Mr. President : The question is:

"That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, of following new clause be inserted:—

'(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government or in any way aided, Protected or Subsidised by Government, and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.' "

The amendment was negatived.

Mr. President : The question is:

"That clause (6) of article 144 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 144, as amended, stand part of the Constitution.

The amendment was adopted.

Article 144, as amended, was added to the Constitution.

New Article 144-A

Mr. President : Notice of an amendment has been received from Shri B. M. Gupte that a new article 144-A be put after article 144. It reads:

"That after article 144, the following new article be added:

'144-A. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.' "

I think this is already included in the article accepted. Therefore this cannot be moved.

Article 145

Dr. P. K. Sen : (Bihar: General): I do not wish to move the amendment No. 2205 but I would like to make a few observations.

Mr. President : When we come to the discussion of the article, you can do that. (Amendment Nos. 2204 and 2206 were not moved.)

(Amendment Nos. 136 and 178 of Lists III and IV were not moved.)

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

"That after Clause (2) of article 145, the following new clause be added:

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.' "

I want to enable the Advocate-General to have the right of audience in all Courts in the State for which he is the Advocate-General, without any special authority, and also when he appears for the State in other States, and also in the Federal Court when he appears in that capacity. My reason is based on

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the analogy of article 63, clause (3). Article 63 of the Draft Constitution relates to a similar provision giving the Attorney-General of India, right of audience in all courts in India. Clause (3) of that article runs thus:

> "(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in the territory of India."

While there is this provision for the Attorney-General, empowering him to appear in all Courts in the territory of India by virtue of his office, there is no corresponding provision empowering or authorising the Advocate-General to appear in Courts of the State to which he is attached and also in courts in other States where the State to which he is attached is a party, and also in the Supreme Court where the State is a party. I submit that it is a necessary provision: otherwise there would be practical difficulties. If we do not insert here a clause similar to clause (3) of article 63, it would be necessary in every case for the State to authorise the Advocate-General in every case where he is required to appear. Without this statutory provision he will have to obtain authority for appearance in every case, and there may be difficulties about enrollment. A lawyer from Bihar may be appointed the Advocate-General of West Bengal. While that lawyer is enrolled in the High Court at Patna, he may not be enrolled in the High Court at Calcutta. There will be this difficulty that although he is the Advocate-General of West Bengal, he will not be entitled to appear in any Court subordinate to the Calcutta High Court because of the enrollment difficulties and it may be that the State for which he is the Advocate-General is a party in a suit or proceeding in another State; there also he should be empowered to appear on behalf of the State to which he belongs without any written authority and also without the difficulty of enrolment.

We have similar provisions in the Code of Criminal Procedure as to the Public Prosecutor. In section 493 or that Code, the Public Prosecutor is authorised automatically to appear without any authority in all cases in the district for which he is the Public Prosecutor. There are similar provisions with regard to the Government Pleader or the Crown Lawyer appearing for the Crown in civil cases.

So, I submit that this is a necessary Provision, otherwise the difficulties which I have suggested, and other ancillary difficulties will arise. It is similar to other provisions with regard to all lawyers appearing for the State and there is no reason why this should not be accepted in principle in the case of the Advocate-General. If the principle is accepted that the Advocate-General should have a right of audience in all courts where the State is a party without any authority, I think a provision should be made here. If the Drafting is open to any objection, it may be considered by the Drafting Committee and a suitable draft be adopted.

This is the Principle on which this amendment is based.

(Amendment Nos. 179, 2208 and 2209 were not moved.)

Mr. Naziruddin Ahmad : Sir, I would like to move my amendment with a slight verbal alteration to which, I understand, Dr. Ambedkar has no objection, Sir, I beg to move:

> "That for the existing clauses (3) and (4) of article 145, the following be substituted:—
>
> '(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.' "

Sir, clause (3) as it at present stands, reads as follows:

> "(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed."

This provision will cause a lot of inconvenience. I submit, that the tenure of the Advocate-General should not be made dependent on the vagaries of party politics. It is quite likely that the Advocate-General may be engaged in the midst of a prolonged case in which the State may be interested. His removal, all of a sudden, will prejudice the interests of the State. It is therefore, better to make his tenure dependent upon the pleasure of the Governor.

I understand that this amendment is exactly on the same lines as the one suggested by Dr. Ambedkar himself and that it is acceptable to him. I hope, therefore, that the House will accept it.

The Honourable Dr. B. R. Ambedkar : Are you not moving amendment No. 2211?

Mr. President : He has embodied it in his amendment. It is exactly the same as your amendment which need, not therefore, be moved now.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I have only just one more argument to urge in support of amendment No. 2207 which has been moved by my honourable Friend Mr. Naziruddin Ahmad. According to clause (1) of article 145 the Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State. Now, Sir, one who is an eminent jurist is also eligible for appointment as High Court Judge and as such he is eligible for appointment as Advocate-General also. It is quite likely that an eminent jurist may not be a duly enrolled advocate of a High Court. If an eminent jurist is appointed an Advocate-General and if by chance he is not a duly enrolled member of a High Court, it will certainly not be open to him to appear in any High Court or even in a subordinate court. In view of this, Sir, I think it is necessary that the amendment moved by Mr. Naziruddin Ahmad, or at least the substance of it, should be accepted. It may be said that it will be a rare contingency that a jurist not enrolled in any High Court will be appointed as Advocate-General. I admit that it may be so. But then when we are so very particular in laying down every little detail in this Constitution, I do not see any reason why we should let this lacuna remain.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to oppose the amendment (No. 2207) moved by my honourable Friend Mr. Naziruddin Ahmad. The amendment appears to have been based on a confusion between the functions of the Advocate-General of India and the Advocate-General of a Province. The Advocate-General of India—whom we have styled "Advocate-General" in this Constitution—is really an Advocate-General functioning throughout of India. He has, therefore, to go to all courts in order to act for the Government of India. For instance, whenever a question of the interpretation of the Constitution is taken up before a court, under the present Civil Procedure Code, notice is given to the Government of India to appear in that matter. The Advocate-General of India, therefore, has to appear in all the provincial Courts in order to support the interests of the Centre.

As regards the Advocate-General of a province, his position is entirely different. In his own province, naturally being the Advocate-General, he has audience before all the courts in the province. But as regards the other provinces, he has no *locus standi* as Advocate-General. His *locus standi* would only be that of an advocate of one High Court and he will, therefore, be

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governed by the provisions of the Legal Practitioners' Act. He has no position as Advocate-General in the other provinces and, therefore, there is no reason why he should be put on the same footing as the Advocate-General of India. Ordinarily, the Advocate-General of one province goes to another provincial High Court not for purposes of any litigation connected with the State. He only goes there for his private practice and therefore to that extent he can appear only under conditions which are imposed by the High Court in which he is going to appear.

There is reciprocity of appearance between one High Court and another ordinarily. But there have been occasions when one High Court has not permission to advocates of another High Court for various reasons—valid or invalid. The regulation of appearance of an advocate of another High Court in one particular High Court depends upon the rules and policy of that High Court. Therefore, it is much better that the Advocate-General's appearance in another High Court is regulated by the Legal Practitioner's Act applicable to all the members of the profession. I, therefore, oppose this amendment.

Mr. Naziruddin Ahmad : I do not advocate private practice in the case of the Advocate-General. It is only when he appears for the State in another High Court that the question arises. May I draw attention to the fact that I do not want the Advocate-General to indulge in private practice? It is only when he appears for the State in another High Court that the question arises. There the question of private practice does not arise. What provision has been made for the Advocate-General appearing for his State in the Supreme Court?

Shri K. M. Munshi : No one has found any difficulty in one Advocate-General appearing in another province. There is no reason why there should be a special provision.

Prof. Shibban Lal Saksena : Sir, I wish to draw attention to one fact. We have taken the British practice in these matters as the model in framing our Constitution. In Britain the Advocate-General has the status of a Minister. Dr. Sen had given notice of an amendment to give our Advocate-General the same status, but has not moved it. I would draw attention to the fact that it will be much better if we followed the practice in England. I request Dr. Ambedkar to tell us why he does not follow that model in this respect.

Dr. P. K. Sen : Sir, I quite appreciate that this debate should not be prolonged at least by me, and I am going to finish my observations as quickly as possible.

The point I wish to place before this House is not in support of my amendment, because I am not moving it, but to express my ideas about the fundamental principles which should govern the office of the Advocate-General. The Advocate-General at the present moment is no doubt often a lawyer of eminence in the province, but his sole duty and function seems to be to advise the Government on occasions in regard to certain points that arise in cases either between the Government and a private party or between parties which in some manner or other are connected with Government. For instance, there is a trust property in the hands of the Government and the trust is being disputed by somebody or other. In various matters like this the Advocate-General's opinion is sought. His office is really a bureau or legal advice. So is also the office of the Legal Remembrancer or the Judicial Secretary. But in neither case is the Government obliged to take opinion or adopt it and, in

many cases, it is treated with scant courtesy. Supposing that the Minister in charge of Labour or Revenue or Local Self-Government wants to initiate a certain measure. He no doubt consults the Advocate-General. But he can ride rough-shod over the opinion of the Advocate-General and take the opinion of any other inferior, irresponsible advocate and proceed upon it. This seems to me to be against all principles whatsoever. The Advocate-General's position should be, as I conceive it, much higher. He ought to be of the status of a Minister. The Law Minister can then influence to a very large extent, the spirit of the legislative and administrative structure of the Government. This has to a very large Crown under the Law Minister, the Advocate-General can hardly do anything, even if he were a man of great eminence to influence legislation. His powers are practically nil. As I conceive it, the position of the Advocate-General should be much higher. Unless it is equivalent to that of a Minister, it is impossible for him to discharge his duties properly. In other words, it comes to this that in my humble opinion, the Advocate-General should be charged with the portfolio of law. The question may arise about attendance in courts. Why should he then go about appearing in case? At the present moment the Advocate-General think that it is one of the Privileges of that office to earn fees by appearing in cases on behalf of the Government in the *mufassal* or even in the High Court. Well, that is a thing which will recede into the background of he is charged with the duties of the office of law Minister. The most preeminent of those duties shall be to establish and maintain a high level in the legislative and executive structure of the Government. He cannot then go and appear for fees in all cases; but in matters affecting high policy he would certainly go as Advocate-General to give an exposition on a high level, before the courts, of the principles and policies that actuated his Government. Now-a-days we are passing through critical times. There are various fissiparous tendencies at work and all manner of discriminatory legislation is being put through which bears the marks of very unwise and unskillful handling. What I submit is that the Advocate-General is one of those few persons who if installed in the office of the Law Minister could take a large share in regulating, shaping and moulding the polish of legislation in all its aspects. The rule of law is, in my humble judgment, the rule that should save the Government from all manner of disruptive tendencies. With the Law Minister, being in charge if these high functions it would be possible for the Government to proceed in the right manner and in the right direction. These are the observations which I humbly place before the House to consider in connection with article 145.

The Honourable Dr. B.R. Ambedkar : I do not think I need add anything to the debate that has taken place. All that I want to say is this: I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

Mr. President : I shall now put amendment No. 2207 of Mr. Naziruddin Ahmad to vote.

The question is:

"That after clause (2) of article 145, the following new clause be added:—

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

Shri T.T. Krishnamachari : What is the number of the amendment, Sir?

Mr. President : I shall put the amendment to vote again.

The question is:

"That after clause (2) of article 145, the following new clause be added:—

[Mr. President]

'(2a) In the performance of his duties the Advocate-General shall have right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

The amendment was negatived.

Mr. President : Then I put Amendment No. 2210 which includes within itself 2211 also.

The question is:

"That for clauses (3) and (4) of article 145, the following be substituted:—

'(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.'"

The motion was adopted.

Mr. President : The question is:

"That article 145, as amended, stand part of the Constitution."

The motion was adopted.

Article 145, as amended; was added to the Constitution.

Mr. President : We shall now adjourn till tomorrow morning, 8 O' clock.

The Constitution Assembly then adjourned till Eight of the Clock on Thursday the 2nd June 1949.