Mr. President : The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A for the words 'which he is from time of time serving' the words 'as the case may be' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'the same conditions' the word 'conditions' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'and the same rights' the words 'and rules' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as respects disciplinary matters or rights' the words 'of conduct and discipline' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement', the words 'as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement' be substituted."

The amendment was negatived.

Shri H. V. Kamath : I think you will agree that this article is badly drafted. Do you not, Sir?

Mr. President : It is no use my agreeing or disagreeing. We have the vote of the House.

The next are the amendments of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I am not pressing them. I leave them for consideration of the Drafting Committee.

Mr. President : The question is:

"That the proposed article 283A stand part of the Constitution."

The motion was adopted.

Article 283A was added to the Constitution.

Article 307

Shri. T. T. Krishnamachari : Sir, I move:

"That for clause (2) of article 307, the following clauses be substituted:—

'(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such, adaptation or modification shall not be questioned in any court of law.'

(3) Nothing in clause (2) of this article shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution; or

(b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause."

"That in Explanation I to article 307, the words 'but shall not include an Ordinance promulgated under section 88 of the Government of India Act, 1935' be added at the end."

[Shri T. T. Krishnamachari]

"That in Explanation II to article 307, for the word 'has' the word 'had' be substituted and after the words 'continue to have' the word 'such' be inserted."

"That for Explanation III to article 307, the following be substituted.—

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.' "

Sir, the intention of the Drafting Committee is that clause (1) of article 307 is kept intact. Clause (2) has been varied for one particular purpose. There was some doubt whether the President may make adaptations, modifications, amendments or repeals of existing laws and in so doing whether his action could be questioned in a court of law and how for his action would attract judicial interference. Actually, the original clause (2) says that such adaptations could not be questioned in a court of law. But the idea of the Drafting Committee was that it should be made clear that what should not be questioned should merely be the form and adaptation or modification and an examination of the purpose underlying such action should be left open. For that purpose we have begun this article in clause (2) with these words:

"For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution....."

That is the basic purpose and if the adaptation or modification has been for any other purpose, undoubtedly that will be a matter which will come within the purview of the courts. So far as that purpose has been granted if any question of wording or minor variations are questioned, they cannot be taken to a Court of law.

The second modification that has been admitted in this amendment is to limit the power of the President, in this behalf to a period of two years after the commencement of this Constitution by clause (3) (a). The other sub-clause (b) is taken out from the body of the original clause (2) and it has been made clear that nothing that the President might do shall prevent the appropriate authority from changing any law in force as it wishes to even if it had been adapted by the President. This will not act as a bar to any legislation being brought up before Parliament or before the legislature of a State.

So far as the modifications of the Explanations are concerned, the modification with respect to Explanation I is to restrict its meaning. This shall not apply in regard to ordinances promulgated under section 88 of the Government of India Act a provision, which should have been there. It is a lacuna which we are now seeking to rectify.

So far as the new Explanation (iii) is concerned, it is an amplification of the present Explanation.

Before I resume my seat, I would like to mention that this article should not be confused with article 313, which was passed the other day, where the President has been given power to modify the provision of this Constitution in case of any difficulty. The article under consideration gives the President a very restricted power and it is only in regard to those laws about which the President is advised that they come into conflict with the purpose of the Constitution that a modification will become necessary. It is very necessary because we have provided in article 307(1) that all the laws in force in the territory of India shall continue to remain in force subject only to the fact that they do not offend the provisions of this Constitution. This is a very necessary article and the modifications I have suggested are necessary in view of the fact that a certain lacuna in the original draft of the article has been brought to our notice and I do hope that the House will understand that the purpose we have in mind in suggesting these amendments is limited. The

President's Powers are such that they can be overruled by Parliament or the appropriate legislature and it is only intended to serve during a period of time when neither Parliament nor probably the Legislatures of the States would have enough time to devote the detailed attention that is necessary to amend certain laws in force in our country. Some such action was taken in regard to certain laws when the Government of India Act, 1935, was adapted following the Indian Independence Act and this would follow the same lines.

By and large, the main modifications will be of it formal nature. Possibly, in many cases the words "Governor- General" will have to go, and the word "President" will have to be put in and other similar changes will have to be made Substantial changes are not likely to happen except so far as we have provided in this Constitution. It is possible certain changes have to be made arising out of the fundamental rights, embodied in the Constitution.

There is one argument I would like to anticipate in view of the fact that certain amendments have been tabled. It has been suggested in these amendments that Parliament should do these adaptations. Well, if Parliament should do it, or Parliament should ratify the action taken by the President in their behalf then Parliament can undertake this question of modification by passing amending legislation. It is because we feel that Parliament will not have the time during the initial period for this purpose that we have provided this article.

Certain suggestions have been made that a tribunal or a committee may be appointed to go into the matter. That is to be left to the proper authorities who undertake this adaptation at the proper time. Whether they would think that the machinery in the hands of Government is suitable for this purpose, or that the machinery can carry out minor modifications, and if there are to be modifications of a major character that public opinion should be consulted or judges should be consulted, it will be for the appropriate executive authority to do what it feels is necessary. There is nothing to bar a tribunal being appointed, or an examination of the existing laws being made by either the Government of India or by the provincial Governments in the future. I hope these arguments will satisfy those people who have tabled amendments and this article will be passed as amended by the amendments that have been moved by me. Sir, I move.

Shri Brajeshwar Prasad : Mr. President, Sir, I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal,' be inserted."

Sir, there is a provision in article 307, I refer to the last line of clause (2), which says that any such modification or adaptation shall not be questioned in a court of law. I am not opposed to this provision; I am in favour of this. But, if we are going to pass such a drastic provision, it is necessary that an such adaptations or modifications which the President may make should be at least in consultation with the highest judicial authorities of the land. We are debarring the courts of law from going into the question. Here, the word President means the Minister for Law. It is he and he alone who will be in charge of modifications and adaptations. The President will have neither the time nor the inclination to go into these questions at all. I want that the Minister for Law should have the assistance of these Chief Justices. It is in no way a criticism or lack of confidence in the merit of the Law Minister, but it is only with a view to strengthen his hands, so that nothing should be left to chance. It is with that end in view that I have suggested this amendment.

Shri H. V. Kamath : Mr. President, Sir, I am one of the people, to use the language of my honourable Friend Mr. T. T. Krishnamachari,—Who have

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tabled amendments. I wish he had used a better term in conformity with parliamentary practice and decorum and referred to those who have tabled amendments as Members if not honourable Members. I think it is not proper to use the word 'people' in reference to my honourable colleagues who have tabled amendments. That is, however, by the way.

I move amendments 134 and 137 together by your leave:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

"That in amendment No. 2 of List I (Second Week), in sub-clause (b) of the proposed clause (3) of article 307, for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted."

They are more or less formal amendments and they are on the lines of the original draft article 307. Article 307 as it stood in the Draft Constitution reads as follows: "(1) Subject etc., etc., all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority." I think this is a very comprehensive statement of any changes that may be made. I feel, therefore, that the commission of the word 'altered' is a lacuna which this House would do well to remove. I have therefore moved amendments 134 and 137 so as to bring this new draft in conformity with the original draft article 307. 1 feel they are a more comprehensive and much happier expression of the meaning that we seek to convey.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, I move the amendments that stands in my name, No. 135:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the following words be added at the end:—

'but placed before the Parliament for ratification.' "

Sir, I feel that some principle is involved in the amendment that I have given notice of. While speaking on this article, my honourable Friend Mr. T. T. Krishnamachari told us that such a provision has been made in the Constitution to empower the President at times of emergency and also when the legislatures are not in session. I feel, Sir, taking into account what is happening in the provinces where the Governors who promulgate Ordinances feel in their duty to place before the concerned legislature when it meets in session what they have done in the matter of Ordinances or laws which are necessary in the interest of the country. The President as envisaged in the Constitution can look to Parliament as the body which has to ratify whatever action he has taken when the Parliament was not in session. We are only asking the President to place what adaptations or changes he has made in conformity with the constitution so that not only the country, but also the representatives in Parliament should know what the President has done during the absence of the legislature or Parliament. I feel, Sir, that this is as a matter of right due to the legislature or Parliament of the country because every Member is expected to know what the President has as an emergency measure done during the absence of the Parliament. I am sure that the Drafting Committee will consider this matter and accept my amendment. Moreover, it is made clear in clause (3) (b) that "nothing in this clause (2) shall be deemed to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause." Therefore, I feel, Sir, that this amendment can be accepted by the Drafting Committee.

Mr. Naziruddin Ahmad : Mr. President I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (3) of article 307:—

(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution' the words 'after the constitution of the ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution' be substituted; and

(ii) in sub-clause (b), the words 'or other'.Competent authority' be deleted."

Sir, in moving these two amendments, I must say that I am in full agreement with the principle of the two clauses which have been moved. In the interim period when we pass through a very rapid transition, numerous anomalies and difficulties will arise and it is therefore necessary to authorise the President to make adaptations and modifications as may be required. The existing laws must be adapted and modified so as to conform to the standard laid down in the new Constitution. That was done when the Government of India Act, 1935, was passed. While agreeing with this principle, my amendment would try to limit the period during which the President may exercise these powers of adaptation and modification. In clause (3), sub-clause (a) it is proposed that the power of the President to make these adaptations and modifications shall be limited to two years. By my amendment instead of this period of two years I want to limit it to a period during which the general elections will be held and ministries will be constituted at the Centre and in the States. After that the Legislatures at the Centre and in the States will be in full operation. We may have general election under the Constitution within a period of two years. If so, there would be anomaly that the legislatures both at the Centre and in the States, will be in full operation and yet the President will be given power to make amendments and changes and modifications in the Constitution. When these legislatures will come into operation, the President's power should cease. The Legislatures alone should thereafter be entitled to make modifications. Therefore, the power to make these modifications should last till the next general elections are held and ministries constituted. There is no occasion to extend it beyond that. It may be that elections may be delayed and in that case there would be a gap after two years and the time when the new Legislatures would come into force when there will be no authority to make these adaptations. In these circumstances, I should like to place the period till the period when elections are held and ministries constituted.

My second amendment relates to the proposed clause (3) which runs thus :

"Nothing in clause (2) of this article shall be deemed to prevent any competent legislature, or other competent authority to repeal or amend any law adopted or modified by the President under the said clause."

I would like to delete the words 'or other competent authority'. I can well appreciate that the adaptation made by President may be changed by any competent legislature, but I fail to see what other competent authority there would be to make necessary changes. Therefore, we should leave this power to make changes in the decisions of the President to the competent legislatures and not to any other authority. I would ask for a clarification as to what competent authority beyond the legislatures may be empowered or should be empowered to make the necessary changes.

Prof. Shibban Lal Saksena : Mr. President, I move :

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the words 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

This is a very important article by which we want to bring all the present existing law in consonance with the provisions of the Constitution and we are, only providing the machinery for the adaptation. The President is hereby

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authorised to do it. I have no objection to that. I think it is merely bringing the law which in existence today in consonance with the Constitution and 1, therefore entirely agree that the President is the proper authority. But what I object to is this, that the adaptation which he may make should not be questionable in any Court of Law. Suppose by mistake or any other reason the modification made is not really in consonance with the purport of this clause and goes beyond this, then where is the authority which will pronounce that the adaptation is not in consonance with the intention of this article, which reads thus—

"For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, etc."

But what is the machinery provided for seeing that the purpose of this clause at the beginning is given effect to. If the intention is that every such case has to go to the Supreme Court, it will be very troublesome and costly, because the law to be amended will be very wide. I therefore think that the courts which administer that law should be empowered to judge whether the adaptation is, proper or not. The President will not have the time to go through all the law and see it adapted in accordance with the Constitution. The Law Department will do it and even the Law Minister will not have the time to go through it all. This will be done by the clerks of the Department. We do not want that Acts of Parliament passed by former legislatures to be amended and adapted by ordinary clerks and they should not be liable to be challenged in a court of law even on the ground that they are not in consonance with the provisions of the Constitution.

I, therefore, wish that the normal machinery of law should be trusted to see that if any mistake is made in adaptation then courts should be empowered to correct it. If this is not done, many mistakes will be committed which could not be corrected by anybody in the country. If you want the Supreme Court to be approached, then I do not think every litigant will have the power to do it. I do not know whether the Supreme Court will also have the power. But I think the Supreme Court has inherent powers to go into anything. But still in this Constitution we should provid definitely that the the adaptation shall be with the purpose mentioned in the first clause and the Court shall be empowered to judge the correctness of the adaptation. The other amendments I do not object to, but I do think that the Drafting Committee will explain what machinery they are providing to see that adaptation made will be only in consonance with the provisions of this Constitution.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to move:

"That in amendment No. 2 of List I (Second Week), for the proposed clause (2) of article 307 the following be substituted:—

'The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.' "

I also beg to move:

"That in amendment No. 2 of List I (Second Week), for the proposed clause (3) of article 307 the following be substituted:—

"(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this Constitution into accord with the provisions of this constitution, the President shall, after the commencement of this Constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions rotating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provisions of this Constitution. The Government shall, on the receipt of the report, forthwith take steps to avoid, repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after an year of the commencement of this Constitution if they are not avoided, repealed or amended earlier'."

I also beg to move:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, for the words 'made, and any such adaptation or modification shall not be questioned in any court of law' the word made be substituted."

Also—

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'and any such adaptations or modifications shall not be questioned in any court of law' the words 'except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

I also move:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words 'except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

And—

"That in amendment No. 2 of List I (Second Week), the proposed clauses (2) and (3) of article 307, be deleted."

Sir, my purpose in moving these amendments is to give full effect to the provisions that we have already passed, *vide* article 8. Now, these existing laws can easily be divided into two kinds of laws—laws relating to fundamental, guaranteed rights, and the laws with regard to other matters. I want to make a distinction between these two, and as would appear from the amendments I have proposed, some of them relate only to the guaranteed rights and the other relate to the other laws in force. Now, I take very serious exception to the words—"any such adaptation or modification shall not be questioned in any court of law." And that is why I have proposed these amendments, so that such words may be taken away and such other words substituted as would make the meaning absolutely clear. I am almost despaired of getting the objectionable provision of this section cleared out and I have therefore even proposed that the entire clause (2) be deleted. Sir, I feel full thought has not been given to this matter, I mean as much thought as should have been given to it. If the proposition is accepted as it is, if the proposal of Shri Krishnamachari is carried, the result will be this. Not the legislature, but the Government through its department of law, not the law Member, but the Secretary or clerks will make these adaptations and modifications and all these adaptations and modifications will never come before any Assembly or Legislature. The substantive law of the land will, *ipso facto*, by the Executive fiat, be adapted or modified and become the law of the land. The law shall stand modified or adapted and after that, that law becomes so immutable that the courts will not be able to question them. My submission is, we have passed article 8 already which says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency be void."

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Now, all those laws which the Courts are today empowered to declare void are sought to be sanctified and made "pucca" by these adaptations. And it is not in accordance with clause (2) of article 8, which says:

> "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

What would happen if a modification or adaptation is made which is really in contravention of the clause? That law cannot be questioned, no court will be able to question it, which means in plain English, that what we give by virtue of article 8(2) and 8(1) is being taken away by this back-door method. I do not say that is the desire of those who have framed this proposal, but my humble submission is, that that is the result, that it will result in a situation like that.

Let me just illustrate this point. Take article 13. We have practically changed the definition of sedition, by the provisions made under this article. Under article 13(3) we have put in "reasonable" before "restrictions on the exercise of the right....." and thereby we have given the courts of the country the opportunity to find if the particular laws which are harsh and onerous should be void or not. They come within the purview of the courts' jurisdiction and any court can declare that such and such law is against the letter and the spirit of article 13 and therefore, void. But as soon as the adaptation is made—and it will not be something enacted by the legislature, but something done by the Executive.—and if the adaptation fails to carry out the purpose, if it is not in consonance with article 8, no court will have the power or the authority to declare such adaptation to be wrong, which means that we give such power to the Executive as we have not entrusted to the legislature even. If this Parliament, after 26th January, 1950, passes any law in respect of these fundamental rights which abridges the liberty of the people, that can be questioned in a court of law, and any court of law can say that Parliament was wrong in so far as it contravened the provisions relating to the fundamental rights. If the adaptation is made in such a manner that it does not carry out the full purpose, then we are absolutely helpless. It is said that there is provision that any legislature can take such action as it deems necessary and repeal the law. Quite right. This is so. May I ask if this right is not completely illusory? Where is the Provincial Legislature which will come to the conclusion that the adaptation or modification made by the President is wrong and sit as a court of appeal on the decision of the President, and go ahead to frame the laws afresh? Where is the individual Member who will be given the facilities to bring in the necessary new provisions? We all know how many obstacles there are in the way of those who want to enact a law. My submission is that when once these adaptations or modifications are made, it will be very difficult to change them. Government will not change them. The local legislatures will not change them, and no private member will have the chance of changing them. It means in plain English that these adaptations or modifications will be there for all time, whether they are in accord with the Constitution or not. Who makes the law of the land? The legislature and not the executive or Secretary or Clerk in the office of the law Member. Even if the President were to pass any Ordinance, that Ordinance will again be placed before the legislature within two months, but so far as these adaptations or modifications are concerned, they will never be placed before the Legislature. Therefore, my submission is that these adaptations will be defective in more ways than one. They will not receive the seal of the Legislature and the courts will not be competent to question those modifications.

Now, Sir, it is said that the first sentence "For the purpose of bringing the provision of any law in force in the territory of India into accord with the provisions of this Constitution" is sufficient guarantee. My submission is that this is no guarantee. My point is that the purpose is there, but what if the purpose is not carried out, if the adaptations or modifications are not good or do not go to the same extent that the Fundamental Rights do? The courts have no power to interfere. If you say, "necessary or expedient" are there, and the courts can go into the question of whether the adaptations are necessary or expedient, my submission is, what is the sense in having these words "shall not be questioned in any court of law"? I understood Mr. Krishnamachari to say that minor things should not be questioned but that only the purpose should be seen. The adaptations can say that for such and such purpose the adaptations are made, but that is not sufficient. The courts will not be able to go into the question of the purpose also. The purpose is there, but there is no guarantee that the adaptations will carry out the purpose. It may be said that such a provision in the shape of section 293 existed in the old Government of India Act of 1935. No doubt that section was there in the Government of India Act, but then the purpose is absolutely different. Here in this Constitution the main change that we have made is that we have given certain Fundamental Rights. In the Act of 1935 there were no Fundamental Rights. I would not care if you make adaptations to the ordinary laws of this country provided you do not touch the rights of the people. You may bring all the laws of the land in accord with the Constitution, but when you go and touch the very delicate rights of the people in general and touch their fundamental rights, then my submission is that the matter becomes of very great importance. In section 293 even these words 'shall not be questioned by any court' do not appear. In the old section 293 you will find that the powers of the courts were not taken away. There the laws were subject to the jurisdiction of the court as before. Now these words have been specifically added that the adaptations or modifications shall not be called in question in any court of law. My main objection is to these words.

It is a secondary objection, though of equal import, that the executive should not be given the right to adapt these laws. I propose that in regard to these Fundamental Rights, a Committee of Experts should be appointed to go into the question. This will be an important Committee and the best heads of the country should be on it. They will go into all the laws and make a report to the President that he may be pleased to see that such and such Acts are enacted, because the law-making power is that of the Legislature and we cannot delegate this power to any President or any other set of people. After the Committee has reported, the Government will take steps to see that such inconsistent laws are repealed. In this I beg to submit that the authority of the court will not be taken away. It is the essence of these Fundamental Rights that the courts are the ultimate authority and possess ultimate sanctions and jurisdiction. After all, if the courts will not safeguard these rights, what chances are there that the executive will do it ? Really, you are putting the cart before the horse. In section 293 of the Government of India Act such rights were not touched at all. Only the existing laws were taken into consideration; there was no reference to Fundamental Rights and therefore also no taking away of the jurisdiction of the courts. It is possible that the rights guaranteed by article 13 may be so tampered with in the way of adaptations that we will not be able to change them for years to come.

Therefore it seems to me, Sir, that you have only trumpeted to the whole world that you have given these Fundamental Rights. I do not say that the, Law Minister will behave in this manner. I think he will not behave in this manner but he might ask someone in his chamber to go into this matter. I cannot possibly agree to delegate this power to any authority, even including the President or the Law Minister. Let the legislature go into these

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laws and find out whether adaptations are necessary or not. The executive should not change the law of the land in this manner. Mr. Krishnamachari said that these words are not important. All right, take them away, and my main objection would go away. Sir, in 1947 we had a Bill before the Assembly in which many old laws were sought to be repealed by the legislature. Why cannot you bring in a Repealing Bill before the Assembly again? In regard to these Fundamental Rights, people will go to court and the court will be able to hold that such and such law is not in accordance with the provisions of the Constitution. Why not give this power to the Courts? If you want to benefit the people, benefit them in a direct manner. As it is, you may abuse your position and bring disaster to the people.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, a great deal of the criticism of the amendment moved by my Friend, Mr. Krishnamachari, proceeds on an entire misapprehension. It is necessary to have in view what exactly is the object of this clause. Our Constitution has made certain fundamental changes in the structure of the Constitution, in the distribution of powers, in the powers vested in particular authorities, in the relation between the Unit Legislatures and the Central Legislature. At the same time, it is not our object to start afresh our career in legislation, but to take over all the enactments under the previous Constitution subject only to the prohibitions and to any special provisions in the present Constitution. It is necessary to have an idea of the number of Statutes, Ordinances, Acts, subordinate Acts, and rules there have been made in all these twenty years after the first adaptation in the year 1935. If every Act, every rule, and every order, is to be subject to the scrutiny of courts and this adaptation is to be canvassed from court to court, it will no doubt afford plenty of opportunities for lawyers and litigants, but it will not be in the larger interests of the country. Therefore, in taking over the whole body of legislation to the new Constitution you first provide that that legislation shall continue to operate unless it is repugnant to the principles of the Constitution.

That is the first principle and having laid that down, it becomes necessary to provide for adaptation. If that adaptation is to be made within the two years when Parliament is overloaded with work in regard to various matters consequent upon the new Constitution, to trouble Parliament with the work of adaptation will be an unwise task. Under those circumstances, what is provided is there will be adaptation by the Government. You need not proceed on the footing that the Governor-General or the President sitting at Delhi is going to make all the adaptations. The Government will be assisted by an expert body. The advisory bodies which my friend suggested may, be utilised for the purpose of making the adaptation, provided they do not become unwieldy and hamper the work of adaptation. The adaptation will have to be done quickly in addition to other work which the Constituent Assembly may have to take upon itself soon after the passing of the Constitution in order to bring the Constitution into effect.

Before I make my comment upon the article as put forward before the House, it is necessary to have in mind what exactly section 293 of the Government of India Act which has been adapted in this article 283 provides. Under the section 293, His Majesty was given the power of adaptation. No limit of time was imposed. The President of the Drafting Committee who was responsible for putting the limitation of these two years thought that a power for an indefinite length of time should not be vested in the President. It must be expedited and the adaptation must be finished within two years. Therefore the limit of two years was placed. Under section 293, the question came up before the Federal Court in the very first case after the new Constitution of 1935 whether an

adaptation can be questioned in a court of law. Sir Maurice Gwyer, the then Chief Justice, delivering the judgment in the U.P. Cantonment Case stated that adaptation could not be questioned at all. We put a limitation in the present article in the opening words, "for the purpose of bringing the provisions of any law enforced in the territory of India in accord with the provisions of this Constitution." It is only for that purpose that this power is to be exercised by the President. This is a very necessary, wholesome, and salutary provision. With my experience in courts in regard to other provisions and bye-laws, I am bold enough to state that there is a general tendency to attack every rule and every Act, and I can say that this provision is most wholesome and salutary. Instead of leaving it to the Supreme Court or Federal Court again to deal with the point whether Sir Maurice Gwyer's decision is to be followed or not or whether some dissenting opinion expressed in the Lahore High Court is to be followed, the position is made clear that the adaptation shall not be questioned in a court of law. It was advisedly, deliberately put in in order to prevent frivolous, immaterial objections being taken. But if the adaptation is so alien to the main provisions of the Constitution to the very purpose of the Constitution, then the court will have the necessary jurisdiction to hold the adaptation invalid. It does not mean that every bye-law, every clause, every sub-clause, every expression, has to be canvassed in the court of law. If the main purpose is kept in view and if the adaptation is not alien to the purpose, it shall not be questioned in a court.

After all, the adaptation is not immutable. It is subject to the intervention of the legislature. If the legislature is vigilant, and sensitive to public opinion as to scrutinise every adaptation, I think there is nothing to prevent it from passing a law when an adaptation is not in accordance with the spirit of the Constitution. We are proceeding on the assumption that the legislature is quite alive to its duty, it is very vigilant, very capable, hard-working, and with the host of lawyers in the country who will surely canvass every bye-law and with a large public who are likely to be affected by it, there is no danger of its not being noticed by the vigilant public or equally vigilant lawyers or equally vigilant legislators. The legislators will be on the watch. The lawyers will be on the watch and the courts are sure to find any lacuna in legislation. Under these circumstances, I submit this is the most salutary provision. Already there is great criticism that the Constitution itself is intended for the benefit of lawyers. The provision in the Constitution that adaptation of the Constitution shall not be questioned in court is a most wholesome one.

Regarding the power of the legislature to intervene, it can do so at any moment. The provision does not stand in the way of the President constituting a body of able advisers like my Friend, Pandit Thakur Das Bhargava who certainly will have the public spirit to assist the President in making the necessary modification and at the same time, as a temporary phase it enables the President to make the necessary adaptation. Unless the President is mad or his Cabinet is mad, they will not violate Fundamental Rights. Of course, here and there in respect of a particular clause, it is possible that the legislature may take a different view, but if there is a tenable ground, the legislature can look after it and it will be competent for the Government or the parties concerned to alter that provision. Under these circumstances, I am sorry that this provision should be taken exception to.

Mr. President : It is suggested that we should meet in the afternoon, so that we might make more progress. So we shall sit again at 4 o'clock.

The Assembly then adjourned for lunch till 4 P.M.

The Assembly re-assembled after lunch at 4 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Biswanath Das (Orissa: General). Sir, the proposed amendment follows very closely the Government of India Act of 1935. If at all there is any difference, it is on the side of stringency. In the Act of 1935, as adapted, this section—I mean section 293—was omitted. We have naturally a right to expect an explanation why this omission was made and why a departure has now been felt necessary in this regard.

Sir, my honourable Friend, Pandit Thakur Das Bhargava, has clearly stated his objections. Most of those are our objections. My honourable Friend, Shri Alladi Krishnaswami Ayyar, representing the Drafting Committee, treated us to some homilies. He stated that the power of the Legislature has not been taken away by this amendment. I want to ask him whether it is necessary that an eminent lawyer like him to explain these elementary principles to us, as if the Members of the Assembly do not know that under a system of responsible Government the 'President' means the Cabinet or the Prime Minister himself. Then again he stated that it is in consonance with the spirit of section 293 that the Orders in Council were being issued by the British Cabinet. When you were trusting the British Government, why cannot you trust your own Government? If at all there is any element of distrust, I say that the boot is on tile other leg. So, it is unfair and unfortunate to state that we want a change in the section merely because we do not trust the Ministry. It is not a question of our trusting the Ministry. What has been proposed in this article is that the Honourable Dr. Ambedkar, the Chairman of the Drafting Committee, will transfer all the powers of the Legislature to the Honourable Dr. Ambedkar, the Law Minister of India. Here again we would not probably have so much bother, if he or his Cabinet handled the whole question themselves. Sir, it is a well known fact that Cabinet Ministers are busy-bodies. It is not possible for them to go closely through all the Acts that have to be adapted in this regard.

While discussing this question we have to keep two or three things in view. The first thing is that you have in the Constitution the Fundamental Rights which, were never contemplated; nor were they conceived in the Act of 1935 and much less thought of by the British Government or the British Cabinet. Secondly, you have barred the Jurisdiction of the courts by a specific provision in the Constitution. A point has been made out by our Friend, Shri Alladi Krishnaswami Ayyar, that it is the judicial pronouncement of the highest court. I must tell him again—as I have already suited—that my confidence in the pronouncements of the British judiciary under a system of imperial administration is not as it would be under the pronouncement of a free judiciary in a free India. Until that is done I must plead with him and with the honourable Members of this House that my confidence in the judiciary will be within its limitations.

Sir, a period of limitation of two years has been laid down—I do not known, for what reason. The enormous powers that are vested in the Executive are not at all desirable. When my honourable Friend Shri Alladi Krishnaswami Ayyar was thrusting his homilies on us to trust the executive, it took my breath away. I hardly expected that an eminent jurist and lawyer as he would teach me about

our confidence in our Executive. I would plead with him to carry his logic further. By all means have all confidence. Why then have any law? Leave everything to the administration. Have no laws at all. Have no constitution; no Fundamental Rights are called for because we have it responsible Government and a popular Ministry. This is hardly expected of a very wise and sound jurist of his eminence.

Sir, I must complain in this connection that the Government have not placed all their cards before us. I do realise the fact that the Government is not represented here and the Members of Government are here in their capacity as Members of the House. But it is no doubt a fact that Dr. Ambedkar is also the Law Minister of India, and it is his responsibility and duty to explain to us what steps he has taken up till now in this regard. This is, a very big order that he wants to be given to him. There are thousands of laws, Central and Provincial in operation, including the Regulations passed by the British Government. All these have to continue in operation. Is it possible for ordinary Members, I ask, to undertake the private legislation to modify all these? What has been done by the Ministry of Law? I plead again with the Drafting Committee that the position they have taken so far, as also the action taken by the Law Ministry so far in this regard has not been helpful. My Honourable Friends have made various suggestions.

Mr. President : What is the kind of action which you expect from the Law Ministry on this subject?

Shri Biswanath Das : I am coming to it. In fact I will be failing in my duty if I do not state it and I will iterate. The British Government, before any adaptations were undertaken asked the Government of India and the Law Department of the Government of India to examine all the necessary Statutes. The Government of India were suggesting adaptations and the adaptations suggested by the Law Ministry, then, the Law Department of the Government of India, were being approved and published as the adaptations of the British Government in an Order-in-Council. My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Mr. President : Without knowing what the Constitution is going to be.

The Honourable Dr. B. R. Ambedkar (Bombay: General): My Friend is thoroughly misinformed. He does not know what is being done.

Shri Biswanath Das : I will be glad if I am misinformed and I will be glad If all this has been done. In which case, my Honourable Friend ought to have placed the whole thing at least by this time—as I said and I repeat—all the cards on the table, and said "I have got them ready, give me the order and I will publish." I do not agree with those who think that consultations with Chief Justice will improve the matter nor do I agree with those honourable friends who feel that reactions are to be placed before Parliament . The adaptations under the Indian Independence Act were placed before Parliament. But to what effect? Where has the legislature time for private Members to undertake this stupendous task? Under these circumstances, placing of adaptations for the reactions of Parliament will not help.

Another proposal has been placed before honourable Members and that is an Expert Committee. That would be certainly useful and helpful. But I would suggest that we are giving a big order and placing very responsible power and

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authority with the Executive. Therefore, I think it will be fair to the Legislature also if some of the eminent jurists, who happen to be Members of the Legislature, are constituted into a Committee to place recommendations before the Law Ministry so that the Ministry gives them merely legal shape. It should be the responsibility of the Law Ministry to put them into legal form. I am not inclined to place all other powers, importance and responsibility as they are, in the hands of the Executive. In this view of the question, for myself will be fully satisfied if the Honourable the Law Minister or the Drafting Committee say that they are willing and anxious to have an Expert Committee of the Constituent Assembly and the Legislature examines all the laws, and if necessary, asks the Provincial Governments to undertake examination of all the laws and all the adaptations to be put together. It would be unthinkable after responsible Government in a free India to have laws irresponsible in themselves and most of which are out of date and at antediluvian and which do not suit the present-day needs of the people to co-exist and operate. In these circumstances, I plead with the Drafting Committee and also with the honourable Members of the Constituent Assembly to consider this important question.

An Honourable Member : The question may now be put.

Shri Rohini Kumar Chaudhuri : Sir, after listening to this debate carefully, I am inclined to support the view expressed by my honourable Friend, Pandit Thakur Das Bhargava. It seems rather preposterous that if a Legislature passes any provision which is inconsistent with the Constitution then any one aggrieved by that would be entitled to bring that fact to the notice of the Court and the Court will not be precluded from considering that question. Supposing any legislation was passed which was inconsistent with any of the Fundamental Rights of the Constitution, then it was up to anybody to move the Court to have that legislation declared illegal and void. It seems rather strange when a similar order or provision was made by the President by virtue of the power of his adaptation and modification—which was inconsistent with the Constitution, we could have no remedy in a court of law. I thought, Sir, there it was not necessary to abrogate this new provision because so long as the adaptation order was inconsistent with any provision of the Constitution, the lower court would have full jurisdiction. But my honourable Friend, Shri Alladi says that in a recent ruling the Federal Court has held that any suit brought to set aside or to declare an adaptation invalid would be out of court. Therefore, Sir, I consider it would be safe and in the interests of all concerned that an amendment of the nature which has been proposed by Pandit Thakur Das Bhargava should be accepted.

I would also like to say that the period of two years prescribed by this article is rather too long. If such a period is there, in some instances the President or his advisers may not taken steps as early as they should. In my opinion, immediate action would be necessary after the passing of the Constitution so far as administration of justice in the tribal areas is concerned. It will be within the recollection of the House that in paragraph 5 of Schedule VI, certain provisions have been laid down on the strength of which the Code of Civil Procedure and the Code of Criminal Procedure could be made enforceable in the tribal areas.

But honourable Members will be surprised to learn that even though there may be a litigation between persons who do not belong to the tribal community, in areas which are not inhabited by tribal people at all, but are within the juris- diction of the hill area, the Code of Civil Procedure and the Code of Criminal Procedure are not in force, For instance, there any Assistant to Deputy Commissioner who may not have any legal academical qualifications is competent to punish an accused with any sentence up to seven years; and under the present rules if the sentence is more than three years then only an appeal can be filed.

Otherwise, there is no right of appeal. I regard to other matters also, the Civil Procedure Code or the Criminal Procedure Code is not in force. It has been laid down that the courts will be guided by the spirit of the Code of Civil Procedure or the spirit of the Code of Criminal Procedure. This spirit, Sir, it has been very difficult to find at all. Sometimes, the spirit of the Criminal Procedure Code is interpreted in not following the Criminal Procedure at all; sometimes it is interpreted in following the Criminal Procedure Code strictly. Even if my honourable Friend. Dr. Ambedkar or Alladi Krishnaswami Ayyar had been practising in these bills, they would have found it difficult to see where the spirit of the Civil Procedure Code or the spirit of the Criminal Procedure Code lay. Under this paragraph, it is within the competence of the Governor to declare that the Criminal Procedure Code will be enforced in respect of the trial of offences which involve a sentence of imprisonment of five years or more, or transportation or capital sentence. But, unless the law is adapted immediately, this provision of the Constitution will remain merely as a dead letter. This is a very small mercy. Just for a moment, fancy that anybody living in Delhi or Ajmer Merwara being tried, convicted and sentenced to death also without the Criminal Procedure Code being followed. I could have quite understood if this law was applicable in those cases where the indigenous people or the tribal people were the parties. But it is not so. Even if it is a case purely between non-tribals or between a tribal and a non-tribal the Criminal procedure Code is not applicable and in that case no legal procedure is followed; at any rate the right of appeal will not be allowed.

I submit that in order to bring the present law in line with those provisions which have given a small mercy in that the Governor may declare certain provisions of the Criminal Procedure Code to be enforced in a particular area in respect of certain cases, steps should be taken by an amendment or modification of that law so that that law may come into force at an early date. Therefore, I welcome this article which allows an alteration or modification of the existing law so as to bring it in line with the provisions of the Constitution. At the same time, we must be safeguarded against the application of these provisions for adaptation or modification in such a way as may interfere with the fundamental rights given by this Constitution. In such cases of interference, it should be made clear that we should have the right to go to the court, in order to have that adaptation declared invalid. Otherwise, if you leave it at that, in view of the ruling that has been cited, we shall be absolutely powerless to take any step when the President would be pleased to make such an adaptation as would be inconsistent with the provisions of the Constitution.

Mr. President : Closure has already been moved. The question is:

That the question be now put."

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, let me, at the outset apologise to my honourable Friend, Mr. Kamath, who is not here I see, who took objection to a slip of the tongue on my part when I referred to those honourable Members who moved amendments as people who moved amendments.

The House may recollect that I had tried to anticipate the amendments that were being moved and answer those amendments in advance. The bulk of them, at any rate so far as the amendments moved by my honourable Friends, Mr. Kamath, Mr. Muniswami Pillai, and Prof. Shbibban Lal Saksena, I have attempted to answer in advance. I think that so far as the wording of clause (2) as it now stands is concerned, It is so clear that no mischief can possibly arise out of the wording appearing at the end of that clause, namely, that such modifications and adaptations shall not be questioned in a court of law. Ample provision has been made by the opening words which specifically state that the

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adaptation should be made only for the purpose of bringing the provisions of the law in force in the territory of India into accord with the provisions of this Constitution.

It is only this group of amendments which were tabled by my honourable Friend, Pandit Thakur Das Bhargava which probably require some reply. In his amendment No. 188, in which he seeks to substitute clause (2) by another clause, he has failed to understand the purport of clause (2). The purport of clause (2) is that in so far as it is possible, the machinery at the disposal of the Government would prepare the necessary amount of material for adaptations to be made which will, in all probability, be published as an Order by the Pressident immediately after the Constitution is promulgated. That would be necessary because there will be a number of details, minor in some cases, of a different character in certain other cases which will have to be dealt with in order to bring the laws in force in tune with the provisions of the Constitution.

In the amendment proposed by my honourable Friend, he suggests that a committee should be appointed and that that committee should report within a period of eight months, and that action should be taken later on. What is to happen in the period between the time of the promulgation of the Constitution and the eight months that will naturally elapse until the committee reports? It is obviously impossible that any such thing could possibly be done, if actually the laws that are in force are to be brought in tune with the provisions of this Constitution. As I said in my remarks at the time of moving these amendments, there is nothing to prevent the Government, to prevent the Parliament, from passing a resolution, or prevent the Government from taking the initiative in this matter and appointing a Committee to review the law structure in this country and modernise it and bring it in tune with the principles that are adumbrated in this Constitution. I think my honourable Friend, Pandit Thakur Das Bhargava must wait until the new Constitution is promulgated and either by means of a Bill or by means of a Resolution get the Government to move in the matter, on the lines that he has suggested.

So far as his amendment to clause (3) is concerned, the amendment is such that it takes away the guarantee that is provided in clause (3) of the amendment moved by me. What he has done is merely he has sought to incorporate in his suggested amendment to clause (3) what he had originally thought of moving as a separate article 307-A. The idea that he had when he framed the amendment that he wanted to move as a new article 307-A has been incorporated in clause (3), namely, that something must be done in regard to the fundamental rights, and the question of relating the laws of this country in tune with the fundamental rights.

I therefore feel that my honourable Friend, Pandit Thakur Das Bhargava who is known to this House as a lawyer of considerable eminence and who puts in a lot of hard work in helping this Constitution to be framed has, in this particular instance, allowed his enthusiasm to outrun his usual discretion and tabled an amendment which does not fit in with the particular amendment before the House. It may fit into something else; it may go in as an independent proposition; but it does not fit in this particular amendment. Because, his amendment No. 188, does not fulfil the purpose of clause (2) of the amendment that I have proposed and his amendment No. 189 does not fulfil the purpose of clause(3), that . . . . . .

Pandit Thakur Das Bhargava : So far as the amendment relating to the proposed clause (3) is concerned. it is a separate thing altogether It is not an amendment to clause (2).

Shri T. T. Krishnamachari : Actually, his amendment No. 189 says—

"That in amendment No.2 for the proposed clause (3) the following be substituted."

I feel that it is not a substitution because it bears no relation whatever to the provisions of clause (3) as I have moved it, and I think there is no mystery about it because the wording of clause (3) is very clear. The wording seeks to empower the President to make adaptations only for a period of two years.

Pandit Thakur Das Bhargaya : It is an amendment to the original article.

Shri T. T. Krishnamachari : Then I stand corrected. If my honourable Friend has brought an amendment at 9-35 A.M. today which is something apart from the amendment, which is on the Order Paper, I am afraid that I must withdraw all the remarks that I have made and merely plead that since the thing bears no relation to the amendment that I have moved, I am unable to furnish a reply and the proper authority probably to give a reply will have to be the Honourable Minister for Law of the Government of India or the Law Minister of the Government of India as it is to be after the 26th January. I feel that the article 307 as amended by the amendments proposed by me fulfils a definite purpose which has been amply justified by the learned arguments furnished by my honourable Friend and colleague, Mr. Alladi Krishnaswami Ayyar, and the House would therefore do well to accept his argument in support of this proposal and I would therefore request the House to accept my amendment and pass article 307 as amended by my amendment.

Shri Amiyo Kumar Ghosh (Bihar: General): I want a clarification of what is really intended to be meant by the words—

"and any such adaptation or modification shall not be questioned in any court of law."

Because if the President amends or modifies any existing law in accordance with what we have passed in the Constitution then his actions are *intra vires* and no question of raising the matter in any court of law arises. But if the President does anything which is against the spirit of clause (2), *i.e.*, if he amends, modifies or repeals any existing law which is at variance with or repugnant to the provisions laid down in the Constitution then his action is *ultra vires* and certainly it can be questioned in a court of law. What class of cases are really contemplated to come within the limitation provided in the last two lines. Clearly, the cases in which the President acts precisely within his power conferred by this article do not come under those two lines mentioned above so there is only one class of cases that are likely to be governed by the said lines are in which the President acts in contravention to what is laid down in this article because you have not laid down any procedure or rules for the President to act in matters of amending or modifying the existing laws and so no question of irregular exercise of Power arises.

Shri T. T. Krishnamachari : My honourable friend his not followed perhaps my imperfect explanation of the provisions. I wanted him to consider the opening words. The opening words justify the interference by a court to see whether the adaptation has been made in accordance with the opening words *i.e.*, for the purpose of bringing the provisions of any law in force. If it is felt by a Court that it is not for that purpose, undoubtedly the adaptation will be *ultra vires*. If on the other hand it is a matter of merely a question of a different point of view in regard to wording of the adaptation, etc., then it certainly is a matter which we feel ought not to be questioned in any court of law. In any event, nothing would prevent any court from going into the question whether the adaptation was for the purpose intended by this clause *viz*., for the purpose of bringing the provisions of any law in force. We cannot really state in a

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Constitution what particular matter is to be *ultra vires* or *intra vires*. The purpose has been clearly indicated and I do not think we can go beyond the words contained in this clause.

Shri Amiyo Kumar Ghosh : If the cases of irregular exercise of jurisdiction and the cases in which the President's action is in accordance with this provision do not come under these two last lines, then certainly there is always a danger of interpreting it so as to include the cases in which the President acts without jurisdiction.

Mr. President : I will now put the amendments to vote.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307. after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal' be inserted."

The amendment was negatived.

Mr. President : No. 134.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

The amendment was negatived.

Mr. President : No. 135.

Shri V. 1. Muniswamy Pillay : Sir, I would ask for leave to withdraw my amendment.

The Amendment was by leave of the Assembly withdrawn.

Mr. President : 136. 1 will put the two parts separately.

The question is:

"That in amendment No. 2 of List I in the proposed clause (3) of article 307—

"(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution the words 'after the constitution of the Ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution. be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (b), the words 'or other competent authority' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I in sub-caluse (b) of the proposed caluse (3) of article 307 for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted.

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I in the proposed clause (2) of article 307, the words 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Second Week), the proposed clause (2) and (3) of article 307 be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:—

'The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:—

'(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this constitution into accord with the provisions of this Constitution, the President shall, after the commencement of this constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions relating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provision of this Constitution. The Government shall, on the receipt of the report forthwith take steps to avoid repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after one year of the commencement of this Constitution if they are not avoided, repealed or amended earlier.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No.2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `made and any such adaptation or modification shall not be questioned in any court of law' the word `made' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `and any such adaptation or modification shall not be questioned in any court of law' the words `except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words `except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

The amendment was negatived.

Mr. President : The question is:

"That for clause (2) of article 307, the following clauses be substituted:—

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed—

(a) to empower the President to make any adaption or modification of any law after the expiration of two years from the commencement of this Constitution; or

(b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause."

3. That in Explanation I to article 307, the words ' but shall not include an Ordinance promulgated under Section 88 of the Government of India Act, 1935' be added at the end.

4. That in Explanation II to article 307, for the word 'has' the word 'had' be substituted and after the words 'continue to have' the word 'such' be inserted.

5. That for Explanation III to article 307, the following be substituted:—

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force."

The amendment was adopted.

Mr. President : The question is:

'That article 307, as amended, stand part of the Constitution."

The motion was adopted.

Article 307, as amended, was added to the Constitution.

Article 308

Mr. President : We go to article 308. Dr. Ambedkar.

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

"That for clause (3) of article 308 the following clause be substituted:—

'(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect us if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this constitution.' "

Also:

"That after clause (3) of article 308, the following new clause be inserted:—

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.' "

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed—section 4—in case they are not finally disposed of before the 26th January,