had to pass special legislation in regard to committee procedure there.

Shri H.V. Kamath : I could not hear, but I suppose that does not matters.

Mr. President : In the Australian Constitution there is a direct reference to the House of Commons of the United Kingdom :

Section 49.—The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the Committee of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Practically the same words are used here.

Shri Jagat Narain Lal (Bihar : General) : Sir, I want to speak with regard to clause (2) as I have not been able to share the point of view expressed by Mr. Naziruddin Ahmad and some other friends. I feel that so far as the members of parliament are concerned, clause (2) seeks to give them two privileges or immunities. One is with regard to vote and the other is with regard to the speech which they may deliver in the Parliament and which might be published under the authority of the Parliament. My friends want further immunity. They want that the member who has delivered a speech in the parliament should have a further immunity, should have the right and privilege of publishing their speech outside in the Press. That may relate to the freedom of the Press, but that does not pertain to the freedom of the member so far as his speech or his vote in the parliament is concerned. I think that is stretching a point too far and it is neither fair nor proper. If a member, for example wants to deliver a speech in the parliament, not for the purpose simply of making an honest speech, but for the purpose of maligning some body or some institution and he starts straightaway by delivering a speech and publishing the same in so many other papers outside, I should say, that is not an honest expression of opinion and that is not a *bona fide* expression of opinion either. Therefore, I would like honourable Members to confine the privileges which are given and the immunity which is sought to be given to members of parliament only to those two which are contained in clause (2). I have nothing further to add.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, my first impression on this section was that it was rather restrictive of the privileges of a member of a parliament or legislature, but on second consideration...

An honourable Member : You are not audible.

Shri Rohini Kumar Chaudhuri : I advise you to go to the doctor. Sir, I am very sorry to learn that I am not audible. There may be some defect in my voice. If there is no defect in my voice. I would ask my honourable Friends who complain about it to go immediately and consult a ear specialist.

Sir, as I said my first impression of this article 85 was that it was rather restrictive, restrictive of the privileges of a member of a parliament or a legislature. But on second thought I found that my honourable Friend Dr. Ambedkar has been very wise. I think he has been wiser by experience because I know that in future there will be more women Members of the legislature than there are now. The strategy which they have played by the non-reservation of special seats in the future legislature only goes to prove that they will get more seats when they do not ask for it. That is the ordinary human experience. If a woman does not ask for anything you give her more. If she asks, you may sometimes refuse. So in future, I am sure, Sir, partly on account of the Hindu Code which is in the air, there will be more women Members of the legislature and when you are convinced of that and when my

honourable Friend Dr. Ambedkar is convinced of that, it is only a measure of caution that the privileges of members should be hereafter more curtailed than is now, but there is a one thing, Sir, which I am rather apprehensive about and it is this. Sir, while you are alive people are eager to find defects in you; your defects are sometimes exaggerated; sometimes defects which do you not possess are attributed to you; but when you are dead and gone, when, for instance, I am not in this House, when the condolence resolution is passed, qualities which I may not possess are spoken of as my own and paraded in the House. So you are more admired when you are dead than when you are alive. So I believe is all right that our speeches which are delivered here are published in the ordinary proceedings; that is all right and there is no fault in that. Nobody can find fault with that, but you may have a relation, you may have a friend, you may have your own son who would like to publish your speech, who would like to publish your speech in a book form, but supposing those speeches contain certain objectionable points, then he would be prosecuted. There may be various speeches, Sir, which are worthy of publication and you publish it because the ordinary Government proceedings are not available to every body. You publish it or some friend of yours publishes it and then he has not that privilege and he will be prosecuted. That is a danger which this cause as it stands will bring about. So I would say that *bona fide* proceedings which the Speaker or the President has not expunged, which the Speaker or the President has not stopped should be allowed to be published. The President or the Speaker has the right to stop any speech which incites people to violence, to stop any speech which contains defamatory remarks, and the Speaker and the President have the inherent right always to do so. Why should you like the Speaker or the President will allow a member to make defamatory remarks against any member in the House or any member who is not in the House? Why should you presume that the President will allow a speech to remain which incites people to violence. Once a speech is made and the Speaker does not think it fit to be expunged, why should you stop its publication by other papers than the government publications? I do not find any reason except one which might have prompted Dr. Ambedkar to consider that there would be more women Members and loose talk and therefore it would be better to stop that. If he has adopted that reason, I am entirely at one with him. Otherwise, I find no Justification for this clause.

There is another aspect. It has been seriously object to by some Members of the House about the reference to the House of Commons of the United Kingdom. Of course, it would have been much better if it was possible to avoid such a reference. It has been pointed out that even in countries like Canada and Ireland, these provisions are incorporated in their constitutions. After all, the Canadians are merely people of England; most of them have gone from England. Blood is thicker than water. There is no harm in the Canadians adopting entirely the Constitutions of England. In the case of Ireland also the same remarks apply. But that does not apply to the Indians. We cannot claim that the same blood runs in our veins or that we came originally from England and settled here. Of course matters have changed considerably. So long as we are in the Commonwealth, we might also flatter ourselves and think that the same blood flows in our veins also. For the present, so long as we are in the Commonwealth, there should be no objection in retaining these words.

Mr. President : I think we have had a fair discussion on this; I would request Members to be short.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Mr. President, Sir, article 85 is apparently innocent but in my opinion there are certain features which should attract more than a mere passing notice of honourable Members of this House.

[Pandit Lakshmi Kanta Maitra]

Two points have so far been discussed. One is that the right and privileges that accrue to the members of Parliament shall be the same as prescribed for the member of the House of commons of the Parliament of the United Kingdom at the commencement of this Constitution. My honourable Friend Shri Alladi Krishnaswami Ayyar has explained the reason why this has been put in that way. Speaking personally, I feel that this sort of legislation by reference, that is to say, making certain legislative provisions, not in the form of substantive provisions, but by reference to the constitutions of foreign countries should, in my opinion, not be acceptable to the house. We are framing a constitution for a free, independent sovereign republic. In the body of that Constitution itself, we are going out of our way to prescribe the rights and privileges for the interim period by reference to what is contained for the members of the House of Commons of the Parliament of the United Kingdom, though there also there is no exhaustive list of the rights and privileges which the Members enjoy. It is a matter of deep sentiment that these words should not have found a place here. I would much rather go without any privileges for the next few months or a year for which we shall be functioning—I would much rather go without any specified privileges than make provision therefore by reference to foreign legislation. That disposes of one part.

The other part relates to the immunity with regard to publication of the proceeding of the House, which bears on the freedom of speech. Here, Mr. President, with your indulgence, I would like to place certain historical facts which should be carefully considered by every single Members of this House. You are going to provide that whatever you do in this House, your speeches or your conduct inside the House is absolutely privileged, and that immunity attaches only to the publication made by the Government of India or by the authority of the House. That means that any speech we make here, if it is printed and published in the official debates, is absolutely immune and the court has no jurisdiction to take cognisance of any case arising out of that, be it slander, or libel or whatever it be. Mr. Jagat Narain Lal has placed a point of view which is of course worthy of our consideration. It is quite possible that the privilege can be abused in that way, but there is also the other side of the shield. Let me tell you how this question arose in our Parliament.

The House may perhaps recall that one Miss Bina Das shot at the Governor of Bengal, Mr. Stanley Jackson. She was arrested; the Governor was not killed. In the course of her trial, she made a statement in the court. This statement could not be available anywhere in the country. It so happened that one member of the Central legislature, at that time, in the course of his speech on the repressive policy of the Government in Bengal read out the entire statement given by Miss Bina Das in the course of her trial. That was a revealing document. She gave the entire history of the genesis of the terroristic outrages in Bengal and particularly the circumstances that compelled her to take to that drastic step against the Governor of Bengal. Not a single line of that was allowed to come out in the Press on the ground of security by the British Government. The question arose when the speech of the honourable Member of the Central legislature which contained that statement came to be published. The Government said could be not be published. Sir B.L. Mitter the Law Member of the Government of India stoutly resisted its publication—a speech in the course of which he simply narrated the full text of the statement made by the accused Miss Bina Das in connection with her trial. That was in 1934. In 1935 or 1936—I do not exactly recollect, probably it was in 1935—we has been discussing the Criminal Law Amendment Bill in Simla. In the course of the general debate on the Criminal Law Amendment Bill, a speech was delivered by my late lamented Friend, Pandit Krishna Kanta Malaviya in which he gave a resume of the so-called terroristic outrages in the country and tried to explain

how the policy of the British Government had been mainly responsible for the morbid psychology which compelled young men and women to take to the cult of the bomb and the revolver. It was a magnificent speech. We were surprised that the next morning, none of the papers did publish a single sentence of the two-hour speech, a written speech which was delivered by my Friend Pandit Krishna Kanta Malaviya. The Government of the day, the Home Minister, I think it was Sir Henry Craik, took jolly good care to see that not a single line of that speech came out in the Press. He could only print and publish it on pain of penalty. Thereafter, my Friend Mr. Malaviya published the entire text of that speech—the speech as it is—in his own paper, *Abhyudaya*. At once the Government of the day came down upon him, he was not prosecuted but a security was demanded from his paper. Now when this was done, we on the floor of the House of the Legislative Assembly in 1936 raised a debate and brought a censure motion. We took the stand that the privilege of the house was infringed in-as-much as when a member made a speech on the floor of the House which was printed and published in the Government publication or assembly Debates and when he made a verbatim transcript of the whole thing in his own paper, immunity should also be extended to it. There were elaborate arguments by honourable Member on either side. The then Law Member Sir Nripendra Nath Sircar came out with a statement—at that time surprising—that the House had no privileges thought all time the House had been acting in the belief that it had certain rights and privileges. He said ‘This House has no privilege’. Be that as it may owing to our pressure the matter was settled then. This raises a very important point. I am surprised today at this change of attitude of those my friends and colleagues, who were with us in those days and who condemned the stand of the Government of those days and stoutly maintained that a published report of the proceedings, if honestly made by any private agency should also be entitled to protection. In those days they were the people who were all of the same opinion. Today we conveniently forget that and we do not allow that same privilege to be extended to non-Government publication. I realise that it is quit possible that in the course of the debate a member might be making references which if made outside will not give him immunity in a Court of law; but frivolous charges are not allowed to be made by the Speaker in the House. As a matter of fact the Standing Orders also provide that you cannot digress and make all manner of scurrilous or objectionable speeches. If you make libellous or slanderous speeches, the Speaker pulls you up. A member cannot say things unless he is sure about them and can substantiate them. Whenever references like that are made, by any particular member, the Speaker or President of the Chamber at once calls him to order. If in spite of that, the Member is firm and makes a speech with certain objectionable remarks what happens? When the government publishes that in the shape of records of Debates, there is no harm. If the Government prints them in large numbers, one can buy and distribute them as he likes with impunity. Put if at a later stage for instance an honourable Member wants to publish his own speeches or some of his relations wants to publish them and they make a verbatim transcript of these very speeches delivered by him which are published in the Official Debates, if they publish them in their own books, then no immunity is attached to that. It is preposterous, whatever the excuse may be for that. I ask the House to carefully consider this.

Shri M. Ananthasayanam Ayyangar : Sir, I am not a little surprised at the manner in which my honourable Friend Pandit Lakshmi Kanta Maitra wants to claim what according to me, is not a privilege but a licence. We are not trying to claim any thing more than what in the Mother of Parliaments those members in England who have striven for liberty of speech inside and outside the House have claimed and are claiming. Now let him consider one or two aspects. Outside this House Members are not entitled to either speak sedition

[Shri M. Ananthasayanam Ayyangar]

or make defamatory statements, but inside the House itself one may make any statement whatsoever, either attacking the Government or preach violence so overthrow the State or even defamatory statements, if you think it is on the public interest. In the Government of India Act, 1919, seditious statements and libellous defamatory statements were tabooed and were not allowed to be made.

Pandit Lakshmi Kanta Maitra: Subject to the permission of the Speaker you can make any speech.

Shri M. Ananthasayanam Ayyangar: It has been removed in the Act of 1935.

Pandit Lakshmi Kanta Maitra: Standing orders are not made under that Act.

Shri M. Ananthasayanam Ayyangar: Under the 1919 Act no seditious words could be uttered even inside the House. If they were made, the Speaker will pull up the member who was making any seditious or defamatory statement. That was the time when the foreign bureaucracy was trying to have its stranglehold upon us and did not allow us any freedom. But under the 1935 Act Adaptation laws we had been given freedom of speech in the House. There, any member of the House can utter any statement which he may not be able to make outside. Whatever he is not able to say outside, merely because he becomes a member and he makes any statement,—is that not to be confined? He is given the privilege for a particular purpose. Here members can say what they like with a view to convert the other Members of the House to their own view. They may even advocate violence. A Member when making speeches in the House cannot be looking round here and there, afraid of Criminal Laws. It is very dangerous and it is impossible for the country to progress towards democracy if he has to make speeches under those limitations. So, absolute freedom is given inside the House. My Friend wants that even if he makes an absolutely improper statement for which, if he makes it outside, he will be liable under the sedition section,—merely because he makes a statement here, he wants to go out and print them. My Friend, Mr. Rohini Kumar Chaudhuri, wants to ask his son to publish a lakh of copies and broadcast to the whole world the words that have been uttered by his father. What my Friend, Pandit Maitra, wants is this. He wants to make all kinds of defamatory statements, leaving alone for the time being seditious statements. Some of us are so left-wingers as to want to make all sorts of attacks against Government, whether it is our own Government or any foreign Government. We have not yet got out of the rut. In the House we can make any kinds of statement against anybody. If we utter them outside, the Courts of law will not give you redress. In the House it is open to me to say that Pandit Maitra is a dishonest man. Outside, if I say that, I will be liable to be proceeded against.

Pandit Lakshmi Kanta Maitra : I perfectly allow you to do it.

Shri M. Ananthasayanam Ayyangar : In the public interest, if it is necessary, I ought not to be afraid of saying it in the House.

Pandit Lakshmi Kanta Maitra: The moment you say Maitra is a dishonest person, the Speaker will call you to order.

Shri M. Ananthasayanam Ayyangar : The President is not entitled to do it under the existing law.

Pandit Lakshmi Kanta Maitra : Absolutely, if you make any personal aspersion.

Shri M. Ananthasayanam Ayyangar : If it is necessary in the public interest for me to say anything against the personal conduct of an individual, I am entitled to say so. I feel that under the present Government of India Act—and this article is only a copy of it—I am entitled to say that, if it is in the public interest. After all it privilege and it is an exception, as ordinarily you ought not to make any defamatory statement against private individuals, or make violent statements that will overthrow the State. So any exception so made is a privilege and we should not grudge its limitation. If at all those statements are to be printed, they can be only in those reports. Even copies of those reports ought not to be made outside. If a man goes to the extent of buying a copy of the official Report, let him do it. As the member might know making defamatory statement alone is not liable to punishment but any person who published it also is liable. Why should a person print a million copies and publish it? It is a different offence altogether. It is an offence in itself. The maker of a defamatory statement is liable to punishment, as also the person who publishes it. To say that you have got it here printed, and so you can reproduce it, any number of copies of it, is not correct. It is not a privilege, but a licence. The honourable Member says there is no opportunity for explanation, but explanation or no explanation, a defamatory statement is a defamatory statement.

Shri Lakshmi Kanta Maitra: It is an astounding proposition.

Shri M. Ananthasayanam Ayyangar : My Friend says it is an astounding proposition. He referred to a statement made by a girl and to its not being allowed to be published. Complaints were made against the government of those days. But if it had been this present government even, I would say that the statement should not be allowed to see the light of day. It is an abuse of a privilege. It is a license. For what purpose is such a statement to be published? To destroy the established order of society, to destroy the feeling between man and man, and to throw the whole community into confusion. I repeat such a things is an abuse of a privilege in such circumstances, it is an exception made to the ordinary rule. In facts, it is a special weapon given into our hands and that weapon has to be used carefully. Members must be able to speak freely in the House without constant fear of any one dragging them into a court of law; otherwise to that extent they will not be discharging their duty to the country properly. It is for that purpose that this privilege is given, but is must be restricted to free speech inside the House. Repetition outside cannot be allowed. Merely because a person is a Member, he cannot do anything he likes; that is the positions. That it is the positions in the British Parliament, and we want to be in line with them in this. I am opposed to any amendment, and I want the clause as it stands to be accepted. As regards the reference to the House of Commons, I see no harm, especially as recently we have becomes a member of the Commonwealth of Nations. This is in tune with what we have been doing, and we can do so, till we give up the English language altogether, as you yourselves suggested yesterday.

Mr. President : We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything.

The Honourable Dr. B.R. Ambedkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : No. 1625, Mr. Kamath's amendment.

The question is:

"That in clause (3) of article 85, for the words 'as are enjoyed by the members of the house of commons of the Parliament of the United Kingdom at the commencement of the Constitution' the words 'as were enjoyed by the Dominion Legislature of India immediately' before the commencement of this Constitution be substituted."

The amendment was negatived.

Mr. President : Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is:

"That in clause (4) of article 85, after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President : Then Prof. Shah's amendment No. 1631.

The question is:

"That after clause (4) of article 85, the following new clause be inserted:—

- (5) In all matters of the privileges of the House of Parliament or of members thereof the house concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof."

The amendment was negatived.

Mr. President : Now I put article 85, as amended by Shri Jaspat Roy Kapoor's amendment No. 1627, to vote.

The question is:

"The article 85, as amended, stand part of the Constitution."

The motion was adopted.

Article 85, as amended, was added to the Constitution.

Mr. President : Before we adjourn, I desire to make one suggest to the House. Members are probably aware that there is going to be a meeting of the All-India Congress Committee at Dehra Dun on Saturday and Sunday next. The suggestion has been made that we might adjourn for one day; but I do not think we should stop the proceedings of this House because of this meeting. I suggest that on Monday instead of meeting in the morning, we may meet in the afternoon, if that is acceptable to the Members. On Monday we may meet in the afternoon instead of the morning, to enable those who return from Dehra Dun to attend our session. I suggest five to eight o'clock in the evening on Monday next.

Honourable Members: Yes.

Mr. President : The House now stand adjourned till tomorrow at 8 o'clock.

The Assembly then adjourned till Eight of the Clock on Friday, the 20th May 1949.