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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

'or transportation for life.' "

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President : Which is that?

Pandit Thakur Das Bhargava : I move:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sir, I move:

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

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

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

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

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

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

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

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

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

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

Sir, I move :

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

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

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

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

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

Shri Jaspat Roy Kapoor : Sir, I move :

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

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

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

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

Mr. President : You do not move the alternative?

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

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

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

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

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

Mr. President : It is not necessary.

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

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

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

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

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

(Amendment No. 32 was not moved.)

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

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

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

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

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

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

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

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

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

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

I beg to move :

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

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

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

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

Then, Sir, follow three alternatives :

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

or, alternatively,

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

or, alternatively,

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

Kazi Syed Karimuddin : Sir, I move :

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

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

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

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

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

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

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

(a) against any sentence of death;

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

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

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

Prof. Shibban Lal Saksena : Which, Sir?

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

"The following be substituted as 111-A :—

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

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

Pandit Thakur Das Bhargava : It has been moved already.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An Honourable Member : The time is up.

Mr. President : Will you take long?

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

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

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