Emergence of Second Chamber in India

R. C. Tripathi

RAJYA SABHA SECRETARIAT
NEW DELHI

EMERGENCE OF SECOND CHAMBER IN INDIA

There is a general impression that this House cannot make or unmake governments and, therefore, it is a superfluous body. But there are functions which a revising chamber can fulfil fruitfully. Parliament is not only a legislative but a deliberative body. So far as its deliberative functions are concerned it will be open to us to make very valuable contributions, and it will depend on our work whether we justify or do not justify this two-Chamber system which is now an integral part of our Constitution. So, it is a test to which we are submitted. We are for the first time starting, under the new parliamentary system, with a Second Chamber in the Centre, and we should try to do everything in our power to justify to the public of this country that a Second Chamber is essential to prevent hasty legislation. We should discuss with dispassion and detachment proposals put before us.

Dr. Sarvepalli Radhakrishnan
16 May 1952

To Call either of these Houses an Upper House or a Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two Houses together that are the Parliament of India...There can be no constitutional differences between the two Houses, because the final authority is the Constitution itself. That Constitution treats the two Houses equally, except in financial matters which are to be the sole purview of the House of the People. In regard to what these are, the Speaker is the final authority.

Jawaharlal Nehru
6 May 1953

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Published for and on behalf of
RAJYA SABHA SECRETARIAT
NEW DELHI

National Publishing House
2/35 Ansari Road, Darya Ganj, New Delhi-110002 (India)

Branch
Chaura Rasta, Jaipur-302003

Website :
http: //parliamentofindia.nic.in
htt : //rajyasabha.nic.in

First Published : June, 2002

Price : Rs. 550.00

Printed in India at Saraswati Printing Press, Sector 5, A-95, Noida-201301 and published by National Publishing House, 2/35 Ansari Road, Darya Ganj, New Delhi-110002.

[ISBN 81-214-370-7]

e-mail : klmalik@mantraonline.com
Fax : (011) 3274161

न सा सभा यत्र न सन्ति वृद्धाः,
वृद्धा न ते ये न वदन्ति धर्मम्।
धर्मः स नो यत्र न सत्यमस्ति,
सत्यं न तद्यच्छलमभ्युपैति॥

(महाभारत 5.35.58)

[*That's not an Assembly where there are no eldermen,*
Those are not elders, who do not speak with righteousness,
That's no righteousness where there is no truth,
That's not the truth which leads one to deceit.]

(*Mahabharata* 5.35.58)

CHAIRMAN
RAJYA SABHA
PARLIAMENT HOUSE
NEW DELHI

Foreword

"If the Second Chamber dissents from the First, it is mischievous; if it agrees, it is superfluous"; Abbe Sieyes' famous denunciation of the Second Chamber may have had elements of truth, but it is a lot more rhetoric than it is truth. The more conventional justification for the Second Chamber—it being a chamber of continuity, affording cool reflection on the great issues of the day and providing voice to the states in the central legislature in a federal polity, etc., appear closer to the mark. There is enough empirical evidence to support the view, that as governments are not formed, nor do they fall on the basis of the party strength in the Second Chamber, this Chamber is relatively free from the compulsions of competitive party-politics, which characterizes its other counterpart.

Most Second Chambers pride themselves on the quality of their debates, the presence of the spirit of give and take, of accommodation and adjustment among their members across party lines and, their ability to supplant political differences to serve larger and worthier causes. It is this desire for dignified debates and cool reflection that prompted our Constitution Makers to provide for nominations to the Council of States (Rajya Sabha) of 12 Members noted for their contribution to literature, science, art and social service. The Second Chamber being a smaller House also helps from the standpoint of time devoted to discussions as well as the variety in subject matter of debates. Consensus building—the crux of any functional democracy, is a lot easier in the relatively small Chamber such as our own Council of States. The Second Chambers rightly regard themselves as the guardians of the state-interests in a federal polity.

Our Constituent Assembly had vigorously debated the need for a Second House in the Country's Parliament. Gopalaswami Ayyangar put forth one strand of dominant viewpoint in these words... "The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues... What we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which

might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People... On the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration."

But, the other important reasons which made the Constitution makers gravitate towards the idea of a Second Chamber was the need to give representation to the States—*qua* States, in the Federal Legislature. They were also influenced by India's constitutional history, in which the Second Chamber was part of the legislative arrangement, both in the Government of India Act of 1919 and the Government of India Act of 1935. One other factor which seems to have influenced the Fathers of our Constitution was that a Chamber of legislative continuity was needed in a Parliamentary system where the popularly elected House ends and, is re-born, every five years or less. Should it become necessary to bring before the Parliament an important matter when the Lok Sabha may be under dissolution, or on its way to reconstitution following an election, the absence of a Second, and continuous Chamber, could be distinct and, perhaps, critical deficiency.

The majority-minority party equation in the Council of States (Rajya Sabha) changes at a much slower pace than in the Lok Sabha. There may be occasions when a Party enjoying a majority in both the Houses is reduced to a minority during an election in the Lower House, but remains a majority in the Rajya Sabha. Some experts argue that this position is an anomaly because it derogates from the theory of mandate, which holds that popular mandate, at any given time, gives to the winning majority an untrammeled right to initiate legislations germane to that mandate. The need to carry the opposition majority in the Upper House is, by inference, an anomalous provision. There is the added danger, that the Opposition in the Upper House can use its majority to embarrass the government of the day.

There is no doubt, that in every democracy a certain political one-upmanship is practiced among political parties. But, at the same time, consensus-building remains the hallmark of mature democracies. Seen in that light, the differing majorities in the popularly elected Lower House and a continuous Upper House, do not appear all that disagreeable. A large number of very important government legislations have been approved by both Houses in spite of the opposition majority in the Upper House. There may be odd occasions when the government may be faced with difficulty in carrying its legislations through the Rajya Sabha. The dominant trend, however, has been towards carrying the legislation

through consensus. The committee system of the Parliament, where most bills are considered, analyzed and amended by Parliamentary Committees, reduces the margin of difference between the government and the Opposition; at least the government and the dominant Opposition, and promotes consensus-building for maximum legislative output. In a sense, it strengthens the fibre of our democracy.

The parliamentary institutions in our country, including the Second Chamber, are still evolving—learning from experience, correcting course where necessary and, in the process, yielding a rich body of conventions, which help our institutions create functional space even in the midst of the mundane competitiveness of party politics.

Shri R.C. Tripathi, in his book 'Emergence of Second Chamber in India', has captured the essence of the evolution of the Council of States—the Rajya Sabha. He has brought into focus the thoughts on our constitution makers' minds when they chose to make our Parliament a bicameral legislature. A lot of interesting historical snapshots about the evolution of the Second Chamber in India enhance the value of the book.

New Delhi
30th May, 2002

(Krishan Kant)

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Introduction

India was already conversant with the bicameral central legislature before Independence. Second Chamber was introduced in 1921 under the Government of India Act, 1919. The Council of State, with all its limitations, as the Second Chamber of the bicameral central legislature of the colonial era can perhaps be regarded as the precursor of the Council of States or Rajya Sabha of the Independent India. Any study, therefore, of the origin and evolution and the circumstances necessitating such a chamber in the Central Legislature in colonial period is no doubt an interesting and useful exercise. This is one of the aspects dealt with in this book.

Founding fathers of our Republic in their collective wisdom gave primacy to the concept of 'accountability' over that of 'stability' while deciding the form of government for Independent India. They, therefore, opted for the parliamentary form in which the accountability of the Executive to Parliament—the supreme representative body of the people—is more visible and strong and is continuous and not periodic. Given the conditions—social, political and economic prevailing at the time India won Independence, it was only logical and perhaps most practical that the founding fathers put premium on accountability aspect of the governance. They, however, did not stop at that. Looking at the demographic and geographical factors, they also chose to have a bicameral Parliament. Though under article 75 (3) of the Constitution, they made the Council of Ministers responsible to the House of the People, the Council of States, despite being a body representing the States and some of the Union territories in Parliament and this reinforces the unity and integrity of the Indian nation, also was designed to make the operation of accountability of the government towards Parliament wider and intense.

Apart from this, other aspect uppermost in the mind of the founding fathers while providing for a bicameral Parliament was the need for having a revisory House which would allow scope for having a second look on matters coming up before Parliament.

The Council of States or Rajya Sabha also has the benefit of wise counsel of twelve nominated members whom President nominates to this House as per the provisions of article 80.

My association with Rajya Sabha has spanned for about two decades and a major part of it has been as the Deputy Chairperson of the House. I have found Rajya Sabha to be a sagacious body, which has taken decisions in relatively serene atmosphere. There have been instances of occasional turmoil but such occasions cannot be completely eliminated in a vibrant democracy. The dignity of the House has, however, rarely been violated.

This book indeed is a significant contribution in the realm of political history. In this work Shri R.C. Tripathi, Secretary-General of Rajya Sabha has sought to highlight important stages in the evolution of Second Chamber in India. The relevant documents given as appendices in the book add authenticity and also make available important constitutional documents having a bearing on the evolution of Second Chamber in India at one place.

I hope this book would be found useful by those who are interested in bicameral aspects of the history and evolution of Central Legislature in India.

Najma Heptulla

New Delhi

(Najma Heptulla)

Preface

The existence of second chambers has been one of the vexed questions in the history of democratic governance. Political thinkers, for and against this institution, have been divided on this issue from the very beginning. While some have described second chambers diversionary and conservative in nature, others have found them to be effective checks against possible legislative "tyranny of the popular lower chambers". This controversy is as old as the concept of the second chamber itself. Many of the countries in the world prefer to have bicameral legislatures for one reason or the other, while demands for abolishing them have been raised in some countries for a variety of reasons.

Generally speaking, the reasons for having second chambers in different countries are based on factors like traditions; need for protecting the interests of propertied and conservative elements; prevent hasty legislation; providing representation to the classes or interests in the legislature who are generally not able to get represented in the Lower House and also providing representation to the federating units in the national legislature. There exists no uniformity as regards the manner of election for the second chambers, eligibility of candidate for being chosen to this House or to be a voter for constituting a second chamber. The socio-economic profile of its members and the manner of their being chosen, *i.e.*, either through election which may be direct or indirect or nomination, are the determining factors of the attitude and position taken by a second chamber on issues that are placed before it.

In view of the sustained debate over the role and utility of the second chambers, the need for deeper studies on various aspects of this "fascinating enigma" need hardly be underlined. This is more so in the case of India. Much has been written about the history, evolution and working of Indian Parliament. These studies, barring a few, are focused generally on Lok Sabha (the House of the People). I feel that no study of Indian Parliament can be complete if it does not include Rajya Sabha. A history of a parliamentary democracy in India, therefore, would remain

incomplete without such a study. I have felt the need to have a study done of the origin and evolution of the second chamber in India. While attempting such a study, one has to understand the circumstances—historical, political and economic, and the motives behind the setting up of a second chamber in India by the then colonial rulers. This book is a small step in that direction attempting to bring out the transformation of this body both in structural and functional aspects chronologically since its inception.

The first chapter of the book presents a brief account of democratic and representative institutions playing important role in deciding the affairs of the state in ancient India. These are known to have observed elaborate rules of procedure somewhat akin to those being observed by modern legislatures. The second chapter aims at bringing out the origin and evolution of legislative institutions with modern appendages during the colonial rule up to the operation of the reforms suggested by the Morley-Minto Report, 1909. The third chapter dwells on the circumstances and motives which led to the setting up, for the first time, of a second chamber in the Central Legislature by the British. Some discerning trends which later influenced the process of moulding of the second chamber in its present shape after it was inaugurated in 1921 have also been highlighted in this chapter. The fourth chapter provides an account of successive changes made in the mode of election, composition, powers, etc. of the second chamber under the pressure mainly from the nationalist forces. Views of the Simon Commission and the relevant provisions of the Government of India Act, 1935 have been highlighted in this chapter. The fifth chapter provides a synoptic account of the other proposals, mainly non-official ones, in respect of second chamber in India. The sixth chapter is a sort of anthology of the views of the founding fathers of the Indian Constitution on the second chamber expressed in the Constituent Assembly. The last chapter gives an account of Rajya Sabha as it exists today. Important documents relating to the creation and evolution of the second chamber in India have been appended for ready reference.

I am greatly beholden to the Hon'ble Vice-President of India and Chairman, Rajya Sabha, Shri Krishan Kant, who blessed this project and kindly contributed a foreword to this book. He has very succinctly observed in the foreword that over the years Rajya Sabha has justified its existence and also played a positive role in assimilating and expressing regional aspirations with national unity and integrity. Shri Krishan Kant has been a member of both the Houses, Lok Sabha as well as Rajya Sabha. His observations on Rajya Sabha are, therefore, the most authentic expression about the role which the Council has played in strengthening parliamentary democracy in India.

I am also grateful to Dr. Najma Heptulla for writing an introduction to this book. Dr. Najma Heptulla has been a member and Deputy Chairman of the Rajya Sabha for over twenty years. Her views are rich with experience and authenticity.

A study of this nature requires digging up a lot of archival material and consulting different documents and reports. And in doing this, I was ably assisted by Shri N.K. Singh, Director in the Rajya Sabha Secretariat. I also appreciate the assistance rendered to me by Shri N.C. Joshi, Joint Secretary in the Rajya Sabha Secretariat in the project. Their consistent support has made this work possible. I express my thanks to them and also to the officers and staff in the Research & Library and Printing Section who helped in reading of the proofs and preparing index for the book. My thanks are due to all those who helped me in various ways in this endeavour whom I am unable to name for want of space.

New Delhi
31st May, 2002

R.C. Tripathi
Secretary-General
Rajya Sabha

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Chapter 1

Democratic Traditions in India

Democratic concepts and institutions are known to have existed and worked in ancient India. Discussion and debate on matters of public importance had been the hallmark of Indian life in ancient times. Even in the Vedic period, when Kingship was the most common form of governance, the Kings were never absolute rulers. They exercised their powers with the aid and advice of their ministers. "In the works of emergency" says Kautilya, "the King shall call both the ministers and the council" and after discussion "shall do whatever the majority of the members suggest or whatever course of action leading to success they point out."[1] King's powers emanated from a body of laws based on customs as well as traditions known as *Dharma*, which in modern parlance can be described as the 'rule of law'. Kings and the rulers themselves took great care of public opinion and those who did not care for public opinion or defied *Dharma* could not continue to rule long. Some people, however, believe that India did not have any experience of the functioning of democracy and working of democratic institutions before the advent of the British in the country. Any demand for representative institutions during the British period, therefore, was opposed with the argument that it was hopeless to introduce into India a system of governance responsible to the people, as any system of government other than the absolute monarchy was not known in India and that democratic institutions or such concepts were totally alien to the genius of the Indian people. Those who advanced this argument were apparently taking no note of the democratic institutions which existed in ancient India. The famous historian E.B. Havell arrived at the conclusion that taking such a view was, in fact, a "false conception of Indian history held by Europeans". He says:

> ...the common belief of Europe that Indian monarchy was always an irresponsible and arbitrary despotism is, so far as concerns the pre-Muhammadan period, only one of the many false conceptions

of Indian history held by Europeans. It will be a surprise to many readers to discover that the mother of the Western Parliaments had an Aryan relative in India, showing a strong family likeness before the sixth century B.C. and that her descendants were a great power in the State at the time of the Norman conquest.[2]

He argues that while the liberty of the Englishmen was secured from unwilling rulers by bitter struggles and by civil wars, India's Aryan constitution was a free gift of the intellectuals to the people. This constitution was designed not in the interests of one class, but for all classes, for securing liberty and spiritual and material possessions subject to their respective capacities and consideration for the common welfare.[3]

According to another historian, Professor Rhys Davids, "The earliest Buddhist records reveal the survival, side by side with more or less powerful monarchies, of republics with either complete or modified independence." He also says:

> The administrative and judicial business of the clan was carried out in public assembly at which young and old were alike present in their common Mote Hall at Kapilavastu. A single chief—how and for what period chosen we do not know – was elected an office-bearer, presiding over the sessions, and of Raja, which must have meant something like the Roman Consul or the Greek Archon.[4]

While writing on India, the Greek historians refer to tribes who dwelt "in cities in which the democratic form of government prevailed". There is also a reference to a tribe "where the form of government was democratic and not regal". Various other tribes who opposed Alexander, the Great are referred to as living under a democratic form of government. Diadoros speaks of a Patala, as a city "with a political constitution drawn on the same lines as the Spartan; for in this community the command in war is vested in two hereditary kings of two different houses, while a Council of Elders rules the whole state with paramount authority."[5]

Megasthenes refers to the assemblies in Southern India also controlling and even deposing Kings. How long these forms of government subsisted, it is now not easy to say. It certainly prevailed on the West Coast of India among the Nairs at the time of the Portuguese invasion. The Portuguese writer speaks of the "Parliament" which controlled the Kings. The *Jirgahs* on the North-West of India which in the British territories consisted of the nominees of the Deputy Commissioner or Commissioner were the representatives of the old tribal assemblies which settled questions of war and peace and other important questions of government. That the spirit of popular government had not died when the British Government took possession of the country was, therefore, clear.[6]

Even in the ordinary villages, a democratic form of local self-government prevailed when the British took possession of the country. The Fifth Report of the Select Committee of the House of Commons accurately described how the village republics had survived invasions, convulsions and monarchy after monarchy.[7] The village assemblies administered justice—both civil and criminal. The supreme government dealt with them and not with the inhabitants of the villages and had election rules, containing the qualifications, disqualifications, etc. of the electors which were preserved in the inscriptions. These self-governing villages were incompatible with the revenue system of the British Government and with the administration of civil and criminal justice.The village entity was not recognized by the British rulers and in some provinces was destroyed by legislation, perhaps like the beautiful tree of education.[8]

POPULAR ASSEMBLIES IN ANCIENT INDIA

It is, therefore, evident that India had its own variant of democracy and democratic institutions though not of the western form. References to the existence of democratic institutions are also found in the Epics and the Puranic literature. The Vedic and the Buddhist literature abound in several examples of deliberative and consultative bodies.[9] The *Rigveda* and the *Atharvaveda*, for example, mention about the existence of some kind of popular assemblies. In these assemblies important affairs of the State were decided after much debate and discussion.[10] There are several instances of elected Kings or approval of succession by the people in Indian history. Kings were accountable to the people for their acts of omission and commission.[11] Deliberative bodies like regional councils (*Janapadas*), city councils (*Paura Sabhas*), village assemblies (*Gram Sabhas*), administering people's affairs at different levels were common features of ancient Indian polity.[12]

BICAMERALISM IN ANCIENT INDIA

References are found which suggest the existence in some form of the concept of second chamber in ancient India. In the Constitution of Patala Kingdom, for example, the 'Council of Elders' was said to have ruled. Patala kings were responsible to the Council which was probably elected by the whole community.[13] References to the existence of two assemblies called *Samiti* and *Sabha*—one consisting of the entire people and the other representing a select section of the people, are also found particularly in the *Rigveda* and the *Atharvaveda*. King's powers, particularly his executive powers, were limited to a great extent by these assemblies.[14]

The *Samiti* has been described as the "sovereign assembly of the Vedic times" which finds mention in many passages in the *Rigveda*. The

word *Samiti* means meeting together, *i.e.* assembly. There is a reference to the King being a familiar figure in the *Samiti* and it was his duty to attend it.[15] The *Samiti* was the national assembly of the whole people where everyone was expected to be present. The *Rigveda* says that the entire people or the *Samiti* in the alternative, elected and re-elected the *Rajan* or King and this, obviously, was the most important business of the *Samiti.* It could also re-elect a king who was banished. Matters of general importance were discussed in the assembly. It was thus a sovereign body from the constitutional point of view.[16]

As references to the *Samiti* in the *Rigveda* are found only in portions which are considered to be the latest, it may perhaps be concluded that the *Samiti* was a product of the developed, not the early Vedic age. The *Samiti* has been compared with the early folk-assemblies of Western Europe by some European scholars. The *Samiti* had a very long life, a life extending certainly over a thousand years, or even longer. Its continuous existence is clearly indicated by *the Rigveda* and the *Atharvaveda* and later by the *Chhandogya Upanishad* (800 or 700 B.C.) which nearly marks the end of the later Vedic period. It withered around the time of the *Jatakas* (300 A.D.)[17]

The *Sabha,* mentioned in many passages of the *Rigveda* was another constitutional body during the *Vedic* period which also existed later. That the *Sabha* was a gathering of elect and the rich patrons is clear from the term *Sabheya, i.e.* 'worthy of assembly' used for its members.[18] Its decisions (resolutions) were binding on all and inviolable. Its career was co-extensive with that of the *Samiti.* The *Sabha* definitely acted as the national judicature also.[19]

References to the *Sabha* and the *Samiti* in the Vedic literature do not throw adequate light on the exact nature, functions and relations between these bodies. However, some tentative conclusions can be arrived at.[20] The *Sabha* and *Samiti* were described as sisters—the two daughters of *Prajapati.*[21] It appears that the *Samiti* was an august assembly of the people for deciding the public affairs and was presided over by the King. The *Sabha* was a select body, less popular and political in character than the *Samiti.*[22] There is mention of the *Sabha* being attended by persons of noble birth and of wealth who were shown special respect. The *Samiti* which was then existing thus corresponds to a national assembly (of all the people) and the *Sabha* to the Council of Elders. This broadly suggests that the *Sabha* probably was a Council of Elders or Nobles corresponding to the second chamber.[23]

The political assemblies like *Sabha* and *Samiti* could not withstand ravages of time and gradually faded. The political expansion of kingdoms over large areas also would have weakened the popular assemblies, since the longer distances might have prevented frequent meetings and

hence their decline.[24] The self-governing village assemblies, however, became important and continued to exist even in the face of subsequent political upheavals and frequent changes.[25]

The several accounts of democratic institutions in ancient India available to us are, undoubtedly, not quite elaborate and the available references do not define their exact character and functions. There are thus several gaps in our knowledge about them. It is nevertheless clear beyond doubt that some kind of people's assemblies, howsoever rudimentary in form, did exist during the Vedic period and that the idea of representative bodies, is certainly not entirely alien to Indian traditions and thinking.

RULES OF DELIBERATIONS IN ANCIENT INDIA

There are direct or indirect references to the various procedures followed by the deliberative bodies in ancient India, some of which were quite akin to the procedures observed by modern legislatures.[26] The Buddhist texts give a detailed account of such rules and regulations which are held by many scholars as identical with and probably based upon the democratic constitution of the republican states. Definite rules were laid down for counting of votes as the decisions were taken by majority.[27] Votes of those who could not attend assembly due to illness or some kind of disability, were collected. On a matter, if adopted unanimously, voting was not taken, but if voting on a question became inevitable, speeches were made before voting. Voting was done with the help of voting-sticks or voting-tickets called *Salakas* of different colours perhaps denoting 'ayes' and 'nays'. The Assembly appointed a *Salakagrahapaka,* taker of voting-tickets, who would collect voting-tickets either secretly or openly. Seating arrangement for members was supervised by a seat regulator, called *Asanaprajnapaka,* an official appointed specially for this purpose. Rule about quorum was also observed and any business transacted without necessary quorum was regarded as "invalid and inoperative". Duty of ensuring the presence of required number of members during the deliberations of the assembly was entrusted to one of its members, who was called *Gana-Puraka, i.e.* the 'whip' for a particular sitting.[28]

All the deliberations in these assemblies were initiated on a Motion, *Jnapti.* Resolutions, *Narishta* were also known to these assemblies which had to be put in a particular form and language. Resolutions had to be adopted or rejected by the assembly. Those against a resolution were allowed to speak while those in favour did not. If members remained silent after a resolution was read thrice, it was declared as adopted. A question once decided by the assembly in accordance with the established procedure, could not be reopened. Doing so was regarded as an offence.[29]

Members had to follow certain rules while speaking in the assembly. If a member did not control himself in discussion and showed "contradiction, cantankerousness and similar misdemeanour in speech", he was liable to a 'censure' by the assembly. The course of referring questions to the committees was also resorted to by these assemblies. The committees after deciding a question referred to them had to communicate their decision to the assembly.[30] There are references in the Buddhist literature that there used to be a person in the assemblies to record minutes of the deliberations of the assembly. He enjoyed a high status in the assembly. This person perhaps was a precursor of 'Clerk of the House' in modern legislatures.[31] The assembly was presided over by one of its members. This office was not hereditary and he was regarded as Chief rather than King.[32]

Dr. B.R. Ambedkar was of the view that parliamentary procedure was not new to India. While speaking in the Constituent Assembly on the day the draft constitution was adopted, he said:

> It is not that India did not know Parliaments or Parliamentary procedure. A study of the Buddhist *Bhikshu Sanghas* discloses that not only there were Parliaments—for the *Sanghas* were nothing but Parliaments—but the *Sanghas* knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization , *Res Judicata*, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the *Sanghas*, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.[33]

This account of existence and working of people's assemblies presupposes not only India's previous experience of having some sort of popular assemblies as also of having bicameral features. The characteristic features of these ancient bodies can be aptly summed up thus :

> The genius of the people for the corporate action expressed itself in a variety of self-governing institutions with highly developed constitution, rules of procedure and machinery of administration which challenge comparison with modern parliamentary institutions. Reading of the election rules of these bodies, the division of villages and districts into electoral units, their rules of debate and standing orders for the conduct of the business and maintenance of order in debate and their committee system, one might wonder whether many standing orders of the House of Commons and of the London Country Council are not derived from the regulations of the ancient local bodies, ecclesiastical councils and village assemblies of ancient India.[34]

Pandit Nehru believed that the parliamentary system has functioned with a very large measure of success in India because the democratic institutions have functioned in our country in the ancient past. He was also of the view that parliamentary institutions were suited to the genius and ethos of our people. He once said:

> We chose this system of parliamentary democracy deliberately; we chose it not only because, to some extent, we had always thought on those lines previously, but because we thought it was in keeping with our own old traditions also; naturally the old traditions, not as they were, but adjusted to the new conditions and new surroundings. We chose it also—let us give credit where credit is due—because we approved of its functioning in other countries, more especially in United Kingdom.[35]

Notes and References

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2. *See* E.B. Havell, *The History of Aryan Rule in India*, London, *Introduction*, p. xiii.
3. *Ibid.*
4. Taken from the Minutes of Dissent submitted by Sir Sankaran Nair to the *Government of India's First Reform Despatch* to the British Government in 1919. Also *see* P. Mukherji, *The Indian Constitution*, Part-II, Calcutta, 1920, p. 152.
5. For a detailed discussion on this aspect *see* Chapter VIII, *Hindu Republics in Greek Writers*, in, Jayaswal K.P., *Hindu Polity*, Bangalore, 1943, pp.58 -72.
6. *See* Minutes of Dissent by Sir Sankaran Nair, *op. cit.*, pp. 153-54.
7. For a detailed account of it *see* Sleeman's *Travels;* and Max Muller's *What India can Teach us.*
8. *See* Minutes of Dissent by Sir Sankaran Nair, *op. cit.*, p. 154; and Dharampal, *The Beautiful Tree: Indigenous Indian Education In The Eighteenth Century*, Biblia Impex Pvt. Ltd., 1983.
9. For details, *see* Hemchandra Roychaudhuri, *Political History of Ancient India,* Calcutta, 1953; R.K. Mookerji, *Glimpses of Ancient India,* Bombay, 1970; R.S. Tripathi, *History of Ancient India,* Delhi, 1960; Dr. P.L. Bhargava, *India in Vedic Age,* Lucknow, 1971; A.S. Altekar, *State and Government in Ancient India,* Delhi, 1949; and R.C. Majumdar, *Corporate Life in Ancient India,* Calcutta, 1918. The pioneering and extensive work on ancient Indian polity has been done by K.P. Jayaswal, *Hindu Polity*, Patna, 1988 (reprint).
10. *See* K.P. Jayaswal, *op. cit.*, p. 131; *Dr. P. L. Bhargava, op. cit.*, p. 257; and Padmini Sengupta, *Everyday Life in Ancient India,* London, 1950, p. 47.
11. Dr. P.L. Bhargava, *op. cit.*, p. 257.
12. N. Srinivasan, *Democratic Government in India,* 1954, pp. 3-4.

13. K.P. Jayaswal, *op. cit.*, p. 74; R.C.Majumdar, (ed.), *The Age of Imperial Unity*, op. cit., p.331.
14. R.S. Tripathi, *op. cit.*, pp. 44-45; and B.G. Gokhale, *Ancient India – History & Culture*, Bombay, 1956, pp. 100-01.
15. For a comprehensive account of *Sabha* and *Samiti see* K.P. Jayaswal, *op. cit.*, pp. 13-22.
16. *Ibid.*, pp. 13-14.
17. *Ibid.*, pp. 14-15.
18. R.C.Majumdar, (ed.), *The Vedic Age*, Bharatiya Vidya Bhavan, 1996, p. 356.
19. B.G. Gokhale, *op. cit.*, pp. 100-101; and K.P. Jayaswal, *op. cit.*, pp. 18-22
20. R.C. Majumdar, *Ancient India*, Varanasi, 1952, p. 46; and R.C.Majumdar, (ed.), *The Vedic Age*, *op.cit.*, pp. 356-57
21. *Ibid.*, p. 433.
22. R.C. Majumdar, *op. cit.*, p. 46; and R.C.Majumdar, (ed.), *The Vedic Age*, *op. cit.*, p. 357.
23. R.C.Majumdar, (ed.), *op.cit.*, pp. 433-34; and K.P. Jayaswal, *op. cit.*, p. 74.
24. Romila Thapar, *A History of India*, a Pelican original, 7/6, p. 51.
25. R.S. Tripathi, *op. cit.*, p. 44.
26. For a vivid discussion on procedure of deliberations in the Hindu Republics *see* Chapter XI of K.P. Jayaswal *op. cit.*
27. Padmini Sengupta, *op. cit.*, pp. 47-48; and R.C.Majumdar, (ed.), *The Age of Imperial Unity*, op. *cit.*, pp 332-33.
28. R.C.Majumdar, (ed.), op. *cit.*, p. 333; and K.P. Jayaswal, *op. cit.*, pp. 91-93.
29. *K.P. Jayaswal, op.cit.*, p. 96.
30. *Ibid.*, p. 98.
31. *Ibid.*
32. Romila Thapar, *op. cit.*, pp. 51-52.
33. Constituent Assembly Debates, 25 November, 1949, p. 978
34. Giriraj Shah, *Glimpses of Ancient Indian Culture*, NOIDA,1989, pp. 85-86.
35. *Lok Sabha Debates*, 28 March, 1957, cc. 1290-91.

Chapter 2

Evolution of Legislative Council of India (1600-1909)

Instances of deliberative and elected bodies in ancient India notwithstanding, full-fledged modern legislative institutions that we have today, in fact, evolved gradually during the British period through various Charters, Acts and other Statutes enacted from time to time mainly in response to nationalist demands and other pressures.

EAST INDIA COMPANY

The 'East India Company' which was initially set up by some enterprising merchants of London with the object of entering into trade relations with the East Indies was granted a Charter on 31 December 1600 by Queen Elizabeth I. The Company took the title of the 'Governor and Company of Merchants of London trading into the East Indies'. The original charter of the Company continued till 1765. Various Royal Charters issued notably in the years 1609, 1661, 1683, 1726 and 1753 gradually conferred on the Company powers to make civil, criminal and military laws mainly for defensive purposes as also to enable it to exercise effective control over its servants. The Company had initially built main trading centres at Bombay, Calcutta and Madras in the form of small colonies having their own offices, godowns and security. Each of these centres was under the control of the Governor-in-Council consisting of senior servants of the Company and the Governor was first among equals. The Company derived its authority partly from the British Crown and Parliament and partly from the Moghul Emperor and other Indian Rulers in the form of concessions like permission to build storehouses, right to keep soldiers, etc. It continued to work well so long as the Company remained a trading corporation and did not show any political ambitions.

With the weakening of the central authority in India after the death of Moghul Emperor Aurangzeb, regional chiefs and feudal lords began

asserting their sovereignty in the respective areas under them. As a result, India became a house divided against itself and the Company in such a situation began to acquire territories and hence political power, which laid the foundation of The British Empire in India.[1]

The Company, now, held territories in India not as its own but on behalf of the Crown. "The astonishing position was created that a few commercial agents were handling revenues of a kingdom in the name of an Emperor". In view of the opulence and arrogance of officials of the Company returning to England from India, there grew a strong feeling that Parliament should assert its responsibility so that the "experiment of ruling a distant and alien race was properly conducted".[2]

BEGINNING OF PARLIAMENTARY CONTROL

A comprehensive legislation, known as the Regulating Act, 1773, was enacted as the first important attempt by the British Parliament to reorganise the Company's system of governance in India. This Act altered the constitution of the Company at home and changed the structure of the Government in India subjecting all the Presidencies to one supreme control.[3] Uptil now, the three Presidencies were separate from and independent of each other. This Act made the Presidency of Bengal the supreme government with a Governor-General and four Counsellors for better management of the Company's affairs in India.[4] The Governor-General and Council was empowered to make and issue rules, ordinances and regulations, for the good order and the civil government of the Company's settlements at Calcutta and other places subordinate to it.[5] The legislative authority of the Governor-General and the Council was subjected to the veto of the Supreme Court set up by this Act itself at Fort William.[6] It may be noted that while the legislation was by the executive, the Supreme Court was provided as an independent check on the former, as the Governor-General and the members of his Council were appointed by the Company's Court of Directors.[7] Relation between the Court and the Council, in actual practice, was generally hostile which probably was the reason for the "comparative absence of legislations during the period from 1773 to 1780."[8]

Although the Regulating Act of 1773 had marked the beginning of parliamentary control, most of the powers still remained with the Company's Directors. Defects of this system were sought to be removed by a subsequent Act passed in 1784, commonly known as the Pitt's India Act, 1784.

DUAL SYSTEM OF GOVERNMENT

The Pitt's India Act aimed chiefly at remodelling the constitution of India by instituting a "dual system of government". It provided for a 'Board

of Control' consisting of six commissioners to be appointed by the Crown for the superintendence and control over all the British territorial possessions and over the Company's affairs in India.[9] The Company's Directors were subjected, in all matters, to the orders of the Board concerning civil and military government and revenues of India.[10] It reduced the number of Counsellors of the supreme government at Bengal to three, and remodelled the Councils at Madras and Bombay also on the similar pattern.[11] It created a separate Department of the British government in England whose only function was to exercise control over the Directors of the Company. The Pitt's India Act thus established for the first time a regular instrument of the British government to control the affairs of the East India Company. This system of double government remained, in fact, the hallmark of parliamentary control over the affairs of India till 1858.[12]

BEGINNING OF THE END OF THE COMPANY'S RULE

The Charter Act, 1833, in fact, marks the beginning of the end of the Company's rule by asking the Company to close its commercial business in India "with all convenient speed".[13] The Company now for the first time officially styled as the "East India Company", ceased altogether to be a mercantile corporation.[14]

The Governor-General and his Counsellors were styled as "the Governor-General of India in Council"[15] which was expanded by this Act by the addition of a fourth member—the Law Member. He was to be appointed by the Directors subject to the approval of the Crown from among the persons not in service of the Company. The first such member was Thomas Babington Macaulay. The Law member could sit and vote only in the legislative and not in the executive meetings.[16] The Act also provided for the framing of rules of procedure for the Council for efficient dispatch of its proceedings.[17] The Act centralised the legislative authority in the "Governor-General of India in Council" by empowering it to make laws for the whole of British India.[18] In effect, it took away law-making powers from the Presidency Governments. The latter were now required to submit regularly "true and exact copies of all such Orders and Acts" and matters which they shall deem material to be communicated to the Governor-General of India in Council from time to time.[19] The laws made by the Governor-General in Council were subject to disallowance by the Court of Directors and repeal or alteration by the British Parliament.[20]

LEGISLATIVE BODY IN INDIA

The Charter Act, 1833 passed during Lord William Bentick's time, made for the first time, a distinction between the executive and legislative functions of the Governor-General in Council by providing exclusively a

Member for the law-making purposes. This was a significant change because India now acquired "one central though rudimentary legislature."[21] Law making which was purely by executive order so far, had thereafter ended and one legislative authority was provided for the entire British India in place of what was being done by the three presidencies separately. But this reform also had many defects. One of the main defects was that the members of the Governor-General in Council based at Calcutta did not possess "local knowledge" about the problems in other presidencies. The defects of the 1833 Act were sought to be taken care of by the Charter Act of 1853.

BEGINNING OF A MINIATURE LEGISLATIVE ASSEMBLY

The Act of 1853 made significant changes in the composition and functions of the legislative machinery. It further enlarged the Governor-General in Council for law-making purpose by the addition of six legislative members, consisting of the Chief Justice and one other judge of the Calcutta High Court and four members as representatives of the provincial governments.[22] The Governor-General in Council now consisted of twelve members—four existing members, six law members, the Governor-General himself and the Commander-in-Chief. The legislative members as in the past could sit and vote in the Council only when it met for legislative work, not when it met to transact executive business.[23] No law made by the Council could come into effect until it received assent of the Governor-General.[24] Business in the Council was for the first time made public and the proceedings were officially published.[25]

The most significant aspect of the Charter Act of 1853 was that the legislation for the first time was treated as special function of the government requiring special machinery and special process. By including representatives from the sister presidencies in the Council, principle of 'local representation' was also recognised for the first time under this Act. After having the local governments represented, the Governments of Madras and Bombay were expected to demand increase in the meagre share which they had in legislation concerning their own presidencies. Rejecting the idea of increasing the number of members in the Council from the two subordinate presidencies, Lord Canning proposed that the single council should be broken up into three distinct councils—the legislative council of the Governor-General at Calcutta and local councils in Madras and Bombay. To each council, he proposed that three non-official members, European or Indian, should be admitted; that all measures of local character not affecting the revenue should fall within the competence of the local councils; that the latter should concern themselves with legislation only; and that business should be so conducted as to allow even Indians unfamiliar with English to participate in it. These proposals were remarkable as constituting the first decisive

Composition of Council of State

The Montagu-Chelmsford Report had envisaged a Council of State having fifty members, consisting of twenty-nine nominated (twenty-five officials, four non-officials) and twenty-one members elected by the non-official members of the provincial Legislative Councils and by interests such as the Mohammedans, landed classes and Chambers of Commerce.[38] The Franchise Committee considered, *inter alia*, the proposals regarding the scheme for election/nomination of the members of the Council of State contained in para 277 of the Montagu-Chelmsford Report.[39] The Committee experienced great difficulty in giving shape to the scheme to provide for the different "interests" mentioned in the Report, while preserving the proportion of seats amongst the provinces. It, therefore, even at the risk of going outside its terms of reference, recommended an increase in the number of elected seats from twenty-one to twenty-four and from twenty-nine to thirty-two in case of official seats. As a result, the strength of the proposed Council of State rose from fifty, as suggested by Montagu-Chelmsford, to fifty-six, excluding the Governor-General.[40]

Method of Representation

As regards the elected seats, fifteen seats, as per the Montagu-Chelmsford Report, had to be returned by the non-official members of the provincial Legislative Councils and six had to be elected from Mohammedans, Landholders and Chambers of Commerce directly. The Franchise Committee, in fact, did not find the method of direct election even to the Legislative Assembly practicable. It had received no practical suggestion, nor had it succeeded in formulating any method of direct election also for the Council seats.[41] The Franchise Committee recommended that except the two seats allocated to the European commerce, all the elected seats should be filled in by indirect elections through provincial Legislative Councils. It did not favour the idea of increasing one more election to the two elections (to the provincial councils and to the Indian Legislative Assembly) in which special interests like landholders and Mohammedans would be taking part. The Committee said :

> It appears to us that the least inconvenient course will be to provide, in all cases, except the two seats reserved for European commerce, for election to the Council of State by the non-official members of the respective provincial councils, and we have framed our scheme on these lines. We have not overlooked the fact that our proposals for election to the Indian Legislative Assembly and to the Council of State involve two elections by the members of the provincial Legislative Councils, but we are unable to devise any alternative system which is not open to graver objection.[42]

Qualifications of Candidates

As regards, the qualification of candidates, the Franchise Committee was of the view that candidature to the Council of State should not be confined only to the members of the Indian Legislative Assembly and provincial Legislative Councils. It saw great advantage in the selection of suitable representatives from outside these bodies. The Committee, therefore, recommended that it should be left to the electors to choose any person to the Council of State who was qualified to be the member of a provincial Legislative Council.[43]

GOVERNMENT OF INDIA ON FRANCHISE COMMITTEE REPORT

The reaction of the Government of India to the recommendations/ views of the Franchise Committee on matters relating to the Council of State was a mixed one. While agreeing to the idea of increasing the number of elected members in the proposed Council of State, it was argued that unless the original proportion was maintained between the two Houses as proposed by the Montagu-Chelmsford Report, the Council of State might lack the authority in cases where its opinion would be in opposition to the Assembly.[44] The Government did not give the same weightage as the Committee had done to the need for adjusting the claims of the provinces and the communities in the Council of State as well as in the lower chamber. Proposal of the Committee to fill the special Mohammedan and landholders' seats by the non-official members of the provincial Legislative Councils was found to be unworkable by the government.[45]

The suggestions of the Committee regarding the method of election to the Council was also not acceptable to the government although both preferred direct election to the Legislative Assembly. The government, however, felt that until it became attainable, there was no alternative "but to create new constituencies electing directly to the Council of State". To get both the chambers elected from the same electoral college was likely to reduce the Council of State to merely a "standing grand committee" of the Assembly. The government was of the view that the "Council should partake of the character of a hall of elder statesmen" and for that purpose its membership should be subject to a high standard of qualification. The Report, *inter alia*, said :

> Having gone so far, we should see no difficulty in advancing a step further and providing for each province an electorate of from 1,000 to 1,500 voters, possessed of the same qualifications as those which we should prescribe for membership of the Council of State, who should be required to elect to that body from among their own numbers. The details would vary between provinces, and it would of course be necessary to consult local Governments upon them.[46]

Assuming, therefore, that the Legislative Assembly would be enlarged, the provisional proposals regarding the Council of State would take the following form[47]:

(*i*)	Elected by restricted constituencies in	
	Madras, Bombay, Bengal, the United Provinces and the Punjab (3 each)...	15
	Bihar and Orissa, Burma, and the Central Provinces(2 each)...	6
	Assam	1
(*ii*)	Elected by Chambers of Commerce...	2
	Total elected members—	24
(*iii*)	Nominated non-official	4
(*iv*)	Official members—	
	Members of the Executive Council...	7
	Secretaries to the Government of India...	10
	Provincial and departmental officials...	11
	Grand Total ...(24 + 4 + 28) =	56

The government was of the view that in allowing for communal interests, one seat in each of the provinces having three seats should be reserved for Mohammedans, and one seat alternately in Bihar and Orissa and in the Central Provinces. One of the Punjab seats should be kept for Sikhs.[48]

As regards the official members, the question before the government was whether the officials appointed to the Council of State should be approximately same as those nominated to the Assembly or not. The Government felt that it would neither be easy for the provinces to spare two sets of senior officials for the comparatively prolonged sessions of the two Houses nor would the presence of so many officials be necessary for the purpose of joint sessions, if the certificate power was freely used. It would, therefore, still be advantageous to have the same officials in touch with the proceedings in both the chambers. Although in practice, it would mean that the two chambers could not sit at the same time, it was nevertheless advised by the Government that the same officials should, as far as possible, be members of both the Houses.[49]

The government was of the view that providing greater representation to interests should be the determining factor of the reform schemes. The view expressed was :

> For the rest, our aim should be to give the greatest scope to the representation principle and to make the business of the Indian legislature

a reality to the electorate; and the best hope of doing so lies in establishing a system of direct election to both chambers. We recognize that this is at the moment impracticable ; but for the upper or senatorial chamber we advise that the attempt be made. It can be done without delay, and there is no reason to fear that it will impede the introduction of reforms.[50]

The Government while summing up its views upon the report of the Franchise Committee said :

> We think that it will serve the immediate purpose of making clear to Parliament the general scope of the electorate which it will be possible to set up in India; the play which must be allowed to the principles of communalism and special interests; and the size and composition of the resulting legislative bodies in the provinces. Whatever changes may be made on points of detail, important as some of these are, will not impair the value of the report from these points of view. At the same time, we feel that there are proposals in the report, as for instance those affecting the depressed classes, the non-Brahmins, the Muslims, the landlords, and the division of urban and rural areas that we cannot without further inquiry endorse; while we desire more investigation into the constitution of the Indian Legislature and the method of election for the Council of State.[51]

JOINT SELECT COMMITTEE ON GOVERNMENT OF INDIA BILL, 1919

The Government of India Bill, 1919, was drafted in the light of the proposals contained in the Montagu-Chelmsford Report, Reports of the Committees which went into various aspects of the reform proposals; and the views held by the Government of India, provincial governments and the Imperial Government thereon.[52] After the Bill was introduced in the House of Commons on 5 June 1919, it was referred to a Joint Select Committee of both Houses of British Parliament for consideration and report.[53] The Committee suggested but few changes of far-reaching significance from the point of view of evolution of the second chamber in India. The Montagu-Chelmsford Report intended the Council of State to be the supreme law making body in matters which the government regarded as essential and, therefore, deliberately tried to make it a House in which the Government would be able to command a majority. Their intention was not for providing a real second chamber to India, rather making it a chamber of appeal against the possible refusal of the Legislative Assembly to pass the legislation considered necessary or indispensable by the government.[54] The Joint Select Committee of the British Parliament, however, rejected this scheme and recommended to reconstitute the Council as a "true second chamber". It said :

> The Committee do not accept the device, in the bill as drafted, of carrying government measures through the Council of State without reference to the Legislative Assembly, in cases where the latter body cannot be got to assent to a law which the Governor-General considers essential. Under the scheme which the Committee propose to substitute for this procedure, there is no necessity to retain the Council of State as an organ for government legislation. It should, therefore, be reconstituted from the commencement as a true second chamber.[55]

Similarly, the Joint Select Committee also did not agree to the proposal in the Bill which sought to empower the Governor-General to refer to the Council of State for its approval, any legislation which had been thrown out by the Assembly but was considered essential to the discharge of duties by him. The Committee was of the view that while there could be no two opinion on the Governor-General being fully empowered in all circumstances for securing legislations essential for the discharge of his responsibilities, it would, however, be unworthy to provide that such responsibility should be conceded through the action of a Council of State, specially devised in its composition for securing the necessary powers in this regard.[56] It, therefore, recommended to place all such legislations before the British Parliament. The Committee said :

> In such a case it would add strength to the Government of India to act before the world on its own responsibility. In order, however, that Parliament may be fully apprised of the position of the considerations which led to this exceptional procedure, they advise that all Acts passed in this manner should be laid before Parliament.[57]

The Committee further recommended that the Council of State should consist of sixty members, of whom not more than twenty should be official members. The advice of the Franchise Committee that non-official members should be elected by the same group of persons as would elect the members of the Legislative Assembly and from the same constituencies, could not be accepted by the Select Committee. The latter believed that a different system of election for the Council of State could be devised by the time the Constitution embodied in the Bill came into operation. The Committee, therefore, recommended :

> The Government of India be enjoined forthwith to make suggestions accordingly, to which effect can be given without delaying the inauguration of the new constitution. If the advice of the Committee that it be re-appointed for the purpose of considering the rules to be framed under this Bill be approved, it should have an opportunity of considering the proposals made for the election of the Council of State.[58]

As regards the Legislative Assembly, the Select Committee was equally unwilling to accept the method of indirect election proposed in the report of the Franchise Committee as a permanent arrangement. It opined that "if by no other course it were possible to avoid delay in bringing the Constitution enacted by the Bill into operation, the Committee would

acquiesce in that method for a preliminary period of three years."[59] The Committee was, however, not convinced that delay would be involved in preparing a better scheme of election, and they endorsed the views expressed by the Government of India in its despatch dealing with the subject.[60] The Committee, accordingly advised that the Government of India be instructed to make recommendations to that effect at the earliest possible.[61]

The Government of India had disapproved the indirect election to the Council of State.[62] Its essential character of a final legislative authority, however, remained as valid as before. In so far as a part of its membership was to be directly elected, it was different from other second chambers elsewhere.

Besides, the Joint Select Committee also expressed its views/ suggestions relating to the relevant experience of the person to be appointed as President of the Legislative Assembly, his salary; submission of Budget to the Assembly, composition of Governor-General's Executive Council, etc.[63]

The Joint Select Committee while examining the Bill took evidence of about seventy witnesses including eminent Indian leaders like B.G. Tilak, Surendranath Banerjea, Annie Besant, M.A. Jinnah and others. All of them were against either the Council of State *per se* or the composition thereof. Two memoranda, one each presented on behalf of the Indian National Congress and the Indian Home Rule League, were also considered by the Committee. The Congress memorandum regarded the provisions 'even less acceptable than the unsatisfactory and disappointing recommendations of the Joint Report'. The Home Rule League demanded a House with eighty per cent of elected seats as the existence of a solid bloc of an autocratic central government was against the spirit of the policy of His Majesty's Government announced on 20 August 1917.[64]

The Joint Select Committee thus made its contributions to the shaping of the central legislature mainly in three directions. First, the Council of State was transformed into somewhat a true second chamber as against a supreme legislative authority intended by Montagu and Chelmsford. Secondly, the direct election was substituted for indirect election for the Legislative Assembly. Finally, it recommended the relaxation of the control of the Secretary of State over the Government of India *vis-a-vis* the new status of the Legislative Assembly.

The changes recommended by the Joint Committee, no doubt, were an improvement on the proposals of the Montagu-Chelmsford Report. The Committee contributed significantly in making the Council of State a truly revisory chamber capable of performing the function of 'a buffer between the lower House and the reserve powers' of the Governor-General. Impact of these improvements, however, was highly limited.

GOVERNMENT OF INDIA ACT, 1919 IN BRITISH PARLIAMENT

The House of Commons discussed the Government of India Bill on 3 and 4 December 1919. In the course of debate, Colonel Wedgewood, a member of the Labour Party moved an amendment to the clause providing for a bicameral legislature and suggested scrapping of the Council of State. In defence of his amendment, he said he did not see the necessity for a double chamber system even in this country (Britain) still less for India.[65] The Secretary of State while replying to the debate justified the existence of the Council of State on the ground that a substantial public opinion was in its favour and that it was to be elected 'for a different term of years, by an electorate' quite distinct from that of the Legislative Assembly.[66] In the clause dealing with the constitution of the Legislative Assembly, Colonel Wedgewood wanted to provide that it should be 'directly' elected. The Secretary of State, refusing to accept the amendment, told the House that while in all 'human probability' the Government of India was framing rules for the introduction of direct election, it was also possible that the arrangements could not be ready for the first Legislative Assembly.[67] An other member of the House moved an amendment for the restoration of the strength of the Legislative Assembly at one hundred and twenty, as suggested by the Franchise Committee. Montagu told the members that once the principle of non-official majority had been accepted, it did not really matter what its size was and the advantages, therefore, were wholly in favour of these figures. He assured the members that he had the full concurrence of the Government of India in fixing the number of the Legislative Assembly at one hundred and forty.[68]

Speaking on the Bill in the House of Commons, Montagu expressed the hope that the power that was still retained by the government in India would be exercised in future "as though they are applicable to a country of growing national consciousness on the road to self-government and not as if we were administering a great estate".[69] Similar sentiments about the prospects of constitutional growth were echoed by Lord Satyendra Prasanna Sinha, the Under Secretary of State for India in the House of Lords. Moving for the second reading of the Bill there, he described it as 'natural and inevitable sequel to the long chapter of previous legislation for the better government of India'.[70] Lord Meston regretted the tendency in certain quarters of using 'unbridled and almost hysterical language...mixed with wholly unworthy personal vituperation',whenever questions relating to Indian reforms were discussed. That resulted in the creation of an atmosphere of bitterness in India harmful to the cause of political reforms.[71]

The Government of India Bill was passed on 13 December 1919, and became the Government of India Act, 1919, after it received the

royal assent on 23 December, 1919*. The Government of India Act, 1919, was only an amending measure, and the amendments made by it were incorporated in the Government of India Act. The Government of India Act, 1915, as amended by the Acts of 1916 and 1919, was known simply as the Government of India Act. This Government of India Act and the Rules made thereunder had become, with some minor amendments later on, the basis of the Constitution of India from 1921 till the Government of India Act, 1935 came into force.[72]

GOVERNMENT OF INDIA ACT, 1919 AND SECOND CHAMBER

Composition

The Government of India Act, 1919, provided that the Indian Legislature shall consist of the Governor-General and the two chambers namely, the Council of State and the Legislative Assembly.[73] The Council of State, the second chamber, was to consist of not more than sixty members.[74] It may be recalled that the Montagu-Chelmsford Report had proposed a Council of State consisting of fifty members (as against a Legislative Assembly of hundred members). The Franchise Committee which looked into certain proposals made in the said report increased the strength of the Council to fifty-six. This proposal was accepted by the Government of India in their Fifth Despatch sent to the Imperial Government. But the Government of India Act, 1919, finally raised the membership of the Council of State to sixty, while that of the Legislative Assembly to one hundred and forty.

Of the total membership of the Council of State, thirty-three were to be elected and twenty-seven members nominated by the Governor-General. Of the nominated members, not more than twenty would be officials and seven non-officials, including one member nominated as a result of an election held in Berar.[75] The composition of the Council has been given in the table at the next page.[76]

Term of Council of State

While the Council of State had a term of five years and the Legislative Assembly three years, either House could be sooner dissolved by the Governor-General. The Council, in actual practice, was never dissolved before time. The Governor-General was also empowered in special circumstances to extend the life of the either chamber.[77] This power was given to the Governor-General as reserve power to be used only in exceptional circumstances, such as to defer the holding of a general election.[78] But to obviate any possibility of its misuse, it was

* For text of the Sections concerning Indian Legislature *see* Appendix-II.

Council of State

Province	*Nominated**		*Elected*			*Non-Communal*	*European Commerce*	*Total*
	Officials	*Non-officials*	*Non-Mohammedan*	*Mohammedan*	*Sikh*			
Government of India	11(inc. President)	—	—	—	—	—	—	11
Madras	1	1	4	1	—	—	—	7
Bombay	1	1	3	2	—	—	1	8
Bengal	1	1	3	2	—	—	1	8
United Provinces	1	1	3	2	—	—	—	7
Punjab	1	3	1	2@	1	—	—	8
Bihar & Orissa	1	—	2@	1	—	—	—	4
Central Provinces & Berar	—	2#	—	—	—	1	—	3
Assam	—	—	—	1	—	—	—	1
Burma	—	—	—	—	—	1	1	2
N.W. Frontier Province	—	1	—	—	—	—	—	1
Total	17	10	16	11	1	2	3	60

* The distribution of the twenty seven nominated seats was not fixed, and could be varied at the discretion of the Governor-General; but the officials could not exceed twenty.

@ At alternate general elections there were 3 non-Mohammedan seats for Bihar and Orissa, but only one Mohammedan for the Punjab.

One of these was a member nominated as the result of an election held in Berar.

Source : Report of the Indian Statutory Commission, Vol. I, Calcutta, 1930, page 167.

made obligatory on the Governor-General to fix a date for holding the next session of the legislature which should not be more than six months, and with the sanction of the Secretary of State not beyond the nine months after the date of dissolution of that House.[79] These powers, it may be noted, could be exercised by the Governor-General without the advice of the Executive Council as there was no reference to this effect in the Act.

All matters were to be decided in the Council of State by the majority of the members present; and the Presiding Officer could exercise only a casting vote in case of equality of votes.[80] The members of the Governor-General's Executive Council could attend and address the Council of State but could not vote unless they were nominated to it. The members of the Executive Council could be nominated to either of the Chambers.[81]

President of Council of State

Originally, the draft Bill had proposed that the Governor-General, when present, would himself preside over the meetings of the Council of State and he would also appoint a Vice-President from amongst the members of the Council.[82] The Act, finally provided that the Governor-General would not be presiding over the proceedings of the Council. He, however, would have the right to appoint, from amongst the members of the Council of State, a President and other persons to preside the Council in such circumstances as he might direct.[83] He would have the right of addressing it.[84] The membership of the Council of State under the Act included, (*i*) such members of the Governor-General's Executive Council as may be nominated to the Council of State (*ii*) nominated official or non-official, and (*iii*) elected non-official members. Thus, in practice, even a member of the Governor-General's Executive Council could be appointed as President of the Council of State. As a matter of fact, A.P. Muddiman, a nominated official member of the Council was appointed by the Governor-General to be the first President of the Council of State.[85] The Act provided to appoint 'any other person', in the absence of the President, to perform his duties.[86] Such a person while presiding over the Council had the powers to function as the President.[87]

Joint Sittings of Two Houses

The Act provided that a Bill would be deemed to have been passed only after it had been agreed to by both the chambers, either without amendment or with such amendments as might be agreed to by both the chambers. The Act also provided for removing deadlocks if any, between the two Houses by convening a joint sitting of the two.[88] If one chamber passed a Bill and the other chamber did not pass it within the six months with or without amendments, the Governor-General could refer the matter for decision to a joint sitting of the two chambers.[89] The

joint sitting was to be convened by the Governor-General by a notification published in the Gazzette. The President of the Council of State presided and the procedure of the Council, as far as practicable, was applied in such sittings. An issue was decided by the majority of the voters present and voting.[90]

Law-making Powers

The Council of State and the Legislative Assembly could jointly make laws (*a*) for all persons, for all courts, and for all places and things within British India; (*b*) for all subjects of His Majesty and servants of the Crown within other parts of India; (*c*) for all native Indian subjects of His Majesty, without and beyond as well as within British India; (*d*) for the government officers, soldiers, airmen and followers of His Majesty's Indian forces, wherever they were serving in so far as they were not subject to the Army Act or Air Force Act; (*e*) for all persons employed or serving in or belonging to the Royal Indian Marine service; and (*f*) for repealing or altering any laws which for the time being were in force in any part of British India or applied to persons for whom the Indian legislature had power to make laws.[91]

There were also provided certain restrictions on these law-making powers of the Legislature. The Act provided that it could not, unless expressly so authorised by the Act of British Parliament, make laws repealing or affecting (*i*) any Act of Parliament passed after 1860 and extended to British India (*ii*) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India (*iii*) any law affecting the authority of Parliament, or any part of unwritten laws or Constitution of the United Kingdom and Ireland whereon might depend in any degree the allegiance of any person to the Crown of the United Kingdom; and (*iv*) any law affecting the sovereignty or dominion of the Crown over any part of British India. The Legislature also had no power, without the previous consent of the Secretary of State for India, to make laws empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.[92]

The Act had expressly laid down a limiting clause that without the previous consent of the Governor-General, it could not initiate any measure affecting—(*a*) the public debt or public revenues of India or imposing any charge on the revenues of India; or (*b*) the religion or religious rites and usages of any class of British subjects in India; or (*c*) the discipline or maintenance of any part of His Majesty's Military, Naval or Air Forces; or (*d*) the relation of Government with foreign princes or States.[93] Further, it could not initiate any measure—(*a*) regulating any provincial subject or any part of a provincial subject, which had not been

declared by rules made under the Act to be subject to legislation by the Indian Legislature; or (*b*) repealing or amending any Act of a local legislature; or (*c*) repealing or amending any Act or Ordinance made by the Governor-General.[94]

Rules of Procedure

The Council of State was empowered to make rules for the convenient transaction of business and for regulating and preserving order during the Sessions as also for quorum, asking of questions, regulating discussions, etc.[95] The first hour of every sitting was available for asking answers of questions.[96] Supplementary questions were also allowed.[97] The Presiding Officer had the power to disallow any question or any part thereof on the ground that its subject-matter did not concern the Governor-General.[98] Resolutions could be moved by any member and if passed, had only advisory effect and in no way were binding upon the government.[99] Resolutions affecting the relations of the Governor-General with Indian Princes or foreign states, or affecting any matter which had been under the adjudication of a court of law within His Majesty's Dominions were not allowed to be moved.[100] The Governor-General could within the period of notice disallow any resolution which, in his opinion, was detrimental to public interest or, related to a matter which was not primarily the concern of the Governor-General.[101] Adjournment motions also could be moved for the purpose of discussing a definite matter of urgent public importance.[102] Leave to introduce such motions was granted only if the mover had the support of at least fifteen members. Fifteen members of the Council formed a quorum for formal sittings.[103] The Secretary of the Council had to prepare a report of the proceedings and publish it in the manner directed by the Governor-General. Members were to stand in their places while speaking, and had to address the Chair.[104] The Governor-General and the members of his Executive Council had the right to attend and address the Council.[105]

Every Bill passed by the two Houses had to be sent to the Governor-General for his assent.[106] He could withhold it or return it for reconsideration[107] by either chamber or reserve the Bill for the consideration of His Majesty.[108]

Governor-General's Power of Certification

The Governor-General was empowered to stop the consideration of any Bill, a part or a clause thereof or an amendment thereto, at any stage in either House, if he thought that it would affect the 'safety and tranquility of India or any part thereof.'[109] Similarly, by his power of certification, the Governor-General could enact any law rejected by any House, if in his opinion it was 'essential for the safety, tranquility or interests of British India or any part thereof.'[110]

Section 67 (2A) of the Government of India Act, 1919, in fact, was supplementary to the Section 67B. While the former empowered the Governor-General to use his power of certification for preventing the passage of a law (affecting the safety or tranquility of British India or any part thereof), the latter, on the other hand,enabled the Governor-General to secure the passage of any law (which he deemed essential for the safety, tranquility or interests of British India or any part thereof). The original proposal put by Montagu-Chelmsford empowered the Governor-General to certify that the passage of a Bill was essential for the 'peace, order or good Government of Birtish India' or that a state of emergency had arisen; and on such certificate being given, the Council of State could, without obtaining the concurrence of the Legislative Assembly, pass laws which were meant to have effect as if passed by both chambers.[111] The Joint Select Committee was opposed to the proposals in the Government of India Bill which would have enabled the Governor-General to refer to the Council of State, and to obtain by virtue of its official majority, any legislation refused by the Legislative Assembly, but which he regarded, as essential to the discharge of his duties. While the Committee accepted the view that the Governor-General should in all circumstances be fully empowered to secure legislation which was required for the discharge of his responsibilities, it found unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. The Committee believed that in such a case, it would add strength to the Government of India to act before the world on its own responsibility.[112] In order, however, that Parliament may be fully apprised of the position and of the considerations which led to this exceptional procedure it was advised that all Acts passed in this manner should be laid before British Parliament.[113]

The Act of 1919 provided that in case either of the chambers of the Indian legislature refused leave to introduce, or failed to pass in the form recommended by the Governor-General, any Bill, the Governor-General could certify that the passage of the Bill was 'essential for the safety, tranquility or interests of British India or any part thereof'. Thereafter, if the Bill had already been passed by the other chamber, the Bill would, on signature by the Governor-General, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or, as the case may be, in the form recommended by the Governor-General even if it had not been passed by the other House.[114] Every such Act was to be expressed to be made by the Governor-General, and would, as soon as practicable after being made, be laid before both Houses of Parliament. Such an Act was not to have effect until it had received His Majesty's assent, and would not be presented for His Majesty's assent until its copies were laid before each House of Parliament for not less than eight days on which

that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General. The Act was to have the same force and effect as an Act passed by the Indian legislature and duly assented to. The Act provided that where, in the opinion of the Governor-General, a state of emergency existed which justified such action, the Governor-General could direct that any such Act would come into operation forthwith, and thereupon the Act would have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.[115] Thus, the Act provided two safeguards against the possible misuse of the certifying powers *viz.*, (*i*) that a Bill passed by the Governor-General under this power must be laid before each House of Parliament for not less than eight days on which that House has sat; and (2) that it must receive His Majesty's assent. It was only upon the signification of such assent by His Majesty in Council and the notification thereof by the Governor-General, that the Act would be deemed to be an Act passed by the Indian legislature.[116]

The Governor-General was also empowered, in case of emergency, to direct that any such Act would come into operation forthwith; the Act was, however, later subject to disallowance by His Majesty in Council.[117]

Financial Legislation and Council of State

The estimated annual expenditure and revenue of the Government of India were to be laid in the form of a statement before both Houses each year.[118] Although the Council of State was authorized to discuss the annual Budget of the Government of India, it had no power to vote it; this power belonged to Legislative Assembly only. Proposal for the appropriation of any revenues or moneys for any purpose could not be made except on the recommendation of the Governor-General.[119] The proposals of the Governor-General for the appropriation of revenues or moneys relating to certain heads of expenditure, however, were neither submitted to the vote of the Legislative Assembly, nor were they open to discussion by either House at the time when the annual statement was under consideration, unless the Governor-General otherwise directed. Those expenditures were (*i*) interest and sinking fund charges on loans (*ii*) expenditure of which the amount was prescribed by or under any law (*iii*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; (*iv*) salaries of Chief Commissioners and Judicial Commissioners; and (*v*) the expenditures classified by the order of the Governor-General-in-Council as (*a*) ecclesiastical (*b*) political and (*c*) defence.[120] Demands for Grants, not relating to above heads of expenditure were to be voted by the Assembly which could assent or refuse its assent to any demand or the whole demand. The Council, however, did not have such powers except the right to discuss the demands presented to it.[121]

Mode of Election

The character and composition of a legislative body is determined mainly by the manner in which it is constituted. The Council of State under the Act of 1919, was proposed to be a body having both elected as well as nominated members.[122] As regards the elected members, the Franchise Committee had recommended to increase the elected element in the Council of State and to get its non-official members elected by the same electors as would elect the members of Assembly.[123] The Government of India, however, did not agree with this method of election to the Council. In this manner, the Council of State, it was argued, would be reduced to the position of "a standing grand committee of the Assembly." The government in its anxiety to shape the Council into a House of elders, suggested to make its membership subject to high standards of qualifications.[124]

The Joint Select Committee of British Parliament rejected the recommendations of the Franchise Committee regarding method of election to the Council. It had hoped that by the time the new Constitution came into operation, a different system of election could be devised.[125]

The Government of India Act, 1919 provided that the members of the Council of State would be nominated or elected in accordance with the rules to be made by the Government of India. Accordingly, the task of deciding the system of election, the franchise and the types of constituencies were left to the Government of India. Under the rules framed by the Government of India, the Council of State was to be a directly elected body by an electorate different from that of the Legislative Assembly.[126]

Qualifications for Voters and Candidates

Thus, the election to both the chambers ultimately were to be direct. High property qualifications were prescribed for both the voters as well as candidates to the membership of the Council of State. These qualifications varied from province to province and from community to community. Muslims had lower income requirement than the general voters. A voter for the Council of State was to be assessed either on the basis of an Income-Tax on the annual income of not less than rupees 10,000 to rupees 20,000 or to a land revenue of rupees 750 to rupees 5,000. In addition to this, those who had some previous experience of public service or who had been recognised as men of high academic excellence such as those who were or had been either members of a legislative body or those who had held or were holding the office of a Chairman or Vice-Chairman of a Municipality or a District Board or a central cooperative bank, together with the past and the present members of a University senate and the holders of the highest title of oriental

learning were entitled to have their names included in the electoral rolls for the general constituencies for the Council of State.[127]

No special qualifications were prescribed for the candidates for election to the two Houses of the central Legislature, except that they should not be less than 25 years of age and should be qualified as voters for the constituencies from which they sought elections. Thus, a person who was below 25 years of age and was not qualified as a voter, was disqualified for election. The disqualifications for voters were the same both for the central and provincial legislatures, namely, that a person was not entitled to vote, if he were (1) not a British subject, or (2) a female, (3) below 21 years of age, or (4) were adjudged by a competent Court to be of unsound mind.[128] Rulers and subjects of the Indian States could neither vote nor become members of the Council unless they were eligible for voting and contesting for seats in the provincial legislative Councils.[129] As a result of the restricted franchise based on property and income-tax qualifications, number of voters for the Council was very limited. With these electors, nearly half of the elective seats went to landeholders; one-third to commercial magnates and rest to the miscellaneous groups.[130] The Council of State electors, actually voted to the extent of 45 per cent in 1920.[131]

Women were excluded from the membership of the Council as well as from voting for its election. The Council, however, had power to remove this restriction by adopting a resolution to this effect.[132] Women, were, however, eligible to contest election for the Assembly "in any province where they might be elected to the provincial Legislature, *i.e.*, in seven out of nine provinces."[133]

As regards the nominated seats in the Council, their distribution was not fixed and could be varied at the discretion of the Governor-General, subject to the condition that the number of officials was not to exceed twenty. At alternate General Elections, there were three non-Mohammedan seats for Bihar and Orissa and one Mohammedan seat for Punjab. One of the two nominated members for the Central Provinces and Berar was nominated as a result of election in Berar. From the communal point of view, the sixty member Council of State would comprise twenty-one Hindus, seventeen Muslims, sixteen Europeans and six other minority members.[134]

The Council, owing to the nature of its franchise and composition, was termed as 'a bulwark of conservation' and, therefore, remained a target of criticism at the hands of progressive sections of India. Its nominated bloc was said to have generally voted with the Government. As its elected members belonged to various interests such as land-holders, capitalists, etc. they also usually said to have sided with the Government.

The Council of State thus instead of functioning as a 'true Second Chamber' had become a tool in the hands of the executive. There was a growing sense of public resentment against it and not many believed that it would really have a long life.

Notes and References

1. *Report on Indian Constitutional Reforms* (hereinafter referred to as *Montagu-Chelmsford Report*), 1918, Paragraphs 273-74.
2. *Montagu-Chelmsford Report*, paragraph 273.
3. *Ibid.*
4. *Ibid.*, paragraph 275.
5. *Ibid.*, paragraph 277.
6. *Ibid.*, paragraph 278.
7. *Ibid.*, paragraph 277.
8. *Ibid.*, paragraph 283.
9. Ibid.
10. *Ibid.*, paragraph 279.
11. *Ibid.*
12. *Ibid.*, paragraph 280.
13. *Ibid.*, paragraph 284.
14. *Ibid.*, paragraph 276.
15. *Ibid.*, paragraph 283.
16. *Ibid.*, paragraph 275.
17. *Ibid.*, paragraph 286.
18. *Ibid.*, paragraph 236.
19. *Ibid.*, paragraph 286.
20. *Ibid.*, paragraph 285.
21. *Ibid.*, paragraph 276.
22. *Ibid.*, paragraph 277.
23. *Ibid.*, paragraph 9.
24. *Ibid.*, paragraph 28.
25. *Ibid.*, paragraph 6.
26. R. Coupland, *The Indian Problem* 1833 – 1935, Oxford, p. 45.
27. Resolution of the Congress passed at Amritsar, in 1919 see A.C.Banerjee, op.*cit*, p. 259; also see Manoranjan Jha, *Role of Central Legislature in the Freedom Struggle*, NBT, 1972, p.43.
28. Resolution of the Congress, Special Session Bombay, in 1918 see A.C. Banerjee, *op. cit.*, pp. 254-55.
29. *Government of India's First Despatch on Indian Constitutional Reforms*, 5 March 1919, paragraph 116 in P. Mukherji, *The Indian Constitution*, Part II, Calcutta, 1920, paragraph 116, p. 132
30. *Government of India's First Despatch...*, Paragraph 116.
31. Sir C. Sankaran Nair's *Minutes of Dissent*, in P. Mukherji, *op. cit.*, pp. 184-85.
32. Sir C. Sankaran Nair's *Minutes of Dissent*, in P. Mukherji, *op. cit.*, pp. 184-85.

33. *Government of India's Fifth Despatch on the Report of the Franchise Committee* — Minutes of Dissent by W.H. Vincent, see P. Mukherji, *op. cit.*, p. 479.
34. *Montagu-Chelmsford Report, op. cit.*, paragraph 258.
35. *Ibid.*
36. Lord Southborough presided over the *Franchise Committee*. The *Functions Committee* was presided over by Richard Feetham and Marquess of Crewe, a former Secretary of State for India, presided over the *Committee on the Home Administration of Indian Affairs*; see Bhawani Singh, *Council of States in India*, Meerut, 1973, p. 2.
37. *Report of the Franchise Committee*, paragraph 2(III) in P. Mukherji, *op. cit.*, pp. 188-89.
38. *Montagu-Chelmsford Report*, paragraph 277.
39. *Report of the Franchise Committee*, paragraph 3.
40. *Ibid.*, paragraph 40.
41. *Ibid.*, paragraph 41.
42. *Ibid.*
43. *Ibid.*, paragraphs 36 & 42.
44. *Government of India's Fifth Despatch on the Report of the Franchise Committee*, paragraphs 40-41 in P. Mukherji, *op. cit.*, pp 475-76.
45. *Government of India's Fifth Despatch on the Report of the Franchise Committee*, paragraph 40.
46. *Ibid.*, paragraph 41.
47. *Ibid.*, paragraph 42.
48. *Ibid.*
49. *Ibid.*, paragraph 43.
50. *Ibid.*, paragraph 44.
51. *Ibid.*, paragraph 45.
52. Simon Commission on differences between the *Mantagu-Chelmsford Report* and the Government of India Act, 1919 in A.C. Banerjee, *Indian Constitutional Documents*, Vol.II, Calcutta, 1946, p. 238.
53. The Joint Select Committee was chaired by Lord Selborne and consisted of seven members each from the House of Commons and the House of Lords.
54. *Report of the Indian Statutory Commission*, Vol. I, Calcutta, 1930, paragraph 174, pp. 162-63.
55. *Report of the Joint Select Committee of the House of Lords and the House of Commons*, clause 18, in P. Mukherji, *op. cit.*, pp. 519-20.
56. *Report of the Joint Select Committee*, clause 26.
57. *Ibid.*
58. *Ibid.*, clause 18.
59. *Ibid.*, clause 19.
60. Government of India's *Fifth Despatch*, paragraph 39, in P. Mukherji, *op. cit.*, p. 475.
61. *Report of the Joint Select Committee*, clause 19.
62. Government of India's *Fifth Despatch*, paragraph 41.
63. *Report of the Joint Select Committee*, clauses 20, 28 & 29.
64. *Report of the Joint Select Committee, Appendix*, p. 676.

65. *House of Commons Debate* (H.C. Deb.) 4 December, 1919, Col. 701.
66. *Ibid.*, Col. 702.
67. *Ibid.*,Cols. 704-05.
68. *Ibid.*, Cols. 706-07.
69. *Ibid.*, Col. 836.
70. *House of Lords Debate* (H.L. Deb.), 11 December, 1919, Col. 943; also *see* P. Mukherji, *op. cit.*, pp. 565-87.
71. H.L. Deb., 12 December 1919, Col. 1036.
72. *See*, D.N. Banerjee, *Some Aspects of Indian Constitution*, Calcutta, 1962, p. 5.
73. The *Government of India Act, 1919*, Section 63, *see* P. Mukherji, *op. cit.* Part I, p. 241.
74. *The Government of India Act,1919*, Section 63A.
75. *Council of State Electoral Rules*, Section 1(2).
76. *Report of Indian Statutory Commission* Vol. I, p. 167.
77. The *Government of India Act, 1919*,Section 63D.
78. *Ibid.*
79. *Ibid.*, Section 63D.
80. *Ibid.*, Section 63D (4).
81. *Ibid.*, Section 63E (4).
82. *Montagu-Chelmsford Report*, Paragraph 277.
83. *The Government of India Act, 1919* , Section *63 A*.
84. *Ibid.*, Section 63A (3).
85. *Ibid.*
86. *Ibid.*, Section 63A (2).
87. Rule 4, *The Indian Legislative Rules*, 1920 in P. Mukherji, *op. cit.*, pp. 428-29.
88. *The Government of India Act, 1919*, Sections 63 & 67 (3).
89. *Ibid.*, Section 67 (3).
90. *Indian Legislative Rules, 1920*, Rules 37-39.
91. *The Government of India Act, 1919*, Section 65 (1).
92. *Ibid.*, Section 65 (2).
93. *Ibid.*, Section 67 (2).
94. *Ibid.*
95. *Ibid.*, Section 67 (1).
96. Moinuz Zafar Khan, *The Council of State – As a Second Chamber*, Aligarh, 1973, p. 51.
97. *Indian Legislative Rules, 1920*, Rule 9.
98. *Ibid.*, Rule 7.
99. *Ibid.*, Rule 24.
100. *Ibid.*, Rule 23.
101. *Ibid.*, Rule 22.
102. *Ibid.*,Rule 11.
103. *Council of State Standing Orders*, Rules 22-26, *see* Moinuz Zafar Khan, *op. cit.* p. 52.
104. *Ibid.*, Rule 26.
105. *The Government of India Act 1919*, Section 63A(3).

106. *The Government of India Act 1919*, Section 68.
107. *Ibid.*, Section 67 (4).
108. *Ibid.*, Section 68.
109. *Ibid.*, Section 67 (2A).
110. *Ibid.*, Section 67B (1)(a-b).
111. *Montagu- Chelmsford Report*, Paragraph 279.
112. *Report of the Joint Select Committee on Government of India Bill, 1919*, Clause 26.
113. *Ibid.* Clause 28.
114. *Government of India Act, 1919*, Section 67B(1)(a-b).
115. *Ibid.*, Section 67B (2).
116. *Ibid.*
117. Proviso to Section 67B (2)
118. *Ibid.* Section 67A(1),
119. *Ibid.*, Section 67A(2).
120. *Ibid.*, Section 67A (3).
121. *Ibid.*, Section 67A (4-6).
122. *Ibid.*, Section 63A.
123. *Report of the Franchise Committee*, paragraph 41.
124. *Despatch on Franchise Committee Report*, Paragraphs 40-41, in P. Mukherji, *op. cit.*, Part II, pp. 475-76.
125. *Report of the Joint Select Committee*, clause18, in P. Mukherji, *op. cit.*, Part-II, pp. 519-20.
126. Bhawani Singh, *Council of States in India*, Meerut, 1973, p. 5.
127. Gurmukh Nihal Singh, *Landmarks in Indian Constitutional Development.*, Delhi, 1963, pp. 291-92.
128. *Council of State Electoral Rules*, VI(I) (d & f)
129. *Council of State Electoral Rules*, III(I) (a)
130. Moinuz Zafar Khan, *op. cit.*, p. 3.
131. *Report of the Indian Statutory Commission (Simon Commission), 1930*, Vol. I, Calcutta, 1930, p. 222-23.
132. *Report of the Simon Commission*, *op. cit.*, p.223; *and Gazette of India, Part 1*, September 18, 1935, p. 1130. The Council passed a resolution to this effect on 8 September, 1935 and women were allowed to register as voters to the Council of a province.
133. *Report of the Simon Commission*, *op. cit.* p. 223.
134. *Ibid.*, p. 224.

Chapter 4

Evolution of Second Chamber (1921-35)

SIMON COMMISSION

The Government of India Act, 1919 itself had provided for the constitution of a Royal Commission at the expiration of ten years for the purpose of inquiring into the system of government, growth of education, development of representative institutions and matters connected therewith and to report, *inter alia* regarding the working of responsible government, including the question of second chamber of the local legislatures. Norms of the Commission were to be approved by the British Parliament.[1] This provision was suggested originally by the Montagu-Chelmsford Report.[2] Accordingly, constitution of the 'Indian Statutory Commission', popularly known as the 'Simon Commission', was announced on 26 November 1927. While the Council of State co-operated with Commission by electing three of its members in pursuance of the Commission's request to do so, the Legislative Assembly had decided not to cooperate with the Commission.[3]

INDIAN CENTRAL COMMITTEE REPORT

The Government of India also at the same time appointed the 'Indian Central Committee' consisting of members from both the Houses of the central legislature. The Committee under the chairmanship of Sir C. Sankaran Nair worked with the Simon Commission on the reforms to be carried out in the Government of India Act, 1919 and submitted its report in October 1929. The Committee was, no doubt, aware of the defective composition of the Council of State and its defective power structure set up under the Government of India Act, 1919. It, however, suggested a Council of State for India consisting of one hundred members, elected and nominated in the same proportion as was already existing and had more or less the same powers as well. The report said :

> The retention of the Council of State, composed on these lines and possessing all its existing powers might appear somewhat incongruous with the revised Constitution we have proposed for the government of India; on the other hand, the existence of these powers might prove a valuable safeguard in contingencies which cannot at present be foreseen. We are conscious of the magnitude of the changes we have recommended and the serious consequences which a breakdown of the new arrangements might entail. We, therefore, feel no hesitation in recommending a retention of powers equally drastic to deal with such eventualities.[4]

Sir Hari Singh Gour, one of its members was against the retention of the Council of State in its present form. He was of the view that radical changes were needed to ensure that the Council entirely achieved the purpose for which the second chambers had been provided in other Constitutions of the world. He, however, did not suggest any such changes in its composition and powers. He was opposed to the system of nomination to the Council as the nominated members always felt obligation to their nominator and tried to live up to their expectations by supporting the official position in the chamber with a view to ensuring their renomination. All the members of the Council, therefore, should be elected by the members of the lower chamber, he suggested.[5]

SIMON COMMISSION AND SECOND CHAMBER

Report of the Simon Commission was published in June 1930. The proposals of the Commission as regards the bicameralism were not as important as those contained in the Montagu-Chelmsford Report. As it had to work within the ambit of the policy announced on 20 August 1917, the Simon Commission did not suggest much changes pertaining to the existing legislature. The Report, submitted by the Commission had stated in this regard :

> We enter upon our task, therefore, upon the basis and assumption that the goal defined by Mr. Montagu represents the accepted policy to be pursued, and that the only proposals worthy to be considered are proposals conceived in the spirit of the announcement of 20 August, 1917, and inspired with the honest purpose of giving to it its due effect. It is in this spirit and with this purpose that we frame our Report, and we can do no other, for we are appointed under a section of the very Act of Parliament which contains the Preamble.[6]

Accordingly, the Report did not suggest significant changes to the Council of State. It, however, made certain observations regarding the relevance, composition, etc. of the proposed Council of State. In regard to the existing Council of State, it was generally admitted in evidence before the Commission that the Council of State, no doubt, had played a useful role in the evolution of representative government in India, its

existing Constitution, however, was certainly not in keeping with the federal principles which the Commission had adopted in framing the new Constitution for India. It owed its position largely to the Joint Select Committee, which, contrary to the recommendations of the Montagu-Chelmsford Report, explicitly proposed to make it a "true second chamber." The Commission felt that the Joint Select Committee, in fact, was thinking in terms of "British Parliamentarism and desired to form a body which should perform functions similar to those of the House of Lords in the British Constitution". The Commission, however, was of the opinion that "the parliamentary model was not the one most likely to be found suitable for the central government in India. They found the US example as a good bicameral system in a federal constitution which provided equal representation to all the federating units.[7]

Retaining of Second Chamber

The Simon Commission basically was not in favour of having the Council of State for an indefinite period. It, owing to the special circumstances of India, suggested a 'Federal Assembly', the lower House containing "senatorial principle" in so far as its members were to be elected by the members of the provincial council and not by primary electors. Theoretically, therefore, the Commission could see no sufficient reason for the retention of the second chamber. They intended that the Federal Assembly should in due course, develop into an all India body containing representatives of the States. In such a scheme, they felt, it would be anomalous to retain indefinitely a second chamber. They argued :

> It would clearly be anomalous to retain, indefinitely, a Second Chamber, representative of the elements of British India alone, to revise the decisions of an All-India Assembly. On the other hand, the enlargement of the present Second Chamber by the addition of Ruling Princes or other representatives of the Indian States would involve difficulties of selection, especially in view of the desirability of not unduly increasing its size.[8]

It, nevertheless, recommended for its retention mainly on the ground that it contained members having experience and distinction who had made valuable contributions to the discussions on public affairs. The Council of State, the Commission felt had a steadying influence during a difficult transitional period. It was argued by the Commission :

> ...demand for its abolition has been brought to our notice. In the stage, upon which India is now entering, she will need all her resources of statesmanship and experience. There is much to be said against abolishing on purely theoretical grounds a piece of constitutional machinery which has worked well at a time when great changes are being introduced, the effect of which cannot, at present, be estimated.

We are, therefore, of opinion that the Council of State should be retained with its present powers.[9]

The Commission did not suggest any changes in the composition and electoral qualifications in regard to the Council of State.

Allocation of Seats in Council

The Commission was not in favour of changing the number of and proportions between elected and non-elected members of the existing Council of State. According to the Commission, seats in the Council of State should be allotted to federal units and the number of seats allotted to them should be, with some exceptions, equal. The Commission suggested that three seats should be allotted to the smaller provinces, one each to North-West Frontier Province, Delhi Province and one to be selected in turn from British Baluchistan, Ajmer-Merwara and Coorg. It was also suggested by the Commission that in each of the "three great cities" of Madras, Calcutta and Bombay, one member representing British and one representing Indian Commerce should be chosen under rules by appropriate organizations. The Commission recommended that each province should be represented in the Council of State by three members and suggested alternative methods for their election. If second chambers were to be constituted in the provinces, the Commission recommended, the representatives of a province in the Council of State might be selected by the members of those bodies, a similar method of proportional representation to that used in the elections to the Federal Assembly being employed. If, on the other hand, no second chambers were created in the provinces, the members of the Council of State might be elected by the members of the provincial legislatures, the same method of proportional representation being employed.[10]

Qualifications for Electors

The Commission found that a number of qualifications were laid down for the electors of the Council of State which were different from province to province. The right to vote depended mainly on possession of wealth, status or some public post. The rules also provided for communal electorate and also for special representation for Commerce and Industry. Such a role of elector was found by the Commission "altogether too narrow" and did not consider it worthwhile to making any suggestion in this regard. It said :

> We had very little, if any, evidence on the subject, and it is impossible for us from the information at our disposal to judge how far any alteration of the electoral qualifications would continue to bring to the Council men possessing the attainments and experience which are desirable. We have had no constructive suggestions, and should desire, therefore, not to do more than indicate a possible composition of the Council of State.[11]

Qualifications for Membership

The Commission urged that rules should be made laying down certain qualifications for candidates, directed to securing persons of experience and status so as to bring to the Council of State the qualifications of distinction, leadership, authority, and experience. For instance, distinguished members of the Services, ex-Judges, and ex-Ministers, besides those who have gained honour in other walks of life, would be the kind of candidates desired.[12] The Governor-General, it was proposed, would have the right to nominate not less than twenty officials, though it might well be that this right would seldom be utilised to its full extent. With regard to the other nominated members, it was proposed that the Governor-General should have regard to the desirability of including representatives of organised workers in industry. The Commission also suggested that there should be no sex disqualifications for membership of the Council of State.[13] The Council of State had, hitherto, a life of five years as compared with the three years of the Legislative Assembly but the Commission recommended to extend the life of the Legislative Assembly to five years and that of the Council of State to seven years, so that the two Houses were constituted at different intervals.[14]

Power of Central Legislature

The Commission did not suggest significant changes in the law making powers of the two Houses. The Federal Assembly, the Commission stated, would inherit all the powers of its predecessor and the proposed change in the method to elect the Council of State did not entail any alteration in its constitutional authority. The Commission suggested certain additional functions to be performed by the Federal Assembly in the sphere of finance. The changes which were proposed in the method of composition of these bodies by the Commission were, however, dictated by the conception of the future Constitution of India. While the immediate changes were not great, there were future possibilities which were of a far-reaching character.[15]

Ironically, the first chamber, which is generally elected directly, was to be elected by the federating units under the scheme suggested by the Simon Commission. It was not in keeping with the principles of federalism. A first chamber elected through the system of proportional representation by the federating units to serve their interests and a second chamber embodying the principle of equal representation to all the federating units were not likely to succeed. The Joint Parliamentary Committee of the British Parliament which was later appointed in 1933 to consider the

or in cases of urgency, at once, to summon a joint session of the two Chambers for resolving the differences between both the Chambers.[24]

There was a difference of opinion in the Conference on the mode of representation to the upper chamber. The general agreement was that some weightage should be given to the States in view of the apprehension expressed by them that by federating, they might lose their individuality. It was, therefore, mentioned as a ground for increasing their proportion in the upper chamber to one of equality with the British India. The Muslim delegates opposed the idea of weightage to be given to the States in the legislature. They, however, argued that if it were unavoidable, it must be ensured that the quota of Muslims from the British India should not be less than what they would have secured, if the States had no weightage over the population ratio.[25]

Mahatma Gandhi, while speaking in the Federal Structure Committee on the questions pertaining to the election of members of the federal legislature, had expressed his opinion about the suitability of second chamber for India. He said :

> I am certainly not enamoured of and I do not swear by two Houses of Legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang the popular Legislature. I think that a popular Legislature can take care of itself; and, since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us. I do not for one moment endorse the idea that, unless we have an Upper Chamber to exercise some control over the popular Chamber, the popular Chamber will ruin the country. I have no such fear; but I can visualize a state of affairs when there can be a battle royal between a popular Chamber and an Upper Chamber. Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber only and that we can do with it to great advantage.[26]

He further argued that there could be no absolute similarity between any two living human institutions and that one should not be guided by the precedents and examples existing in other countries. India has its own peculiarities; it should, therefore, choose its own institutions. He favoured only one chamber legislature and suggested to make it as perfect as human ingenuity possibly could.

WHITE PAPER AND SECOND CHAMBER

On the basis of discussion held in the Round Table Conferences, the British Government came out with a White Paper in March 1933, containing the proposals indicating the line on which the new Constitution of India was to take shape. It also invited both House of Parliament to set up a joint select Committee to consider these proposals and report on them.[27]

The White Paper proposed a bicameral federal legislature having two chambers—House of Assembly and Council of State. The two Houses were to have identical powers, except in the case of Money Bills and votes of supply which were to be initiated in the lower chamber. Thus, the range of the functions of the upper chamber in relation to supply were to be less than those available to the other chamber.[28] The House of Assembly was to consist of three-seventy-five members, of whom one-twenty-five were to be appointed by Rulers of the States and two-hundred fifty to be elected from constituencies of British India distributed to provinces on the basis of population.[29]

The White Paper provided that the upper chamber—the Council of State—would consist of a maximum of two hundred sixty members, of whom one hundred would be appointed by the Rulers of the States; one hundred fifty members would be elected by the members of the provincial Assemblies and the future second chambers in the provincial legislatures through the method of single transferable vote. Ten seats were left to be nominated by the Governor-General to secure appointment of elder statesmen.[30] It also provided that an exception would be made in the case of those minorities — Europeans, Anglo-Indians and Indian Christians —whose representatives in the provincial legislatures would be sufficient enough to provide the necessary quota to secure representation in the upper chamber.[31] It had also mentioned that the British Government intended that Muslims should be able to secure one-third of the British Indian seats in the upper House, and if it were considered that the system of proportional representation would make insufficient provision for that purpose, the necessary modifications might be effected so as to meet the target in view.[32] No specific proposal was made in the White Paper for the allocation of seats among the States. However, it was stated that the detailed allocation of seats which would eventually be provided for in the Constitution should be based, in the case of Council of State, on the rank and importance of the State as indicated by the dynastic salute and other factors.[33]

The White Paper was discussed in both the Houses of Indian legislature also. The Council of State debated it on 27 and 28 March, the Legislative Assembly discussed it between 29 and 31 March 1933. Its proposals were generally found unacceptable and disappointing by the members of both the Houses.[34] The publication of the White Paper, in fact, produced more or less similar criticism in India which had followed the Simon Commission Report.

JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORMS AND SECOND CHAMBER

The proposal contained in the White Paper were submitted to the scrutiny of a Joint Committee of both Houses of British Parliament in 1933, which after examining scores of witnesses from India and England, submitted its report to Parliament in November 1934.[35]

Moving the motion in the House of Commons to appoint a Joint Select Committee, Secretary of States, Sir Samuel Hoare, stated that the White Paper, no doubt, had 'complexities', difficulties and many anomalies. It, however, was a comprehensive constitution embracing both the provincial autonomy and responsibility at the Centre.[36] Clement Atlee described the proposed Council of State as "a wonderful pillar of vested interests".[37] Winston Churchill saw through it a definite decline or even disappearance of British authority in India as it offered "to hand over... Indians' fortunes to Indian hands".[38] The Motion for the Joint Select Committee was moved in the House of Lords by Lord Chancellor who equated the proposals with the great tradition of the Buddha, which charted a middle path.[39]

In regard to the bicameral system in India, the Joint Committee stated :

> We have carefully considered a suggestion that the federal legislature should consist of one chamber only. We recognise that there is much to be said for this proposal also but on the whole, we do not feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conference that the federal legislature should be bicameral. Certainly, a reversal of this view would be distasteful to nearly all, if not to all, the Indian States.[40]

After having agreed to have a bicameral legislature, the most complex question before the Committee was the method of election of the central legislature. Under the given circumstances, the Committee realised that there was no alternative to the adoption of some form of indirect election as against the direct election suggested by the White Paper.[41] The federal Assembly, the Committee recommended, would be elected by the members of the provincial assemblies and the system of single transferable vote was abandoned. For the Council of State, the electoral college would consist of members of the provincial legislative Councils where they existed and in the provinces with no legislative Councils, *ad hoc* electoral colleges were to be constituted comprising persons chosen by an electorate very similar to those provided for the upper House.[42]

The Joint Committee endorsed the principle that so far as possible, the two Houses should have equal powers. It, therefore, provided the upper House wider powers in relation to finance, *i.e.*, the powers not only to secure reconsideration of a rejected grant at a joint session of the two Houses but also to refuse its approval to any Bill, clause or grant already accepted by the lower House. It also suggested that the Money Bills could be introduced in the upper House as well. The Committee stated :

> We think that the upper House should have wider powers in relation to finance, and that it should be able, not only to secure that a rejected grant is reconsidered at a joint session of two Houses, but also refuse its assent to any Bill, clause or grant which has been accepted by the lower House. We think, therefore, that all demands should be considered first by the lower House and subsequently by the upper House and that the powers of each House in relation to any demand should be identical, any difference of opinion being resolved at a joint session to be held forthwith.[43]

The Joint Committee found that the balance of convenience was against any reduction in the size of the legislature proposed in the White Paper. The Joint Committee suggested that the interval between deadlock and holding of the joint sitting should be six months, not three months as proposed in the White Paper.[44]

All these proposals were put in the form of a Bill which was brought before the British Parliament. While the House of Commons accepted the Bill as it was[45], the House of Lords amended the clause relating to the scheme of indirect elections for both chambers. It provided that while the lower House would continue to be an indirectly elected body, the upper House would be elected directly.[46] Thus, a curious anomaly was created where the lower House was elected indirectly and the upper House was a directly elected body. This was done perhaps to assuage the feelings of the liberals at home and in deference to the Indian demand for direct elections as well.[47]Hence, to meet the critics at least half way, it incorporated the provision of direct elections for the upper House to make it more acceptable and also to impart greater responsibility to it. The Act received Royal Assent on 2 August 1935 and came to be known as the Government of India Act of 1935.[48]

GOVERNMENT OF INDIA ACT, 1935 AND SECOND CHAMBER

Composition

The Government of India Act, 1935*, provided that there shall be a

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* For the text of Sections concerning Federal Legislature contained in the Act *see* Appendix-III.

Federal Legislature which would be consisting of His Majesty represented by the Governor-General and two chambers to be named respectively, as the 'Council of State' and the 'Federal Assembly'. The Federal Assembly was to consist of two hundred twenty five members from the British India and one hundred twenty-five from the Indian States.[49]

The Council of State was to consist of two hundred sixty members — one hundred and fifty-six representatives from the British India and not more than one hundred and four representatives of the Indian States.[50] Of the one hundred and fifty-six seats in the Council of State to be filled by the representatives of the British India, one hundred and fifty seats were to be filled as follows : Seventy-five general seats, forty-nine Mohammedan seats, six each for Scheduled Castes and women and four for Sikhs. Provinces and Community-wise distribution of seats has been shown in the Table[51] below :

The Council of State : Representatives of British India

1 *Provinces or Community*	2 *Total Seats*	3 *General Seats*	4 *Seats for Scheduled Castes*	5 *Sikh Seats*	6 *Mohammedan Seats*	7 *Women Seats*
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	1
Central Provinces and Berar	8	6	1	—	1	—
Assam	5	3	—	—	2	—
North-West Frontier Province	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—
Coorg	1	1	—	—	—	—
Anglo-Indians	1	—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians	2	—	—	—	—	—
Total	**150**	**75**	**6**	**4**	**49**	**6**

Six seats were to be filled by persons selected by the Governor-General himself to redress imbalance of representation, if any, in case of Scheduled Castes, women and minorities. The representatives of the Anglo-Indians, Europeans and Indian Christian Communities were to be chosen indirectly by the electoral colleges constituted by the representatives of these communities in the provincial Assemblies and Councils.

The members from the Indian States were to be appointed by their Rulers in a manner they considered expedient. The basis of distribution was later on decided as the number of gun salutes they were entitled to. Thus, Hyderabad with twenty-one gun salutes was allotted five seats, Mysore, Kashmir and Gwalior with nineteen gun salutes two seats each and so on.[52]

Method of Election

Method of election of the Central legislature had been a controversial issue. The Motilal Nehru Committee's recommendation to have indirect election for the Second Chamber was practically endorsed by the Simon Commission and the White Paper also provided for this. The Joint Parliamentary Committee, in fact, recommended indirect election for both the Houses[53] (not for the Council of State alone) and it was incorporated in the Government of India Bill which was brought before British Parliament. The latter, however, made the Council to be a directly elected House by adopting amendment to this effect to the Government of India Bill. Paradoxically, while the Council was to be elected, the Assembly remained an indirectly elected body under the Government of India Act, 1935.[54]

The British Indian seats were divided amongst different communities. Members from Hindu and Muslim communities were to be elected directly by the voters from their respective communities possessing high property qualifications. The representatives of Europeans-Anglo-Indians, Depressed classes and women, however, were to be elected indirectly by the Members of provincial legislative bodies belonging to these communities. Besides, the Act of 1935 provided six members to be nominated to the Council of State. Thus, while the Council was largely a directly elected body, it had some element of indirect representation and nomination as well.[55]

Term of Council of State

The Council of State was a permanent body not subject to dissolution but as nearly as possible, one-third of its members were to retire every third year. The term of a member in the Council of State, normally was to be nine years. Thus, the Act introduced in India for the first time, the theory of the permanence of the upper chamber. The two chambers created under the Act of 1919, it may be recalled, were subject to dissolution separately by the Governor-General.[56]

Joint Sittings

In the event of a deadlock on a Bill between the two chambers, the Governor-General was empowered to call a joint sitting of both the

chambers, where the decisions were to be taken by a majority of the total members of both chambers present and voting. A deadlock were said to have resulted if (*i*) a Bill was rejected by the other House; or (*ii*) both Houses had disagreed on an amendment to a Bill; or (*iii*) the receiving House kept a Bill for more than six months without taking any decision thereon.[57]

Legislative Powers

The two Houses had legislative parity to a considerable extent, except in the financial matters. The federal legislatures had powers to make laws for the British Indian provinces with regard to all subjects in the Central as well as the Concurrent List; for the Chief Commissioner's Provinces on all matters; and for the federating states on all subjects handed over to the federation under the Instruments of Accession.[58] For becoming an Act, every law was required to be passed by both the Houses and assented to by the Governor-General.[59]

Financial Powers

Money Bills could be introduced only in the Assembly and not in the Council. The Governor-General had the power to decide the items, which were to be charged on the revenues of the federation. Such items of expenditure, representing about eighty per cent of the budget, were beyond the control of the federal legislature and no voting could take place on them. Regarding the remaining twenty per cent, the items were to be moved in the form of Demand for Grants, first in the lower House and then in the Council of State. The Governor-General had the power to reinstate a grant, refused or reduced. The Money Bills required his previous consent and the budget could not be presented except by his orders. Thus, the financial powers of the federal legislature in general and the Council of State in particular were restricted to a considerable extent.[60] It may be noted that most of the provisions described above could not be put into practice because of the rejection of federal part of the Act by Indians.[61]

The Presiding Officers—the President and the Vice-President in the case of Council of State and the Speaker and the Deputy Speaker in the case of Assembly—were to be elected.[62]

Thus the provisions under the Act of 1935 relating to the Council of State were generally not in keeping with those of the second chambers in a true federal legislature. It was anomalous to have an indirectly elected lower House and directly elected upper House. The principle of equality of representation for the British provinces as advocated by the Indian Statutory Commission was also not adhered to. The Council of State, under the Act, thus, was neither truly elective, nor truly federal, nor was

it designed to properly pursue and further the traditions of bicameral system in India. This Act, therefore, did not constitute an important landmark in the process of the evolution of a theoretically sound and healthy bicameralism in India.[63]

Criticism of the Council

The colonial rulers, in fact, were anxious to introduce a second chamber in India not for meeting the regional or provincial aspirations but mainly for serving their own imperialistic designs. The decision for creating a second chamber in 1919, with highly restricted franchise and overriding law-making power *vis-a-vis* Legislative Assembly was quite intriguing. A second chamber in India was, in fact, the culmination of a well-designed policy formulated long before the passage of the Act of 1919. It was actually in 1909, that the Imperial Government was able to locate certain conservative elements in Indian community and hoped, "to create a constitution about which the conservative opinion would crystalise and offer substantial opposition to any further change."[64] These imperial policy-makers had also anticipated that the aristocratic element in Indian society and moderate politicians for whom there was no place in Indian politics "would range themselves on the side of the Government and oppose any further shifting of the balance of power and any attempt to democratise Indian institutions."[65] The Imperial Government, in fact, had recognised the political significance of a social class based on economic superiority with potentialities to serve the Imperial interests.[66] Lord Minto's Government had intimated the Imperial Government in London that Indian gentlemen of position ordinarily refused to offer themselves as candidates to a wide electorate; partly because they disliked canvassing, and partly by reason of their reluctance to risk the indignity of being defeated by a rival candidate of inferior social status. Lord Morley also had accepted the contention of Lord Minto's Government and had emphasised that they were not aiming at a responsible Government for India.[67]

The government as a result, generally got whatever laws it liked passed by the Council and it was felt that the Council often obstructed progressive legislations coming from the lower House. For example, in the first assembly, when the government proposed 100 per cent increase in the salt-tax, it was disallowed by the Assembly. The Bill was later got cleared by the Council of State after obtaining a certificate from the Governor-General.[68] Similarly, the Princes' Protection Bill, wherein stringent measures were provided to suppress movements spreading disaffection against the Indian Princes, was refused leave for introduction by the Assembly. The Governor-General got this Bill also passed by the Council of State.[69] Between 1921 and 1928, on no less than five occasions

the two chambers reached, in the first instance, at different conclusions on the government's Finance Bills. On nine other occasions, the Houses had been at variance on legislative measures. The relations between them had discouraged attempts to make them act together, though statutory provisions for such joint action existed. On eighteen occasions only, have Joint Committees been appointed and there had never been a joint sitting of the two Houses.[70]

'n short, on crucial occasions of conflict between the Assembly and the Government, the Council generally threw its weight on the side of the Government, which made it a suspect in the eyes of nationalist forces.[71] Even the Simon Commission found it anomalous to retain the second chamber, indefinitely.[72] Sir Hari Singh Gour, a member of the Indian Central Committee, appointed by the Government in 1927 under the chairmanship of Sir Sankaran Nair to go into the working of the Reforms of 1919, had expressed his opposition to the continuation of the Council of State in these words :

> ...our experience of the working of that body for the last nine years, has led us to the conclusion that in spite of the small unofficial majority in the Chamber, it has invariably supported the Government and has virtually taken the place of official bloc removed from one chamber to the other...it is only on rare occasions that the nominated members have had the courage of their conviction to oppose the official view. They owe their nomination to the Government; nominations are presumably carefully made and the nominees themselves feel the obligation to their nominator and live up to their nomination by supporting the official in the hope they would thereby secure renomination for further term of years. Whatever may be the reason, the Council of State has aroused deep hostility in the country and has frequently antagonized their representatives in the Legislative Assembly. Measures passed by that body have been turned down for no reason other than that the Government opposed them.[73]

Thus, the Second Chamber was created to accommodate such "gentlemen of position" and to safeguard and further colonial interests. Whether this second chamber served solely the imperialist design can be a matter of debate, its origin in India, however, can certainly be traced in the deliberate design of having a second chamber with superior legislative powers for securing imperialistic legislation even if the popular Assembly had turned it down.

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Chapter 5

Bicameral Legislature for India : Other Proposals

Apart from the official proposals for setting up a Second Chamber in Federal Legislature and subsequent suggestions for modification of powers and structure thereof, various other proposals mainly non-official were made from time to time in this regard. While it is true that these proposals could not get wide publicity, their influence in subsequent official proposals for reforming the existing Second Chamber can hardly be denied.

CONSTITUTION OF INDIA BILL, 1895 (HOME RULE BILL)

Much before the Montagu-Chelmsford Report was prepared, some intellectuals had proposed a blueprint for the future Constitution of India. In accordance with the resolution of the Indian National congress 1889, Charles Bradlaugh introduced the Indian Council Amendment Bill in the House of Commons in 1890. It was forestalled by the British government by introducing its own Bill in the House of Lords same year. In the year 1895, there was another non-official attempt to provide for parliamentary democracy for India with bicameral legislature. It was a comprehensive document known as the 'Constitution of India Bill, 1895.' Although there is no clear evidence about its authorship, the proposed scheme was probably inspired by Lokmanya Bal Gangadhar Tilak. It was later on described by Dr. Annie Besant as the 'Home Rule Bill for India.' This scheme envisaged a bicameral Parliament consisting of two Houses—the upper House and the lower House.[1]

The upper House was proposed to be constituted by (*i*) the members elected for life directly by the people; (*ii*) official members; (*iii*) the members representing certain professions for life; and (*iv*) the members nominated by the Sovereign. The Bill provided that a large part of its membership will be chosen for life—some by the people and others by various professions, trade and interests. Ten members each were to be chosen from legal profession, medical profession and Universities;

thirty from Commerce; and twenty-five from Municipalities. Twenty members were to be nominated by the Sovereign. Two representatives were to come from each Division and one representative from each District.

A person would be eligible to be a member of either House of the proposed Parliament, if he had attained the age of twenty-five years and had been a citizen of India for ten years. Viceroy of India was to be the President of both the Houses and Vice-President of each House would be chosen by the respective chamber. The Vice-President of the upper House had a tenure of five years and that of the lower House had a tenure of three years.[2]

COMMONWEALTH OF INDIA BILL, 1925

The idea of getting a Constitution for India drafted by Indians themselves was gaining ground even before the Montagu-Chelmsford proposals were made public. A large section of nationalist opinion argued that Indians would never accept a Constitution drawn up at Westminster. Therefore, a convention was suggested for this purpose. The idea of having the Constitution framed by a 'Convention' was endorsed by the members of the two Houses of the Indian Legislature who met at Shimla. Accordingly, a 'National Convention', presided over by Sir Tej Bahadur Sapru and consisting of 255 members was constituted in February 1924. This Convention prepared a draft of the 'Commonwealth of India Bill, 1924.' This Bill was subsequently amended by the same Convention and the draft was placed before a sub-committee constituted by the 'All-Parties Conference' presided over by Dr. Annie Besant, which suggested a number of amendments to it. Finally, the Bill was given to a Drafting Committee consisting of Dr. Annie Besant, Shri C.P. Ramaswami Aiyar, Shri B. Shiva Rao, Shri N. Sri Ram and Shri Yadunandan Prasad to finalise it.[3] The draft Bill as cleared by this Committee was passed on to the Parliamentary Labour Party of Britain along with a memorandum signed by forty-three leaders of various political parties of India. The Bill was introduced in the House of Commons in December 1925 by George Lansbury, a member from the Labour Party. However, the defeat of Labour Government in the meantime, sealed the fate of the Bill.[4]

The Bill proposed a five tier governance namely, (*a*) the Village (Panchayat), (*b*) the Taluka (Tehsil), (*c*) the District (Zilla), the Province (Rashtra) and India (Hindustan). It, however, did not include the Indian States in its scheme. As regards the legislature at the Centre, the Bill suggested a Parliament consisting of the Viceroy, a Senate and a Legislative Assembly. The Senate was to consist of one hundred and fifty members elected for conspicuous public service. Its term was fixed for six years. Members of the Senate were to be elected by (*a*) members and ex-members of the legislatures; (*b*) members of the governing bodies

of recognised Universities; (*c*) members from Chambers of Commerce, labour associations, etc; and (*d*) persons possessing the property and income qualifications prescribed for the then Council of State.[5]

The Legislative Assembly was to have three hundred members having a term of five years, subject to dissolution even sooner by the Viceroy. Legislative powers of the two Houses were equal, except in the case of a Money Bill which could not be introduced in the Senate.[6]

SWARAJ CONSTITUTION (NEHRU COMMITTEE REPORT)

In 1927, the Bombay Session of the Indian National Congress had adopted a resolution moved by Shri Motilal Nehru calling upon its Working Committee to frame a Constitution for India to be placed before a National Commission which would consist of people from various interests, communities and political parties for giving it a final shape. Accordingly, an 'All Parties Conference' held in 1928, constituted a Committee headed by Shri Motilal Nehru, including among others Sir Tej Bahadur Sapru and Shri Subhas Chandra Bose. The report of the Committee which was submitted on 10 August 1928, became famous as " the Nehru Committee Report". It recommended a parliamentary form of government for India based on bicameralism.[7]

Composition

The Nehru Committee report proposed a Commonwealth of India having a Parliament which would consist of the King, a Senate and a House of Representatives. Membership of the Senate was fixed at two hundred as against five hundred for the House of Representatives. Members of the Senate were to be elected indirectly by the members of the provincial legislatures. Every provincial legislature could elect a specified number of Senators, allotted to them on the basis of their population, subject to a minimum. The elections were to be held on the basis of proportional representation with single transferable vote. Against the method of equal representation as prevailing in the USA, each province was to have a quota of members based on its population. This was perhaps done, keeping in view the differences in size and population of the provinces in India. The House was to be directly elected on the basis of adult suffrage. While a seven-year term was suggested for the Senate, five-year term was proposed for the House. Either chamber could be sooner dissolved by the Governor-General who could also extend their normal terms under special circumstances. It was, however, mandatory to call the next Session within six months from the date of dissolution of a House.[8]

Legislative Process

All Bills, except the Money Bills, could originate in the Senate. A Money Bill passed by the House of Representatives would go to the Senate for its concurrence and the Senate had to return it within the specified period. After the expiry of that period, a Money Bill if not passed, was deemed to have been passed by both the Houses.[9] The House was free to accept or reject the recommendations of the Senate.

A Bill could be initiated in either House of Parliament and, if passed by the originating House, was to be sent to the other House for being considered and passed. A Bill was deemed to have been passed by Parliament only after it had been agreed to by both Houses, either without amendments or with such amendments as may be agreed to by both Houses. If a Bill which had been passed by the House of Representatives, was not passed by the Senate within six months after the passage of the Bill by the House, the Governor-General could on a resolution passed by either House to that effect, refer the Bill to a joint sitting of the two Houses. Decision on a matter in the joint sitting was to be reached by the vote of majority of members present at such sitting.

Assent to Bills

Every Bill passed, or deemed to have been passed by both Houses, was to be presented to the Governor-General for the signification by him in the King's name of the King's assent. The Governor-General could either signify such assent or withhold the same or he could reserve the Bill for the signification of the King's pleasure. Any Bill, if returned by the Governor-General was to be further considered by Parliament together with the amendments recommended, if any by the Governor-General, and if re-affirmed with or without amendments, would be again presented to the Governor-General for the signification in the King's name for the King's assent.[11]

Thus, in the scheme of bicameralism proposed by the Nehru Committee, the Senate played only a secondary role in the process of law-making, specially because its powers regarding financial legislations were restricted as compared to those of the other House. The Senate, in fact, was mainly a revisory chamber with power to delay, except in the case of Money Bills. The scheme, therefore, was mainly based on the Westminster system of vesting superiority in financial matters in the lower House. Even in matters of ordinary legislation, it was the will of the House of Representatives which was to prevail ultimately, because its numerical strength was more than double to that of the Senate which gave it upper hand in a joint sitting. The second chamber in this case appeared to have been recommended to provide an opportunity for the reconsideration of a legislation in a somewhat calmer atmosphere. An important fact of

the Nehru Report was that the idea of a bicameral legislature at the Centre was not rejected by the Indian leaders.

The Muslim League also subscribed to the principle of bicameralism for the Centre though it was not satisfied with the composition of the proposed Indian Legislature. It may be mentioned that earlier the Congress-League Scheme of 1916 had demanded a unicameral Legislature for India.[12]

Besides these organised attempts, individual suggestions also were made by even the members of the Council of State with a view to bringing about suitable changes in its powers, composition, etc. Saiyed Raza Ali, a member of the Council of State while speaking in the Chamber in 1923 suggested that the Council of State in India should be structured on the lines of the American Senate which exercises real powers. He argued that continuing with the existing Council of State would be sheer wastage of time and energy and suggested to discontinue it.[13] Shri Pheroze C. Sethna referring to the limited role which the Council of State played in Financial matters, contended that while its members pay largest amount of revenue to the Government, either by way of land tax or income tax, yet they have no right to tell them how to spend that revenue. He suggested that the Budget should be voted in a joint sitting.[14] The views expressed by individuals were more about the composition and powers of the Council of State rather than about its existence or otherwise.[15]

Notes and References

1. *see* B. Shiva Rao *et al,The Framing of India's Constitution*, Vol. I, p. 5.
2. *Ibid.*, pp 6-10.
3. *Ibid.*, p. 43.
4. *Ibid.*, p. 44.
5. *Ibid.*, p. 45.
6. *Ibid.*
7. *Ibid.*, p. 59.
8. *Ibid.*, pp. 60-61.
9. *Ibid.*, pp 62-63.
10. *Ibid.*, pp 63-64.
11. *Ibid.*
12. *The Congress-League Scheme, 1916, see* B. Shiva Rao, *et. al, op. cit.*, pp. 27-28.
13. *Council of State Debates*, Vol. III, 1923, p. 1220.
14. *Ibid.*, 7 September 1927, pp. 1073 & 76.
15. *Ibid.*, pp. 1079 & 1082.

Chapter 6

Constituent Assembly and Second Chamber

In terms of its form and content, the Central Legislature which existed in India before the transfer of power in 1947, was actually the same as constituted under the Government of India Act, 1919. The Government of India Act, 1935 had also not made significant changes in its structure and composition. The Central Legislature thus continued to have two chambers with limited powers, restrictive franchise, and considerable official and nominated elements in it. The Governor-General enjoyed enormous discretionary powers in regard to the working of the legislatures including the power to make rules providing for various matters relating to the composition of the Legislative Assembly and the Council of State. The Governor-General was also empowered to make rules for regulating the conduct of business in the two chambers. He had powers to issue Ordinances in emergent conditions and to certify any Bill or an amendment thereto as being essential and get it passed even if it was turned down by the Assembly. Also under the Government of India Act, 1935 the executive accountability to legislature continued to remain severely limited. The legislative machinery contemplated by the Act was not in consonance with the idea of a democratic and elected body.[1]

The structure and composition of the Council of State provided in the Government of India Act, 1919 and that of the 1935, in fact, did not provide any satisfactory basis on which the second chamber of Independent India could have been devised. This was clearly felt at the time of framing the new Constitution for India. Shri B.N. Rau, the Constitutional Adviser to the Constituent Assembly had prepared a questionnaire bearing the salient features of the new Constitution which was initially circulated to the members of the Central and Provincial Legislatures in India. It was hoped that the answers received in response to the questionnaire would provide the basic material to the Constituent Assembly in the light of which the new Constitution might be drafted.[2] The questionnaire had invited views on different aspects of the proposed

Union Legislature such as the need for having a second chamber; how the two Houses should be constituted; the provision, if any, to be made for the representation of different communities and interests; the composition, franchise, electorate, constituencies, methods of election, allocation of seats, term of office; the relative powers of the two chambers; and provisions for resolving deadlocks between them. Shri Rau had also prepared notes regarding these aspects obtaining in other countries.[3]

GENERAL DIRECTIVES OF SHRI K.T. SHAH

Shri K.T. Shah had submitted to the President of the Constituent Assembly on 22 December 1946, a copy of the 'General Directives' regarding the new Constitution. It was prepared at the instance of Shri Jawaharlal Nehru, based on the American, British and French models. As regards the Union Legislature, the General Directives provided that it shall consist of two chambers, the 'House of the People's Representatives' and the 'House of the United States and Provinces'. The House of the People's Representatives was to represent the adult citizens of the Union in all its parts elected by adult franchise on the basis of at least one representative for every million of the population.[4]

The second chamber was to consist of the representatives in equal number (or proportion), of every component part of the Union. Any regrouping or redistribution of these, it was provided, would require reallocation of such representatives provided that the total strength of the representatives of the component parts of the Union in the House of the 'United States and Provinces' should not exceed twice the total number of such parts. The representatives of every component part of the Union were to be elected by the people of each component part as a whole. In addition to these, there would be such other representatives, not exceeding fifteen, of the minorities who would not be able to secure direct representation for themselves owing to the scattered nature of their numbers, or their numbers in any part falling below the minimum necessary to elect a representative to the House of the People's Representatives and because of the recognized importance of their part or contribution in the collective life of the country.[5]

MEMORANDUM PREPARED BY SHRI B.N. RAU

Subsequently, Shri B.N. Rau, the Constitutional Adviser to the Constituent Assembly prepared an independent memorandum on the Union Constitution for the consideration of the Constituent Assembly. The memorandum was submitted to the President of the Assembly in May 1947, which envisaged that the legislative power of the Union would be vested in a Parliament which would consist of the President and two Houses to be known as 'Senate' and 'House of Representatives'. The Senate, it was proposed, would consist of not more than one hundred

and sixty eight representatives of the provinces and not more than one hundred twelve representatives of the Indian States. It was to be a permanent body not subject to dissolution, but one-third of its members were to retire every third year. The memorandum proposed that for summoning and prorogation of the Houses of Parliament, dissolution of the lower House, relations between the two Houses, method of voting, disqualifications for membership, parliamentary procedure, including procedure in financial and other matters, the corresponding provisions contained in the Government of India Act, 1935 would be followed.[6]

Composition of the Senate under this scheme followed, as far as possible, that of the Council of State proposed in the Government of India Act, 1935. The Council of State under that Act consisted of one hundred and fifty-six representatives of British India plus not more than one hundred and four representatives of the Indian States. Under Shri Rau's plan, the Senate was to have not more than one hundred and sixty-eight representatives from the provinces and not more than one hundred and twelve representatives from the Indian States. In this scheme, Shri Rau followed the scheme outlined in the Government of India Act, 1935, perhaps because it was the line of least resistance. It should be remembered that there were "thirty five potential Indian States and only eleven British provinces, excluding Chief Commissioner's provinces at that time". Shri Rau did not attempt to give all the units equal representation in the Senate, because the provincial represen-tatives, "or to use a convenient term of British Indian representatives", would have been swamped by the representatives of the Indian States. If this scheme was not acceptable, Shri Rau suggested an alternative scheme for the Senate with functional representation on the pattern of Ireland.[7]

UNION CONSTITUTION COMMITTEE AND SECOND CHAMBER

The Constituent Assembly through a resolution adopted on 30 April 1947, authorised its President to nominate a committee of not more than fifteen members to report on the main principles of the Union Constitution. Accordingly, the President of the Constituent Assembly nominated a twelve-member Union Constitution Committee headed by Shri Jawaharlal Nehru for the purpose. Members of the Union Constitution Committee were : Maulana Abul Kalam Azad, Pandit Govind Ballabh Pant, Shri Jagjivan Ram, Dr. B.R. Ambedkar, Shri Alladi Krishnaswami Ayyar, Shri K.M. Munshi, Shri K.T. Shah, Dr. Syama Prasad Mookerjee, Shri V.T. Krishnamachari, Sardar K.M. Panikkar and Shri N. Gopalaswami Ayyangar.

Shri B.N. Rau had prepared a paper on the second chamber for the members of the Assembly providing a synoptic account about the nature, type, structure, etc. of the second chambers in different countries of the world, perhaps with a view to enabling them to form an opinion about

the kind of upper chamber that India should have. Motives behind creating second chambers, it was argued in the paper, have generally been (*i*) the force of tradition, (*ii*) protective armour for safeguarding interests of the propertied class; (*iii*) a check on hasty legislation by the lower chambers; and (*iv*) providing representation to various interests not adquately represented in the lower House. The paper categorised the second chambers as follows :

(1) hereditary, (2) nominated, (3) partially elected; (4) fully elected; and (5) special types.[8]

The Memorandum prepared by the Constitutional Adviser was taken up for consideration by the Union Constitution Committee in its meeting held on 9 June 1947. The main points which emerged out of its deliberations were :

1. The two chambers of Parliament should be named as Council of States and the House of the People, indicating to a great extent the manner in which each chamber would be constituted.
2. The Council of States would have 250 members who would be elected by the members of the lower Houses of the States except the ten members to be nominated by the President of India.
3. The Vice-President of India would be *ex officio* a member of the Council of States and its Chairman; and if any member of the Council of States was elected Vice-President, he would vacate his seat.
4. The two chambers would, except in respect of Money Bills, have equal legislative powers and deadlocks between them would be resolved by joint meetings.
5. Money Bills would originate in the House of the People and power of the Council of States would be limited to making suggestions for amendment, which the House of the People may or may not accept.
6. The Council of States would not be subject to dissolution; one-third of its members, however, would retire every two years. Life of the House of the People would be four years.[9]

The Union Constitution Committee, it may be mentioned, suggested Hindustani names 'Rajya Sabha' for the Council of States and 'Lok Sabha' for the House of the People.[10]

Sub-Committee on Composition of Council of States

A Sub-Committee of the Union Constitution Committee consisting of Dr. B.R. Ambedkar, Shri N. Gopalaswami Ayyangar, Shri K. M. Munshi, Shri B.H. Zaidi and Shri K. M. Panikkar was constituted to work out the details for providing representation to the States in the Council of States. This Sub-Committee suggested that the units should have representation

in the Council on the basis of one member for every whole million of population upto five millions and one member for every two additional million of population, subject to a total maximum of twenty members from a single unit. On this basis, while the provinces had one hundred sixteen members, States could send forty-five. Twenty-six seats went to the remaining States individually having population less than one million. These representatives were to be elected by the lower Houses of the legislatures of the units, except for ten members to be nominated by the President in consultation with universities and scientific bodies.[11]

Report of Union Constitution Committee

These suggestions were considered by the Union Constitution Committee and included in its Report which was presented to the President of the Constituent Assembly on 4 July 1947. Clauses in Chapter II of the Report which related to the proposed Parliament read as follows :

13. *Constitution of the Federal Parliament* : The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses—the Council of States and the House of the People.[12]

14. (1) The Council of States shall consist of

(*i*) not more than 10 members nominated by the President in consultation with universities and scientific bodies ;

(*ii*) representatives of the units on the scale of 1 representative for every whole million of the population of the unit up to 5 millions plus 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

Explanation

(*a*) A unit means a province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a unit means the group so formed.

(*b*) The representatives of each unit in the Council of States shall be elected by the members of the lower House of the Legislature of such unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than one representative for every 750,000 of the population.

(*d*) The ratio between the number of members to be elected at any time for each constituency and the population of that

constituency, as ascertained at the last preceding census, shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule... :
Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution; but, as near as may be, one-third of the members thereof shall retire every second year in accordance with the provisions in that behalf contained in Schedule...

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House :

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency.

(*Note* : Taking into account only the "willing" Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. The composition of the Lower House will be on a purely population basis).[13]

Provinces	
Madras	20
Bombay	12
Bengal (W)	12
U.P.	20
Punjab (E)	9
Bihar	20
C.P.	10
Assam	7
Orissa	6
Total	116

States	
Hyderabad	10
Mysore	6
Travancore	5
Baroda	3
Gwalior	4
Jaipur	3
Kashmir	4
Jodhpur	2
Udaipur	2
Patiala	2
Rewa	2
Cochin	1
Bikaner	1
Kolhapur	1
Indore	1
Total	47
For the groups of the remaining States where population individually did not amount to one million	24
Grand total 116 + 47+ 24 =	187

15. There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, Money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in Money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended(where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of Money Bills, both the Houses shall have equal powers of legislation; and deadlocks should be resolved by joint meetings of the two Houses. The President shall have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.[14]

DISCUSSION ON THE REPORT OF UNION CONSTITUTION COMMITTEE IN CONSTITUENT ASSEMBLY

Clauses 13 and 14 as contained in the Report of the Constitution Committee pertaining to the Federal Parliament were taken up for consideration by the Constituent Assembly on 28 July 1947*. Shri N. Gopalaswami Ayyangar, while moving the motion for consideration and adoption of clause 13, mentioned about the notice of an amendment to this clause given by Shri K. Santhanam who proposed to delete the word "the National Assembly comprising" from the original clause. He agreed that it was unnecessary to have both the words Parliament and the National Assembly.[15] Shri Santhanam also argued that keeping both these words would be most inconvenient and when it would come to translating these names in Hindustani, it would be worse.[16]

Shri R.K. Sidhwa suggested to insert the word "Congress" also in this clause, or at any other place in the Constitution.[17] Shri Mohd. Tahir, on the other hand, suggested to delete the reference to the word 'Council of States'. He wanted to have only one chambered legislature as the second chamber in India was "a product of British imperialism" devised for serving their interest. He reminded as to how the nominated members in the Council of State created by the Act of 1919, used to override the decisions of the Assembly mostly with a view to serving the imperialistic interests and not those of the people.[18] Prof. Shibban Lal Saksena also expressed apprehension that the second chamber would act as a "clog in the wheel" of nation's progress. He argued that in no country an upper House had helped progress; it has always acted as a hinderance to quick progress. He was of the view that the two chambers would not help us in the realization of our new programmes with the required rapidity.[19]

Shri Naziruddin Ahmad, on the other hand, supported the idea of having a Council of States in Independent India. He felt that "a second chamber would not only be an advantage but an absolute necessity." He stated that while a popular House was known for its vitality and vigour and has the exclusive power in financial matters, "a second chamber introduces an element of sobriety and second thought".[20] He argued :

> ...we have to consider the entry of the States into the federation, and if we have this in mind, a second chamber would be an absolute necessity. Without a second chamber it would be difficult to fit in the representatives of the States in the scheme of things.[21]

Shri N. Gopalaswami Ayyangar, who had moved the motion to be considered and adopted by the Constituent Assembly, while replying to the debate stated that no elaborate justification was necessary for

* For text of the debates *see* Appendix-IV.

adopting clause 13 providing for the two chambers in the federal legislature. He asserted :

> After all, the question for us to consider is whether it performs any useful function. The most that we expect the second chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this second chamber is only an instrument by which we delay action which might be hastily conceived and we also give an opportunity, perhaps to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of People.[22]

He further stated that the balance of opinion in the Constituent Assembly was in favour of having a second chamber, of course, with taking care to see that it did not "prove to be a clog either to legislation or administration."[23] The motion moved by him was adopted with a few changes.[24] The Constituent Assembly thus agreed in principle, to have two chambers in the federal legislature namely, the Council of States and the House of the People.

Clause 14 concerning the composition of the Council of States was taken up for consideration on 31 July 1947 by the Constituent Assembly. Shri N. Gopalaswamy Ayyangar moved a lengthy amendment assimilating most of the points sought to be included by a large number of amendments moved to this clause.[25] He moved that for items (*a*), (*b*) and (*c*) of the sub-clause (1) of the main clause, the following may be substituted :

> (*a*) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail :
>
> Provided that the total representation of Indian States does not exceed 40 per cent of this balance.
>
> *Explanation*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.
>
> (*b*) The representatives of each Unit in the Council of States shall be elected by the elected members of the legislature of such Unit and in cases where a legislature consists of two Houses by the elected members of the Lower House of that legislature.
>
> (*c*) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :
>
> Provided that the ratio of the total number of 'Indian States' respectively to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.
>
> 2. That in sub-clause (1) of Clause 14, following new item (e) be inserted :
>
> The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution."[26]

This amendment moved by Shri Ayyangar proposed that membership of the Council of States should not exceed one-half of that of the House of the People. Of this membership, twenty-five were to be returned by the five functional constituencies or panels drawn on the lines of those provided in the Irish Constitution of 1937. The original suggestion of nomination of ten members in consultation with universities and scientific bodies appeared to him narrow in scope and he, therefore, felt it desirable

to get into the Council persons who, even though not belonging to universities or scientific bodies, deserved on account of their connection with important aspects of the nation's activities, to be on a body like Council of States. Apart from this small number of twenty-five members to be elected from these panels, the overwhelming majority of its members were to be elected—60 per cent from the provinces and 40 per cent from the Indian States, which would be grouped, if necessary. The representatives of each Unit were to be elected by the elected members of the lower Houses of the Units.[27]

The amendment sought to authorise the Union Constitution Committee further to consider the fixing of the actual strength of the two chambers, the distribution of the membership among the units of the Federation, the determination of the number, nature and constitution of functional panels for the Council of States, the manner in which the smaller Indian States should be grouped into units for purposes of election to the two Houses, the principles on which territorial constituencies should be delimited, and other ancillary matters. The Union Constitution Committee was directed to submit its recommendations to the President of the Assembly.[28]

Prof. Shibban Lal Saksena moved an amendment seeking to provide that as nearly as may be, half of the members of the Council should retire every second year instead of one-third as originally proposed. By retiring half of its members every two years, he argued, there would emerge "a new Council of States every fourth years". Secondly, he argued, lower Houses of the Units being dominated as they were, by the nominated members, chances of the "reactionary members" getting elected in large numbers to the second chamber would be greatly reduced.[29] Similarly, Begum Aizaz Rasul moved for increasing the period of the retirement of the members of the Council from 'two years' to 'three years' on the contention that the two years period for a member would be too short "to show his worth and do justice to the House to which he is elected". She stated that by doing so she wanted to deny the members of the lower Houses of the Units to elect members of the Council twice during their tenure.[30] The amendment moved by Shri Gopalaswamy Ayyangar was negatived.[31]

As per the decision of the Constituent Assembly, the Union Constitution Committee met again on 24 August 1947 to consider the details regarding representation of provinces and Indian States in the federal legislature. It decided to recommend that a Unit of federation should have one representation in the Council of States for every whole million of population and upto five million. It would have one additional member for every additional two million population subject to a maximum of twenty members per Unit. Delhi and other centrally administered areas would have one representative each in the second chamber.[32]

DRAFT CONSTITUTION PREPARED BY SHRI B.N. RAU

These decisions of the Committee and the broad principles adopted by the Constituent Assembly after discussing the relevant clauses contained in the Report of the Union Constitution Committee, were incorporated in the first Draft Constitution prepared by Shri B.N. Rau in October 1947.[33]

This draft recommended a "Federal Parliament consisting of two Houses.[34] The second chamber, *i.e.,* Council of States was to consist of not more than one half of the total membership of the lower House, *i.e.,* the House of the People.The Council would consist of two types of representatives—twenty-five of the functional interests and remaining those of the Units.[35] Twenty-five members were to be chosen from the five panels of candidates to be constituted before the first general election and, thereafter, before each biennial elections, containing the names of the persons having knowledge and practical experience of the interests and services such as :

(*a*) National language and culture, literature, art, education and such professional interests as might be defined by an Act of the Federal Parliament;
(*b*) agriculture and allied interests;
(*c*) labour;
(*d*) industry and commerce including banking, finance, accountancy, engineering and architecture; and
(*e*) public administration and social services.[36]

Each panel was to contain at least twice the number of members to be elected by it.[37]

The Fourth Schedule to the Draft Constitution set out detailed provisions regarding the drawing up of the panels.[38] The actual election to the Council of States from these panels was to be done by the members of the House of the People in accordance with the system of proportional representation by means of the single transferable vote.[39]

This draft Constitution also provided that the Council of States would be a permanent body not subject to dissolution, but as near as may be, one-third of its members should retire every second year, in accordance with the procedure laid down in its Fourth Schedule.[40]

The Fourth Schedule to the draft Constitution proposed the term of the members of the Council of States, other than a member chosen to fill a casual vacancy, to be six years.The term of the members nominated to Council of States by the Government of an Indian State, nominating in rotation, however, shall be one year. It further provided that upon the first Constitution of the Council of States, the President was empowered to make, by order, such provision as he thought fit by curtailing the term of

office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class had to retire in every second year thereafter.[41] A member chosen to fill a casual vacancy would serve for the remainder of his predecessor's term in office.[42]

The Draft Constitution proposed that the House of the People would consist of not more than 500 members elected directly on the basis of adult suffrage in territorial constituencies.[43] The Fourth Schedule to the draft Constitution provided for allocation of seats in the Council of States to the provinces and the Indian States, apart from the procedure relating to elections to House, qualifications, etc. to be replaced later by Acts of Parliament.[44]

The draft Constitution also provided that the Vice-President of India would be the *ex officio* Chairman of the Council of States and an elected Deputy Chairman would perform the duties of the Chairman in his absence.[45] Except in the case of Money Bills, Council of States was given equal powers and deadlocks between the two Houses on an issue were to be settled in a joint sitting.[46] The Chairman of the Council of States was to preside over the joint sittings.[47] The Council of States in the case of Money Bills could make only suggestions and if it did not return a Bill within thirty days, the Bill would be deemed to have been passed by both Houses in the form it was sent to it by the House of the People. The Council of States had no powers of voting on supplies or control over the expenditure from federal revenues.[48]

DRAFTING COMMITTEE AND SECOND CHAMBER

The provisions of the Draft Constitution prepared by the Constitutional Adviser were considered by the Drafting Committee between October 1947 and February 1948.[49] The Drafting Committee decided that India should be described as a 'Union of States' and not as a 'Federation'. It provided that the Parliament of the Union shall consist of two Houses—the House of the People and the Council of States.[50] The Drafting Committee fixed the strength of the Council of States at 250, of whom fifteen were to be nominated by the President and the remainder 235 to be the representatives of the States.[51] The Committee thus deleted the earlier provision of the five 'functional panels' for choosing twenty-five members from different interests. The Drafting Committee instead sought to empower the President to nominate to the Council of States, fifteen members with experience or knowledge of (*a*) literature, art, science and education; (*b*) agriculture, fisheries and allied subjects; (*c*) engineering and architecture; and (*d*) public administration and social services.[52] The Committee felt that the panel system of election operating under the Irish Constitution had proved to be unsatisfactory. In the absence of any other guidance in this matter, the Committee provided for nomination by

the President in place of election, while retaining a certain measure of functional representation.[53]

The elected members of the Council of States were to be chosen by the elected members of legislatures of the provinces and those of the Indian States and where they had a bicameral Legislature, by the elected members of the lower Houses. In case of the Indian States having no legislature, the representatives were to be chosen in such a manner as Parliament might by law prescribe.[54] It may be pointed out that the draft prepared by Shri B.N. Rau had provided that members from Indian States or group of States having no legislature were to be nominated by the government of the Unit or in rotation by the goverments constituting the Unit.[55]

The Drafting Committee omitted the Fourth Schedule added to the Constitutional Adviser's Draft and added an article empowering Parliament itself to make laws providing for all matters relating to or in connection with elections to the Houses of Parliament.[56]

DRAFT CONSTITUTION AND SECOND CHAMBER

The Drafting Committee, after considering the draft prepared by the Constitutional Adviser in the light of notes, reports, memoranda, etc. received by it, prepared its own Draft Constitution to be submitted to the Constituent Assembly, with some important changes in it. The revised draft was submitted to the President of the Constituent Assembly on 21 February 1948. However, the draft was reprinted and submitted to the President of the Constituent Assembly on 26 October 1948, incorporating some suggestions received during the interregnum and which were acceptable to the Drafting Committee. The provisions relating to Parliament were discussed* in the Assembly at different points of time.[57]

On 3 January 1949, while considering article 67 of the Draft Constitution, Shri Lokanath Misra moved for deleting any reference to the 'Council of States' from the Constitution. He argued that during the existing conditions and temper, there was no real need for a second chamber and that its creation would only result in wastage of public money and time.[58] Begum Aizaz Rasul sought to substitute the word 'Parliament' by 'Indian National Congress' with a view to permanently commemorating the contribution of the Congress Party in securing Independence for the country.[59] Shri K.T. Shah was against making the President as a part of Parliament as he would hardly have any discretionary powers, and will have to act on the advice of the government of the day. Making him an integral part of Parliament just as the British King, would be "utterly out of place", he stated.[60] All the three amendments, however, were negatived.[61]

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* For the text of draft articles and debates held in the Constituent Assembly on articles relating to the Council of States, *see* Appendix-V and Appendix-VI.

Shri K.T. Shah proposed to delete clause (2) from article 67* providing for nomination of members to the Council of States. He argued that the various interests mentioned in the clause were not logical and that the element of nomination was against the very idea of an elected body. He also suggested to give equal representation to all the States in the Council of States and their number should be mentioned in the Constitution itself.[62] While Dr. B.R. Ambedkar moved to bring down the number of nominated members from fifteen to twelve, Shri Lokanath Misra sought to reduce the number of elected members from two hundred fifty to one hundred fifty on the ground that having lesser number of members would be economical both in terms of money and time.[63]

Shri Lakshminarayan Sahu demanded that the provision regarding nomination of members to the Council should be deleted and in its place functional representation based on panel system should be provided. Getting some persons nominated by the President might subject him to unwarranted allegations of favouritism and nepotism. Alternatively we may, he suggested, have 'advisory board' as it existed in Russia, consisting of meritorious and learned persons.[64] Shri Naziruddin Ahmad proposed that instead of mentioning the number (*i.e.*, twelve) for nomination to the Council, words "not more than six per cent of the total number of members of the House" should be included. He argued that with the addition of the words "not more than" by Dr. Ambedkar, before "250 members" as the strength of the House, position had slightly changed. He clarified :

> In the new clause you make the House one of not more than 250 members. Therefore, by Dr. Ambedkar's amendment, the number of members in the Council of States would fluctuate. It may be less; it will never exceed 250. The number of nominated members should bear a proportion to the actual number of members in the House. This number should also fluctuate in proportion. I have, therefore, suggested six per cent which would be fifteen only if the maximum number of members in the House is taken. Otherwise, if the number of members is less, the number of nominated members would also be less. They should, I submit, bear some relation to each other. In fact if the number be reduced to twelve, an arbitrary figure, that would bear no relation to the actual number. The actual number in the House may be considerably less. So, I think, Sir, a proportion of six per cent of the total membership of the House would be more convenient and more logical.[65]

This amendment was negatived.

Another amendment to article 67 was moved by Sardar Hukam Singh. His objection was that instead of saying that the twelve members shall be nominated in the manner provided in clause(2) of this article, it should say that members should be nominated from amongst the categories of persons given in that clause. He argued that while the clause implied that some method or mode of nomination would be provided, it actually did not give one. Any reference to "manner", therefore, had to be omitted. This amendment also was not accepted.[66]

Pandit Hirday Nath Kunzru, while moving his amendment, contended that the representation in the Council of States of the States specified in Part III of the First Schedule should also be fixed in accordance with the principle proposed for representation of the House of the People. In other words, he wished that population should be the basis for determining representation not only in the House of the People but also in the Council of States.[67] Professor Shibban Lal Saksena suggested to allocate one seat each in the Council to the States included in Schedule I, "for every million population up to the first seven million" provided that no State shall have less than one representative for every additional two million population thereafter. In this manner, he wanted to give "a little weightage" to the smaller States.[68]

Shri Lokanath Misra wanted every State to be represented equally in the Council of States as was the case in the United States of America. If both the Houses were represented on the basis of population, he contended, the Council of States would serve no real purpose and it would amount to unnecessary duplication of the House of the People. He also suggested that the number of representatives from each State shall in no case be more than three which was thought to be "sufficient to safeguard the special interests of the States."[69] Shri Lakshminarayan Sahu wanted to ensure that, as far as possible, all the States were put in a uniform pattern and were represented in the Council.[70]

Professor K.T. Shah suggested to provide for a consultative council consisting of certain special interests elected by the organizations of those interests such as agriculture, industry, trade, social services, etc. to advise Parliament and the Council of Ministers in all matters of policy and to prepare or scrutinize proposals concerning these matters. Members of this council, he suggested, should not have either individually or collectively, any executive duties or responsibilities. This council, he argued, would enable the interests not directly represented in Parliament, to put forward their case before the Departments and make their own alternative proposals. The popular representatives generally being the laymen would have expert advice and guidance from the various interests represented in the advisory council who would not be law makers themselves.[71]

Shri Lokanath Misra and Shri Naziruddin Ahmad pleaded for making

* For Corresponding articles in the Constitution of India, *see* Appendix-VII

the categories of interests whose representatives were to be nominated to the Council of States more broad-based so as to make the choice of the President while nominating them, wider and easier. While Shri Misra suggested to nominate "only those who represent our great past of great intellectual fervour, high morals, deep and lofty flights or the spirit", Shri Naziruddin Ahmad suggested to add categories like journalism, commerce, industries, and law as well. He also wanted the "philosophers or the men who are the leaders of the religion" also to be represented in the Council of States.[72]

Shri Mohd. Tahir and Mahboob Ali Baig Sahib Bahadur asked as to why the nominated members of the Legislative Assemblies as well as the elected members of the Upper House in a province or in a State were being debarred from voting in the election to their representatives in the Council of States.[73]

Shri Mahavir Tyagi and Mahboob Ali Baig Sahib Bahadur also pleaded for election of the Council to be done in accordance with the system of proportional representation by means of single transferable vote. It was "the most scientific and most democratic method of representing the people of a country" in a democracy.[74]

During the general discussion, on the provisions relating to representation in the Council of States, Shri R.K. Chaudhari supported the use of terms 'lower House' and 'upper House' for the two Houses.[75] Shri R.K. Sidhwa was against the system of any nomination to the Council; he apprehended that it might give rise to a "good deal of bickerings" and bring the office of the President into controversy. He also supported the idea of having an advisory council consisting of experts, as proposed by Shri K.T. Shah, on just two or three selected subjects. But this should be effected by an Act of Parliament and not by making a provision to this effect into the Constitution.[76] Shri Mohamed Ismail Sahib demanded that representatives of 'trade and commerce' also should be included in the list proposed for nomination to the Council of States; and that nominated members of the Legislative Assemblies of States and provinces should have right to take part in election to the Council of States.[77] Pandit Hirday Nath Kunzru made an elaborate argument in favour of adopting the system of proportional representation by means of single transferable vote for the election to the upper House dispelling all the fear about introducing communal electorate through this system.[78]

Dr. Ambedkar while replying to the debate on 3 January 1949, clarified that due to change in the situation, the representation of the Indian State in the Council would now be on the basis of population and not forty per cent of the total as proposed earlier. He also rejected the idea of having an advisory council of expert instead of nominating persons to the Council of States as suggested by Shri K.T. Shah. All the

amendments concerning the Council of States were put to vote one by one and most of them were negatived.[79]

As regards the duration of the Council of States, the draft Constitution provided in article 68(1) that it would not be subject to dissolution, but as many as possible, one-third of its members shall retire on expiration of every second year.[80] There was not much discussion on this provision in the Constituent Assembly. Dr. Ambedkar, however, sought to introduce a new article 68(A) providing for certain conditions to be fulfilled by a person to fill a seat in the Council of States, namely, he should be a citizen of India, not less than 35 years of age and should have such other qualifications as might be prescribed under any law made by Parliament. His contention was that a person wishing to serve in the legislatures should have some higher qualifications, experience and certain amount of knowledge in the affairs of the State. He hoped that if this amendment was accepted, the right kind of candidates would be available to serve the House better than an ordinary voter would do.[81] Shrimati Durgabai Deshmukh moved an amendment for lowering the minimum age for the membership of the Council from 35 to 30 on the contention that wisdom did not depend on age. She was supported by Shri H.V. Kamath and Shri Tajamul Husain who also were in favour of allowing the younger elements to come to the Council as its members.[82] Prof. Shibban Lal Saksena, however, exhorted Dr. Ambedkar to withdraw this particular amendment, as he was not in favour of restricting younger persons from becoming members of the Council of States. Mahboob Ali Baig Sahib Bahadur and Shri Shibban Lal Saksena were opposed to the power being given to Parliament for prescribing qualifications for election to the Council by simple majority. Shri Baig expressed his fear that what was being laid down today might be taken away tomorrow by Parliament. He argued that while specific provisions for the purpose have been made in respect of candidate for the office of President, Vice-President, etc., why was this being left to be decided by Parliament? He also argued that it might prove to be a dangerous provision because Parliament at different times might take different positions on this issue.[83] Shri T.T. Krishnamachari supported the amendment brought by Dr. Ambedkar and also the amendment suggested by Shrimati Durgabai. He agreed to the amendment moved by the latter suggesting to make the prescribed age for the membership of the Council of States from 35 to 30.[84]

It may not be out of place to mention here the views of the President of the Constituent Assembly, Dr. Rajendra Prasad, about the need for laying down the qualifications for Members of Parliament. He said :

> In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges

are required to possess very high qualifications, for helping the Judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all, and a legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is nonsensical and the wisdom of all the lawyers and all the Judges will be required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it would have to put up with it.[85]

Draft articles relating to the Chairman and the Deputy Chairman of the Council of States (article 73), vacation, resignation of and removal of the Deputy Chairman from the office (article 74) and power of the Deputy Chairman to perform duties of the office of or act as the Chairman (article 75) were adopted without any discussion thereon. A new article 75(A) was, however, added on the proposal of Shri T.T. Krishnamachari.[86] It provided that the Chairman and the Deputy Chairman of the Council of States would not preside over the sittings of the Council in which resolutions for their removal would be considered.[87] Article 79 providing for salaries and allowances to be paid to the Chairman and the Deputy Chairman and the Speaker and the Deputy Speaker was adopted as it was, because no amendment was proposed to it.

The Power of Parliament to legislate with respect to a matter in the State List in the national interest were proposed in article 226 which stipulated that if the Council of States declared by a resolution supported by not less than two-thirds of the members present and voting, that it would be necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter. The Union Constitution Committee was of opinion that power should be provided for Parliament to legislate with respect to any matter in the State List when it assumed national importance, and, therefore, inserted this article for the purpose.[88]

On 13 June 1949, Dr. B.R. Ambedkar formally moved an amendment to add the following two clauses to this article :

(1) a resolution passed under this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in this article, such resolution shall continue in force for a further period of one year from the date on which it would otherwise have ceased to be in force.

(2) a law made by Parliament which Parliament would not but for the passing of a resolution under this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.[89]

Professor Shibban Lal Saksena said that the amendment made the article almost useless for the purpose it was intended. The purpose of the article was that, if a large number of provinces desired that in some matter there should be coordination among them and because they did not have the power indirectly to frame any such law for co-ordinating the efforts of those provinces, they may ask their representatives in the Council of States to pass a resolution by two-thirds majority for giving the power to the Parliament to legislate on that subject to tide over any emergency and help those provinces. This article originally did not have any limit of time and it meant that until the emergency lasted, it could remain. But by reducing the period to one year, he was of the view that no major schemes could be undertaken. He, therefore, suggested that instead of providing for a new resolution of the Council of States to be passed every year, it would be better if the resolution conferred power for three years in the first instance, to be extended thereafter year by year until the emergency was over.[90]

Shri H.V. Pataskar questioned the very idea of Parliament making laws for the States. States themselves should pass a law for themselves or be willing to have the laws passed by Parliament, he said. There were other provisions in the Constitution under which Parliament could interfere on the ground of national interest, emergency, etc. The wording in article 226, "in the national interest, Parliament should make laws" was something which implied that the Centre required legislation by Parliament in a matter of national importance, which the State was not prepared to pass. In respect of subjects left for legislation by the States, Shri Pataskar felt that such cases were likely to be very rare. He said, that to allow this article to be passed without considering all the aspects would not be proper.[91] Shri O.V. Alagesan contended that this article would provide scope for interference in matters contained in the States List by the Central Government through the agency of the Council of States. It had great potentiality to interfere with provincial autonomy. He, therefore, requested Dr. Ambedkar to withdraw this article.[92]

Shri T.T. Krishnamachari said that Dr. Ambedkar's amendment seemed totally different from the article as it originally stood in the Draft which was intended to cover any lacuna that might exist in the distribution of powers, wherein it was necessary that the Centre should coordinate the activities of the provinces quickly without going through the process

indicated by article 226 and also to cover cases where there was a certain amount of overlapping. The original article had also the disadvantage to empower the Centre to legislate in respect of a particular subject by means of a resolution passed by the Council of States and placing it permanently in the Concurrent List. He was of the view that the provinces should be in the sole charge of the field assigned to them not because of any adherence to theoretical reasons that the federalism adopted by us should be pure and we should not have a mixed kind of federalism as it existed in Canada. It may be necessary for the Centre to have a larger amount of powers. But it should not really interfere with the scheme of powers allotted to provinces. Looked at from that point of view, article 226 as it originally stood was undoubtedly objectionable. Dr. Ambedkar's amendment, he said, had been introduced as being such which provided for minimum interference with provincial autonomy and only in cases where there was an emergency and the safeguards against any mischief were contained in the provisions of the amendment itself. He hoped that the House would accept Dr. Ambedkar's amendment and the people of this country at large, would be convinced of the *bona fides* of this House whose intentions are to preserve provincial autonomy as far as possible.[93]

Shri Brajeshwar Prasad argued that the task of determining which subject had assumed the proportion of national importance should not be left in the hands of the members of the Council of States. To leave it to the representatives of the provincial legislatures sitting in the Council of States to move a resolution was really nullifying the good that could accrue to the Centre, if the power to move such a resolution was vested in the House of the people.[94]

Shri B.M. Gupte similarly contended that it was not proper to allow only one House, namely, the upper House to take action in such a case. The continuance of the resolution, if passed, should be secured by a vote of the States. He objected to this as it allowed only the upper House without the House of the People and the legislatures of the State having any say in the matter.[95]

Shri Mahavir Tyagi was of the view that the original article was quite sufficient for the purposes for which it was provided. There was a lot of emphasis in the country as well as in the House that the provinces should enjoy autonomy and, that the States would be autonomous States. The very fact that Parliament would enact laws whenever and with regard to whichever province it was necessary to get the laws enacted from the Centre, showed that this exception to the routine shall be taken only when there was some necessity and that too when the Council of States itself by two-thirds majority decided in its favour. According to the amendment of Dr. Ambedkar, after six months the law would lose its force. So after six months the Council of States would have again to sit

and extend the period so as to enable Parliament to extend the law. This was a cumbersome process, he said. Our Union could be strong only when it was fully empowered to make laws uniformly applicable to the whole of India.[96] According to Shri V.S. Sarwate, the article encroached upon the powers of the provinces. However, if this provision were not there, the alternative would be for all the provinces and States to pass a resolution that the Centre should legislate in that particular emergency. To avoid that cumbrous process, the Council of States which was composed of representatives of the States should have been empowered to pass a resolution. On the first occasion, it might be proper for the Centre to take appropriate action. But on the second occasion, *i.e.*, if a need arose for repeating the resolution, it could be better left to the provinces themselves to pass such a resolution. To empower the Council of States to pass such a resolution again and again was unjustified, he said.[97]

Supporting the article, Shri S.V. Krishnamoorthy Rao argued that if such a resolution were to be against the interests of the States, the State legislatures could represent to the Centre against it. Giving such power to the Council of States was very necessary under the circumstances, he said.[98] Article 226 and the amendment proposed by Dr. Ambedkar were finally adopted.

Article 282-C provided for creating all India services, if the Council of States declared by a resolution supported by not less than two-thirds of the members present and voting that it was necessary or expedient in the national interest so to do. On 8 September 1949, Shri Brajeshwar Prasad felt that the aim of article 282-C was to protect the federal foundations of the Constitution. Therefore, this power had been given to the upper Chamber. There would be no danger if this power was vested in both the Houses of Parliament instead of vesting this power only in the upper Chamber.[99] Dr. P.S. Deshmukh stated that the initiatives in important matters were generally left to the House of the People in the Central Parliament. It was absolutely unnecessary, unless it was intended to clothe the "useless House of the Council of States with some dignity or some function" [100]

While replying, Dr. B.R. Ambedkar clarified that article 282-C laid down the proposition that the Centre would have the authority to recruit for services which were under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who were to be under the State service. Since the Upper Chamber represented the States and, therefore, their resolution would be tantamount to an authority given by the States, he argued. The article was adopted.[101]

In fact, a good deal of debate took place in the Constituent Assembly on draft articles which defined the composition and powers of the Council

of States. Despite very strong position taken by some of the members in the Constituent Assembly against having a Council of States, the fathers of the Indian Constitution, however, finally settled to have a bicameral Central Legislature for free India, the upper House representing the States and the lower House representing the people directly with the Vice-President of India as *ex officio* Chairman of the Council of States or Rajya Sabha.

Notes and References

1. B. Shiva Rao, *et. al, The Framing of India's Constitution, —A Study,* 1968, pp. 417-19.
2. The Questionnaire was circulated to the members of central and provincial legislatures on 17 March 1947. It was also circulated later on to members of the Union Constitution Committee and those the Provincial Constitution Committee in May 1947.
3. For text of the questionnaire, *see* B. Shiva Rao, *et.al., op., cit.*, Vol. II, pp. 434-51.
4. *Ibid.*, p. 461.
5. *Ibid.*, p. 462.
6. *Ibid.*, pp. 470 and 479-81.
7. *Ibid.*, p. 480, see 'Note'
8. B. Shiva Rao, (ed.), *B.N. Rau, India's Constitution in the Making,* New Delhi, 1960, pp. 254-73.
9. B. Shiva Rao, *et. al., op. cit.*, A Study, p. 422.
10. *Ibid., see* Minutes of the meeting of the Union Constitution Committee held on 9 June 1947, items No. 20 and 21. p. 557.
11. *Ibid., see* Minutes of the meetings of the Union Constitution Committee held on 9, 11 & 30 June 1947; and Minutes of the meetings of the Sub-Committee, held on 10 June 1947 in B. Shiva Rao, *op. cit.*, Vol. II, pp. 557-63 & 572.
12. B. Shiva Rao, *op., cit.*, Vol.II, p. 581.
13. *Ibid.*,p. 582.
14. *Ibid.*, pp. 582-83.
15. *Constituent Assembly Debates* (hereinafter referreds C.A. Deb.) 28 July 1947, p. 872.
16. *Ibid.*, p. 875.
17. *Ibid.*, p. 872.
18. *Ibid.*, pp. 873-74.
19. *Ibid.*, p. 875.
20. *Ibid.*, p. 876.
21. *Ibid.*
22. *Ibid.*, p. 876.
23. *Ibid.*
24. While the amendment moved by Shri Mohd. Tahir was negatived, clause 13, however, was adopted with the amendment moved by Shri K. Santhanam. Clause 14 was simply moved on that day (*i.e.*, 28 July 1947) and discussion thereon was postponed for some time. C.A.Deb. 28 July 1947, p. 876.
25. *Ibid.*, 31 July 1947, p. 969.
26. *Ibid.*, pp. 969-970.
27. *Ibid.*, pp. 971-72.
28. B. Shiva Rao, *et al*, A study, *op., cit.*, p. 424.
29. C.A.Deb., 31 July 1947, pp. 973-74.
30. *Ibid.*, pp. 974-75. Many other members also spoke directly relevant to the provision relating to the Council of States.
31. *Ibid.*, pp. 978-79
32. B. Shiva Rao, *et. al, op., cit.*, pp. 424-25
33. Constitutional Adviser, Shri B. N. Rau, undertook this task on 14 July 1947 and finished in October 1947. The Draft Constitution prepared by him contained 240 Sections and 13 Schedules, *see* B. Shiva Rao, *et. al, op., cit.* Vol. III, p. 3.
34. For the text of the Sections relating to *the* Federal Parliament see *The Draft Constituion prepared by Shri B.N. Rau*, March 1960, published by the Lok Sabha Secretariat based on the copy available in the National Archives of India.
35. *Ibid.*, Section 60.
36. *Ibid.*, Section 60 (2).
37. *Ibid.*, Section 60 (3).
38. *Ibid., Fourth Schedule.*
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Chapter 7

Constitution of India and Rajya Sabha

The Central bicameral legislature which was established in 1921 continued upto the year 1947 when both the Houses ceased to exist at the midnight hour of 14 August 1947 under Section 8 of the Indian Independence Act, 1947. Under article 379 of the Constitution, the Dominion Legislature *i.e.*, Constituent Assembly (Legislative) became Provisional Parliament immediately before the commencement of the Constitution on 26 January 1950. The Provisional Parliament was not dissolved but it ceased to exist under article 379 of the Constitution after both the Houses of bicameral Parliament came into being.[1]

The new Constitution of India after having been adopted by the Constituent Assembly on 26 November 1949, came into force on 26 January 1950. Under the provision of this Constitution, the basic precepts of a true representative democracy like bicameralism, federalism, executive responsibility, administrative accountability, etc. were given real meaning. The second chamber become a real federal chamber. Parliament of India now consisted of the Council of States and the House of the People. It included President also.[2] There was thus, a short interregnum in the existence of bicameralism in India between August 1947 when Central Legislature constituted under the Act of 1935 ceased to exists and April 1952 when both the Houses of Parliament under new constitution of India came into being.

First election to the Council of States was held in March 1952 and the House was constituted on 3 April the same year.[3] The first sitting of the Council of States was held on 13 May 1952.[4] On 23 August 1954, the Chairman of the Council of States, Dr. Sarvepalli Radhakrishnan made an announcement in the Council about adoption of Hindi name of the Council of States as 'Rajya Sabha'.[5] Earlier, on 14 May 1954, the Speaker, Shri G.V. Mavalankar, made an announcement in the House that the House of the People would thereafter be known as 'Lok Sabha'.[6] The terms 'Lok Sabha' and "Rajya Sabha' were, in fact, used for the first

time in an amendment to the Delhi (Control of Building Operations) Bill, 1955 which was adopted by both the Houses.

COMPOSITION OF RAJYA SABHA

Rajya Sabha being a federal chamber, consists mainly of the representatives of the States and the Union territories. Twelve persons are nominated to it by the President of India. Not more than 238 representatives of the States and the Union territories can be sent to Rajya Sabha.[7] Allocation of seats in Rajya Sabha to the States and the two Union territories has broadly been made on the basis of population and the number of seats to be filled by each of these has been specified in the Fourth Schedule to the Constitution.[8]

The representatives of the States in Rajya Sabha are elected by their respective Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote[9] and Parliament by law prescribes the mode of sending the representatives of the Union territories to Rajya Sabha.[10] Accordingly, Representation of the People Act 1950 was enacted which provides manner in which seats allocated to Union territories are to be filled.[11] Currently only two Union territories – Delhi and Pondicherry, have been represented in this House which have their own Assemblies and members of their Assemblies constitute electoral college for this purpose.[12]

The President nominates twelve members to Rajya Sabha from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.[13]

As against the maximum strength of two hundred and fifty members prescribed in the Constitution, the present strength of Rajya Sabha is two hundred and forty-five, of which two hundred and thirty-three are to be elected and twelve to be nominated by the President. The Council of States initially was to consist of two hundred and seventeen members—twelve nominated and two hundred and five elected members. As per the original Fourth Schedule to the Constitution, the two hundred five seats were allocated on the basis of population to the then existing categories of the States as follows : Part A States—one hundred forty-five; Part B States—fifty three and Part C States seven. [14]

The Constitution initially had provided that if any amendment was essential in the Fourth Schedule between passing of the Constitution and its commencement, the Governor-General had the power to make the required amendment by issuing an Order.[15] Accordingly, an Order was issued by the Governor-General in 1950 for amending the Fourth Schedule which, *inter alia*, removed the entry relating to Cooch-Behar (one seat) from the Part C of the Schedule reducing thereby the number of elected members from two hundred and five to two hundred four.[16]

Thus, when the Constitution came into force on 26 January 1950, the Council of States consisted of two hundred and sixteen members—twelve nominated and two hundred four elected members. It was provided in the Constitution initially that the elected members of the Legislative Assemblies of Part A and Part B States would elect their representatives to the Council of States and it was left to Parliament to prescribe by law the manner in which Part C States would be electing their representatives. The Representation of the People Act, 1950, was accordingly enacted which created an electoral college for this purpose in each of the Part C States which did not have Legislative Assemblies. This Act also provided that if a Part C State had a Legislative Assembly, the members of such Assembly would constitute the electoral college.[17]

The first general elections to elect the House of the People and State Assemblies were held between December 1951 and January 1952. The elected members of all the Legislative Assemblies and the electoral colleges of Kutch and Tripura were called upon to elect members for Rajya Sabha on 4 March 1952. Election to the Council were held and completed by the end of March 1952 and the names of the members elected along with four members nominated by the President on the recommendations of the Government of Jammu and Kashmir from the State of Jammu and Kashmir were published under Section 71 of the Representation of the People Act, 1951 on 3 April 1952.[18]

Number of members of the Council given in the Fourth Schedule to the Constitution which came into force on 26 January 1950 has undergone changes from time to time. The numerical strength of Rajya Sabha was 204 in 1952, 207 in 1954, 220 in 1956, 224 in 1960, 226 in 1964, 228 in 1966, 231 in 1972, 232 in 1976 and 233 in 1987.

Due to creation of new States of Uttranchal, Chhattisgarh and Jharkhand, some seats have been redistributed between these newly created States and their original states leaving thereby the total seats intact. Therefore, the maximum number of elected members in Rajya Sabha is 233 which has remained unchanged from the year 1987 till date. Current allocation of seats in the Fourth Schedule is as follows :

	States	*No. of Members*
1.	Andhra Pradesh	18
2.	Arunachal Pradesh	1
3.	Assam	7
4.	Bihar	16
5.	Chhattisgarh	5
6.	Delhi	3
7.	Goa	1
8.	Gujarat	11
9.	Haryana	5
10.	Himachal Pradesh	3
11.	Jammu & Kashmir	4

	States	No. of Members
12.	Jharkhand	6
13.	Karnataka	12
14.	Kerala	9
15.	Mahdya Pradesh	11
16.	Maharashtra	19
17.	Manipur	1
18.	Meghalaya	1
19.	Mizoram	1
20.	Nagaland	1
21.	Orissa	10
22.	Pondicherry	1
23.	Punjab	7
24.	Rajasthan	10
25.	Sikkim	1
26.	Tamil Nadu	18
27.	Tripura	1
28.	Uttaranchal	3
29.	Uttar Pradesh	31
30.	West Bengal	16
	Total	**233**

DURATION

As per the provisions of the Constitution, Rajya Sabha is not subject to dissolution but one-third of its members retire every second year.[19] The term of individual members is six years. However, a member elected/ nominated against a casual vacancy holds office for the remainder of the term.

A very unique situation came up after the members of the Council of States were elected for the first time. The problem was how to decide as to which members should retire after the second, fourth and sixth years. The President, after consultation with the Election Commission made an Order known as the 'Council of States (Term of Office of Members) Order, 1952', for curtailing the term of office of some of the members then chosen so that the members could be identified for the purpose of retiring biennially. The order created three categories of the members who would retire on 2 April 1954; 2 April 1956 and 2 April 1958.[20] The members to be placed in each category were decided by the Election Commission by draw of lots in public on 29 November 1952.[21] As a result of the categorisation and draw of lots, seventy one members each were to retire in 1954 and 1956 and seventy two members were to retire in 1958. Likewise, twelve nominated members were also divided into three categories and their term again was decided by draw of lots.[22]

QUALIFICATIONS FOR MEMBERSHIP

In order to be chosen a member of Rajya Sabha, a person (a) must be a citizen of India, and (b) must not be less than 30 years of age.[23] A person has to be an elector in a parliamentary constituency in the State from where he seeks election to Rajya Sabha.[24]

DISQUALIFICATIONS FOR MEMBERSHIP

The following grounds could disqualify a person for being chosen and for remaining a member of Rajya Sabha :

(*a*) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament, by law, not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; and

(*e*) if he is so disqualified by or under any law made by Parliament.

The mere fact of a person being a Minister either of the Union or of any State does not amount to holding an office of profit.[25] Pursuant to certain constitutional provisions, Parliament has enacted laws exempting holders of certain offices from being disqualified as Members of Parliament.[26]

Besides, the Constitution provides for disqualification of the members on ground of defection. As per the provisions contained in the Tenth Schedule to the Constitution, a person shall be disqualified for being a member :

(*i*) If he has voluntarily given up the membership of his political party.

(*ii*) If he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has been condoned by the political party within fifteen days.

An elected member who has been returned to the House as an independent candidate shall incur disqualification if he joins any political party after such election.

A nominated member of the House shall be disqualified from the membership of the House if he joins any political party after the expiry of six months from the date of his taking seat in the House.

However, disqualification on ground of defection does not apply in case of 'split' in or 'merger' of political parties. Under the provisions contained in the Tenth Schedule to the Constitution, split constitutes only when not less than one-third of the members of a legislature party decide to give up membership of their original party. Similarly for merger, a group of members of a legislature party deciding to join another legislature party, should not be less than two-thirds of the total membership of their original party.

The provisions of disqualification, under the Tenth Schedule, do not apply to a member who on his election as the Speaker and the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha or the Chairman and the Deputy Chairman of the Legislative Council of a State or the Speaker and the Deputy Speaker of the Legislative Assembly of a State, voluntarily gives up the membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office.

The Chairman or, as the case may be, the Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

The President of India is the final authority to decide if a member has become subject to any of the disqualifications mentioned above. Before giving his decision, however, the President obtains the opinion of the Election Commission of India and acts according to such opinion.[27]

PRESIDING OFFICERS OF RAJYA SABHA

Chairman

The Vice-President of India is *ex officio* Chairman of Rajya Sabha.[28] The Chairman presides over Rajya Sabha and regulates its pro-ceedings. He maintains order in the House. He also has the power to adjourn Rajya Sabha and suspend its meeting if there is no quorum. He is the channel of communication between the House and any other outside person or authority. He has to decide under constitutional provisions whether a member of Rajya Sabha has tendered his resignation voluntarily. He has also to decide under the constitutional provisions, question of disqualification on ground of defection. Under the Rules of Procedure and Conduct of Business in Rajya Sabha, the Chairman admits notices of Questions, Motions, Resolutions, etc.

While presiding over Rajya Sabha, the Chairman has only a casting vote.[29] When a resolution for his removal is under consideration he is neither entitled to preside over the House nor to vote on such a resolution but has a right to take part in such proceedings.[30]

Deputy Chairman

Rajya Sabha elects a Deputy Chairman from amongst its members[31] While the office of Chairman is vacant, or during any period when he acts or discharges the functions of President, the Deputy Chairman of Rajya Sabha performs the duties of the office of Chairman. If the office of Deputy Chairman is also vacant, the President appoints a member of the House to perform the duties of the office.[32] During the absence of the Chairman from any sittings of Rajya Sabha, the Deputy

Chairman acts as the Chairman.[33] He may be removed from office by a resolution of Rajya Sabha moved after fourteen days notice of the intention to move the resolution and passed by a majority of all the then members of the House.[34]

Panel of Vice-Chairmen

There is also a panel of six Vice-Chairmen formed by the Chairman and, in case both the Chairman and the Deputy Chairman are absent, a person from the panel presides. If none of the empanelled members is available, the House elects a person from amongst its members to preside over its sittings.[35]

QUORUM AND VOTING

One-tenth of the total number of members of Rajya Sabha constitutes the quorum for a meeting of the House.[36] All questions are decided by majority vote. The Chairman or person acting as such, has no vote in the first instance, but has a casting vote in the case of an equality of votes. A Minister is entitled to vote only if he is a member of the House.[37]

POWERS, PRIVILEGES AND IMMUNITIES OF THE HOUSE AND MEMBERS

Parliamentary privileges in India are not codified. Some of the privileges and immunities of the Houses of Parliament, its members and committees are specified in the Constitution, certain statutes and the Rules of Procedure of the Houses, while others continue to be based on precedents of the British House of Commons, and on conventions which have grown over the years.

A few important privileges and immunities are :

Freedom of speech in Parliament subject to the provisions of the Constitution and to the rules and standing orders regulating the proceedings of Parliament.[38]

Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.[39]

Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.[40]

Prohibition on the courts to inquire into proceedings of Parliament on the ground of any alleged irregularity of procedure.[41]

Immunity to a person from any proceeding civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice.[42]

Freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before the commencement and forty days after its conclusion.[43]

Exemption of a member from service of legal process and arrest within the precincts of the House.[44]

FUNCTIONS

The functions of Rajya Sabha may broadly be categorised as : Legislative, Financial, Deliberative and Federal. Legislation is by far the most important function of Rajya Sabha, as indeed of Parliament and in this sphere, Rajya Sabha enjoys almost equal powers with Lok Sabha.

Legislative

The Constitution has classified the subjects for legislation into three Lists, (1) the Union List, (2) the State List and (3) the Concurrent List.[45] The Union List includes those subjects over which Parliament has exclusive authority to make laws, while the Concurrent List enumerates those subjects over which it has authority along with the States. It has been provided that if the Legislature of a State makes a law in respect of a matter enumerated in the Concurrent List which contains any provision repugnant to the provisions of a law made by Parliament with respect to that matter, then the law so made by the Legislature of such State will, if it has been reserved for the consideration of the President and has received his assent, prevail in that State but at the same time Parliament has the power to enact any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.[46]

The residuary power is vested in the Centre.[47]

Even in regard to the State List over which the States have exclusive jurisdiction, Parliament can assume authority, if (1) Rajya Sabha declares by a resolution supported by not less than two-thirds of the members present and voting that such legislation is in national interest,[48] or (2) two or more States mutually agree that Parliament may do so,[49] or (3) it is necessary to implement any treaty, agreement or convention.[50] Further, if a Proclamation of Emergency is in operation, Parliament becomes empowered to legislate on matters enumerated in the State List.[51]

A Bill can be introduced in either House of Parliament.[52] A Bill introduced by the Minister is known as the Government Bill and a Bill introduced by a private member is known as the Private Member's Bill. The procedure for the passage of the Bills is similar in both the cases. A Bill has to pass through three stages in each House of Parliament and receive Presidential assent before it becomes an Act of Parliament.[53]

In the event of a deadlock between the two Houses on a Bill other than a Money Bill or a Constitution Amendment Bill, the issue is resolved at a joint sitting of the two Houses.[54]

Financial

Under the Constitution, financial legislation has been divided into two categories—Money Bills and Financial Bills.[55] The former contains only and exclusively money clauses and the latter, apart from money clauses also contains other matters. A Money Bill cannot be introduced in Rajya Sabha. A Bill which if enacted and brought into operation would involve expenditure from the Consolidated Fund of India is also called a Financial Bill. Such a Bill, however, can be introduced in Rajya Sabha. It cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill. With respect to Money Bills, Rajya Sabha is empowered to make only recommendations within the constitutionally stipulated period of fourteen days after which the Bill is disdeemed to have been passed if it is not returned to Lok Sabha during this period.[56] However, in case of Financial Bills, Rajya Sabha has equal powers with Lok Sabha like an ordinary piece of legislation.

The Annual Budget of the Government is laid before Rajya Sabha also,[57] although the Budget speech is made in Lok Sabha only. Rajya Sabha has no powers to vote on the Demands for Grants of the Ministries/Departments which is the exclusive domain of Lok Sabha. However, the seventeen Department-related Parliamentary Standing Committees which have forty-five members, fifteen from Rajya Sabha and thirty from Lok Sabha, examine the Demands for Grants of the respective Ministries/Departments of the Government of India. Report of these Committees are presented to both Houses of Parliament. Six of such Committees function under the administrative control of the Chairman, Rajya Sabha.

Deliberative

One of the important functions of Rajya Sabha is to focus public attention on major problems affecting policies of the Government and administration and to provide a forum for ventilation of public grievances. This responsibility is discharged through deliberations on General Budget, Railway Budget, Motion of Thanks on the President's Address, Five-Year Plans and working of various Ministries/Departments and on various policy statements made by the Government. Rajya Sabha also places its views on various international issues and influences governmental views and policies. While the Government may not be dependent on the will of the members of Rajya Sabha as it does in the case of Lok Sabha,[58] it is

however, accountable to Rajya Sabha also for its every act of omission and commission.

Federal

Rajya Sabha enjoys certain special powers under the Constitution. Rajya Sabha may pass a resolution, by a majority of not less than two-thirds of the members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List. Then, Parliament is empowered to make a law on the subject specified in the resolution for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a further resolution.[59]

If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more all-India services common to the Union and the States, Parliament has the power to create by law such services.[60]

Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Normally, every such Proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the Proclamation can remain effective if a resolution approving it is passed by Rajya Sabha.[61]

COMMITTEE SYSTEM IN RAJYA SABHA

Parliamentary Committees are of two types—*ad hoc* Committees and Standing Committees. An *ad hoc* Committee is created for a specific purpose. When it has completed its assigned task and has submitted its report, it becomes *functus officio*. Commonly known examples of such *ad hoc* committees are the Select and Joint Committees on Bills.[62]

Rajya Sabha has the following Standing Committees, members of which are nominated by the Chairman of Rajya Sabha.

Committee of Privileges : It examines questions involving breach of privileges of the House or of the members or any of its committees referred to it by the House or by the Chairman.[63]

Committee on Petitions : It examines petitions on Bills and matters of general public interest and also entertains representations on matters concerning central subjects.[64]

Committee on Government Assurances : It scrutinises the assurances given by Ministers in the House and reports to the House regarding their implementation.[65]

Committee on Subordinate Legislation : It scrutinises and reports to the House whether the powers to make regulations, rules, sub-rules, by-laws, etc., conferred by the Constitution or delegated by Parliament, are being properly exercised by the Executive within the scope of such delegation.[66]

Committee on Papers Laid on the Table : It examines the Papers laid on the Table of the House by Ministers to see whether there has been compliance of the provisions of the Constitution, Act, rules or regulations under which the Paper has been laid.[67]

Business Advisory Committee : It recommends time that should be allotted for discussion of legislative and other business which is to be brought before the House.[68]

Committee on Rules: It considers matters of procedure and conduct of business in the House and recommends amendments to the rules that are considered necessary.[69]

General Purposes Committee : It considers and advises the Chairman on matters concerning the affairs of the House, which do not appropriately fall within the purview of any other committee.[70]

House Committee : It deals with the residential accommodation and other amenities for members.[71]

Ethics Committee : It oversees the ethical and moral conduct of the members of Rajya Sabha and also examines cases referred to it with reference to ethical and other misconduct of members.[72]

Committee on Provision of Computers to Members of Rajya Sabha : It deals with efforts relating to supply of computers to members and also reviews the hardware and software requirements of members.[73]

Committee on Members of Parliament Local Area Development Scheme : This Committee monitors the implementation of the members of Parliament Local Area Development (MPLAD) Scheme.[74]

Members of Rajya Sabha are also associated with some of the important Committees of Lok Sabha like the Committee on Public Accounts,[75] Committee on Public Undertakings[76] and Committee on the Welfare of Scheduled Castes and Scheduled Tribes.[77]

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEES

With a view to further strengthening the Committee System, the two Houses of Parliament gave unanimous approval on 29 March 1993, for the setting up of the seventeen Department-related Standing

Committees.[78] The system of Department-related Parliamentary Committees was inaugurated on 31 March 1993 and the new Committees started functioning from 8 April 1993. Members of both Houses serve on these Committees. Six of the seventeen Department-related Parliamentary Standing Committees, *viz.*, the Committee on Commerce; the Committee on Home Affairs; the Committee on Human Resource Development; the Committee on Industry; the Committee on Science and Technology, Environment and Forests; and the Committee on Transport and Tourism are under the administrative control of the Chairman of Rajya Sabha.

These Committees encompass for scrutiny purpose all Ministries and Departments of the Government within their ambit. The Department related Committees are entrusted with the following functions :

(*a*) to consider the Demands for Grants of the related Ministries/ Departments and report thereon. The report shall not suggest anything of the nature of cut motions.

(*b*) to examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;

(*c*) to consider the annual reports of the Ministries/ Departments and report thereon; and

(*d*) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.

These Standing Committees are not to consider matters of day-to-day administration of the related Ministries/Departments.[79]

SECRETARY-GENERAL AND THE SECRETARIAT

Rajya Sabha has a Secretariat[80] of its own headed by the Secretary-General, who is a permanent official working under the overall control of the Chairman of Rajya Sabha. The duties of the Secretary-General are to advise the Chairman and Members of Parliament on the law and the rules of procedure which regulate parliamentary business, to sign orders of the House, and to endorse and sign Bills sent to the President for assent in the absence of the Chairman.

The Secretary-General sits at the Table during the sittings of the House, takes brief notes of the proceedings and also looks after process of voting in the House when there is a division.

The Secretary-General is also responsible for the working of the Secretariat, which serves the House by doing the administrative work, printing of Bills and List of Business, servicing Committees, and keeping the records of the House.

RAJYA SABHA CHAMBER

The Rajya Sabha Chamber is of a horse-shoe shape and its pattern is similar to that of the Lok Sabha Chamber, but smaller in size and has a seating capacity for two hundred fifty members. Originally, the Rajya Sabha Chamber had seating capacity for eighty two members only. In 1957, when the Automatic Vote Recording Equipment was installed there, the number of seats was increased to two hundred fifty keeping in view any possible expansion of the House in future. The Rajya Sabha Chamber is airconditioned and has modern acoustic system. The recently installed light-system enables television cameras to electronically record the proceedings of the House, which are telecast live by the official television called 'Doordarshan' on a Low Power Transmitter (LPT).

The Chair of the Presiding officer of Rajya Sabha stands on a raised platform in the centre of the straight line connecting the two ends of the horse-shoe. Above the Chair are two galleries, which are not used at present. Starting from the left of the Chair are situated the Public Gallery, the Chairman's Gallery, the Diplomatic and the Distinguished Visitors' Galleries, the Press Gallery and the Lok Sabha Gallery. In the pit of the Chamber just below the Chairman's Chair is the table of the Secretary-General. In front of the table of the Secretary-General, a large Table is placed which is known as the Table of the House. Parliamentary Reporters take down verbatim record of the speeches and debates. Members may seek any information from the officers at the Table of the House by personally approaching them or through slips or notes.

Notes and References

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4. *see* Council of States Debate, 13 May 1952.
5. Rajya Sabha Debate, 23 August, 1954.
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7. Article 80.
8. Article 80(2).
9. Article 80(4).
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11. Section 27A(1) of the Representation of the People Act, 1950.
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13. Article 80(3).
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20. Ministry of Law Notification No. SRO1669, 6 September, 1952.
21. Election Commission Notification No. 32/52 Elec. III, 12 November, 1952.
22. Election Commission Notification No. 35/52- Elec. III, 29 November, 1952.
23. Article 84(b).
24. Section (3), *Representation of the People* Act, 1951.
25. Article 102(a-e).
26. *See* Kaul and Shakdher, *Practice and Procedure of Parliament*, 5th edition, 2001, pp.71-77.
27. Aticle 103.
28. Articles 64 and 89(1).
29. Article 100(1).
30. Article 92.
31. Article 89(2).
32. Article 91(1).
33. Article 91 (2).
34. Article 90(c).
35. Rule 8, *Rules of Procedure and Conduct of Business in the Council of States*, Rajya Sabha Secretariat, New Delhi, July 2000.
36. Article 100(3)
37. Article 100(1), *see* also article 88.
38. Article 105(1).
39. Article 105(2).
40. *Ibid.*
41. Article 122.
42. Article 361A.
43. *Code of Civil Procedure* 1908, Section 135(a).
44. Ministry of Home Affairs, Letter No. 1/16012/25/95-JS(DIII) 19 June 1996, addressed to State Governments, etc.
45. Article 246 and the Seventh Schedule.
46. *See* D.D. Basu, *Commentary on the Constitution of India*, vol. K, sixth edition, p.142.
47. Article 248.
48. Article 249.
49. Article 252.
50. Article 253.
51. Article 250.

52. Article 107(1).
53. Article 111.
54. Article 108
55. Article 109 and 117.
56. Article 109(5).
57. Article 112.
58. Article 75(3).
59. Article 249.
60. Article 312.
61. Articles 352, 356 and 360 and Proviso to Articles 352(4) , 356(3) and 360(2).
62. Rule 72, *Rules of Procedure and Conduct of Business in the Council of States.*
63. Rule 192.
64. Rule 147.
65. Rule 212 A-G.
66. Rules 204-212.
67. Rule 212 H-O.
68. Rules 30-37.
69. Rules 216-220.
70. Rules 278-285.
71. Rule 212 P-W.
72. Parliamentary Bulletin Part-II, Rajya Sabha, March 5, 1997.
73. *Ibid.*, March 18, 1997.
74. *Ibid.*, September 11, 1998.
75. Rule 309 A, *Rules of Procedure and Conduct of Business in Lok Sabha*, 9th edition, Lok Sabha Secretariat, New Delhi, 1998.
76. Rule 312 B, *Ibid.*
77. Rule 331 B(1), *Ibid.*
78. *Rules* 268-277, *Rules of Procedure and Conduct of Business in the Council of States.*
79. Rule 270(a-d), *Ibid.*
80. *Article* 98

APPENDICES

Appendix I

Paragraphs relating to Central Legislature contained in Montagu-Chelmsford Report, 1918

Means of securing the affirmative power of legislation.

276. We began with the fundamental proposition that the capacity of the Government of India to obtain its will in all essential matters must be unimpaired. The institution of an assembly with a large elected majority confronts us with the problem, as in the case of the provinces, of enabling the executive government to secure its essential legislation and its supplies. Here also we have examined several possible expedients. In this instance there can be no question of relying on legislation by superior authority. The only superior authority is Parliament, and Parliament is too far off and notoriously too preoccupied and not suitably constituted to pass laws for the domestic needs of India. It is true that the Governor-General has the power of making temporary ordinances for certain emergent purposes. We propose that this power should be retained : its utility has been strikingly demonstrated during the present war. It merely provides however a means of issuing decrees after private discussion in the executive council, and without opportunities for public debate or criticism : and normally it should be used only in rare emergencies. It would be unsuitable for our purpose. What we seek is some means, for use on special occasions, of placing on the Statute book, after full publicity and discussion, permanent measures to which the majority of members in the Legislative Assembly may be unwilling to assent. We seek deliberately, when the purpose justifies us, to depart from popular methods of legislation; and it is obvious that no device which confirms to those methods can possibly serve our purpose. For this purpose, we have come to the conclusion that we should employ the method now familiar to Indian institutions of maintaining such a number of votes, upon which the Government can in all circumstances rely, as to ensure the passage of the legislation that it requires. It is here alone, and only (as will be seen hereafter) for use in cases, where it is obviously necessary, that we propose to perpetuate the official *bloc*. We are seeking to provide for a period of transition; for which purpose no novel expedient, such as multiplying the value of official votes or calling in officials

who have not taken part in the argument to record their votes, or of passing measures automatically after discussion, would be as easily understood or as acceptable as the continuance in modified form of the present system.

The Council of State.

277. One suggestion which we considered was that we should follow the plan adopted in the provinces, and institute grand committees to which the Government's essential Bills should be referred. But the conditions of Indian legislation are different from those of provincial. Matters are more important, the Government's responsibility to Parliament is closer, and the affirmative power must be more decisively used. We feel also that there are advantages, both direct and incidental, in setting up a separate constitutional body, in which Government will be able to command a majority. We do not propose to institute a complete bicameral system, but to create a second chamber, known as the Council of State, which shall take its part in ordinary legislative business and shall be the final legislative authority in matters which the Government regards as essential. The Council of State will be composed of 50 members, exclusive of the Governor-General who would be President, with power to appoint a Vice-President who would normally take his place: not more than 25 will be officials, including the members of the executive council, and 4 would be non-officials nominated by the Governor-General. Official members would be eligible for nomination to both the Legislative Assembly and the Council of State. There would be 21 elected members, of whom 15 will be returned by the non-official members of the provincial legislative councils, each council returning two members, other than those of Burma, the Central Provinces and Assam which will return one member each. Elected members returned to the Council of State would vacate any seats they occupied on the provincial council or the Legislative Assembly. The remaining six elected members are intended to supplement the representation which the Muhammadans and the landed classes will otherwise secure; and also to provide for the representation of chambers of commerce. Each of these three interests should, we suggest, return two members directly to the Council of State. Bearing in mind the fact that among the members of the provincial legislative councils who will elect to the 15 seats there will be a proportion of Muhammadans, and assuming that in each of the bigger provinces each elector will be able as now to give both his votes to one candidate, we estimate that the composition of the Council of State should comprise at least six Muhammadans whether sitting by direct or indirect election or by the Governor-General's nomination. Moreover it is desirable that the four seats to be filled by direct election should be used so as to ensure that the Muhammadan and landed members should as far as possible be representative of the whole of India. Deficiencies may occur in this respect in any one council but they should be corrected in elections to the subsequent council. For this reason the

regulations for elections to the four seats should be framed by the Governor-General in Council in such way as to enable him to decide, after consideration of the results of the indirect elections, from what part of India or possibly in what manner from India generally the seats should be filled.

Qualifications for membership.

278. Inasmuch as the Council of State will be the supreme legislative authority for India on all crucial questions and also the revising authority upon all Indian legislation, we desire to attract to it the services of the best men available in the country. We desire that the Council of State should develop something of the experience and dignity of a body of Elder Statesmen; and we suggest, therefore that the Governor-General in Council should make regulations as to the qualifications of candidates for election to that body which will ensure that their status and position and record of services will give to the Council a senatorial character, and the qualities usually regarded as appropriate to a revising chamber. We consider that the designation "Honourable" should be enjoyed by the members of the Council of State during their tenure of office. In accordance with the proposals which we make hereafter for associating the Ruling Princes with the Government for the purpose of deliberation on matters of common concern, it would be, as will be seen, the Council of State with which the Princes would be associated. It is desirable that as is the case with second chambers elsewhere the lifetime of the Council of State should be longer than that of the Assembly; and assuming that the life of the latter will be three years, we propose five years as the normal duration of each Council of State.

Legislative procedure. Government Bills.

279. Let us now explain how this legislative machinery will work. It will make for clearness to deal separately with Government Bills and Bills introduced by non-official members. A Government Bill will ordinarily be introduced and carried through all the usual stages in the Legislative Assembly. It will then go in the ordinary course to the Council of State, and if there amended in any way which the Assembly is not willing to accept, it will be submitted to a joint session of both Houses, by whose decision its ultimate fate will be decided. This will be the ordinary course of legislation. But it might well happen that amendments made by the Council of State were such as to be essential in the view of the Government if the purpose with which the Bill was originally introduced was to be achieved, and in this case the Governor-General in Council would certify that the amendments were essential to the interests of peace, order, or good government. The assembly would then not have the power to reject or modify these amendments nor would they be open to revision in a joint session.

We have to provide for two other possibilities. Cases may occur in which the Legislative Assembly refuses leave to the introduction of a Bill or throws out a Bill which the Government regarded as necessary. For such a contingency, we would provide that if leave to

introduce a Government Bill is refused, or if the Bill is thrown out at any stage, the Government should have the power, on the certificate of the Governor-General in Council that the Bill is essential to the interests of peace, order, or good government, to refer it *de novo* to the Council of State; and if the Bill, after being taken in all its stages through the Council of State, was passed by that body it would become law without further reference to the Assembly. Further, there may be cases when the consideration of a measure by both chambers would take too long if the emergency which called for the measure is to be met. Such a contingency should rarely arise; but we advise that in cases of emergency, so certified by the Governor-General in Council, it should be open to the Government to introduce a Bill in the Council of State, and upon its being passed there merely to report it to the Assembly.

Private members' Bills.

280. We come now to non-official members' Bills. They would be introduced in whichever of the two chambers the mover sat and, on being carried there, would be taken to the other chamber and carried through that. In the case of a difference of opinion between the two bodies, the Bill would be submitted to a joint session of both, and would either be finally rejected or would be submitted for assent in the form in which it was there passed. It might, however, occur that a non-official member's Bill emerged from the Assembly, whether originally introduced there or not, in a form which the Government thought prejudicial to peace, order and good government. In this case also, if the Governor-General in Council were prepared to give a certificate in the terms already stated, the Bill would go or go back to the Council of State and could only become law in the form there finally given to it.

Advantages of this procedure.

281. Our object has thus been where possible to make assent by both bodies the normal condition of legislation, but to establish the principle that in the case of certificated legislation the will of the Council of State should prevail, and in other legislation the will of the non-official members of both chambers taken together should prevail. In time to come, if and when the procedure by certification becomes unnecessary, the Council of State will become, as in other countries, a purely revising chamber, and differences between the two chambers will be adjusted by joint sessions. We considered the alternative course of leaving non-certificated Bills wholly to the Legislative Assembly, and using the Council of State only for certificated Bills. We dismissed this plan, first because we regard it as important to establish what may hereafter become a normal second chamber; secondly, because we were unwilling to exclude the non-official members of the Council of State, to which we wished to attract the best men available, from all share in the passing of non-certificated business, and all opportunities of introducing Bills. Finally, our own proposal which gives the Government an opportunity of amending a private member's Bill, instead of leaving the

Government with no alternative but to veto a measure some features of which it may disapprove, affords the means by which beneficial changes in the law may result from non-official initiative. It will, we believe, be found to be not the least advantage of the institutions which we propose that by allowing questions to be freely discussed first in a popular assembly and then reviewed by a revising body, in which Government is in a position to exert as little influence as it likes the course of social legislation to which our Indian advisers attach particular importance will be materially promoted. For if the Government is assured that projects of social reforms have the support of the Indian element in two chambers so differently constituted it will have the less reason for offering any obstacle to their progress.

A possible objection.

282. The objection may be raised to our proposal for joint sessions that the non-official members of the Assembly will be swamped by the official members of the Council of State in combination with the official members of the Assembly. We think that this criticism will be disposed of by further consideration of the figures. The Assembly will consist of, let us say, at least 78 non-official and at most 22 official members. The Council of State will consist of 25 non-official and at most 25 officials, because the whole number of officials in either chamber need not necessarily be appointed. In a full joint session, however, there might be 103 non-officials, and about 40 officials, because the members of the Governor-General's Executive Council will be members of both bodies. But we have provided that the official members of the Assembly may also be nominated to membership of the Council of State, and we imagine that this will be the rule rather than the exception. It would be difficult, and also inadvisable from the point of view of departmental business, to bring 40 official members to the meetings of the legislative bodies, and we conceive therefore that, including the members of the executive council, the official element in a joint session might be taken at 30. Moreover, in debates on a non-certificated Bill, official members would be left free to vote and speak as they please, and therefore should not be expected to act as a solid body. In these calculations we have classed together the nominated non-officials and the elected members of both chambers. But the 15 nominated non-officials will be nominated to represent particular interests, and we see no reason to anticipate that they will act less consistently than they have done in the past with their elected fellow representatives.

Powers of dissolution, assent, etc.

283. The Governor-General should in our opinion have power at any time to dissolve either the Legislative Assembly or the Council of State or both these bodies. It is perhaps unnecessary to add that the Governor-General and the Secretary of State should retain their existing powers of assent, reservation and disallowance to all Acts of the Indian legislature. The present powers of the Governor-General in Council under section 71 of the Government of India Act, 1915 to

make regulations proposed to him by local Governments for the peace and good government of backward tracts of territory should also be preserved; with the modification that it will in future rest with the Head of the province concerned to propose such regulations to the Government of India.

Fiscal legislation. Effect of resolutions.

284. Fiscal legislation will of course be subject to the procedure which we have recommended in respect of Government Bills. The budget will be introduced in the Legislative Assembly, but the Assembly will not vote it. Resolutions upon budget matters and upon all other questions, whether moved in the Assembly or in the Council of State, will continue to be advisory in character. We have already given our reasons for holding that it is not feasible to give resolutions a legal sanction. But since resolutions will no longer be defeated in the Assembly by the vote of an official majority they will, if carried, stand on record as the considered opinion of a body which is at all events more representative than the Legislative Council which it displaced. That in itself will mean that the significance of resolutions will be enhanced : there will be a heavier responsibility upon those who pass them, because of their added weight; and the Government's responsibility for not taking action upon them will also be heavier. It will be therefore incumbent on Government to oppose resolutions which it regards as prejudicial with all the force and earnestness that it can command in the hope of convincing the Assembly of their undesirability. There must, however, remain to the Government power not to give effect to any resolution which it cannot reconcile with its responsibility for the peace, order and good government of the country.

Standing Committees.

285. We wish to apply the procedure of standing committees, described in the last chapter, as far as may be to both portions of the Indian legislature. The committees would be drawn jointly from the Assembly and the Council of State. We do not overlook the difficulties entailed by the nature of many of the subjects with which the central Government is concerned, and also by the comparative infrequency with which, owing to considerations of distance, such committees can assemble. The fact that many matters of ordinary internal administration will in future be left to provincial Governments also limits the scope of utility of standing committees in the central legislature. We would leave it to the Government of India to decide with what departments standing committees can be associated; and to the member in-charge to decide what matters can be referred to the committee. Our idea is that the non-official members of the Assembly and Council of State might elect by ballot in proportion to their respective strength two-thirds of the members of each committee while Government nominates the remaining one-third. It is obvious that these committees cannot play such an important part in the work of the Government as the similar committees which we have suggested in the Provinces. It will be difficult to obtain their

assistance in practice, except during the session or immediately before and after it, but we think there should be no difficulty ordinarily in obtaining their views on important new projects, whether legislative or administrative. Their functions might be determined by regulations to be made by the Governor-General in Council.

Questions and rules of procedure.

286. A few subsidiary matters of minor importance remain to be dealt with. We think that any member of the Assembly or the Council of State (and not merely the member who asks the original question) should have the right to put supplementary questions. The control of questions in both bodies should be regulated on lines similar to those which we have suggested in the case of provincial councils; and the question of restrictions upon resolutions should also be similarly treated. But apart from matters affecting the powers of the legislature, we think that the rules of procedure for both bodies should be made in the first instance by the Governor-General in Council. The Assembly and the Council of State should both have power to modify their rules with the sanction of the Governor-General. The approval of the Secretary of State and Parliament should not be required.

An Indian Privy Council.

287. We have a further recommendation to make. We would ask that His Majesty may be graciously pleased to approve the institution of a Privy Council for India. From time to time projects of this kind have been mooted and laid aside; but with the changed conditions we believe that such a body would serve a valuable purpose and do useful work. India for all its changing ideas is still ready to look up with pride and affection to any authority clothed with attributes that it can respect and admire. Appointments to the Privy Council should be made by the King Emperor and for life, which would ensure that they would be valued as a high personal distinction. Officials and non-officials, both from British India and the Native States, would be eligible; but it would be necessary to confine appointment to those who had won real distinction, or had held or were holding the highest offices, such as Members of the Governments, Ruling Princes, Members of the Council of State and High Court Judges. Indian Privy Councillors should enjoy the title of "Honourable" for life. The Privy Council's office would be to advise the Governor-General when he saw fit to consult it on questions of policy and administration. It is our hope that for one purpose or another Committees of the Council comparable to those of the Privy Council in England, which have done such valuable work in connexion with industrial and scientific research and education, will be appointed.

Periodic Commission.

288. At the end of the last chapter, we recommended that ten years after the institution of our reforms, and again at intervals of twelve years thereafter, a commission approved by Parliament should investigate the working of the changes introduced into the provinces, and recommend as to their further progress. It should be equally

the duty of the commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The commission will, doubtless, if they see fit, have proposals to make for further changes in the light of the experience gained. There is no need for us at this stage to attempt to anticipate the line which their recommendations may take.

Summary.

289. Let us now sum up our proposals. We seek to create an enlarged Legislative Assembly with an elective majority; to reserve to the decision of the Council of State, in which the Government will command a bare majority, only those measures which it must have power to carry in the discharge of its continuing responsibility for the good government of the land; to restrict the official *bloc* to the smallest dimensions and the least frequent activity that is compatible with the same guiding principle; to institute a Privy Council of India as a means of honouring and employing ripe wisdom or meritorious service; to admit a second Indian member into the innermost counsels of the Indian Government. It is true that we do not offer responsibility to elected members of the Legislative Assembly; and that we define the sphere in which the Government will defer to the wishes of the elected members not by specific directions in a schedule, as we have done in the provinces, but by a general prescription which we leave the Government to interpret. But we have carried the advance right up to the line beyond which our principles forbid us to go; and by confining the use of the special machinery of autocracy to essential cases where a public declaration of necessity must be made, we have gone definitely beyond the position implied in the Morley-Minto reforms. If there be among Indian politicians those who are impatient of any delay that they encounter on their way to occupy the citadel, they may remind themselves how often before in Indian history has it been said '*Hanoz Dihli dur ast*'*. Impatience we cannot and ought not to seek to satisfy. What we have done is to afford Indians a fair share in the Government of the entire country, while providing in the provinces the means for them to attain the stage of responsible government to which the beginning of responsibility for the Government of India itself must be the sequel.

* 'Delhi is yet a far off.'

Appendix II

Text of Sections concerning Indian Legislature contained in Government of India Act, 1919

PART II

GOVERNMENT OF INDIA

Indian legislature.

17. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

Council of State.

18. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under the principal Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

Legislative Assembly.

19. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the principal Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

Provided that rules made under the principal Act may provide for increasing the number of members of the Legislative Assembly

as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

President of Legislative Assembly.

20. (1) There shall be a president of the Legislative Assembly, who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General, and shall, thereafter be a member of the Assembly elected by the Assembly and approved by the Governor-General :

Provided that, if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

(2) There shall be a deputy-president of the Legislative Assembly who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, or may be removed from office by order of the Governor-General, and any vacancy occurring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(5) A president and deputy-president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president and a deputy-president by Act of the Indian legislature.

Duration and sessions of Legislative Assembly and Council of State.

21. (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting :

Provided that—

(*a*) either chamber of the legislature may be sooner dissolved by the Governor-General; and

(*b*) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(*c*) after the dissolution of either chamber, the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

Membership of both chambers.

22. (1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

Supplementary provisions as to composition of Legislative Assembly and Council of State.

23. (1) Subject to the provisions of this Act, provision may be made by rules under the principal Act as to—

(*a*) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

(*b*) the conditions under which and the manner in which persons may be nominated as members of the Council

of State or the Legislative Assembly; and

(*c*) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorate) and any matters incidental or ancillary thereto; and

(*d*) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(*e*) the final decision of doubts or disputes as to the validity of an election; and

(*f*) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

Business proceedings in Indian legislature.

24. (1) Subsections (1) and (3) of section sixty-seven of the principal Act (which relate to the classes of business which may be transacted by the Indian legislative council) shall cease to have effect.

(2) Provision may be made by rules under the principal Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the legislative assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers : Provided that standing orders made under this section may provide for meeting of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of the principal Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under the principal Act. The first standing orders shall be made by the Governor-General in Council, but may with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under the principal Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

Indian budget.

25. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the legislative assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

(*i*) interest and sinking fund charges on loans; and

(*ii*) expenditure of which the amount is prescribed by or under any law; and

(*iii*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(*iv*) salaries of chief commissioners and judicial commissioners; and

(*v*) expenditure classified by the order of the Governor-General in Council as—

(*a*) ecclesiastical;

(*b*) political;

(*c*) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demands for grants.

(6) The legislative assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the legislative assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the legislative assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the legislative assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provision for case of failure to pass legislation.

26. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon —

(*a*) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(*b*) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as

an Act passed by the Indian legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

Supplemental provisions as to powers of Indian legislature.

27. (1) In addition to the measures referred to in subsection (2) of section sixty-seven of the principal Act, as requiring the previous sanction of the Governor-General, it shall not be lawful without such previous sanction to introduce at any meeting of either chamber of the Indian legislature any measure —

(*a*) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the principal Act to be subject to legislation by the Indian legislature; or

(*b*) repealing or amending any Act of a local legislature; or

(*c*) repealing or amending any Act or ordinance made by the Governor-General.

(2) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

Composition of Governor-General's executive council.

28. (1) The provision in section thirty-six of the principal Act, imposing a limit on the number of members of the Governor-General's executive council, shall cease to have effect.

(2) The provision in section thirty-six of the principal Act as to the qualification of members of the council shall have effect as though the words "at the time of their appointment" were omitted, and as though after the word "Scotland" there were inserted the words "or a pleader of the High Court" and as though "ten years" were substituted for "five years".

(3) Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the Governor-General's executive council, in any case where such provision in not made by section thirty-six of the principal Act as amended by this section.

(4) Subsection (2) of section thirty-seven of the principal Act (which provides that when and so long as the Governor-General's executive council assembles in a province having a governor the governor shall be an extraordinary member of the council) shall cease to have effect.

Appointment of council secretaries.

29. (1) The Governor-General may at his discretion appoint, from among the members of the legislative assembly, council secretaries, who shall hold office during his pleasure and discharge such duties in assisting the members of his executive council as he may assign to them.

(2) There shall be paid to council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the legislative assembly.

Appendix III

Text of Sections (18–41) and Schedule I concerning Federal Legislature contained in Government of India Act, 1935

THE FEDERAL LEGISLATURE

General

Constitution of the Federal Legislature.

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Sessions of the Legislature, prorogation and dissolution.

19. (1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(*a*) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(*b*) prorogue the Chamber;

(*c*) dissolve the Federal Assembly.

(3) The Chamber shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

Right of Governor-General to address, and send messages to Chambers.

20. (1) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

Rights of ministers, counsellors and Advocate-General as respects Chambers.

21. Every minister, every counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

Officers of Chambers.

22. (1) The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy-President thereof and, so often as the office of President or Deputy-President becomes vacant, the Council shall choose another member to be President, or Deputy-President, as the case may be.

(2) A member holding office as President or Deputy-President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy-President, or, if the office of Deputy-President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy-President or, if he is also absent, such person

as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President and the Deputy-President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(5) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy-Speaker" for the titles "President" and "Deputy-President" respectively, and with the substitution or references to the Assembly for references to the Council :

Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

23. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or Person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

Provisions as to Members of Legislature

Oath of members.

24. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

Vacation of seats.

25. (1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of

both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

(*a*) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or

(*b*) by writing under his hand addressed to the Governor-General resigns his seat, his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership.

26. (1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

(*a*) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) If, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(*e*) If, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(*f*) If, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time

and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification :

Provided that a disqualification under paragraph (*f*) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (*d*) or paragraph (*e*) of subsection (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof, or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection he shall not sit or vote.

(4) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

(*a*) he is a Minister either for the Federation or for a Province; or

(*b*) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

Penalty for sitting and voting when not qualified, or when disqualified.

27. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Privileges &c. of members.

28. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the

Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any Committee or office of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a Committee of a Chamber when duly required by the chairman of the committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such Committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

Salaries and allowances of members.

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

Legislative Procedure

Provisions as to introduction and passing of Bills.

30. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

Joint sittings of both Chambers in certain cases.

31. (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(*a*) the Bill is rejected by the other Chamber; or

(*b*) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly :

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

(*a*) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

Assent to Bills and power of Crown to disallow Acts.

32. (1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure :

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Procedure in Financial matters

Annual financial statement.

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation—

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;

(*d*) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of Judges of any High Court;

(*e*) expenditure for the purpose of the discharge by the Governor-General of his functions, with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs

of rupees, exclusive of pension charges;

(*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

(*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*i*) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

Procedure in Legislature with respect to estimates.

34. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (*a*) or paragraph (*f*) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

Authentication of schedule of authorised expenditure.

35. (1) The Governor-General shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the Chambers under the last preceding section;

(*b*) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature :

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special provisions as to financial Bills.

37. (1) A Bill or amendment making provision—

(*a*) for imposing or increasing any tax; or

(*b*) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(*c*) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provisions for any of the purposes aforesaid by reason only that it provides for

the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

Procedure Generally

Rules of procedure.

38. (1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

(*a*) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(*b*) for securing the timely completion of financial business;

(*c*) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(*d*) for prohibiting, save with the consent of the Governor-General in his discretion—

(*i*) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(*ii*) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(*iii*) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(*iv*) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

English to be used in the Federal Legislature.

39. All proceedings in the Federal Legislature shall be conducted in the English language :

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on discussion in the Legislature.

40. (1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purpose of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

Courts not to inquire into proceedings of the Legislature.

41. (1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

FIRST SCHEDULE

Composition of the Federal Legislature

Part I

Representatives of British India

General Qualification for Membership

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

(*a*) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(*b*) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age; and

(*c*) possesses such, if any, of the other qualifications specified in, or prescribed under, this Part of this Schedule as may be appropriate in his case :

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

(*i*) shall not be disqualified under sub-paragraph (*a*) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province; and

(*ii*) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (*a*) to fill a seat allocated to a Chief Commissioner's Province.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The Council of State

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this Part of this Schedule, and six seats shall be filled by persons chosen by the Governor-General in his discretion.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (*i*) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women.

5. A Governor's Province or a Chief Commissioner's Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(*a*) for the election of persons to fill the general seats, if any;

(*b*) for the election of persons to fill the Sikh seats, if any; and

(*c*) for the election of persons to fill the Muhammadan seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

6. (1) No person shall be entitled to vote at an election to fill Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

(*a*) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed;

(*b*) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed.

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years :

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

13. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of this paragraph.

14. In the case of a Province specified in column one in division (*ii*) of the Table of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years; and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

16. Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

The Federal Assembly

17. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

18. To each Governor's Province and Chief Commissioner's Province specified

in the first column of the Table, there shall be allotted the number of seats specified in the second column opposite to that Province, and of those seats—

(*i*) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes;

(*ii*) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (*a*) the Sikh community; (*b*) the Muhammadan community; (*c*) the Anglo-Indian community; (*d*) the European community; (*e*) the Indian Christian community; (*f*) the interests of commerce and industry; (*g*) landholders; and (*h*) the interests of labour; and

(*iii*) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19. Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's province as general seats, Sikhs seats or Muhammadan seats shall be chosen by electorate consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that in the North-West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representatives of backward areas or backward tribes the holders of those seats, shall, for the purposes of this paragraph, be deemed to hold general seats.

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly,—

(*a*) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes;

(*b*) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved; and

(*c*) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

21. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an Electoral College consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the College.

Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

22. For the purpose of choosing persons to fill the Anglo-Indian European and Indian Christian seats in the Federal Assembly, there shall be for British India three Electoral Colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governor's Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate Electoral College.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian Electoral College shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

23. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, landholders and representatives of labour shall be chosen—

(*a*) in the case of seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed;

(*b*) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed;

(*c*) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies and in accordance with such manner of voting as may be prescribed;

(*d*) in the case of one of the non-provincial seats which are to be filled by representatives of Commerce and Industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed; and

(*e*) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seat in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall

be chosen—

(*a*) in the case of Coorg, by the members of the Legislative Council; and

(*b*) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

(*i*) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province;

(*ii*) in the case of any other seat, he possesses such qualifications as may be prescribed.

General

26. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

"a European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India;

"an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India;

"an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

"the scheduled castes" means such castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as "the depressed classes," as His Majesty in Council may specify; and

"prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

(2) In this paragraph the expression "native of India" has the same meaning as it had for the purposes of section six of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only. **33 and 34 Vict. C. 3**

27. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of

the Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to—

(*i*) the notification of vacancies, including casual vacancies and the proceedings to be taken for filling vacancies;
(*ii*) the nomination of candidates;
(*iii*) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms or are reserved for members of the scheduled castes;
(*iv*) the expenses of candidates at elections;
(*v*) corrupt practices and other offences at or in connection with elections;
(*vi*) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and
(*vii*) the manner in which rules are to be carried into effect.

Table of Seats
The Council of State
Representatives of British India
(i) Allocation of Seats

Province or Community	*Total seats*	*General seats*	*Seats for Scheduled Castes*	*Sikh seats*	*Muhammadan seats*	*Women's seats*
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	1
Central Provinces and Berar	8	6	1	—	1	—
Assam	5	3	—	—	2	—
North-West Frontier Province	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—
Coorg	1	1	—	—	—	—
Anglo Indians	1	—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians	2	—	—	—	—	—
Totals	150	75	6	4	49	6

(ii) Distribution of Seats for Purposes of Triennial Elections

Province	*Number of seats to be filled originally for three years only*						*Number of seats to be filled originally for six years only*						*Number of seats to be filled originally for nine years*					
	General Seats	Seats for Scheduled castes	Sikh Seats	Muhammadan Seats	Women's Seats		General Seats	Seats for Scheduled castes	Sikh Seats	Muhammadan Seats	Women's Seats		General Seats	Seats for Scheduled castes	Sikh Seats	Muhammadan Seats	Women's Seats	
Madras	—	—	—	—	—		7	—	—	2	1		7	1	—	2	—	
Bombay	5	—	—	2	1		—	—	—	—	—		5	1	—	2	—	
Bengal	4	1	—	5	—		—	—	—	—	—		4	—	—	5	1	
United Provinces	5	1	—	3	1		6	—	—	4	—		—	—	—	—	—	
Punjab	2	—	2	4	—		1	—	2	4	1		—	—	—	—	—	
Bihar	—	—	—	—	—		5	1	—	2	—		5	—	—	2	1	
Central Provinces & Berar	—	—	—	—	—		6	1	—	1	—		—	—	—	—	—	
Assam	—	—	—	—	—		3	—	—	2	—		—	—	—	—	—	
North-West Frontier Province	—	—	—	—	—		—	—	—	—	—		1	—	—	4	—	
Orissa	4	—	—	1	—		—	—	—	—	—		—	—	—	—	—	
Sind	2	—	—	3	—		—	—	—	—	—		—	—	—	—	—	
British Baluchistan	—	—	—	—	—		—	—	—	—	—		—	—	—	1	—	
Delhi	—	—	—	—	—		—	—	—	—	—		1	—	—	—	—	
Ajmer-Merwara	—	—	—	—	—		—	—	—	—	—		1	—	—	—	—	
Coorg	—	—	—	—	—		—	—	—	—	—		1	—	—	—	—	
Totals	22	2	2	18	2		28	2	2	15	2		25	2	—	16	2	

TABLE OF SEATS
The Federal Assembly
Representatives of British India

Province	Total Seats	General Seats		Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce and Industry	Landholders Seats	Seats for representatives of labour	Women's Seats
		Total of General Seats	General seats reserved for Scheduled castes									
Madras	37	19	4	—	8	1	1	2	2	1	1	2
Bombay	30	13	2	—	6	1	1	1	3	1	2	2
Bengal	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces	37	19	3	—	12	1	1	1	—	1	1	1
Punjab	30	6	1	6	14	—	1	1	—	1	—	1
Bihar	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces & Berar	15	9	2	—	3	—	—	—	—	1	1	1
Assam	10	4	1	—	3	—	1	1	—	—	1	—
North-West Frontier Province	5	1	—	—	4	—	—	—	—	—	—	—
Orissa	5	4	1	—	1	—	—	—	—	—	—	—
Sind	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan	1	—	—	—	1	—	—	—	—	—	—	—
Delhi	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—	—	—	—	—	—	—
Coorg	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats	4	—	—	—	—	—	—	—	3	—	1	—
Totals	250	105	19	6	82	4	8	8	11	7	10	9

PART II

REPRESENTATIVES OF INDIAN STATES

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats, specified in the fourth column of the said Table opposite to that State or to that group of States.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he —

(*i*) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(*ii*) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age :

Provided that—

(*a*) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(*b*) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

6. Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States, and groups of States comprised in Divisions XVI and XVII of the Tables of Seats,

(*i*) The Rulers of States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

(*ii*) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat :

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be —

(*i*) in the case of a person appointed to fill a seat in the Council of State —

(*a*) by the Ruler of a State entitled to separate representation, nine years;

(*b*) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years;

(*c*) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;

(*d*) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat for three years, whichever may be the shorter period;

(*e*) in any other manner, three years; and

(*ii*) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly :

Provided that—

(*i*) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;

(*ii*) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

(*a*) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and

(*b*) in the case of the Ruler of Pudukkottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed :

Provided that in choosing a person to be so appointed the Ruler of a State

mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber :

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation :

Provided that—

(*a*) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled; and

(*b*) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and

(*c*) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats :—

(*a*) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty-five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion;

(*b*) the Governor-General shall, in the rules so made by him, divide the

said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

(*c*) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation;

(*d*) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly :

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(*e*) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

13. His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do—

(*a*) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(*b*) with a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation,

and is satisfied that such variation will not adversely affect the rights and interest of any State:

Provided that a State mentioned in paragraph eight of this Part of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied.

14. In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(*a*) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect;

(*b*) the filling of casual vacancies in seats;

(*c*) the decision of doubts or disputes arising out of or in connection with any appointment; and

(*d*) the manner in which the rules are to be carried into effect.

In this Part of this Schedule the expression "prescribed" means prescribed by His Majesty in Council or by rules made under this paragraph.

15. For the purposes of sub-section (2) of section five of this Act—

(*i*) if the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted accede to the Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State;

(*ii*) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

(*iii*) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Table, such figure as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

TABLE OF SEATS

The Council of State and the Federal Assembly Representatives of Indian States

1	2	3	4	5
States and Groups of States	*Number of Seats in Council of State*	*States and Groups of States*	*Number of Seats in the Federal Assembly*	*Population*
		Division I		
Hyderabad	5	Hyderabad	16	14,436,148
		Division II		
Mysore	3	Mysore	7	6,557,302
		Division III		
Kashmir	3	Kashmir	4	3,646,243
		Division IV		
Gwalior	3	Gwalior	4	3,523,070
		Division V		
Baroda	3	Baroda	3	2,443,007
		Division VI		
Kalat	2	Kalat	1	342,101
		Division VII		
Sikkim	1	Sikkim	—	109,808
		Division VIII		
1 Rampur	1	1 Rampur	1	465,225
2 Benares	1	2 Benares	1	391,272
		Division IX		
1 Travancore	2	1 Travancore	5	5,095,973
2 Cochin	2	2 Cochin	1	1,205,016
3 Pudukkottai	1	3 Pudukkottai	1	400,694
Banganapalle		Banganapalle		39,218
Sandur		Sandur		13,583
		Division X		
1 Udaipur	2	1 Udaipur	2	1,566,910
2 Jaipur	2	2 Jaipur	3	2,631,775
3 Jodhpur	2	3 Jodhpur	2	2,125,982
4 Bikaner	2	4 Bikaner	1	936,218
5 Alwar	1	5 Alwar	1	749,751
6 Kotah	1	6 Kotah	1	685,804
7 Bharatpur	1	7 Bharatpur	1	486,954
8 Tonk	1	8 Tonk	1	317,360
9 Dholpur	1	9 Dholpur	1	254,986
10 Karauli	1	Karauli		140,525
11 Bundi	1	10 Bundi	1	216,722
12 Sirohi	1	Sirohi		216,528
13 Dungarpur	1	11 Dungarpur	1	227,544
14 Banswara	1	Banswara		260,670
15 Partabgarh	1	12 Partabgarh	1	76,539
Jhalawar		Jhalawar		107,890
16 Jaisalmer	1	13 Jaisalmer	1	76,255
Kishengarh		Kishengarh		85,744

1	2	3	4	5
		Division XI		
1 Indore	2	1 Indore	2	1,325,089
2 Bhopal	2	2 Bhopal	1	729,955
3 Rewa	2	3 Rewa	2	1,587,445
4 Datia	1	4 Datia	1	158,834
5 Orchha	1	Orchha		314,661
6 Dhar	1	5 Dhar		243,430
7 Dewas (Senior)	1	Dewas (Senior)	1	83,321
Dewas (Junior)		Dewas (Junior)		70,513
8 Jaora	1	6 Jaora	1	100,166
Ratlam		Ratlam		107,321
9 Panna	1	7 Panna	1	212,130
Samthar		Samthar		33,307
Ajaigarh		Ajaigarh		85,895
10 Bijawar	1	8 Bijawar	1	115,852
Charkhari		Chharkhari		120,351
Chhatarpur		Chhatarpur		161,267
11 Baoni	1	9 Baoni	1	19,132
Nagod		Nagod		74,589
Maihar		Maihar		68,991
Baraundha		Baraundha		16,071
12 Barwani	1	10 Barwani	1	141,110
Ali Rajpur		Ali Rajpur		101,963
Shahpura		Shahpura		54,233
13 Jhabua	1	11 Jhabua	1	145,522
Sailana		Sailana		35,223
Sitamau		Sitamau		28,422
14 Rajgarh	1	12 Rajgarh	1	134,891
Narsingarh		Narsingarh		113,873
Khilchipur		Khilchipur		45,583
		Division XII		
1 Cutch	1	1 Cutch	1	514,307
2 Idar	1	2 Idar	1	262,660
3 Nawanagarh	1	3 Nawanagarh	1	409,192
4 Bhavnagar	1	4 Bhavnagar	1	500,274
5 Junagadh	1	5 Junagadh	1	545,152
6 Rajpipla	1	6 Rajpipla	1	206,114
Palanpur		Palanpur		264,179
7 Dhrangadhra	1	7 Dhrangadhra	1	88,961
Gondal		Gondal		205,846
8 Porbandar	1	8 Porbandar	1	115,673
Morvi		Morvi		113,023
9 Radhanpur	1	9 Radhanpur		70,530
Wankaner		Wankaner		44,259
Palitana		Palitana	1	62,150
10 Cambay	1	10 Cambay		87,761
Dharampur		Dharampur	1	112,031
Balasinor		Balasinor		52,525
11 Baria	1	11 Baria		159,429
Chhota Udepur		Chhota Udepur	1	144,640
Sant		Sant		83,531
Lunawada		Lunawada		95,162

1		2	3		4	5
12	Bansda		12	Bansda		48,839
	Sachin			Sachin		22,107
	Jawhar	1		Jawhar		57,261
	Danta			Danta		26,196
13	Dhrol			Dhrol	1	27,639
	Limbdi	1		Limbdi		40,088
	Wadhwan			Wadhwan		42,602
	Rajkot			Rajkot		75,540
				Division XIII		
1	Kolhapur	2	1	Kolhapur	1	957,137
2	Sangli		2	Sangli		258,442
	Savantvadi	1		Savantvadi	1	230,589
3	Janjira		3	Janjira		110,379
	Mudhol	1		Mudhol	1	62,832
	Bhor			Bhor		141,546
4	Jamkhandi		4	Jamkhandi		114,270
	Miraj (Senior)			Miraj (Senior)		93,938
	Miraj (Junior)			Miraj (Junior)		40,684
	Kurundwad (Senior)	1		Kurundwad (Senior)	1	44,204
	Kurundwad (Junior)			Kurundwad (Junior)		39,583
5	Akalkot		5	Akalkot		92,605
	Phaltan			Phaltan		58,761
	Jath	1		Jath	1	91,099
	Aundh			Aundh		76,507
	Ramdurg			Ramdurg		35,454
				Division XIV		
1	Patiala	2	1	Patiala	2	1,625,520
2	Bahawalpur	2	2	Bahawalpur	1	984,612
3	Khairpur	1	3	Khairpur	1	227,183
4	Kapurthala	1	4	Kapurthala	1	316,757
5	Jind	1	5	Jind	1	324,676
6	Nabha	1	6	Nabha	1	287,574
7	Mandi		7	Tehri-Garhwal	1	349,573
	Bilaspur	1	8	Mandi		207,465
	Suket			Bilaspur	1	100,994
8	Tehri-Garhwal			Suket		58,408
	Sirmur	1	9	Sirmur	1	148,568
	Chamba			Chamba		146,870
9	Faridkot		10	Faridkot		164,364
	Malerkotla	1		Malerkotla	1	83,072
	Loharu			Loharu		23,338
				Division XV		
1	Cooch Behar	1	1	Cooch Behar	1	590,886
2	Tripura	1	2	Tripura	1	382,450
	Manipur		3	Manipur	1	445,606

1		2	3		4	5
				Division XVI		
1	Mayurbhanj		1	Mayurbhanj	1	889,603
	Sonepur	1	2	Sonepur	1	237,920
2	Patna		3	Patna	1	566,924
	Kalahandi	1	4	Kalahandi	1	513,716
3	Keonjhar		5	Keonjhar	1	460,609
	Dhenkanal		6	Gangpur	1	356,674
	Nayagarh	1	7	Bastar	1	524,721
	Talcher		8	Surguja	1	501,939
	Nilgiri					
4	Gangpur		9	Dhenkanal		284,326
	Bamra			Nayagarh		142,406
	Seraikela	1		Seraikela		143,525
	Baud			Baud	3	135,248
	Bonai			Talcher		69,702
5	Bastar			Bonai		80,186
	Surguja	1		Nilgiri		68,594
	Raigarh			Bamra		151,047
	Nandgaon		10	Raigarh		277,569
6	Khairagarh			Khairagarh		157,400
	Jashpur	1		Jashpur		193,698
	Kanker			Kanker	3	136,101
	Korea			Sarangarh		128,967
	Sarangarh			Korea		90,886
				Nandgaon		182,380
				Division XVII		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.		2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.		5	3,032,197

Total population of the States in this Table : 78,981,912

Appendix IV

Text of Debates held in Constituent Assembly on Clauses concerning Council of States contained in Report of Union Constitution Committee

[28th July 1947]

Clause 13

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I beg to move Clause 13.

"13. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People."

With regard to this, there is notice of an amendment that the words "the National Assembly comprising" be deleted. If that is done, the clause will read as follows :

"The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses, the Council of States and the House of the People."

This is merely to avoid having too many designations for what will be the legislative of the Federation in the future. The Parliament of the Federation is to consist of the President and two Chambers. These words, "the National Assembly", have been put in there for the purpose of referring only to the Houses to the exclusion of the President. It seems, Sir, that it is unnecessary to have this expression "National Assembly" coming in between the Parliament and the two Houses. It is therefore considered desirable that we omit all reference to "National Assembly" and make the clause read as I have indicated. I think the notice of amendment has been given by Mr. K. Santhanam and I wish to say at the outset that I shall be prepared to accept it.

Mr. R.K. Sidhwa : Sir, my amendment as stated in the paper reads thus :

"That in Clause 13 after the words 'in the Parliament of the Federation' the words 'to be known as Congress' be inserted."

My object is, Sir, that the freedom that we have attained is under the aegis of the Indian National Congress and I desire the name 'Congress' to be perpetuated in our future Constitution. I understand. Sir, it is the desire of several honourable members that the various words that have to come in the Constitution

should be left over for consideration. Under these circumstances, I do not propose to move it now but I do desire that the word 'Congress' must find a place in our Constitution so as to perpetuate this memorable name under which we have fought for 65 years in the History of our country.

Mr. Mohd. Tahir (Bihar : Muslim) : *[Sir, in the amendment which I have suggested much thought has not been given to the language. Since we have to discuss on principles, my amendment would read like this :

"That in Clause 13, for the words 'comprising two Houses, the Council of States and', the word 'namely' be substituted."

My aim in suggesting this amendment is that in the original resolution where two assemblies have been mentioned and it has been said that there ought to be two Houses, I want to keep one House only.

Sir, we have the picture of one new India before us now, with the crown of freedom in her hands. When we are to forge a new Constitution for her and before I place my humble views regarding that before the House, I want to repeat the couplet :

"Sare Jahan se achcha Hindustan Hamara
Ham bulbulen hain uski woh gulstan Hamara"

After this, I shall say only this much about the amendment, that when we are making a Constitution for India, it is our duty that we should make such a model constitution that all in the country may feel that this Constitution has been made for them and it is theirs. It must not be that, on looking to that Constitution, the common man may say that though the Englishman has left India, his ghost is yet stalking the country. But this Constitution clearly betrays that his ghost is haunting us. I think that if you look at this Constitution and at this clause, which is before us now, you will feel that though no doubt the Englishmen are quitting India, his ghost is walking here. Before framing a Constitution for a newly born nation or for a country which has attained freedom, the most essential thing, to my mind, is to change its past traditions and old Constitutions, which were hitherto in vogue, in such a way as to transform the whole mentality of the people of that country. Sir, you know how during the past so many years of their rule in India, Britishers have changed and enslaved the mentality of the people. Therefore, when we frame a new Constitution, it becomes our duty to make it in such a way as to transform our mentality from that of slavishness to freedom. The old mentality reminiscent of British slavery must be uprooted. I beg to state that in all the countries various forces are at play—in some countries Socialism works well, in others Communism works well, yet in some others fascism is to be found and in some Capitalism and Imperialism flourish. Unfortunately, through Capitalism and Imperialism, the Britishers have brought India to her present distress and miserable plight. Sir, I would like to point out that before framing the Constitution of the country, we should scan the history of India during the short period of 1919 to the present day. Sir, from 1919 to 1935 many Constitutions were framed but all of them were the product of British Imperialism. In 1919, local self-government was conceded to India; councils were created, even a council was

* [ ] English translation of Hindustani speech.

[Mr. Mohd. Tahir]

formed for the centre. It was self-government only in name. But, Sir, if you think over it a little you will find that Imperialism and Capitalism were at its back and they were in full play then. Hence the local bodies could not function freely. This was because imperialism was associated with them. The masses used to send their elected representatives to the local bodies, but the presence of nominated members there used to counteract the influence of the elected ones. And this system still continues. Similar was the case in the Councils; the influence of the elected representatives was weakened by the nominated members; and any programme for the betterment of the country put forth by the elected representatives used to be opposed by the nominated members. That was the state of affairs under the Act of 1919.

Thanks to God Almighty, when Imperialism and Capitalism were at work in India, a party under the leadership of Mahatma Gandhi came forward to voice the feelings of the poor Indians and that voice was raised so vociferously that today we find India on the threshold of freedom. Is it then befitting for us today to frame a Constitution for India, which smells strongly of Capitalism and Imperialism, nay it fosters them? After some struggle and haggling the 1935 Act was enacted. When, after the Act of 1935, the British Government found that very great political consciousness had been developed in India, and she was pressing her demands more insistently, it changed the Act of 1935. Legislative Assemblies were established in the provinces, where only the elected representatives of the people were to manage the affairs of the Government. But of what good could those provincial assemblies be, when the Upper Houses and the Council of State were tacked on to them? It was a creation of the Imperialistic mind. Thus the democratic atmosphere of the provincial Assembly was negatived, because the Britisher knew that for keeping his Capitalistic outlook safe in India no better plan could be devised. Hence I would like to point out that nominations, Upper Houses, and similar other tools were the creation of Imperialism. Therefore, when we are framing the Constitution of free India we should keep these things in mind. The Constitution, which we now frame, should be such that we may be sure that it would be acceptable to the people, and they would willingly work it. I would like to ask a few simple questions to the Honourable Mover of this clause. Is he of the opinion that without having two Houses, the progress of India or of any other country would be hampered, or no good laws can be enacted? May I ask him whether an assembly, better and more responsible than the present one, has ever before assembled in India? I would say that never before did an assembly, more responsible than this, sit in India. Do we not see that one House is carrying on all this work, and is framing the Constitution? After some weeks this very Assembly would function, as the Federal Parliament, where laws would be enacted. If the principle that two Houses are essential is accepted, then this Constituent Assembly should be dissolved and reshaped to contain two Houses. If the Honourable Mover cannot divide the Constituent Assembly into two Houses and he cannot have two Houses of the ensuing Federal Parliament, then it becomes quite clear that he himself does not believe in the principle that two Houses of legislature are essential. But he is making this proposal because of a certain force or pressure upon him—the forces of Capitalism. I would like to tell him that the Council of State nominations, and Upper House were the creations

of Imperialism. Does it mean that poor India is still to labour in the same old way, which though more expensive, added nothing to the efficiency of work? It should not be that even after the Britishers have quitted the country and our Government is established they may have the check to say that their work is still being continued in India. Their work will continue to be accomplished through the devices of the Upper House, nominations, Council of State, etc. With these words, I sit down. If my words have aggrieved anyone, I ask his pardon.]

Mr. President : Sir B.L. Mitter.

Mr. S.V. Krishnamurthy Rao (Mysore State) : I rise on a point of Order. Under rule 32, Clause (1), an amendment must be relevant to the motion to which it is proposed. In the motion that is proposed now there is no word "Lower House" and the amendment seeks to define what the Lower House means. So this amendment is out of order.

Sir V.T. Krishnamachari (Jaipur State) : I was just going to say the amendment is not going to be moved.

Mr. President : So the point of order does not arise.

(*Shri Mohanlal Saxena did not move his amendment.*)

Shri K. Santhanam (Madras : General) : Sir, I move :

"That in clause 13, the words 'the National Assembly, comprising' be deleted."

Already, Sir, N. Gopalaswami Ayyanagar has explained why these words should be deleted. I fully sympathise with the Union Powers Committee in their desire to appropriate all the good words. The expression 'National Assembly' is certainly a very attractive expression, but we must also have the word 'Parliament' They have devised an ingenious formula for appropriating both these expressions. The word 'National Assembly' is to mean the two Houses taken together and the word 'Parliament' is to mean the two Houses plus the President. However ingenious it may be in practice it will be most inconvenient and when it comes to translating it into Hindustani, matters will be worse. It will be bad enough to find a suitable translation for 'Parliament' and if we are to find one for 'National Assembly' also, it will be almost a hopeless task. Therefore, I move this amendment.

Mr. President : There is no other amendment. Now, the clause and the amendments that have been moved are open to discussion.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir, in this motion we have been asked to vote for two Houses, the Lower House and the Upper House. I wish to point out that our experience in the last so many years has been that the Upper House acts as a clog in the wheel of progress. I do not think it is very wise to continue the same thing again in our new constitution. I think that everywhere in the world the experience about Upper Houses has been the same. In no country an Upper House has helped progress. It has always acted as a sort of hindrance to quick progress. Therefore, if we are not careful at present, we shall not be able to make as rapid progress as we need. India is probably the biggest nation in the world. We will have to catch up with

[Prof. Shibban Lal Saksena]

Russia and America if we want to occupy our proper position in the international field. In the next five or ten years we will have to cover the progress which in the normal course would take fifty years. I do not think two chambers will help us in the realisation of our new programme with the required rapidity. Therefore I think that the Mover will kindly review this matter and see that in our new constitution we do not have two Chambers.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, I beg to support the clause as it stands and therefore oppose the motion to omit the Second Chamber. We are going to obtain supreme sovereign powers. We have to deal with foreign and domestic matters of extreme importance. In these circumstances it will be wise for us to have two Houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a Second Chamber introduces an element of sobriety and second thought. In these circumstances it would be wise for us, especially in view of many foreign subjects which are looming large in our minds, to have a Second Chamber would be a disadvantage is, I think, not correct. I submit. Sir, that a Second Chamber would not only be an advantage but an absolute necessity.

Then again, we have to consider the entry of the States into the Federation, and if we have this in mind, a Second Chamber would be an absolute necessity. Without a Second Chamber it would be difficult to fit in the representatives of the States in the scheme of things.

With these few words, Sir, I would oppose the amendment to do away with the Council of States, that is, the Second Chamber.

Mr. President : No one else wants to speak probably. Then the Mover can reply, if he desires to.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I do not think any elaborate justification is necessary for this clause which states that there will be two chambers in the Federal Legislature. The need for a Second Chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to season people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Nothing more is really needed from me to commend the clause as it is to the House, with the small amendment which was moved here.

Mr. President : I shall first put the amendment of Mr. Mohammad Tahir :

"That in Clause 13, for the words 'comprising two Houses, the Council of States and', the word 'namely' be substituted."

The amendment was negatived.

Mr. President : Then I put Mr. Santhanam's amendment :

"That in clause 13, the words 'the National Assembly, comprising' be deleted."

The amendment was adopted.

Mr. President : I shall now put the whole clause as amended.

Clause 13, as amended, was adopted

CLAUSE 14

Mr. President : We shall now pass on to Clause No. 14.

The Honourable Sir N. Gopalaswami Ayyangar : With your permission, Sir, and with the permission of the House, I propose simply to formally move this Clause 14, and to request you to hold over the moving of the amendments and the discussion of this clause to a subsequent day. The clause relates to the composition of the two Houses of the Legislature. A very large number of amendments have been sent in and they raise certain points of importance both to the Provinces and to the Indian States. A good deal of discussion—lobby discussions—has been going on with reference to the merits of these amendments and it seems quite possible that as a result of those discussions, we may be able to put before the House something which will be acceptable to all sides of the House. I only pray, Sir, that you will approve of the procedure I am suggesting, and if you do so, I shall simply read out the clause, Clause 14.

Mr. President : I think the House has no objection to accepting the suggestion, that the discussion on this clause be held over for the present and that the clause be moved formally today.

Honourable Members : Yes.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I beg to move Clause 14.

"14. (1) (*a*) The Council of States shall consist of—

(*i*) not more than 10 members nominated by the President in consultation with Universities and scientific bodies :

(*ii*) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions *plus* 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

Explanation : A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed.

[The Honourable Sir N. Gopalaswami Ayyangar]

(*b*) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(*c*) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 7,50,000 of the population.

(*d*) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule :

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer; and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency."

* * * * * * * *

[31st July 1947]

Mr. President : We all now take up Clause 14.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I have already read this clause out to the House, and I do not think it is necessary for me to read it out again. A very large number of amendments had been tabled in respect of this particular clause, and naturally an attempt has been made to see if the various points of view represented in these amendments could be brought together and a sort of agreed arrangement placed before the whole House for unanimous acceptance. I have taken the liberty, Sir, of sending notice of an amendment this morning which I think represents an agreed solution of the difficulties, and if it is the wish of the House that I move that particular amendment and, if it is passed, the other amendments need not be moved, I am prepared to move it.

Mr. President : Please move it. Or do you think that we should take up the other amendments?

The Honourable Sir N. Gopalaswami Ayyangar : If this is carried, I think there will not be any necessity for the other amendments to be moved.

Sir, the amendment which I beg to move is this :

"That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted :

'(*a*) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail :

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian State, which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(*b*) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(*c*) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

'Provided that the ratio of the total number of Indian States respectively to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.' "

"(2) That in sub-clause (1) of Clause 14, following new item (e) be inserted :—

'(*e*) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.' "

Sir, I wish only to draw attention to the more important aspects of this draft amendment. Sir, the first point to which I should like to make a reference is that in this amendment we are definitely fixing the strength of the Council of States and in doing so we say that strength should not exceed one half of the strength of the House of the People. I think Sir, the House will agree that that is a fair proportion to fix. Now out of this strength that we so fix we propose to allocate 25 members to functional constituencies. In the draft, as originally placed before the House, it will be remembered that ten of the seats were to be filled by nomination by the President in consultation with universities and scientific bodies.

It has been felt by a very large number of people that that is not a sufficient provision for the purpose of getting on to the Council of States people who may

[The Honourable Sir N. Gopalaswami Ayyangar]

not belong to universities or scientific bodies, but who on account of their connection with very important sides of the Nation's activity, deserve to be on a body of that description. In this connection a reference has been made to section 18(7) in the Irish Constitution. As you know, the bulk of the Senate in the Irish Constitution is filled by functional constituencies of this description. These constituencies relate to the representation of culture, education, of trade and commerce, of agriculture, of labour, of social services and various other national activities of that description. Now the one important difference between the provision in the Irish Constitution and the provision that is proposed to be made here is that that principle will be applied only to a very small number of members of the Council of States. If we fix the maximum strength of the House of the People at five hundred, the maximum strength of the Council of States can only be two hundred and fifty. If out of that we take twenty-five for being filled by constituencies of this description, it only means about ten per cent of the total strength so that we retain the essential character of the Council of States, as originally planned. An overwhelming majority of members of the Council will be returned by units more or less on a territorial basis, but a very small number not exceeding ten per cent will be returned by constituencies of this special description. There is also another limitation that we have placed on the representation of Indian States in the Council of States. This amendment says that the total representation given to Indian States should not exceed forty per cent of the strength of the Council of States minus the number allotted to special constituencies.

Then, Sir, I would refer to item (*b*) in this new sub-clause. It practically reproduces item (*b*) in the original clause with this one important difference, namely, that the election should be by the elected members of the legislatures and that, if a unit legislature happens to have two Houses, the electorate will be the elected members of the Lower House of that legislature. Perhaps I might explain that I have retained the description 'Lower House' here in keeping with the description that has been used in other parts of this particular draft. The idea is not to retain this description of the Chamber that we all of us have in mind, but to find another description which would not be open to the same criticism.

Then, Sir, with regard to the House of the People the maximum strength is fixed at five hundred and the limits of one million and 7,50,000 which you find in the existing draft have been reduced to 7,50,000 and 5,00,000. Incidentally this accepts a number of amendments notice of which has been given which are more or less in the same terms.

Then, Sir, you come to the proviso to item (*c*). Perhaps some people might consider this is not very necessary, but, in order to allay fears, perhaps suspicions, it has been decided that it is desirable to put in a Proviso of this description. The House of the People is essentially a Chamber whose composition is based entirely on the population and it is only reasonable that the ratio which the number of Members representing the Indian States bears to the total population of Indian States should not exceed the ratio which the number of seats for the Provinces bears to the total population in the Provinces. So I do not think it needs any justification. Any special treatment which we desire to give to units of the

Federation, whether Provinces or Indian States—that treatment will be provided for in the composition of the Council of States.

Then, Sir, having stated these general principles as regards the composition of the two Houses, it is necessary that they should be elaborated and should be put in a form which could go into the draft Constitution for the future. A good deal of spade work will have to be done in this connection, fixing the actual strength of the two Houses, the way in which that strength should be distributed amongst the units, the kind and composition of the special constituencies and the principles on which territorial constituencies in Indian States should be delimited—all these are very important things on which the Constitution will have to lay down certain fundamental principles and for that purpose I have introduced an additional item (*e*) which assigns to the Union Constitution Committee the task of investigating these problems in some detail and then proposing clauses or sections which could be embodied in the new draft Constitution.

That will certainly come up before the House for discussion. The Report of the Union Constitution Committee will be made to the President and then the Report becomes really the property of the House. If it is so decided that this Report should be discussed in the House before the actual recommendations of the Committee are put into the draft text, that discussion can be held at the future session. But if the House should agree that the recommendations of the Union Constitution Committee as regards these matters can straightway go into the draft text of the Union Constitution, the House will still have an opportunity of examining the merits of these provisions when it comes to debate the text of the Constitution.

Sir, I move this amendment.

Mr. President : I have got a number of amendments to this clause. I shall take these amendments now one after another.

(*Messrs. Jagat Narain Lal, H.V. Pataskar, B.M. Gupte, R.M. Nalavade, Seth Govind Das and G.L. Mehta, did not move their amendments, Nos. 232 to 237.*)

Dr. Mohan Sinha Mehta (Udaipur State) : I withdraw my amendment (No. 238).

Col. B.H. Zaidi (U.P. States) : I withdraw the amendment (No. 238).

Maharaj Nagendra Singh (Eastern Rajputana States) : Mr. President, Sir, the amendment of Sir Gopalaswami Ayyangar meets the view point of small States admirably and he ought to be congratulated on this amendment because it creates effective democracy. After all, Sir, the greatness and balance of a constitution lies in its portraying with the minutest attention to detail the various entities and interests that lie in the country at large. The amendment will certainly achieve this object and I holeheartedly support it. I, therefore, withdraw my amendment, Sir, but I request that as far as the consideration of the allocation of seats *inter se* between the States is concerned there should be some representatives of the small States in the Union Constitution Committee. The grouping of small States and the formation of constituencies will affect these States vitally and it is therefore important from the point of view of these States

[Maharaj Nagendra Singh]
that there should be a representative of the small States in the Union Constitution Committee to express their views.

I withdraw my amendment (No. 239).

(Messrs. Rai Saheb Ragho Raj Singh and H.J. Khandekar did not move their amendments, Nos. 239 and 240.)

Shri Himmatsingh K. Maheswari : I withdraw amendment No. 241

(Amendments Nos. 242 to 260 were not moved.)

Shri Vishwambhar Dayal Tripathi (United Provinces : General) : *[Sir, I do not propose to move my amendment as it is covered by the resolution of Sir Gopalaswami Ayyangar.]

(Amendment No. 262 was not moved.)

(Sir V.T. Krishnamachari did not move his amendment No. 263.)

Mr. President : I take it that none of the other Ministers are moving.

Sir V.T. Krishnamachari (Jaipur State) : Yes.

(Amendments Nos. 264 to 271 were not moved.)

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move :

"That sub-clause (2) of Clause 14 be deleted."

The simple purpose of this amendment is that the sub-clause refers to a schedule which is not yet in existence. If we agree to sub-clause (2) it would be signing a blank cheque or a transfer deed without a schedule. I submit that this is a difficult thing to do.

Then, I find after the amendment of my Honourable friend Sir Gopalaswami Ayyangar this amendment is in an anomalous position. After we gave notice of a large number of amendments the original clause has been re-drafted and put forth here on the floor of the House. We have had no opportunity of considering the draft. I have no particular objection to the revised draft which has been submitted for consideration. But still I should think that perhaps it would have been better to give us some time to consider this important subject. A draft of such intricate nature like this, containing important constitutional principles cannot be easily handled at a moment's notice. I therefore respectfully submit that, as in any other important case, some time should be given for consideration of the subject and then it would be easy for us to submit amendments. It may be that we would fully agree with the principles; but still, for the sake of safety, it would be better to give us some time. I hope the Honourable member will kindly consider the difficulty in which some of us have been placed and postpone the subject for further consideration. This is a very important subject and its importance justifies the suggestion.

(Amendments Nos. 273 to 278 were not moved.)

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir, my amendment to sub-clause (4) of Clause 14 runs as follows :

"That is sub-clause (4) of Clause 14, for the word 'one third', the word 'one half' be substituted."

* [ ] English translation of Hindustani speech.

In accordance with the present provision in sub-clause (4) of Clause 14, one-third of the members will retire every second year. Now according to the time-table which we have laid down, the life of the House of the People shall be of four years' duration, and a new House of the People as well as new provincial legislature shall be elected every fourth year in the normal course of things. What I want is that in the Council of States as well instead of one-third of the members being elected every second year, one-half of the members should be elected every second year. In this manner we shall be having a new Council of States every fourth year. It may be argued that the Lower House may be dissolved before their full terms expire, and the four year cycle may not recur. But dissolution, I am sure, will not be a normal feature in the life of the legislatures; and even if one or two legislatures in the provinces are dissolved before their full terms, the four year cycle will not be materially disturbed at least during the present century.

An Honourable Member : On a point of information, is he going to move the amendment?

Prof. Shibban Lal Saksena : Yes, Sir, I move it.

According to the amendment of Sir N. Gopalaswami Ayyangar the States will have a fairly large representation in this House and, as is well known the Lower Houses of the States have a majority of nominated members, so a majority of the members will be Rulers' representatives. Therefore, what I want is that this House which will have a fairly large number of reactionary members, should not be a House which should be continued for very long intervals. I want at least half of this should change every second year and then it might not be so reactionary. I have already voiced my opposition to Second Chambers before but if we are to have them, at least we should have a change of half of the members every second year so that in the 4th year the whole Council of States will be changed.

(Amendments Nos. 280 to 299 were not moved.)

(Amendments Nos. 13 to 16 Supplementary List No. I, Amendments Nos. 10 & 11 in Supplementary List No. II, and Amendments Nos. 4 to 6 in Supplementary List No. III were not moved.)

Begum Aizaz Rasul (United Provinces : Muslim) : Sir, the amendment standing in my name is—

"That in sub-clause (1) (*d*) of Clause 14, following be added at the end :—

'by a system of proportional representation by single transferable vote.'"

Sir, I do not propose moving this amendment at the present moment in view of the amendment moved by Sir N. Gopalaswami Ayyangar. I hope that this very important aspect of the question as to the method of election to the Council of States will be considered by the Union Constitution Committee in order to safeguard the interest of minorities. I do not wish to move this amendment at this time, Sir, because of the great possibility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

Mr. President : There is another amendment in your name.

Begum Aizaz Rasul : There is another amendment standing in my name :

"That in sub-clause (4) of Clause 14, for the word 'second' the word 'third' be substituted."

Sir, the clause will then read :

"The Council of States shall be a permanent body not subject to dissolution, but as near as may be, one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in Schedule—"

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a Legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected.

Sir, if my amendment is accepted it will mean that the House being a permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system, as it has been working for the last ten years, in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U.S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir, another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present, and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the right to elect twice in their lifetime members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

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

Mr. Jainarain Vyas (Jodhpur State) : Mr. President, Sir, I rise to support the fresh proposals recently put forward by Sir N. Gopalaswami Ayyangar, but while doing so, I would like to offer a few remarks on the subject matter. When we support these proposals, it should not mean that we feel that the proposals will favourably affect the people of the Indian States. We support these proposals purely on political grounds. When these proposals are accepted, fourteen more States will come in the Lower House. These 14 States will include four States of Kathiawar, seven of the Eastern States, one from Rajputana, one from Assam

and one from Simla Hill States. I am very glad to observe that four maritime States, Junagadh, Nawnagar, Bhavnagar and Cutch will find their place in the Lower House on account of these proposals and the border State of Manipur will also come in. So, from that point of view, it is a very good thing to increase the membership of the Lower House as has been done. Sir Gopalaswami Ayyangar while putting forward Clause I (*b*) said that only elected members of the Legislatures in the Lower House will be able to vote for the election of the Lower House. I mean the elected members of the Legislative Assemblies of the States. There is some confusion in the words "elected members" because when we think of the elected members of the Lower House of our Union, we think that these are elected on the basis of adult franchise, but in Indian States things are not so. I know of a State in Punjab where the son of a Ruler is an elected member of the Assembly and his wife also finds a place among the elected members, and Sir, they are unfortunately both Ministers or rather, they are "popular ministers" of the Assembly. So, this is how elected members and elected "popular ministers" come in through the Lower House of the Assembly in States. There is a State which has got an elected member on the basis of four members in the constituency. So he is also an elected member. I know of another State which has got ten jagirdars out of about fifty elected members in the Lower House or in the Legislative Assembly.

That way, the elected members of the Assembly do not mean really elected representatives because they are not elected on popular franchise or on adult franchise. Sir, I want to bring these instances to your notice and through you, to the notice of the House, so that when a draft is being prepared those who are at the helm of affairs in drafting the Constitution will see that truly elected members come in, not members elected on bogus franchise in bogus legislatures as they exist in some of the States.

One thing more I would like to bring to your notice and that is, then popular representatives of the States have got no place in the Union Constitution Committee of this House, and when the rules or clause are framed their opinion does not come up before the Constitution Sub-Committee. I hope Sir, when there is a vacancy in the Union Constitution Committee, then claim of the popular elements will be considered and, if necessary, the strength of the Committee will be increased in order to find a place for the popular members from the States.

With these remarks, Sir, I commend Sir Gopalaswami Ayyangar's proposal to the House. I hope, Sir, my request will be considered when the real drafting is taken in hand.

Pandit Hiralal Shastri (Jaipur State) : *[Mr. President, I had no intention to participate in the debate today. But when Sir Gopalaswami Ayyangar stated that the amendment he was moving had the unanimous support of the House, I felt that I must say something about it.

With all respect, I ask Sir Gopalaswami as to how his amendment has the unanimous support of the House. So far as I know, all the representatives of the States people present in the House are of the opinion that the original proposal in the report of the Union Constitution Committee should stand. Again, I wish to

* [ ] English translation of Hindustani speech.

[Pandit Hiralal Shastri]
know why the strength of the Upper and the Lower Houses should be increased. We have often passed a resolution in the all India States Peoples' Conference, that larger States should join the Indian Union separately while the smaller ones should join the Indian Union in a group. The standard and the qualifications we have fixed for the States joining the union are sufficiently high. According to our standard, a State with a population of 5 million and having a revenue of 30 millions can join the Union individually. We were satisfied to note that for election to both the Houses, the minimum population limit was fixed at a million. Many attempts were made and many amendments were brought in to reduce this limit to a quarter million but in vain. I clearly see that behind the proposed amendment of reducing the limits of one million and 750,000 to 750,000 and 500,000 respectively, underlies the policy that some State, with a population of more than half a million may get representation not only in the Upper House, but also in the Lower House I do not like this. Therefore, I have not agreed to the proposal. There is no unanimous support of the House. Sir Gopalaswami Ayyangar possibly was the author of the original proposal in the report and if it is true that he himself is moving amendment to the original proposal, I do not think it proper to oppose him. However, I cannot but express my feelings in this connection. When our country is going to be politically a Union, in spite of the division, when differences between provinces and States are being removed, I do not think it proper that small States should come into the Union as separate entities. I disapprove of the idea of small States coming into the Union as separate entities, for I know that if separate units of these small States are formed, that would only be for the purposes of elections. I know that this will go contrary to the proposal of grouping and States will get all opportunities for coming in as individual units. If we intend that the small States should come into the union in groups, they should be allowed the minimum opportunity to exercise their franchise as individual units for election to this House. According to our original proposal only fifteen States were to participate in the Assembly elections as individual units. But because their representatives have been recognised and because of this and other amendments by the States, fifteen other States will now come in as individual units and this is the number of small States joining as individual units will be increased. Besides this, a provision has also been added. The amendment of Sir N. Gopalaswami considers many vital matters of detail regarding the formation of units and delimitation of constituencies etc. This matter will go up before the Union Constitution Committee where the final decision will be taken on it. I am very sorry to have to say in this connection that so far no representative of the States people has been taken in the said Committee. However, this is not the point. We are discussing here a very important and vital matter and our decision will be placed before the Union Constitution Committee. Maharaj Nagendra Singhji has demanded here that the small States must be represented on this Committee. I do not know as to how many representatives will be taken but I must voice our demand that representatives of the States people must also be taken on this Committee. Many matters of great importance will be discussed in the Committee and decision thereon taken; and hence a representative of the States people must be there to voice their opinion. I give this particular warning to the House that the smaller States should not be individually allowed to come

in as representatives of each separate unit. The more they are grouped the better it is. I have reasons to say this. However, I do not think it proper to go into controversies over this. One is greatly pained and astonished to hear of the atrocities and repression going on in those small States. The States people are very miserable on account of the atrocities of the authorities. Many of the States that have joined this Assembly whether individually or in groups feel as if they have obliged our leaders and the National Congress by doing so. I do not like to say any thing against it but in the manner the smaller and the bigger States have joined the Assembly, they feel as if they have been given a written authority to have absolute power over their people. Thus they have not only begun to exercise their absolute authority over the people but have also begun to oppress them. If we enquire into the important news of the States, appearing every day with pictures on the front pages of the newspapers, we would find that great atrocities are committed on the people by the States authorities. This is not the proper time to say all this but I had to give vent to my heartfelt pain at some time. Syt. Vyas has just stated that the State authorities are generally interfering with elections. Therefore, I would like to draw the particular attention of Sir Gopalaswami to this and request him to see that when the constituencies and the units are formed the smaller States do not come in as individual units in large numbers and that the view point of the representatives of the States peoples is also somehow secured.

I do not oppose the motion but wish to state that at least the voice of the States subjects must not be ignored. I would also appeal to the Honourable the President to see that the representatives of the States subjects should be included in the Committee.]

Mr. Satyanarayan Sinha : The question be now put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I shall now put the amendments. I shall first put the amendments of Sir N. Gopalaswami Ayyangar. The question is :

1. That for items (*a*), (*b*) and (*c*) of sub-clause (1) of Clause 14, the following be substituted :

"(*a*) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in Section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail :

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation : A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

[Mr. President]

(*b*) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(*c*) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

Provided that the ratio of the total number of Indian States representative to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population."

2. That in sub-clause (1) of Clause 14, the following new item (*e*) be inserted :

"(*e*) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution."

The amendments were adopted.

Mr. President : There are some more amendments which were moved. I shall put Mr. Naziruddin Ahmad's amendment. The questions is :

"That sub-clause (2) of Clause 14 be deleted."

The amendment was negatived.

Mr. President : There is another amendment by Mr. Shibban Lal Saksena, which I shall put. The question is :

"That in sub-clause (4) of Clause 14, for the word 'one-third' the word 'one-half' be substituted."

The motion was negatived.

Mr. President : I shall now put the amendment moved by Begum Aizaz Rasul. The question is :

"That in sub-clause (4) of Clause 14, for the word 'second' the word 'third' be substituted."

The motion was negatived.

Mr. President : I shall now put the original clause as amended by Sir N. Gopalaswami Ayyangar's amendment which has been adopted. The question is:

"That Clause 14, as amended, be adopted."

The motion was adopted.

Mr. M.S. Aney : There is a note under this clause and in that note the different Provinces and States are named. I find among the names the name of the Central Provinces mentioned as 'C.P.' The name of the Province under the

Act under which it was formed as "C.P. and Berar". That name is also reproduced in some other clauses which we have already passed. So I think this might be a clerical mistake. But I do want to bring this fact to your notice and to the notice of the House. When the final draft is made, if the Note happens to be there, the proper name of the Province should be given as "the Central Provinces and Berar".

Mr. President : I think that is a slip because in the Schedule it is correctly stated.

Appendix V

Provisions relating to Federal Parliament contained in Draft Constitution prepared by Drafting Committee

CHAPTER II—Parliament

GENERAL

Constitution of Parliament.

66. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Composition of Houses of Parliament.

67. (1) The Council of States shall consist of two hundred and fifty members of whom—

(a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(1) *The Council of States shall consist of not more than two hundred and fifty members of whom—*

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States :

Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

(b) the remainder shall be representatives of the States.

(1a) *The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.*

[Delete proviso.]

*(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,—

(a) literature, art, science and education;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services.

(2) *The members to be nominated by the President under sub-clause* (a) *of clause* (1) *of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—*

Letters, art, science and social services.

* The Committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for Labour or Commerce and Industry is necessary in view of adult suffrage. The Committee understands that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the Committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the Committee has had to substitute nomination for election and as the Committee thinks that no special representation for Labour or Commerce and Industry is necessary, the Committee is of opinion that it would be enough to provide for fifteen nominated members.

Appendix V

Provisions relating to Federal Parliament contained in Draft Constitution prepared by Drafting Committee

CHAPTER II—Parliament

GENERAL

Constitution of Parliament.

66. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Composition of Houses of Parliament.

67. (1) The Council of States shall consist of two hundred and fifty members of whom—

(a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(1) *The Council of States shall consist of not more than two hundred and fifty members of whom—*

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States :

Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

(b) the remainder shall be representatives of the States.

(1a) *The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.*

[Delete proviso.]

*(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely, —

(a) literature, art, science and education;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services.

(2) *The members to be nominated by the President under sub-clause* (a) *of clause* (1) *of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—*

Letters, art, science and social services.

* The Committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for Labour or Commerce and Industry is necessary in view of adult suffrage. The Committee understands that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the Committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the Committee has had to substitute nomination for election and as the Committee thinks that no special representation for Labour or Commerce and Industry is necessary, the Committee is of opinion that it would be enough to provide for fifteen nominated members.

(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall—

(a) where the Legislature of the State has two Houses, be elected by the elected members of the Lower House;

(b) where the Legislature of the State has only one House, be elected by the elected members of that House; and

(c) where there is no House of the Legislature for the State, be chosen in such manner as Parliament may by law prescribe.

(4) The representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population :

(b) For the purpose of sub-clause (a), the States*** shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall, *save in the case of constituencies having seats reserved for the purposes of article 292 of this Constitution*, be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population :

Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.

(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

(6) The election to the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) Upon the completion of each census the representation of the several States in the Council of States

Provided that nothing in this sub-clause shall apply to constituencies having seats reserved for the purposes of article 292 of this Constitution.

[Delete clause (6).]

and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine.

(9) When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article.

Duration of Houses of Parliament.

68. (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for *five years from the date appointed for its first meeting and no longer, and the expiration of the said period of *five years shall operate as the dissolution of the House :

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* The Committee has inserted "five years" instead of "four years" as the life of the House of the People as it considers that under the Parliamentary system of Government the first year of a minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Sessions Parliament, prorogation and dissolution.

69. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this article, the President may from time to time —

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

Right of President to address and send messages to Houses.

70. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by *Parliament by law* for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he —

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.

Special address by the President at the commencement of each session of Parliament and discussion in Parliament of matters referred to in the address.

71. (1) At the commencement of every session the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

Right of ministers and Attorney-General as respects House.

72. Every minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

The Chairman and Deputy Chairman of the Council of States.

73. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

Vacation and resignation of, and removal from, the office of, Deputy Chairman.

74. A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other persons to perform the duties of the office of, or to act as, Chairman.

75. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the President under article 54 of this Constitution, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Speaker and Deputy Speaker of the House of the People.

76. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

77. A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the House of the People passed by a majority of all the then members of the House :

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Power of the Deputy Speaker or other persons to perform the duties of the office of, or to act as, Speaker.

78. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and the Deputy Speaker.

79. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of Business

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum.

80. (1) Save as provided in this Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(1) Save as *otherwise* provided in this Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, less than one-sixth of the total number of members of the House are present, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until at least one-sixth of the members are present.

Disqualifications of Members

Declaration by members.

81. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

Affirmation or oath by members.

81. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, *an affirmation or oath* according to the form set out for the purpose in the Third Schedule.

Vacation of seats.

82. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(1a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.

of such a State, then at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualifications for membership.

83. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

* (d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; and

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

* The Committee has inserted this sub-clause, following the provisions of section 44(i) of the Commonwealth of Australia Constitution Act.

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that —

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Penalty for sitting and voting before making declaration under article 81 or when not qualified or when disqualified.

84. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 81 of this Constitution, or when he knows that he is not qualified, or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

Privileges and Immunities of Members

Privileges, etc. of members.

85. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

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

(3) In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament as they apply in relation to members of Parliament.

Salaries and allowances of members.

86. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Legislature of the Dominion of India.

Legislative Procedure

Provisions as to introduction and passing of Bills.

87. (1) Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 88 and 89 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 88 of this Constitution, lapse on a dissolution of the House of the People.

Joint sitting of both Houses in certain cases.

88. (1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days.

(3) Where the President has under clause (1) of this article notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which *the House referred to in sub-clause* (c) *of that clause is* prorogued or adjourned for more than four *consecutive* days.

the purposes of this Constitution to have been passed by both Houses :

Provided that at a joint sitting —

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

Special Procedure in respect of Money Bills.

89. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall

within a period of thirty days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

Definition of "Money Bills".

90. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) supply;

(d) the appropriation of the revenues of India;

(e) the declaring of any expenditure to be expenditure charged on the revenues of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the revenues of India or the custody or issue of such money or the audit of the accounts of the Government of India; or

(g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Assent to Bills.

91. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom :

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

Provided that the President may, *as soon as possible* after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly *and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.*

Procedure in Financial Matters

Annual financial statement.

92. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court;

(ii) the pensions payable to or in respect of judges of the Federal Court;

(b) the *salaries* and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(iii) the pensions payable to or in respect of judges of any High Court which exercises or immediately before the commencement of this Constitution exercised jurisdiction within any area included in the States for the time being specified in Parts I and II of the First Schedule;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; and

(f) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

Procedure in Parliament with respect to estimates.

93. (1) So much of the estimates as relates to expenditure charged upon the revenues of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of these estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

Authentication of schedule of authorised expenditure.

94. (1) The President shall authenticate by his signature a schedule specifying —

(a) The grants made by the House of the People under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of India, but not exceeding in any case, the sum shown in the statement previously laid before Parliament.

(2) The schedule so authenticated shall be laid before the House of the People, but shall not be open to discussion or vote in Parliament.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of India shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

95. If in respect of any financial year further expenditure from the revenues of India becomes necessary over and above the expenditure theretofore authorised for that year, the President shall cause to be laid before both the Houses of Parliament a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Excess grants.

***96.** If in any financial year expenditure from the revenues of India has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of articles 93 and 94 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Special provisions as to financial Bills.

97. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

* This article follows the recommendations of the Expert Committee on the Financial provisions of the Constitution.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of procedure.

98. (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People,* or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

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* The Committee is of opinion that the Speaker of the House of the People should preside at a joint sitting of the two Houses of Parliament as the House of the People is the more numerous body.

Language to be used in Parliament.

99. (1) In Parliament business shall be transacted in Hindi or English :

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or the Speaker of the House of the People may whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary in Hindi or English of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

Restrictions on discussion in Parliament.

100. (1) No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided.

(2) In this article the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part.

Provided that the Chairman of the Council of States or *Speaker of the House of the People or person acting as such*, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or *Speaker of the House of the People or person acting as such* may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary in Hindi or English of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

Courts not to inquire into proceedings of Parliament.

101. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

* * * * * * * *

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

***226.** Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter.

226. *(1)* Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect of that matter *while the resolution remains in force.*

(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding three years as may be specified therein :

Provided that the duration of any such resolution may be extended from time to time by a resolution, passed in like manner as the original resolution for a further period not exceeding three years at a time.

* The Committee is of opinion that power should be provided for Parliament to legislate with respect to any matter in the State List when it assumes national importance, and has inserted this article for the purpose.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

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All India Services

282-B (1) Notwithstanding anything in Part IX of this Constitution if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

AUTHOR'S NOTE : Changes suggested by the Drafting Committee have been indicated in the Draft articles by underlining or side-lining the relevant portions. The amendments recommended for adoption by the Drafting Committee after examining the comments and criticisms received from the members of the Constituent Assembly, members of the public, Provincial Governments, Special Committee, which consisted most of the members of the Union Constitution Committee, the Provincial Constitution Committee and the Union Powers Committee, and others in the Draft Constitution, are shown in the second column opposite the clauses or the articles which they seek to amend. Where words have been substituted or new words inserted, they are indicated in *italics*. Where words have been omitted they are indicated by***

Appendix VI

Text of Debates held in Constituent Assembly on Articles relating to 'Council of States' contained in Draft Constitution prepared by Drafting Committee

[3rd Jan. 1949]

DRAFT CONSTITUTION

Article 66

Mr. Vice-President (Dr. H.C. Mookherjee) : Before we begin the work of the House, I am sure that honourable Members will agree with me if I ask them to stand for a minute in silence to show our gratitude to the Source of all life, and the Source of all energy whom we all worship in our different ways, that at last there has been this cease-fire arrangement at Kashmir.

(*The Assembly stood for a minute in silence.*)

Thank you all.

We shall begin our work today by taking up article 66 which has to be passed before we can pass on to article 67.

The motion before the House is :

"That article 66 form part of the Constitution."

Amendment No. 1353 to this article, standing in the name of Mr. Naziruddin Ahmad is disallowed as it is not substantive.

Nos. 1354, 1355 and 1358 are of similar import and No. 1355 may be moved. It stands in the name of Shri Brajeshwar Prasad.

(*Amendments Nos. 1354 and 1355 were not moved.*)

No. 1358 may be moved, standing in the names of Shri Lokanath Misra and Shri Mohan Lal Gautam.

Shri Lokanath Misra (Orissa : General) : Sir, I beg to move :

"That in article 66 the words 'and two Houses to be known respectively as the Council of States' be deleted."

If this amendment is accepted, the article would read like this :—

"There shall be a Parliament for the Union which shall consist of the President and the House of the People."

The effect will be that there will be no second Chamber to be called the Council of States.

Sir, I beg to submit that I am not against second Chambers on principle. But in the present temper of our people, and in view of the manner of the constitution of the second Chamber as has been envisaged in the Draft Constitution, I do not think there is any real need for the second Chamber, nor do I think that it will serve any useful purpose. Sir, so far as I have studied the Constitution and the constitutional precedents, it is now admitted almost on all hands that second Chambers are out of date. The only argument that is generally advanced in favour of such a chamber is that it will have a sobering effect on the decisions of the Lower House which is more representative of the people and that the people are now restive. I therefore submit that unless the manner of the Constitution of this second Chamber is changed and we are in a position to accept something which will be purely Indian based on Indian culture of deep, all-pervasive view and on Indian sentiment and temperament based and nurtured on our traditions which alone can have a sobering influence, the creation of an Upper House by itself will have no influence on the House of the People. But this is not to be and therefore I do not think there is a real need for the second Chamber. Its creation will only result in so much waste of public money and so much waste of time. I therefore submit that if the House is not prepared to change the Constitution of the second Chamber as proposed in the Draft Constitution, it will be much better for us to do away with the second Chamber altogether. I am glad that my own province of Orissa has already decided against a second Chamber and we are going to have only one Chamber. I do not think that without a second Chamber the country will be any the poorer for it, as now we stand.

Mr. Vice-President : Amendments Nos. 1356 and 1359 are of similar import. Begum Aizaz Rasul may move amendment No. 1356.

Begum Aizaz Rasul (United Provinces : Muslim) : Sir, I beg to move :

"That in article 66, for the words 'There shall be a Parliament for the Union which', the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The article will then read :

"The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People."

Sir, my object in moving this amendment is that the word 'Parliament' may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words 'Indian National Congress' are substituted for the word 'Parliament', the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically for otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation's urge to

[Begum Aizaz Rasul]

freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word 'Congress' is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words 'National Congress' should be substituted for the word 'Parliament'. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words, I move my amendment.

Mr. Vice-President : Now, in List I of the VI Week, amendment No. 1 standing in the name of Shri R.K. Sidhwa seeks to amend the amendment just moved. Mr. Sidhwa may move it. I see that Mr. Sidhwa is not in the House. The amendment is therefore not moved.

Prof. Shah's amendment comes next. Before I ask Prof. Shah to move, I would like to know from Mr. Lari whether he wants amendment No.1359 to be put to vote. I see that Mr. Lari is not in the House. Prof. Shah may now move amendment No. 1357.

Prof. K.T. Shah (Bihar : General) : Mr. Vice-President, I beg to move :

"That in article 66, the words 'The President and' be deleted."

The amended article would then read :

"There shall be a Parliament for the Union which shall consist of two Houses to be known respectively as the Council of States and the House of the People."

Sir, in presenting this amendment to the House I want to bring to its notice the fact that the clause as it stands is merely an imitation, and, in my opinion, an unnecessary imitation, of the British system where the King still forms an integral part of the entire Governmental machinery, the entire Constitution, and particularly of the Parliament. All the laws are made by "The King's Most Excellent Majesty, with the advice and consent of the two Houses." Justice is administered in the name of the King. The Post Office functions in the name of His Majesty. The army, the navy, all defence forces, all civil services are in the service of His Majesty.

That, however, is a state of affairs, which is not quite suited to, and should not be imitated in, this, country's Constitution. The King-in-Parliament is not only a traditional institution; but has some solid constitutional foundation to rest on, such as, for instance, the large margin of Prerogative powers which the King exercises. No doubt, he exercises those powers on the advice of His Ministers, but they still reside in the King only.

In the case of the President in India, on the other hand, it is I think, a very misleading analogy to make him the Indian counterpart of the King in England. The comparison is, therefore, very misleading to make the President an integral part of the Legislative organ of the Indian Union.

The President would not only not have the Prerogative authority in all respects that the King has; it is in my view, the basic idea of this Constitution, unless

I have grievously misunderstood it, that the President would be only a figurehead, who will act everywhere and every time only with the advice of his Ministers and with the advice of his Ministers alone. By himself he will be nothing but the ornamental head of the State.

If this conception of the President's place in our Constitution is correct, and I see nothing in the Constitution to contravene that view, then I submit that the inclusion of the President in article 66, making him an integral part of the parliamentary machinery, is utterly out of place; and as such it should be avoided.

This Constitution, Sir, is not like the British Constitution growing up from age to age, from generation to generation, from century to century. It is a Constitution which has been made by the authority of the King making one concession after another, surrendering one prerogative after another, foregoing one power after another or consenting to use it only on the advice of his Ministers. It is by the authority, and in the name of the people of India that the Parliament of India will function; and, as such, the President, even though the people's chosen representative, need not be—and should not be,—associated with the legislature as an integral part thereof.

I think a blind imitation of this kind of the British convention or British constitutional practice, carried to this extent, will only land us in difficulty. For the theory on which the British Constitution is formed is utterly different from that on which ours is based. The British Constitution is very largely based on convention and tradition. Large portions of these conventions are still unwritten and uncertified, leaving an indefinite margin for adoption to circumstances. And those which have been written and codified are only the various legislative enactments of Parliament, which, however, themselves are founded only on accepted traditions, conventions or precedents.

In our case, on the other hand, we are writing this Constitution for the first time by our own efforts. As such for us to associate the President with our Parliament, in the same manner as the King is associated with the British Parliament is, I submit, utterly out of place.

I suggest, therefore, that these words should be deleted. Lest anybody should feel that this, again, arises out of my old idea and amendment about the separation of powers between the chief executive, the chief legislature, and the chief judiciary, let me assure you that that is no longer my submission now; and that that idea in no way affects this amendent now before the House. "The President" can very well be removed from this clause, without in any way infringing upon the doctrine of combined powers or collective responsibility on which this Draft Constitution is based. Accordingly I trust that this amendment will commend itself to the House.

(*Amendments Nos. 1360, 1361, 1362, 1363 and 1364 were not moved.*)

Mr. Vice-President : The article is now open for general discussion.

Shri M. Ananthasayanam Ayyangar (Madras : General) : I am sorry, Sir, that I have to oppose all the amendments that have been moved. The amendments relate to three aspects. Number one and the most important of

[Shri M. Ananthasayanam Ayyangar]

them seeks to restrict the scope of this article to the House of the People alone. That is, the mover of this amendment does not want an Upper House. Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reason, we must find opportunity for various people to take part in politics. Therefore it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the Lower House may be checkmated by the go-slow movement of the Upper House. The third reason is that the Upper House is a permanent body, while the Lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary that in the interests of the progress of this country we should have a second House.

Then, Sir, so far as the name is concerned there has been a suggestion that has been moved by my honourable friend, Begum Aizaz Rasul and there is a similar amendment also standing in the name of Mr. Lari. Both of them want the name of the Parliament to be changed into the Indian National Congress. I appreciate their motives. It is the Congress which fought for the freedom of this country and therefore these friends who sympathise with the Congress, though they are not participants in this organisation, recommend that the name of this organisation should be associated with the name of the Parliament of the Union. However, laudable this may be, if it is accepted, it would lead to the accusation that a one-party government has been established in this country. The very same friends might say, "Look at what is happening. The Congress, the fighting organisation, has established a one-party rule in the country. It has even lent its name to the Parliament of the Union." If this suggestion is accepted, it may even prove to be the death-knell of the Congress, for it would no longer be able to function as a political party, to fight its way against the various reactionary political parties which are still raising their heads mostly based on community and religion. Therefore, Sir, this is not at all acceptable.

Then, as regards the amendment moved by my honourable friend, Prof. K.T. Shah, that the word 'President' should be removed and ought not to be associated in any shape or form with the administration of the country, I would ask him to refer to article 42 which has already been passed and where it is laid down that the executive power of the Union shall be vested in the President of the Republic to be exercised by him in accordance with the Constitution and the law. The President has been made a very important functionary in the whole scheme of things, and in the Constitution he is the chief executive authority. Executive power is co-extensive with legislative power. Therefore it is not mere copying of the United Kingdom practice, but independently also we have to come to the same conclusion. Therefore it is necessary that the word 'President' should be retained. Otherwise, there will be a lacuna.

I submit, Sir, for the consideration of the House that the article as it stands may be accepted and that all the amendments should be rejected.

The Honourable Dr. B.R. Ambedkar (Bombay : General) : I do not accept any of the amendments, nor do I think that any reply is called for.

Mr. Vice-President : I shall now put the amendments one by one to vote. Amendment No. 1358. The question is :

"That in article 66 the words 'and two Houses to be known respectively as the Council of States' be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1356. The question is :

"That in article 66 for the words 'There shall be a Parliament for the Union which' the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1357. The question is :

"That in article 66, the words 'The President and' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That article 66 stand part of the Constitution."

The motion was adopted.

Article 66 was added to the Constitution.

Article 67

Mr. Vice-President : We next come to article 67. The motion is :

"That article 67 form part of the Constitution."

Shri L. Krishnaswami Bharathi (Madras : General) : Mr. Vice-President, I have an humble suggestion to make in the matter of procedure when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of States and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts : one relating to the composition of the Council of States—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People, clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straightway to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when honourable Members deal with the Council of States they may confine their discussion on it and later on they may concentrate their discussion on the part of the article relating to the House of the People.

Mr. Vice-President : Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi?

The Honourable Dr. B. R. Ambedkar : I am quite agreeable to the suggestion for the purpose of facilitating discussion.

Mr. Vice-President : Then we can take up the amendments in their particular order.

The first amendment is No. 1365. It is negative and is therefore disallowed.

Amendments Nos. 1366, 1367, 1379 and 1408 may be considered together.

Amendment No. 1366 may now be moved. It is in the name of Shri Mohan Lal Gautam.

Since he is not in the House, we pass over it.

The next amendment is No. 1367, in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Since we have passed over amendment No. 1366, I do not want to move my amendment. It does not fit in now.

Shri M. Ananthasayanam Ayyangar : The question does not arise !

Mr. Vice-President : The next amendment is in the name of Prof. K.T. Shah—No. 1379.

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

"That clause (2) of article 67 be deleted."

Clause (2) reads as follows :

"The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,—

(a) literature, art, science and education;
(b) agriculture, fisheries and allied subjects;
(c) engineering and architecture;
(d) public administration and social services."

As the clause stands, Sir, it offends in my eye for two reasons. First of all, the element of nomination introduced here, however small, militates against the symmetry of the Constitution of our Legislative bodies. And it fundamentally mars the principle of election. I hold that with regard to both these chambers, in the way, we are making this Constitution, the Legislative organ should be wholly elected and so the element of nomination should be completely excluded, however small it may be. Its being brought in, in this way, only affects, as I have said, the internal symmetry of the Legislative bodies. It must, therefore, be avoided and excluded.

The second reason why I should not like this clause as it stands to be there in the Constitution is : that the various interests or elements selected by nomination are arranged in a somewhat mixed manner. It is not quite consistent intrinsically, logical or scientific.

For instance, "art" is mentioned separately and "science" is distinct,—which it may very well be : "Engineering" and "Architecture" are mentioned separately in another sub-clause. Now it is generally agreed that "architecture" is one of the Fine Arts; and if that is so, I, for one, fail to see the reason of its separate mention, after you have mentioned the generic term "art".

Moreover, "science, literature and education"—are mentioned each separately by name. These are, once more not logically divided one from another. There, again, I really fail to understand what should be the purpose of this separate enumeration. For, consider this. If by "education" it is intended to include both

"Art and Science", through, let us say, such institutions as the Universities, I do not see why they should not be mentioned by their names as Universities, and why they should be specifically stated, each apart from the other as Arts, Sciences, or Literature.

Literature again is usually included, at least in the University terminology, in the Fine Arts or in the Faculty of Arts. Accordingly to mention Literature, Science and Arts separately seems to be utterly incongruous, illogical and overlapping...

Shri L. Krishnaswami Bharathi : May I submit that there is an amendment to be moved by Dr. Ambedkar? It is No. 1380. It deletes all these portions, and includes only Arts and Sciences with Social Service. If the honourable Member bears in mind that it is likely to be accepted, the discussion need not be concentrated on this matter. He may be pleased to see amendment No. 1380, wherein Dr. Ambedkar is to move the deletion of the whole clause and substitute only the four categories. So I may request you to ask the honourable Member to cut short the discussion.

Mr. Vice-President : Have you been able to understand the honourable Member?

Prof. K.T. Shah : I have quite understood the honourable Member's suggestion, but have certain points to advance, which I may, if I am allowed to, though I do not insist on it. I have seen Dr. Ambedkar's amendment; and I not only think that it is probably going to be accepted, but I know that it is certain to be accepted. Still I feel that there are points of view which this House might be freely allowed to hear, without such impatient attempts to smoother discussion. But if you do not wish it, I will not press my view.

Mr. Vice-President : Please go on.

Prof. K.T. Shah : Thank you, Sir. Take "Engineering". It is much more "Technology" or what used to be called in the United States Technocracy, which might be mentioned instead of Engineering. It would include much more than "Engineering". As it stands, it creates a needless anomaly.

Take yet another illustration, Social Services, which do not include public utilities presumably : and then again "Public Administration". I for one do not understand what is meant by "Public Administration", in this connection of composing a legislative body. Is it intended to bring in the Civil Service? By common consent it is thought best to keep the Civil Service out of politics. Is it intended by "Public Administration" to bring in heads of departments, or their nominees? The old Indian Constitution gave a place to secretaries; but I think there is no room for them in the Legislature now. Or does "Social Service" mean something different from "Education", because Education has been separately mentioned already? One would have thought that social service, among the most important of which is Education, would be represented through all the categories in the ordinary system of election, and would not need a special mention by itself. But if you must make special mention of it, then I do not see why you single out only Education. You use a general word like "Social Service", and yet include only that, presumably because you mention it separately, and leave out "Health" which may also be mentioned separately.

[Prof. K.T. Shah]

Accordingly it seems to me that this classification is not quite logical. It also offends against the principle, at least in my eyes, of the symmetry of the legislative body, by including in it the element of nomination. For these two main reasons I think the whole clause should be deleted, and substituted by something different which Dr. Ambedkar's amendment no doubt provides for to some extent; but does not provide for in the manner that I would have wished it to. As I would not have any right to speak on this amendment again, or take part in the general debate, I think it is just as well that the House should be put in possession of my point of view on the matter.

Mr. Vice-President : You may also move amendment No. 1408.

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

"That clause (4) of article 67 be deleted."

Clause (4) of article 67 reads "the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe."

Here, again, I take my ground on the principle of equality amongst the constituent States. Whatever may be the variety or the differences amongst themselves, in regard to area, population, resources, or whatever other criterion you select for judging of the importance of the several States, so far, at any rate, as you accept the principle of a Federal Union, you ought to make the States equal *inter se*.

On that basis I do not quite subscribe to the view propounded in clause (4) of the article, whereby it is left to Parliament to distribute the seats amongst the States, and not provided for in the Constitution itself. I have tabled another amendment which would suggest that the States should be represented equally in the Council of States, that is by the same number of delegates that any other State may have. On that ground also this clause seems to be superfluous, and I move that it be deleted.

(*Amendments Nos. 1368 and 1372 were not moved.*)

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

"That for clause (1) of article 67, the following be substituted :

'(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States.'"

The only important thing is that the number fifteen has been brought down to twelve.

Mr. Vice-President : There are six amendments to this amendment which I am calling out one by one. The first is amendment No. 2 on List No. 1 (Sixth Week) in the name of Mr. L.N. Misra.

Shri Lokanath Misra : Sir, I beg to move :

"That in amendment No. 1369 of the List of Amendments, in the proposed clause (1) of article 67, for the word 'two' the word 'one' be substituted."

It comes to this that the Council of States shall consist of not more than one hundred and fifty Members. In moving this amendment reducing the number to one hundred and fifty I have only one intention and it is this, that from our actual experience we find that such a huge number of people either in the House of the People or in the Council of States does not serve any very useful purpose. And we know that there is real difficulty in finding out so many Members who will be qualified and quite interested in such law making. We see from the proceedings of this very House which consists of more than three hundred Members that so few of us take real part in and are really useful to Constitution making.

Mr. Vice-President : That is a reflection I cannot allow.

Shri Lokanath Misra : I am sorry, Sir. It is no reflection. I therefore submit that instead of having two hundred and fifty Members it will serve the purpose of the second Chamber if we have one hundred and fifty Members. In that case there will be a saving of money and time. I therefore submit again that the number two hundred and fifty may be reduced to one hundred and fifty.

Mr. Vice-President : Amendment No. 3 of List 1, standing in the name of Mr. L.N. Sahu may be moved.

Shri Lakshminarayan Sahu (Orissa : General) : (Began to speak in Hindi).

Mr. Vice-President : I wish only to make a request to the honourable Member. Many of our Members coming from South India do not know Hindi. Probably if he wants to convince them it would be better if he speaks in English. But he is at perfect liberty to speak in any language he wants.

Shri Lakshminarayan Sahu : No, Sir. I will speak in Hindi.

*[Mr. Vice-President, I rise to speak a few words in support of the amendment which stands in my name and is now before the House. It is :

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

My reason for moving it is that we do not favour the system of nomination. The truth is that under no condition and in no place do we approve of it. Therefore, when we are framing our Constitution afresh we must consider very seriously whether we should do away with this system or not. My submission is that nomination in whatever place or form it may be—and I may add that indirect election is also a form of nomination—should be abolished.

I submit that we should consider with all earnestness the grounds, if any, which justify the original provision for fifteen nominated members or as amended now, for twelve nominated members. We should think why this provision for nominated members is made. Is it because they are so highly talented as to make us desire their presence as members in the said House? If that be so we can get such people from Universities—through election. I fail to understand what prevents this being done. My submission is that we should make some provision for the election of such talented persons who fail to get elected to the Legislature from the general constituencies. Unless we keep this in view, the

* [ ] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

constitution that we are framing would not be to the liking of the majority. If we authorise the President to nominate these twelve members, he will always be accused of favouritism by quite a good number of people. People will complain that instead of nominating the right and able persons the President has nominated his own favourites. I am afraid that the danger of the President being subjected to unfair criticism would always be there. It is evident that it is the most undesirable thing that the Leader of our Nation, the Supreme Head of our Republic should thus be an object of unfair criticism. I would, therefore, submit Sir, that the provision for nomination be deleted and in its place Functional Representation be provided. It is said by some people that Functional Representation has been tried and found seriously defective in Ireland. But I submit, Sir, that it is bound to succeed if it is tried along with Panel System. I do not think that I need say much against the system of nominations, but in this connection I may draw your attention to the fact that till recently, we members of the Assemblies and Councils in India used to go to one person—Mahatma Gandhi—for advice and used to manage our affairs in the light of his advice. Even if there be any person who is as really great as Mahatma Gandhi was, and for bringing in whom this system of nomination is being provided for and who is not willing to come in through elections, well we can go to him and have his advice. If there be any person of great learning or scholarship who may be unwilling to contest election, well, for myself I can say that I would feel no hesitation in going to him for seeking his advice. We used to go to Mahatma Gandhi for his advice. Similarly, if any able and competent person does not seek election, we may go to him and have his advice. We may constitute a board of such meritorious and learned persons to aid and advise us. The system of advisory board does exist in Russia. We may constitute an advisory board for every minister. Instead of doing what I have already suggested, if we authorise the President to nominate twelve persons, bitter allegations of favouritism and nepotism will be levelled against him and that would not be desirable. Therefore, I propose, Sir, that the provision of nomination should be totally deleted. With these words I resume my seat.]

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I do not wish to move Amendment No. 5 of List I (Sixth week), because it is merely verbal. I, therefore, confine myself to Amendment No. 4.

Sir, I beg to move :

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent of the total number of members of the House' be substituted."

Shri S.V. Krishnamurthi Rao (Mysore) : I suggest that this may be ruled out of order as the number originally fixed is 15 and the total number is 250. Six per cent will be again 15.

Mr. Naziruddin Ahmad : It would not be fifteen. I submit, Sir, that the original clause of article 67 was to the effect that the Council of States shall consist of 250 members. By the amendment moved by Dr. Ambedkar it now stands as *not more than* 250 members.

Mr. Vice-President : He says he seeks to fix the maximum; therefore, it is slightly different. You need not labour the point. He may go on.

Mr. Naziruddin Ahmad : In the new clause you make the House one of not more than 250 members. Therefore, by Dr. Ambedkar's amendment, the number of members in the Council of States would fluctuate. It may be less; it will never exceed 250. The number of nominated members should bear a proportion to the actual number of members in the House. This number should also fluctuate in proportion. I have, therefore, suggested 6 per cent which would be 15 only if the maximum number of members in the House is taken. Otherwise, if the number of members is less, the number of nominated members would also be less. They should, I submit, bear some relation to each other. In fact if the number be reduced to twelve, an arbitrary figure, that would bear no relation to the actual number. The actual number in the House may be considerably less. So, I think, Sir, a proportion of 6 per cent of the total membership of the House would be more convenient and more logical.

[*Amendment No. 6 in List I (Sixth Week) was not moved.*]

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. Vice-President, Sir, it has just been suggested to me that it would be better if instead of moving my amendment now, I move it as an amendment to Amendment No. 1378, which is to be moved by Dr. Ambedkar. It is all the same to me, Sir, when I move this amendment. If you agree to the view that I have expressed, I can move this amendment a little later.

Mr. Vice-President : Yes; I agree.

I have admitted a short notice amendment standing in the name of Sardar Hukam Singh. It may be moved now.

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

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided', the words 'from amongst the categories of persons illustrated' be substituted."

Sir, it might be thought that this is a very small affair; but I have to submit and I request that some attention might be paid to this, because I think there is some force in my amendment.

Amendment No. 1369 says that twelve members shall be nominated by the President in the manner provided in clause (2) of this article. According to this amendment, we should expect that some manner, which means method or mode of doing things, will be laid down in clause (2) of this article. But, when we look to this clause, there is no method or mode provided; no manner is provided there. What we find is that the members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in such matters as the following. Therefore, no manner or method is provided by this clause (2). Rather, there is a class of persons or categories of citizens and these categories or classes are illustrative, they are not exhaustive. They are described here as the categories from amongst whom the President shall nominate twelve members that are proposed to be selected under clause (1). My objection is that instead of putting in these words that these twelve shall be nominated by the President in the manner, it ought to be, from amongst the categories of persons illustrated in clause (2). This is the only amendment and I request that some attention might be paid to this.

(*Amendment No. 1370 was not moved.*)

Mr. Vice-President : There are three amendments which may be considered together, amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

(*Amendments Nos. 1371, 1373 and 1374 were not moved.*)

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved. Amendment No. 1376 is identical with amendment No. 1375. So, I am not going to put it to vote. Amendment No. 1375, Dr. Ambedkar.

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

"That the proviso to clause (1) of article 67 be deleted."

With your permission, Sir, may I also move amendment No. 1378? It is in substitution of this proviso.

Mr. Vice-President : Yes.

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

"That the following new clause be added after clause (1) of article 67 :

'(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.'"

Mr. Vice-President : The amendment of Pandit Kunzru may now be taken up. It is amendment No. 7.

Pandit Hirday Nath Kunzru : Mr. Vice-President, Sir, I beg to move :

"That to clause (1a) of article 67 as now moved, the following words be added :

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States'."

Sir, the proviso to clause (1) of article 67, the deletion of which has been moved by Dr. Ambedkar, runs as follows :

"Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder."

that is, forty per cent of the elected members of the Council of States. It has now been proposed by Dr. Ambedkar that as many seats in the Council of State should be allocated to the States specified in Part III of the First Schedule as may be laid down in Schedule III-B. We have not got this Schedule before us. We do not therefore know what proportion the representatives of the States mentioned in Part III of the First Schedule will bear to the representatives of the States included in Part I of the First Schedule.

Sir, during the Round Table Conference, the Rulers of the States insisted that they should be given greater representation both in the Assembly and in the Council of State than their population warranted. In other words, they asked for weightage in both the Houses of the Central legislature and it was therefore laid down in the Government of India Act, 1935, that the representatives of the States shall be forty per cent of the total representatives in the Council of State whether elected or nominated and that in the Assembly, the number of representatives of the States should be one-third of the total number of elected representatives.

The Union Powers Committee recommended that the proportion of the representatives of the States mentioned in Part III of the First Schedule should be forty per cent of the total number of elected representatives in the Council of States. In other words, in this respect it approved of the provision contained in the Government of India Act, 1935, but it departed from that Act in regard to the representation of the States in the Legislative Assembly. The Draft Constitution follows the recommendation of the Union Powers Committee which were accepted by the House last year. Dr. Ambedkar has now moved that no percentage should be fixed for the representatives of the States specified in Part III of the First Schedule but that the seats allocated to the States should be as laid down in a schedule to be attached to the Draft Constitution. Now, Sir, when the Government of India Act, 1935, was passed by the British Parliament, the situation was very different from what it is now. The States were then not prepared to join the Federation except at a price. Apart from this, it suited the British Government to give weightage to the States. In the new order, however, the position of the States formerly known as the Indian States, has completely changed. Their representatives in this House themselves want that their position should be assimilated to that of the provinces. There is no reason therefore why the weightage given to the States in the Government of India Act, 1935, should be continued any longer.

Sir, I have already said that the Draft Constitution, so far as the representation of the States in the House of the People goes, has not adopted the provision relating to this matter in the Government of India Act, 1935. If honourable Members will turn to clause (5) of article 67, they will find that the proviso to sub-clause (b) of this clause lays down that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States. The Draft Constitution insists that the States shall be represented in the House of the People in accordance with their population. What I want is that in the Council of States the representation of the States specified in Part III of the First Schedule should also be fixed in accordance with the same principle. Sir, I may be told that as the Upper Chamber will be known as the Council of States, it means that the number of the representatives of the States specified in Parts III and Parts I and II cannot be fixed in accordance with their total population. If such an objection were put forward, I should regard it as purely superficial. Had I said that in the proviso to sub-clause (b) of clause (1) of article 67 for the word 40, the figure 25 or 30 should be substituted, no such objection could have been brought forward. I seek however to achieve the same purpose in a different way. My amendment cannot really therefore be objected to, on the ground that it would go against the principle that seems to underlie the composition of the Council of States.

Again, Sir, if honourable Members turn to clause (8) of article 67, they will find that it has been laid down there that "upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in

[Pandit Hirday Nath Kunzru]

such manner and with effect from such date as Parliament may, by law, determine." This shows that population is to be taken into account in determining representation not merely in the House of the People but also in the Council of States. My amendment is thus in complete accord with the provisions of Clause (8).

Sir, I have moved this amendment because notwithstanding the new proposal made by Dr. Ambedkar it is not clear that the representatives allotted to the States specified in Part III of the First Schedule will not be 40 per cent of the total number of elected members of the Council of States or in excess of what their population entitles them to. It is true that it is not going to be laid down in so many words in the Constitution that the representatives of the States in Part III of the First Schedule should bear a fixed proportion to the total number of elected members in the Council of States but the allocation of the seats may be such as to bring this about in practice. I want to prevent this and to ensure that as between the States specified in Part III and Parts I and II of the First Schedule, seats should be divided in accordance with their population. We have already done away not merely with separate representation in this Draft Constitution but also with weightage. If we have done away with weightage in the case of the various communities, there is no reason why we should retain it in connection with the representation of the States mentioned in Part III of the First Schedule.

For these reasons, Sir, I hope that my amendment will commend itself to my honourable Friend Dr. Ambedkar and therefore to the whole House.

Mr. Vice-President : Amendment No. 9 in List I, standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move my amendment which is :

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1a) of article 67, the following be substituted :

'(1a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles :

(*i*) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States,

(*ii*) one representative for every two million population after the first seven millions.' "

Sir, I had, along with this amendment, given a chart showing the number of seats to be given to each of the States, and I do not know why it is missing here. In fact, when we were discussing the Report of the Constitution Committee, we had laid down that the maximum number of representatives from any province shall be twenty, and we laid down the numbers for each Province. The system then envisaged was not scientific or logical. I think that the numbers should be laid down on the basis of population up to a limit and that is why I have laid down the limit of one representative for every million up to seven millions, and after that, one representative for every two millions of the population. In this way, we can see to it that the bigger States have lesser numbers of representatives and the smaller States shall get a little weightage which we want to give them. That will be more scientific. Otherwise, it may be that the U.P. will have twenty seats,

and Bihar also twenty. If the Chart I referred to, and had been here, it would have made the position clearer, by showing what is the number of seats I would allot for each State. Sir, I submit the method I suggest is the proper method of distributing the seats and I request that it may be accepted by the House.

Mr. Vice-President : Amendment No. 10 of List I, standing in the name of Shri Phool Singh.

(*Amendment No. 10 of List I was not moved.*)

Amendment No. 11 of List I, standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Sir, I beg to move :

"That in amendment No. 1378 of the List of amendments, in the proposed clause (1a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

Sir, the idea I have in mind, when I move this amendment to the amendment moved by Dr. Ambedkar is this. Since the Council of States is going to represent the States, it is but fair to the States units that these units should be dealt with as units and every unit is equally represented. Otherwise, there is no sense in saying that the States shall be represented in the Council of States. In fact, in the United States of America and in other countries where there are second chambers, representing the interests of the States, the representation given to these units is always the same. We also know that the elected members of our Council of States will be returned by the Lower Houses of the State Assemblies, and if we say that the election will be in some other form, either in proportion to their population or on some other basis and yet people with the same qualification, the Council of States will serve no real purpose, except a purpose of unnecessary duplication of the House of the People. In fact, the House of the People itself will be representative of the people of the States themselves because the States will be sending in either representatives to the House of the People on almost the same basis. Therefore, if we do not accept this principle, that of taking every State as an equal unit, and sending in their representatives to safeguard or protect their special interests, there is no sense or meaning in having a second chamber to represent the States. Though we have Schedule III-B, the position, I feel, should be made clearer that the Council of States will be representative of the State interests, and therefore the States, as States, and as autonomous units, must be equally represented. On this ground, I suggest that the allocation of seats to the representatives of the States in the Council of States should be on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than three. Why I fix upon the figure three is this. I feel that if three members come from every State, that will be sufficient to safeguard the special interests of the States, and their problems. After all, this is to be a sobering House, a reviewing House, a House standing for equality and the members will be exercising their right to be heard on the merits of what they say, for their sobriety and knowledge of special problems; quantity, that is, their number, is not of much moment, and I think three is just sufficient for the purpose.

Mr. Vice-President : Amendment No. 12 in List I, standing in the name of Shri Lakshminarayan Sahu.

Shri Lakshminarayan Sahu : *[Mr. Vice-President, my amendment runs thus :

"That in amendment No. 1378 of the List of Amendments after the proposed clause (1a) of article 67, the following new clause (1b) be inserted :

'(1b) Steps should be taken to see that, as far as possible, men from different units are represented.'"

The reason why I move this amendment is that in view of my previous proposal to delete clause (1a) of article 67 it is necessary that a proviso be made that every member of the Council of States should come there only as a representative of some state. It is because of this that by this amendment I have sought to include a proviso so that representatives from each unit may be able to get into the Council of States. No mention has been made there of the number of representatives from each province and each unit and therefore, we do not have any idea as to the composition of the Council of States, I, therefore, entirely endorse the amendment moved by Pandit Hirday Nath Kunzru. The amendment moved by Shri Shibban Lal Saksena is, as I understand it, also intended to secure representatives in the Council of States for every State. But I find that there are three categories of States. It would be better if we could put all of them in a uniform pattern. It is quite possible that the small States which are neglected now-a-days and are unrepresented may later on desire to have representation in the Council of States. But there are many such small States as will have no opportunity of securing any seat in the Council of States in the ordinary course of things. It is for this reason that I am moving this amendment. I need not add anything further.]

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

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1) :

'(1a) Parliament may by law establish a consultative Council for Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

Explanation.—The number given in the brackets after each group is the total number of representatives from each section.

Members of this Council shall have, individually or collectively no administrative or executive duties, functions or responsibilities. Every member of this Council shall be paid such salaries, emoluments or allowances as Parliament may from time to time provide.'"

Sir, this is an innovation, not borrowed, I can assure the honourable Chairman of the Drafting Committee, from any of the present Constitutions. Something similar to this was to be found in the now defunct Weimar Constitution of Germany; but even that precedent has been radically modified.

The suggestion here is threefold : It is an advisory Council, consisting of certain special interests elected by organisations in those interests, like agriculture, forestry, mining, engineering, trade, industry, social services and so on.

* [ ] Translation of Hindustani speech.

Dr. Jivraj N. Mehta (Baroda) : May I know why Members of the Medical profession have been left out of the amendment?

Prof. K.T. Shah : I would be very willing to accept an amendment to that effect provided you choose to move it. It is an oversight on my part, for which I personally apologise to you. My amendment, however, does not mention either the learned profession of law or the members of the Clerical Order. If the House desires to rectify the omission I have no objection. But I would like to make it clear that it is not so much any profession that is sought to be represented, as the various interests, or the various items in which the country as a whole is interested, and not the exclusive interest, in an economic sense, of those bodies.

Sir, this will be an advisory council which will have no executive or administrative functions according to the amendment I have tabled. It would advise in all matters on legislative proposals that may be coming up before Parliament, or which Parliament may direct them to scrutinise.

Sir, legislation is now-a-days becoming so extremely complex, so varied, and so numerous,—if I may speak individually or severally of the Acts passed by Legislatures now-a-days, that an average member of Parliament would find it extremely difficult to make up his mind, or even to understand the special provisions couched in technical language that grow up or that have to be sanctioned by Parliament.

It is becoming more and more a fine art, not merely in drafting the legislative proposals, which by itself is an extremely complicated task, but also in laying out the various items and satisfying the various interests that have to be provided for. It is even now a convention generally established and commonly followed, whereby the various interests not directly represented in Parliament can put forward their case before the Departments and make their own alternative proposal. Whether it is Insurance Legislation or Labour Legislation or Banking, or Shipping, or Trade marks legislation, those concerned see to it that their case is placed before the authorities. The Minister in charge of such legislation generally hears them before the final draft is made. If the Minister concerned does not so consult the interests concerned, then the Select Committee on the Bill sometimes hears representatives or representations from the interests concerned, before the legislation is passed by Parliament.

On this basis, I think it would be of the utmost benefit to have this consultation, not only to the interests concerned, but also to the proper co-ordination of the particular pieces of legislation with the rest of the social economic framework under which the country is to live. It does happen that, when individual items of legislation come up, only those concerned or interested specially, directly or personally, take any intelligent interest in the various clauses as well as in the general principle underlying; while the rest of the House,—by far the large majority,—remains relatively indifferent. Whether by the guidance of the Party organization, or by personal loyalties, votes are cast not so much by the provisions and their implications understood properly, but by influences of the kind I have just mentioned.

It is, therefore, not in the interests of proper legislation that we should have a body of laymen—and popular representatives are bound to be laymen only in

[Prof. K. T. Shah]

the majority of cases in law-making that come up before Parliament—who should be passing laws, without any advice or guidance from recognised experts upon the complicated pieces of legislation which almost every year come before Parliament. They should have a non-interested, or disinterested, and impartial body of advisers who are competent to advise by their study, training and experience in all such matters, who would have no executive or administrative function, who would not be law-makers themselves, and who would be sufficiently respected outside to influence the decisions in the best interests of the country. Sir, the practice is growing in many countries whereby Parliament passes organic laws, of great social importance, but allows more and more powers to departments to make bye-laws, or rules under such laws, which enables the bureaucracy—I am not using the term in any objectionable sense, call it the permanent services,—to make elaborate codes under these laws. These codes are not enacted by Parliament. These codes are, no doubt, sometimes laid on the table of the House, in the presumption that members, if they have any objections to the rules, will point them out. But, as a matter of fact, these codes are scarcely ever scrutinised by members when once they are enacted under the authority of the law by the departments concerned and so they become laws by fiat of the bureaucracy without any proper understanding by members of Parliament.

This, Sir, is a practice which has led an eminent jurist, Lord Hewell, Chief Justice of the King's Bench Division in England, to describe it as The New Despotism. It really amounts to arming the civil services, arming the permanent officials, with a vast margin of power and discretion that practically amounts to a denial of civil liberties or at any rate the ordinary freedoms of the citizen.

This, Sir, I submit, is not in the interests of the free institutions which we are planning for. I, therefore, suggest that it would be in the interests of the freedom of the people, and also the interests of sound legislation, that we should have a body of disinterested advisers chosen with an eye only to their experience, training and qualification, and not burdened with any other duties as our Ministers are, not charged with any other administrative or executive functions, and remunerated sufficiently to be beyond any influence other than the interests of the country, and so able to devote their entire time to the particular subjects that come up for legislation. I hope this amendment will be accepted.

Mr. Vice-President : Amendment No. 1380 standing in the name of Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, Sir, I move :

"That for clause (2) of article 67, the following be substituted :

'(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.'"

Mr. Vice-President : There are some amendments to this amendment which I am calling out one after the other. No. 13 in the name of Mr. Kamath.

(*The amendment was not moved.*)

No. 14 standing in the name of Mr. Lokanath Misra.

Shri Lokanath Misra : Mr. Vice-President, Sir, I beg to move :

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for' and for the words 'Letters, art, science and social services' the words 'History of ancient Indian philosophy and culture, art and science and social services towards reconstruction of Introspective India' be substituted."

Sir, I am really thankful to Dr. Ambedkar for introducing this amendment and for placing the words "Letters, arts, science and social services" much better than the original. In fact, in my humble opinion as I have conceived this Council of States, to me it represents our past, as the House of the People represents our present. Our future no doubt is in the hands of God. I say that we can have that sobering influence we need, only if we can build our mind and our ideas on our past. I suggest that India to be India must know her lofty past, and the members of the Council of States nominated by the President should be people who know our past, our history, our philosophy and our culture. Therefore, instead of having letters, let us say history, philosophy and culture. All our efforts should be towards one direction and that direction can only be an ideal which will bring up India of her past, *i.e.*, to her own. The nominated members by the President should represent these four things, and to bring home a justification of this point, I need not make a speech of my own. I will only quote some lines from an essay "India and the Western World" by Captain Anthony M. Ludovici (England). He says :

"We are credibly informed by anthropologists that often all that is needed for the ultimate extinction of a particular race is, not violence, disease, or some vicious habit introduced by the European, but merely the despondency generated by the imposition of new forms of behaviour and belief—a state of mind which, by diminishing their zest and *joie de vivre*, undermines their will to survive.

Now, when we grasp how deep attachment to native culture-forms may be, even among the random-bred stocks of Europe, need we be surprised to learn that, among people whose capacity for change and for suffering change has a tempo different from our own, the impact of new and powerful culture, sometimes imposed rapidly with every artifice of proselytization, force and example, has resulted in a complete renunciation of every hope, belief and desire.

* * * * * * *

He (the European) was in a position to coerce recalcitrants and by means of the importunacies of his proselytizing and commercial agents, to provoke acts of hostility which often provided the excuse for retaliatory military measures. If, therefore, certain races survived the impact, not only as a united people, but also, above all, as a community still observing their traditional culture-forms, including the worship of the gods of their fathers, the phenomenon partook of the nature of a feat so stupendous in recuperative power and stamina as to amount almost to a miracle—a miracle of resistance, faith and loyalty.

Well, we now know that, up to a point, India performed that miracle. Thanks to the relatively high evolution and intricacy of her own culture, her large population as compared with the numbers of her invaders, and, above all, of the high intellectual level of her leaders, and their steadfastness as custodians of the people's cherished habits of mind and body, India should, in the millenniums to come, stand as a proverb and example among nations, as a country..."

Mr. Vice-President : How long do you propose to read this? It seems to have little connection with your amendment.

Shri Lokanath Misra : I will be short, Sir, it is relevant, as a foreign appreciation of what we are :

"as a country which against forces almost everywhere else triumphant, contrived for centuries—in fact until the eve of the ultimate recovery of her freedom—to uphold and continue, without irretrievable loss, her own life and her own way of life."

[Shri Lokanath Misra]

Sir, I beg to submit, that in drafting this Constitution we dare not forget our own. The Council of States should represent our past and that could be done only by the President nominating only those who represent our great past of great intellectual fervour, high morals, deep and lofty flights of the spirit.

Mr. Vice-President : Amendment No. 15 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move :

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67 after the word 'science' the words 'philosophy, religion, law' be inserted."

Mr. Vice-President : Why not move amendment No. 17 also? That too stands in your name.

Mr. Naziruddin Ahmad : I also beg to move :

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter :

'(b) journalism, commerce, industries, law.'"

Sir, I beg to submit that the original clause (2) of article 67 contains a number of categories, representing different intellectual spheres from which members could be nominated by the President. In fact there is a number of such items, namely, (a) literature, art, science and education : (b) agriculture, fisheries and allied subjects : (c) engineering and architecture : (d) public administration and social services. Of this long list, only three have been accepted in Dr. Ambedkar's amendment, namely, "art, science and social services" and a new item has been added, namely, "letters". I submit, Sir, that there is a danger in restricting the choice of the President in the matter of nomination to only four classes and rejecting the others. There is no reason why the choice should not be rather wide than restricted. However, my amendment (the first amendment which I have moved) wants to introduce Philosophy, Religion and Law. Sir, I submit that Philosophy is peculiarly Asiatic in origin. So is Religion. All the great Philosophies and all the great Religions emanated from the East. There is no reason why we should give up the Philosophers or the men who are the leaders of Religion. It is only the other day that at the instance of Mr. Kamath we introduced the name of Almighty in the Constitution. In fact, the President is to take the oath of office in the name of God. Having agreed to give the Almighty a place in the Constitution, I think that Religion which follows from God should also have some recognition in this Constitution. It is often hinted that Religion is a very bad thing and that it leads to quarrels. I submit, Sir, that Religion never leads to quarrels. It is communalism that leads to quarrels and not Religion. All the great Religions are really good and supply a fundamental moral basis for humanity to act. Therefore, Religion should not be discarded; so also with Philosophy. A philosophical attitude is particularly useful for a House like this; particularly when a Member finds that his amendments are not listened to or his speeches are not listened to by the Honourable the Chairman of the Drafting Committee, he cannot but be philosophical. So for God's sake, do not discard Philosophy too.

Then comes the matter of Law. I submit, Sir, Law should also be represented. The legal talent of the Upper House should particularly be strengthened, because the Upper House will rather be a revising chamber and Law should be particularly represented. Men like Sir Tej Bahadur Sapru, Shri Alladi Krishnaswami Ayyar...

Shri L. Krishnaswami Bharathi : Sir B.N. Rau.

Mr. Naziruddin Ahmad : Yes, Sir, B.N. Rau too. I am thankful for the suggestion. These are very useful names. I think their names should not be shut out from the choice of the President. It may be that at any future election we may lose Dr. Ambedkar himself, and there should be some means of bringing him in by a presidential nomination. Then there is the Rt. Honourable Mr. Jayakar. These are really great men of the Law and their addition, or rather the choice of the President in their selection should be very useful. In these circumstances they should also have some place.

Then with regard to the second amendment : I have also tried to introduce Journalism, Commerce, Industry and Law. Law has already been suggested in my previous amendment. With regard to Journalism, journalists have also a great duty to perform. In fact, they are a kind of go-betweens between the Legislature and the people and between the people and the Legislature. Ideas which are expressed in the Legislature are disseminated by the journalists, and ideas which prevail among the people are also brought to the notice of the legislators by journalists. A democracy is run by the three States—the Executive, the Legislature and the Judiciary. To these must be added the newspapers which have been described as the Fourth State. They also play a very important part in the role of freedom of a country. Journalism should also be one of the categories from which the President could make his selections.

Then we come to Commerce. We want to associate those great commercial magnates who are really the wealth producers in the country and they should also be represented and their advice and counsel would be of great help. So also with Industry.

These are the different categories from which the selection should be made.

I submit that the introduction of these classes will not in the least compel the President to select or nominate anyone from any of them. The choice would be reasonably wide and I submit that this amendment should be accepted by this House.

In making the suggestion about Journalism, Commerce, Industry and Law, I took them from a suggestion made by a few learned lawyers who considered the Draft Constitution in the "Indian Law Review" of Calcutta. It is a quarterly journal. It is in volume 2 at page 9 onwards. There, with regard to this very clause of this article, they have suggested that Journalism, Commerce, Industry and Law should also be represented. They said that there is no reason why these important professions and callings should not be included as well. The great point which I wish to suggest to the House is that the choice should not be restricted, but should be widened. It would be an advantage to have different professions and callings in the list so as to make the choice of the President easier and better.

Mr. Vice-President : The next amendment in our list is amendment No. 16 in List No. 1 standing in the name of Mr. Sidhwa.

Shri R.K. Sidhwa (C.P. & Berar : General) : I am not moving my amendment.

Mr. Vice-President : The next amendment is No. 18 in List No. 1 standing in the name of Shri B. Das.

Since Shri B. Das is not in the House we pass it over.

The next amendment is No. 1381. I find this is of similar import to 1383, 1384, 1385 and right up to 1392. All these amendments may therefore be considered together.

Amendment No. 1381, standing in the name of Shri Prabhudayal Himatsingka may be moved.

Shri Prabhudayal Himatsingka (West Bengal : General) : I am not moving my amendment.

(*Amendments Nos. 1381 to 1394 were not moved.*)

Prof. K.T. Shah : Mr. Vice-President, Sir, I beg to move :

"That for clause (3) of article 67, the following be substituted :

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens'."

Sir, this is in consonance with the general principle I am advocating namely, that the Legislature shall be constituted only by elected representatives, election being by whatever method you may agree to.

Secondly, that, in the Council of States, all constituent parts of the Union—call them States. Units or what you like—shall be equally represented. Whereas in the Lower House, or the House of the People you may have representation in accordance with number, in the Upper House or the Council of States the representation is more of the territory of the Unit, of the special interests of the Unit or region, than of the people pure and simple.

And these, also, I would suggest should be elected rather than nominated, co-opted, or chosen by any other method. The whole body should be elected; and none but elected representatives should come there.

Next, the representatives, so far as they are representatives of the Units, should be equal in number amongst themselves—that is to say, for each State the same number be returned,—so that it will bring some sense of a real Federation working, rather than of discrimination or differentiation as between the Units. On these grounds I commend my proposition to the House.

Mr. Vice-President : Amendment No. 1396 is formal and is therefore disallowed.

(*Amendment No. 1397 was not moved.*)

Mr. Vice-President : The first part of amendment No. 1398 and amendment No. 1402 are identical. I can allow the first part of amendment No. 1398 to be moved.

Mr. Mohd. Tahir (Bihar : Muslim) : What about the second part?

Mr. Vice-President : That will come at the proper place.

Mr. Mohd. Tahir : Sir, I beg to move :

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

I have moved this amendment because I think that there should not be any distinction between the elected members and the nominated members so far as the election of the representatives in the Council of States is concerned. Nominated Members as soon as they become Members of the House, should enjoy all the rights and privileges of a Member as such.

I had moved a similar amendment in respect of the election of the President of India, but in that respect, the House adopted that only the elected members should be allowed to vote for the President of India. In that case there was some meaning to it, because if a President who nominates certain members to Parliament again stands for the Presidentship election, there would have been some difficulty for the members nominated by the said President in exercising their votes. But so far as the election of the representatives of the Council of States is concerned, I do not think that there is any reason why the nominated Members of the Legislature as such should be debarred from voting in the election of their representatives in the Council of States. I hope that taking all these facts into consideration the House will accept my amendment.

Mr. Vice-President : Now you may move the second part of the amendment. They will be voted upon separately. Do you want amendment No. 1402, which is identical, also to be put to vote?

Mr. Mohd. Tahir : Yes.

Mr. Vice-President : You may move the second part of amendment No. 1398.

Mr. Mohd. Tahir : Sir, I beg to move :

"That in sub-clause (a) of clause (3) of article 67 the words 'Legislative Assembly' be substituted for the words 'Lower House'."

In this connection I would require the special attention of my honourable Friend Dr. Ambedkar. I have moved this amendment because in article 148 of the Draft Constitution the Legislative of the States has been defined as the Legislative Assembly and the Legislative Council; and there is no such term as has been suggested in article 67, that is to say, the 'Lower House'. In this connection I think my Friend Dr. Ambedkar was more conscious than myself because while we were discussing article 43 he introduced an explanation, namely, that "in this and the next succeeding articles the expression 'the Legislature of the States' means, where the Legislature is bicameral, the Lower House of the Legislature." This explanation, Sir, he had to add while we were discussing article 43, which means that this explanation is meant for article 43 and article 44 only. Therefore, Sir, in order to clear the position in the article under discussion, I think there is no other alternative but to accept my amendment; or I would request my Friend, Dr. Ambedkar to introduce an explanation as he has done in article 43, because unless it is done, the meaning of the article will not be clear, and I hope, Sir, this would be duly considered and accepted by the House.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President. Sir, I beg to move :

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House', the words 'two Houses' be substituted."

The sub-clause as proposed to be amended by this amendment reads like this :

"67 (3) (a) where the Legislature of the State has two Houses, be elected by the elected members of both the Houses."

I do not see any reason, Sir, why, when there are two Houses in the Provincial Legislature, the elected members of the Upper House should be excluded from taking part in the election. I am not thinking of those who may be nominated to the Upper House. I am urging that those members of the Upper House who have been elected may be allowed to take part in the election. On principle, there is no reason at all why the elected members of the Upper House should be excluded. That is the reason why I move this amendment.

I have got one other amendment No. 1407, Sir. I may be allowed to move that also.

Mr. Vice-President : There are three amendments of similar import. One is amendment No. 1400, the other is No. 1403 and the last is No. 1407. Amendment No. 1407 seems to me to be the most comprehensive. Mr. Baig can move that amendment.

Mahboob Ali Baig Sahib Bahadur : The other amendment that stands in my name is amendment No. 1407.

Sir, I beg to move :

"That in clause (3) of article 67, the following new sub-clause (d) be added :—

'(d) The election under sub-clause (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote'. "

Shri Mahavir Tyagi (United Provinces : General) : On a point of order, there is a similar amendment standing in my name just before that of Mr. Baig. I have not been allowed to move that amendment.

Mr. Vice-President : Because the three amendments have been moved together, namely Nos. 1400, 1403 and 1407, as the honourable Member will find by reference to papers already circulated, and in my view, amendment No. 1407 seems to be the most comprehensive. The honourable Member will have his chance later on.

Mahboob Ali Baig Sahib Bahadur : I am glad that some Members are of the same opinion as I am with regard to the method of election, particularly my honourable Friend; Mr. Mahavir Tyagi, and I am glad when we come to this part of the Constitution Mr. Mahavir Tyagi has changed his mind. I remember quite well when I moved for the election of the President in the earlier part of the Constitution, Mr. Mahavir Tyagi was, I should say, uncharitable.

Shri Mahavir Tyagi : That was the President's election; this is of the Council of States.

Mr. Vice-President : I think it would be better to substitute the word "emphatic".

Mahboob Ali Baig Sahib Bahadur : Perhaps he did not understand. But now he finds that the method of election by a system of proportional representation by means of the single transferable vote is not injurious for the solidarity of the country. I remember at that time...

Mr. Vice-President : May I suggest that instead of making remarks on the past attitude of Mr. Mahavir Tyagi, another honourable Member of this House, the honourable Member may proceed with his own amendment. Probably that would save the time of the House.

Mahboob Ali Baig Sahib Bahadur : Now, Sir, this House has already accepted the system of election under article 55, that B, in regard to the election of the President.

"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

Therefore, Sir, there is nothing new or extraordinary in my proposing this method of election.

Further, Sir, may I refer to the opinions of certain authorities who are competent to speak on this matter which are referred to in the Constitutional Precedents, supplied to the Members of this House by the Constitutional Adviser? The opinions of persons who are competent to speak on this method of proportional representation are these :

"One of the best safeguards for minority rights and interests is the system of election by proportional representation with the single transferable vote (P.R.) which has already been adopted in a large number of countries; Switzerland is a conspicuous example :

'In the past there were bitter differences, religious and cantonal. But for a long period of years now, government has been stable. The responsibility for forming a government rests upon parliament; its first duty is to elect an Executive. The Swiss parliament is elected by proportional representation'."

The late Lord Howard of Penrith, who was Britain's representative at Berne, Stockholm, Madrid and Washington, and who made a study of the working of governments, wrote as follows :

"Two fundamental requirements of democracy, first that Government should be an expression of the people's will and secondly that it should work both smoothly and stably and not be subject to frequent crises, seem to have been met more successfully by the Swiss system than by any other in the world."

Another authority has stated like this :

"Sir Samuel Hoare addressing his constituents in Chelsea expressed the view that representative Government might function more satisfactorily in Europe if the Swiss rather than the British form of Government was adopted. The New York review Free World organised an unofficial round table discussion on the future of Italy. In this discussion Colonel Raudolfo Pacciardi, an active member of the Left, said :— 'The frequent crises of the Latin democracies, which have so greatly discredited representative democracy, can be avoided by a constitutional form like that which has been developed in Switzerland'."

This was issued by the Proportional Representation Society in June, 1945.

Therefore, this method of election represents the expression of the people's will and it will be more stable as well as responsible. My submission is that all the

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fears that some people might entertain that this method of election would involve the country in sections and it will go against the solidarity of the country are false. Some people who are really communally-minded smell a rat in anything in regard to this kind of representation; that is unjustifiable. This is the most scientific and most democratic method of representing the people of a country in a democratic system of Government. I, therefore, commend these two amendments, firstly that the elected members of the Upper House also should be allowed to take part in the election and secondly that the method of election should be by this system, that is proportional representation by means of the single transferable vote. Sir, I move.

Mr. Vice-President : The other two amendments which have been dealt with together are amendments Nos. 1400 and 1403.

Shri Mahavir Tyagi : Sir, these are my amendments and I beg to submit that I may be allowed to move these amendments separately, so that the House may decide on the issues separately.

Mr. Vice-President : Come to the mike please.

Shri Mahavir Tyagi : Sir, I beg to move :

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added :

'In accordance with the system of proportional representation by means of the single transferable vote'. "

Sir, while moving this amendment.

Mr. Vice-President : I am afraid I have not given the honourable Member permission to move his amendments. I want to know the reason why he wants to move them. They are of similar import as amendment No. 1407.

Shri Mahavir Tyagi : That is perfectly true. My reason is the House can decide the issue in one case in one way and in the other, in another way. Therefore, I want to give the fullest opportunity to the House.

Mr. Vice-President : I can give the honourable Member an opportunity of making his point in the general discussion, but I cannot depart from the convention which has already been established. His two amendments will be put to vote one after the other.

Shri Mahavir Tyagi : Shall I have my say now, Sir?

Mr. Vice-President : I shall certainly give the honourable Member an opportunity in the general discussion.

Mr. Vice-President : Amendment No. 1401, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move :

"That at the end of sub-clause (a) of clause (3) of article 67 the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

I also beg to move amendment No. 1404 :

"That sub-clause (c) of clause (3) of article 67 be omitted."

Sir, so far as this sub-clause is concerned, it introduces some anomalies. Clause (3) where this sub-clause occurs relates to the representation of the various States, sub-clause (a) deals with the representation of States having a legislature

with two Houses. Sub-clause (b) deals with representation of States having a legislature with one House.

Mr. Vice-President : Mr. Naziruddin Ahmad, you might move amendment No. 1404 also.

Mr. Naziruddin Ahmad : Yes, Sir. That is the amendment which I have also moved.

Mr. Vice-President : And one speech.

Mr. Naziruddin Ahmad : Sub-clause (c) deals with representation of States having no legislature. States here comprise the Provinces, the Chief Commissioner's Provinces and the Indian States. All the Provinces, however, have legislatures and they will have legislatures too in the future constitution. Sub-clause (c) therefore really affects the States which are now called Indian States and the Chief Commissioner's Provinces. Where there is no legislature, power is being given to the Parliament to prescribe or determine the manner of choosing their representatives. I submit this would be an encroachment on the rights of those States—specially the Indian States. These States having no legislature have a distinct identity, a modified kind of sovereignty. Dr. Ambedkar conceded the other day that they have some kind of sovereign rights, though not full sovereign rights. The mere fact that they have no legislature is no ground why their representation should be left to be determined by the Parliament. If they have no legislature for the time being, there must be a President, or a Raj Pramukh or some authority who or which would function in the State. If the business of the State, its administration, its executive and the judiciary and other matters could be carried on by some authority, that authority should also deal with the prescribe how the representatives of that States should come to the House. Therefore, this sub-clause is anomalous. Parliament may perhaps come in when there is a gap, when there is really a constitutional vacuum in the State. The only void that is contemplated is the absence of any House of Legislature. There is not a political vacuum. But, still, the State may have an organised Government without a legislature and their representation should really be a matter for them. It really is a question of the terms of the Accession. In fact, if a State having no legislature has acceded on certain terms, then, sub-clause (c), to be valid, must come within those terms. As I see it, sub-clause (c) goes beyond the terms of Accession, and is an encroachment upon the sovereign or semi-sovereign rights of these States. I therefore submit that Parliament would not be entitled to deal with their representation. I would be beyond its competence. The States should be left to decide their own representation. In fact, it is due to them that they should decide their own representation. A Legislature is desirable but by no means a constitutional necessity. The fact they have no Legislature does not debar their expressing themselves as to how they will be represented.

In these circumstances, I submit that sub-clause (c) should be deleted. But I also feel that some appropriate provision recognizing the right of States themselves having no legislatures to determine their own representation may be substituted. In the shortness of time at my disposal I could not submit an alternative proposition but the question is one of principle. If the principle is acceptable to the House, a suitable substitute may easily be introduced. As at present advised. I submit that

[Mr. Naziruddin Ahmad]

Parliament would not be a legal and constitutional substitute for the authority of the States whatever be the form of Government or the nature of the authority which really functions.

With these few words, I submit that my amendment should be accepted.

(*Amendment No. 1405 was not moved.*)

Mr. Vice-President : No. 1406 disallowed as verbal.

(*Amendment No. 1409 was not moved.*)

No. 1410 is disallowed.

I would like to put one suggestion before the House, before the general discussion begin. It is this. I have broken many of the Rules of Procedure, some through ignorance, others deliberately. I am going to break a convention already established deliberately, but I think I ought to get the permission of the House. This article falls under two separate broad divisions. The first four clauses deal with representation in the Council of States and the last few provisions deal with representation in the House of the People. My suggestion is that first of all we discuss the first part, *i.e.*, the first four clauses dealing with representation in the Council of States. The amendments relating to these clauses have been moved one after another. Now I want to give an opportunity to honourable Members to take part in the general discussion on these four clauses. After that I intend to call upon Dr. Ambedkar to reply and after that only these amendments will be put to vote. Then we shall take up the amendments concerned with the clauses (5) onwards. Then the amendments will be moved, and then again a similar procedure will be followed. But this procedure is only for this clause. Have I the permission of the House ?

Honourable Members : Yes.

Mr. Vice-President : Now these four clauses are open for general discussion. I call upon Mr. Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari (Assam : General) : Mr. Vice-President, Sir, I wish to say a few words on this article. My honourable Friend Moulvi Mohammad Tahir has moved an amendment objecting to the use of the word 'Lower House'. Practically speaking as is known to everybody, the Lower House means really the Upper House. That is the House which has a more important voice and has the upper hand in the administration of the province. Similarly the House of Commons is the House of the Commoners and the House of Lords is the House of the Lords. All the same the House of Commons exercises more powers than the House of Lords and nobody for a moment suggests that the name should be changed for that purpose only. Furthermore, the use of the word 'Lower House' connotes that there must be an Upper House in the same province. Now so far as the Upper House is concerned, its members have been denied many privileges—for instance, one would have normally expected that in selecting or in electing members of the Council of States, their compeers, the members of the Upper House should certainly have a voice. Because after all the birds of the same feather flock together and there is a sort of sympathy between members of the Upper House in a Province and the members of the Council of States in the

Centre but, Sir, when you are not giving them the privilege which is exercised by the ordinary members of the Lower House or the Assembly, you must console them by calling them members of the Upper House. Therefore from that point of view also, the words 'Lower House' should be allowed to remain where they are, firstly because the Lower House does not mean a House of Lower dignity but it has to be used for purposes of expediency; and secondly, Sir, so long as we think that we must have a second legislature in a Province, there should be one which is called 'Upper House' because as a matter of courtesy we should call them Upper House because we are not giving them many privileges.

Then I also want to say a few words on the amendments of Prof. Shah. It is certainly democratic to expect that members of any House should be elected but there is one difficulty in the way. If you leave the representation entirely to election in a Council of States, the class of people whom we want to nominate by this article, *i.e.*, the class of people who must have some special knowledge in agriculture, fishery, administration and social services, these people generally fight shy of election and will never be able to come to the House and therefore it is necessary in the exigencies of circumstances that some provision should be left for nomination so that the House may get the advantage of people who would normally not like to enter into a contest of election and at the same time whose services to the Legislature would be very useful.

With these words, Sir, I support the first part of the article.

Shri R.K. Sidhwa : Mr. Vice-President, Sir, this article so far as it relates to the Council of States contains two parts, one is clause 1(a), which has been amended by Dr. Ambedkar by reducing fifteen members which he had originally suggested for nomination to twelve members and in clause (2) where the Drafting Committee had suggested about 14 categories under which the nomination had to be made, he has moved an amendment of 4 categories. Now this is the most contentious clause in this article, which ought to require the serious attention and consideration of the House. There is an election and also nomination in the clause. I have stood all along my whole life for election in all legislatures and public bodies and local bodies.

Not that I do not realise that conditions have changed today, but I do feel that even under the changed conditions, the power that is vested in the President may be misused, I mean the power of nomination. This, Sir, is a matter in which we cannot challenge the action of the President, because it is a matter which is absolutely within his discretion. A certain person 'A' may be more desirable to be nominated, but according to the President, another person, 'B' may be considered more suitable and he may nominate 'B'. The House cannot, and no one can challenge that choice or nomination of the President. No one can say that the President can be impeached because he has done something in bad faith or anything of that kind. I am afraid, Sir, that there will be a good deal of bickerings, that while able persons are available, some favourites, or some persons who are in the good books of the President or some persons who are always around the President, are nominated. Human nature being what it is, such a thing is quite possible. I am not stating something new, for persons above these things are exceptional. The President has to take into consideration so many factors when making his selection and at that time, qualifications or merit or service or sacrifices

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may be set aside or ignored. Therefore, I do feel that even these nominations should not be there, because they will lead to bickerings and out of them bickerings will accrue. The very fact that while the Drafting Committee had laid down some thing like fourteen categories, the Chairman of the Drafting Committee has now come forward with an amendment seeking to change the number to four, and also the number of amendments moved to this particular article show the degree of difference of views. One view is that experts will be required only for a few subjects such as law etc. which are rather technical. But it was asked, why have you left out health? Sir, I do not attach much importance to Law. There are many lawyers in this House, and some quite as competent as Dr. Ambedkar, if I may be permitted to say so. I am only saying that natural temptations will arise, and they are arising, as is shown by the various amendments that have been moved. Therefore, I feel, Sir, that these nominations, in the present juncture, should be done away with.

Coming to Prof. K.T. Shah's amendment I would certainly advocate the suggestion or rather the amendment moved by him proposing the appointment of Advisory Committees. I do not subscribe to his view completely. For instance, I do not agree with the various numbers and various other experts he has suggested, such as 25 for agriculture and so on. I do not subscribe to so many categories coming in. But certainly, I feel that there is scope for Advisory Committee of experts. For instance, we may require experts in civic life and also experts in social life. We cannot ignore the civic service amongst the villages and local bodies. But I do not think such an advisory body should be provided for in the Constitution. In case nomination is to be there, then as an alternative we may have these advisory committees on some two or three selected subjects. But that can be done by Parliament by enacting an Act. These persons need not be given undue prominence by making a provision in the Constitution for these Advisory Committees. According to the conditions that may be prevailing at an election, the Parliament may decide to have certain experts to be attached to particular Ministries. But let the House itself be given an opportunity to find out from its own members whether certain members with expert knowledge on particular subjects are available. If that is not possible, then Parliament can make a law to have Advisory Committees appointed. Sir, today you know we had to seek the advice of economic experts in view of the serious economic conditions in the country. But such an outside body would not be quite desirable, if we are to get a completely unbiased opinion or advice. But if they are in the service of the State, as suggested, they can be trusted to give unbiased opinions.

I would, however, like to make it quite clear that I am opposed to nominations, and the above suggestion is only made as an alternative. We cannot take it, that because we have all been elected, therefore, nomination will be harmless. As I have stated, we cannot expect everybody to be of sterling character, though we wish all of us were of sterling character, and that when we decide upon a person, we do so without any favouritism or any other such considerations, and select the really best man for the place.

With this reservation, Sir, I support the article.

Mr. Vice-President : Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I must thank you for giving me an opportunity to express my views on this article. I wanted to move an amendment, but you were pleased to rule that it has been already covered by an amendment.

Mr. Vice-President : Yes, your amendments Nos. 1400 and 1403.

Shri Mahavir Tyagi : Yes, Sir. I wanted to say that "in accordance with the system of proportional representation by means of the single transferable vote" may be added at the end of sub-clause (a) of clause (3) of article 67, and in the same manner, similar modifications may be made to sub-clause (b). But I have not much to say now. My Friend Mr. Mahboob Ali Baig has already moved an amendment which I think has the same purpose. But I think the words he has suggested will not fit in properly with the existing words, and I am afraid Dr. Ambedkar will have to take the trouble of setting right the whole sentence. Mr. Baig has suggested that a new sub-clause (d) may be added. Now, sub-clauses (a), (b) and (c) all form part of one big sentence. The sentence begins like this :

"The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall...etc., etc."

and then come sub-clauses (a), (b) and (c). If another sub-clause (d) is added, as suggested by my Friend Mr. Mahboob Ali Baig, it will read :

"(d) The election of the representatives of each State...shall be in accordance with the system of proportional representation, etc., etc."

That will create a construction which is neither here nor there. I feel that my amendment is much more simple and does not lead to any such difficulties. I hope my suggestion will be considered by the House because if it is accepted, then Dr. Ambedkar will not have to trouble himself about re-adjusting the wording of the article.

Sir, the Council of States will be represented by those members who are sent into the Council by the respective States, by general election, by majority voting, which means that the representatives of the States will not have any member belonging to the minority party of the respective States. It means that, if in the States the election is not by means of the single transferable vote, the minorities will have no representation at all in the Council of States. Sir, I do not agree with the type of democracy in vogue in Europe. This is the biggest fraud which the politicians of the world are unconsciously practising on the masses. Under the existing system of elections the masses do not get any real representation at all. All democracies based on party basis are the monopoly of the chosen few, the literates and the intelligentsia. They form parties and the elections are run on party lines. This being the case, the seats are held by the same set of people who are borne on the crest of the wave of emotion of the masses. The emotion of the masses is excited, fanned and inflamed by the politicians. So much so, that when people go to the booth, they go swayed by the emotion created by the head of the election campaign. When an elector goes to the polling station, he is not his normal self. His emotions are excited and he forgets his individuality. Mass mind is a separate entity. When the elector votes under his emotions he does not exercise his individual judgement. He is swayed by the election propaganda. Under the circumstances even the representatives of the majority party are not really representatives of the normal mind of the masses.

[Shri Mahavir Tyagi]

It is only those members of the minority who are either defeated at the elections or have won that represent the real spirit of the masses to some extent. They are the only bold ones who have withstood the attacks, hits, and pushes of the majority party and who have kept their heads cool and aloof amidst waves of mass emotion created by election propaganda and struck to their principles. So, those who belong to the minorities should be always cared for and looked upon as people who hold to their own opinions staunchly. Therefore, although democracy as practised in the western countries is a hoax and a fiction, it has survived so long because of the opposition. It is the opposition that reflects the true voice of the people. It is the opposition that sustains democracy. Were it not for this, democracy would have long ago crashed and fallen down. I believe in the democracy...

Mr. Vice-President : The honourable Member's time is up.

Shri Mahavir Tyagi : Please give me one more minute, Sir. I assure you I shall be giving useful suggestions.

Mr. Vice-President : But the honourable Member is taking away the democratic right of others to speak.

Shri Mahavir Tyagi : According to Mahatma Gandhi real democracy is Ram Raj where everyone puts himself and all this power and possession under the supreme control of the general will. Each in fact becomes an indivisible part of the whole body, and indivisible member of the body. Although he acts according to the total will of the people as a whole, even so he obeys himself alone and maintains his freedom. Under such a democracy an attack on the individual is a hit on the total body of people and a hurt on the total body is a hurt on each individual. We have, however, adopted the western model of democracy which I cannot help. There must therefore be parties in our body politics. Let us therefore give seats in the Council of States to some members holding the views of the opposition also. Such members can get elected only if my amendments are accepted. Only then Members who are opposed to the party in power in the States can come in. Whenever high State policy is under discussion we can have the advantage of the views of the other side only if they are allowed to come in by this method. The Democracy of the western type is based on free play of the opposition. Without good opposition the democracy will become one legged, it would limp and tumble down. With these words I hope that my amendments will be accepted.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : Mr. Vice-President, I want to say only a few words and will not take more than one or two minutes.

Under clause (2) of article 67, the different classes from amongst whom the President is to nominate members to the Council of States have been given. In the reason for omitting trade and commerce and industry, the Drafting Committee says that these people can as well come through the general election in view of adult suffrage. Sir, for the same reason you could have omitted to give representation by nomination also to the classes of the people enumerated in sub-clauses, (a) to (d). They can also come through general elections under adult suffrage.

Sir, I do not know that the importance of commerce is in any way less than the importance of the other classes of people enumerated in this clause. Therefore I think it is very reasonable and fair that trade and commerce also should be included.

Sir, now coming to clause (3), in the various sub-clauses, nominated members are being sought to be excluded from having anything to do with the election or the choice of representatives to the Council of States from the States. Sir, if no nomination is provided for at all, that is another thing and I would have no quarrel at all. But you think that nomination is necessary and are providing for the nomination of certain people. Then, when you have recognised the importance of nominating people and when you have actually nominated them to the Council of States, it will not do to discriminate against them. It will not be at all fair to place them at a disadvantage and give them an inferior status. When you have recognised their importance and nominated them, they must also be treated equally, after they have been nominated, with other members who have been elected and who form part of the various bodies. Therefore I am not able to see the reason why these people should be eliminated from having anything to do with these elections.

Then, Sir, a word with regard to the system of proportional representation proposed in more than one amendment to this article. It is said that this system of election will lead to fissures and divisions amongst the people. But, in reality, it would not be leading to that result or effect at all, because people know that under this system of election every group of people has got an effective say in the election. Therefore every group will be drawn towards the other group. When it is a question of election they will be made to work with each other. They will be compelled to seek the franchise of every group. Therefore it will really bring the people together instead of disintegrating them. It will make each group seek franchise of other people. Therefore it would really work for unity rather than for disunity. Sir, I think that the Chairman of the Drafting Committee would see the reasonableness of this proposal and would recommend to the House the acceptance of this system.

Mr. Vice-President : Dr. Ambedkar.

(*Pandit Hirday Nath Kunzru rose to speak.*)

Mr. Vice-President : What is it that you want to say, Pandit Kunzru?

Pandit Hirday Nath Kunzru : I would like to say something about this question of proportional representation before Dr. Ambedkar rises to reply.

Shri L. Krishnaswami Bharathi : In the general discussion only two people have spoken so far, Sir.

Mr. Vice-President : On the whole four people have spoken. But I would allow you to speak, Pandit Kunzru, but please confine yourself to the question of proportional representation only.

Pandit Hirday Nath Kunzru : Mr. Vice-President, as it has been proposed that the members of the Council of States should be elected by the Lower Houses of the provincial legislatures, it is necessary that a system should be laid down for the election of the members as would be fair to men holding different views. It has accordingly been suggested that in their election the system of proportional representation by means of the single transferable vote should be used. Honourable Members may be afraid that, if this system is accepted, it would mean the introduction of communal electorates by the backdoor. We know the evils of communal electorates. We know that the partition of India is the direct result of

[Pandit Hirday Nath Kunzru]

such electorates. We have therefore to be on our guard against any system of election that would lead to the maintenance of the old evil in a new form, but let us consider whether the acceptance of the suggestion that has been made would in practice amount to the election or the members of the Council of States by people belonging to separate communities. In order to clarify our minds, it is necessary for us to consider how the members of the provincial legislative assemblies will be elected. They will not be elected on the basis of communal electorates. The electorates will be mixed. They will consist of men of all communities, and the men returned by mixed electorates are not likely to be imbued with communal virulence. It should not be supposed that the representatives of any community would be able to get in merely by the votes of the members of that community. They will have to seek the suffrages of mixed electorates and it may therefore be supposed—we may take it for granted—that if they want to maintain their position, if they want to be re-elected, they will have to follow a policy that is not based on religious or communal divisions. Now if we get such members in the Lower Houses of the provincial legislatures, is there any reason to fear that if the system of proportional representation by means of the single transferable vote were introduced for the election to the members of the Council of States, the evils of communal electorates would be maintained or intensified? Sir, we ought not to consider this question entirely from the point of view of the representation of different communities. We ought also to consider the need for the representation of persons holding views that are not popular, and the method of proportional representation would enable fair representation to be given to minorities holding views different from those of the majority. Unless the system of proportional representation is introduced, the views that are unpopular would never be represented. Take, Sir, the election of members to the Constituent Assembly. There are some members of this House who do not belong to the Congress and have yet been able to get elected. They have been able to secure their election because of the existence of the method of proportional representation with the single transferable vote for the election of the members of the Constituent Assembly. But for this system no one who was not a Congressman could have been here.

Maulana Hasrat Mohani (United Provinces : Muslim) : Hear, hear.

Pandit Hirday Nath Kunzru : I think therefore that it is desirable that we should adopt the system of proportional representation by means of the single transferable vote in connection with the election of the members of the Council of States. I need not repeat that these members will be elected by provincial representatives who have not been returned on a communal ticket so to say. They will be elected by men who will owe their election to an electorate that will consist to an overwhelming extent of members of the majority community. There need be no reasonable fear therefore that the election of members of the Council of States by means of proportional representation would mean the reintroduction of communal electorates with all the evils that they involve. On the contrary, I think that in the changed circumstances this method would enable a fair representation of the views of sections that would otherwise be overwhelmed and would not be able to make their voice heard, to be secured.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, I am agreeable to amendment Nos. 1369, 1375, 1378, 1380, 1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali Baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, on examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object...

Mr. Vice-President : It was not moved.

The Honourable Dr. B.R. Ambedkar : Then I do not think I need say anything about it. There remain only two—one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should clear the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the Council of States they got two-fifths representation which was 40 per cent. That is not the origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this : That there should be one seat for every million up to five millions, plus one seat for every additional two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of the Indian provinces and the representatives of the Indian States. Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the Report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union

[The Honourable Dr. B.R. Ambedkar]

unless the total of the representation granted to the State had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original state of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this :

We have removed this 40 per cent ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian States as well as to the Provinces, and I am in a position to give some figures, which, although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the provinces will have 141 seats. The Chief Commissioners' provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats. That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions, in the first place it removes weightage and secondly, it brings the total of the House within the maximum that has been prescribed by the amendment that I have made. I think the House will find that this is a very satisfactory position.

Pandit Hirday Nath Kunzru : May I ask my honourable Friend whether the States in Part III of the first Schedule have been represented in accordance with their population?

The Honourable Dr. B.R. Ambedkar : Yes, everybody will now get population ratio.

Then I come to the second amendment—No. 1377 by Prof. K.T. Shah. Prof. K.T. Shah proposes that there should be a council of the representatives of agriculture, industry, commerce and other special interests created by statute. It will be a permanent body of people. The States shall be required to give them salaries, allowances, and the duty of this council, as proposed by Prof. K.T. Shah, is that it shall have the statutory duty of giving advice to Government, and the Government will have the statutory obligation of consulting this body, and it shall not be permissible for the Government, I take it, to introduce any measure which on the face of it does not bear the endorsement that the statutory body has been

consulted with regard to the contents of that Bill. I believe that is the purpose of Prof. K.T. Shah's amendment.

There are various objections to this. In the first place anyone who has held any portfolio in the Government of India or in the Provincial Governments will know that this is the normal method which the Government of India and the Provincial Governments adopt before they finalise their legislative measures : there is no proposal brought forth by the Government of India in which the Government of India has not taken sufficient steps to consult organised opinion dealing with that particular matter. It seems to me that his provision which is a matter of common course is hardly necessary to be put in the Constitution. I therefore think that from that point of view it is unnecessary.

Then I should like to tell the House that it is proposed that at a later stage I should bring in an amendment which would permit the President to nominate three persons either to the Council of States or to the House of the People who shall be experts with regard to any matter which is being dealt with by any measure introduced by Government. If it is a matter of commerce, some person who has knowledge and information and who is an expert in that particular branch of the subject dealt with by the Bill, will be appointed by the President either to the Council of States or to the Lower House. He shall continue to be a member of the Legislature until the Bill is disposed of; he shall have the right to address the House, but he shall not have the right to vote. It is through that amendment that the Drafting Committee proposes to introduce into the House such expert knowledge as the Legislature at any particular moment may require. That justifies, as I said, the rejection of Prof. K.T. Shah's amendment; and also the other amendments which insisted that the other clauses of this article requiring that agriculture, industry and so on be also represented become unnecessary. Because, whenever any such expert assistance is necessary, this provision will be found amply sufficient to carry out that particular purpose. Honourable Members might remember that in the 1919 Act when Diarchy was introduced in the Provinces a similar provision was introduced in the then Government of India Act which permitted provincial Governors to nominate experts to the House to deal with particular measures. Sir, I suppose and I believe that this particular proposal which I shall table before the House through an amendment will be sufficient to meet the requirements of the case.

Shri R.K. Sidhwa : Will the nomination clause remain?

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

Mr. Vice-President : I shall now put amendment No. 1379 to vote. The question is :

"That clause (2) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That clause (4) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1369 of the List of Amendments, in the proposed clause (1) of article 67, for the word 'two' the word 'one' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words, 'twelve members' the words 'not more than 6 per cent of the total number of members of the House' be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put the short notice amendment of Sardar Hukam Singh to vote. The question is :

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided' the words 'from amongst the categories of persons illustrated' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That for clause (1) of article 67, the following be substituted :

'(1) The Council of States shall consist of not more that two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representative of the States'."

The amendment was adopted.

Mr. Vice-President : I shall put amendment No. 1375, standing in the name of Dr. Ambedkar, to vote.

It reads :

"That the proviso to clause (1) of article 67 be deleted."

Shri L. Krishnaswami Bharathi : On a point of Order, Sir. Amendment No. 1375 is out of order in view of the fact that we have already adopted amendment No. 1369 which is a substitution of the clause including the proviso. The proviso has been omitted now by the acceptance of the new clause. There is no point in having an amendment about something which is not in existence.

Mr. Vice-President : Then I shall not put it to vote.

Mr. Vice-President : The question is :

"That to clause (1-a) of article 67 now moved, the following words be added :

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1-a) of article 67, the following be substituted :

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles :

(i) one representative for every million population upto the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States;

(ii) one representative for every two million population after the first seven million.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1-a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1378 of the List of Amendments after the proposed clause (1-a) of article 67, the following new clause (1-b) be inserted :

'(1-b) Steps should be taken to see that, as far as possible, men from different units are represented.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That the following new clause be added after clause (1) of article 67 :

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

The amendment was adopted.

Mr. Vice-President : The question is :

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1) :

'(1-a) Parliament may by law establish a consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economics (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

Explanation.—The number given in the brackets after each group is the total number of representatives from each section.

Members of this Council shall have, individually or collectively no administrative or executive duties, functions or responsibilities. Every member of this Council shall be paid such salaries, emoluments or allowances as Parliament may from time to time provide.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words

[Mr. Vice-President]

'History of ancient Indian philosophy and culture, art and science and social services towards reconstruction of "Introspective India" ' be substituted respectively."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, after the word 'science' the words 'philosophy, religion, law' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter :

'(b) journalism, commerce, industries, law.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That for clause (2) of article 67, the following be substituted :

'(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

'Letters, art, science and social services.' "

The amendment was adopted.

Mr. Vice-President : The question is :

"That for clause (3) of article 67, the following be substituted :

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (3) of article 67, the words 'Legislative Assembly' be substituted for the words 'Lower House.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House' the words 'two Houses' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (3) of article 67, the following new sub-clause (d) be added :

'(d) The election under sub-clauses (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added :

'in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was adopted.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (3) of article 67, after the words 'of that House' the words 'in accordance with the system of proportional representation by means of the single transferable vote' be inserted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That at the end of sub-clause (a) of clause (3) of article 67, the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That sub-clause (c) of clause (3) of article 67 be omitted."

The amendment was negatived.

Mr. Vice-President : It thus appears that there are altogether 5 amendments which have been carried, namely, Nos. 1369, 1378, 1380, 1400 and 1403.

[4th Jan. 1949]

Article 67—*Contd.*

Mr. Vice-President (Dr. H.C. Mookherjee) : Before we begin the business of the House, I have to inform honourable Members that yesterday information was received that members of the R.S.S. would somehow secure entrance into the lobbies and galleries in order to create disturbance. Fortunately, this was prevented. May I request honourable Members to issue visitors' cards for those only who are personally known to them in order that we may proceed with our business without any interruption?

We shall now take up discussion of article 67. The first amendment on the list is amendment No. 1411. This is disallowed as being verbal.

Then we have amendments Nos. 1412, 1413 first part, 1414 first part and 1415 first part. These are identical. Amendment 1415 standing in the name of Kazi Syed Karimuddin is allowed to be moved.

Kazi Syed Karimuddin (C.P. Berar : Muslim) : Mr. Vice-President, Sir I move :

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted :—

'Subject to the provisions of articles 292 and 293 of this Constitution'; and the following words be added at the end :

'in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote'."

Sir, the present electoral system, of single member constituency according to me, is very defective. The one pervading evil of democracy is the tyranny of the

[Kazi Syed Karimuddin]

majority that succeeds in carrying elections. To break off that point is to arrest danger. The common system of representation perpetuates the danger and the only remedy is proportional representation. That system is also profoundly democratic for it increases the influence of thousands of those who would have no voice in the Government and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own choice and opinion. Sir, another objection to the present electoral system is that the system does not even guarantee the rule of majority. We have innumerable instances of this type in England and America. The Conservative majority of 1924 was unreal because it polled 48 per cent of votes and it was supposed to be the majority party in the country. Then in America, Presidents Hayes and Harrison became Presidents in 1876 and 1888 when they secured votes less than the votes secured by their adversaries. In so far as this is concerned, the present electoral system is really perverse. This system may even deprive the minorities of their just share of representation as to render them important. An instance of this has happened in the Irish election. The most ardent defenders of the system would hardly deny the right of the minority to some representation and it is worthy of note that one of the reasons advanced by Gladstone was that such a system tended to secure representation for minorities. This is found to be wrong in Ireland; yet as prophesied in the debates of 1885, the minorities in the South and West of Ireland have since that date been permanently disfranchised. In the eight Parliaments of 1885 to 1911 they had been without representation. Therefore my submission is that the present system as it stands does not guarantee a majority rule as people commonly suppose and does not guarantee a representation to minorities, not necessarily religious, even the political minorities. Today we are faced with an electoral system in which there is no guarantee except the reservation of seats that has been embodied in articles 292 and 293. By my amendment I plead that if proportional representation is guaranteed the reservation of seats even on religious grounds must go. It has been accepted on all hands that communalism must be uprooted from the soil of this country. We have had evil effects of it and the Dominion Parliament is already committed to this stand because a Resolution has been already passed that no communal party may be allowed to function in the country. Therefore separatism, communalism and isolationism must disappear from the body politics of India but we cannot ignore the existing conditions in the country. We find that there is a movement for the establishment of a Hindu Raj. We find that there is an R.S.S. organisation also in the country. In view of this we have to proceed cautiously and gradually, and therefore we have to find out a way that communalism must go and the minorities must be represented in the legislatures.

Now there are two methods before us. One is the reservation of seats as has been provided in the Constitution, *i.e.*, under article 292. The other is proportional representation. There are very serious defects about the provision of reservation of seats because it is based on religious grounds. It defeats the very objects for which it is adopted because the chosen representatives of the community for which reservation is given cannot be secured. Then as I had already said in the general discussions, that even a false convert for the purposes of election will defeat a choice representative and the minorities will be engaging lawyers who

would argue the cases against their own clients; but it is wrong to say that it is communal because it is the majority that would elect the representatives of the minorities mainly and not the minority communities.

The system which I regard as the best is the system of proportional representation. It is not based on religious grounds and it applies to all minorities, political, religious or communal. There are three objections to this system, which are generally argued and debated. The first is that there would be very large constituencies and it would be very difficult to manage the voters. The second objection is the instability of the Government and the third is the establishment of Coalition Governments. Now in regard to the first objection, I think it is not tenable at all. In a large constituency if the party system works, then there is no question of the candidate coming in contact with the voters. The party machinery would work successfully. It is wrong to suppose that there will be instability of Government because the majority is bound to secure majority in the House and the majority is bound to form a Government. Then about the Coalition Government, in my opinion, where there is heterogenous population, it is very necessary that we should have Coalition Governments. It will not be a bad thing that various representative elements should have to be consulted in forming a Ministry. The country is passing through transition and Communism is knocking at our door. It is very necessary that the opposition whether it is communal or it is political will have to be accommodated. We are about to transfer the Government of this country from the middle classes to those whom I might describe as the wage-earning class. This is an immense change which is realised by very few people in the country. The Congressmen are of opinion that they are bound to sweep the polls and therefore they support the Draft Constitution which establishes a majority rule, making no effective provisions for the benefit of either communal or political minorities in the country. They are wrong and they would be found to be wrong. No organization in the world has reconciled the conflicting claims of labour and capital, tenant and landlord and it is impossible to keep them under one banner. Look around us, communism is spreading with alarming speed and once it catches the imagination of the working classes, its potentiality is very grave. Suppose the working classes take a fancy for socialist dogmas or communist dogmas, they being in majority, are bound to capture power in absence of any provision to protect political or communal minorities. In order to provide against such contingencies the system of proportional representation is the only method. Secondly, without any sacrifice of democratic principles, it can afford protection to communal minorities also. Without any spirit of communalism, representatives of political and communal minorities can be elected. In the absence of this, the country can be plunged into communism.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, may I request the honourable Member to read slowly?

Kazi Syed Karimuddin : I am not reading. I am only referring to my notes. You can come here and see it for yourself.

Mr. Vice-President : Mr. Karimuddin, I suggest you speak more slowly.

Kazi Syed Karimuddin : Sir, in the general election and according to the present electoral system if the pendulum swings in favour of communism, all

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schemes of development will be lost and if it swings in favour of communalism, the secular nature of the State will be lost; and if the minorities are neglected, whether they are political, or communal, and crushed and kept out of Parliamentary activities, it will be a good fodder for the communists and they will sit in their lap. Therefore it is part of wisdom to persuade the opposition to take to the ways of constitutionalism and the only way to do it is the introduction of the system of proportional representation. I prophesy that if this is not done, it will lead to chaos. That does not mean that I oppose the continuance of the present regime. I want the Congress to live longer because they have given peace, tranquillity and a secular State to all the communities in India but this cannot be guaranteed unless the system of proportional representation is introduced.

Now, Sir, the first part of my amendment says that there should be abolition of the provision of reservation of seats in case the proportional representation is granted; otherwise not. Sir, in fact when I spoke about the abolition of reservation of seats and adoption of proportional representation, there was an incorrect idea that I was pleading for the abolition of reservation of seats unconditionally. I had stated and I state even today that if proportional representation is introduced, there should be no provision regarding the reservation of seats. Once you accept that there are minorities and also that some recognition has to be given to them, then my submission is that the House should be pleased to introduce the system of proportional representation.

Mr. Vice-President : Then amendment No. 1412 which stands in the name of Mr. Mohd. Tahir. Do you want it to be put to vote Mr. Tahir?

Mr. Mohd. Tahir (Bihar : Muslim) : No, I do not want to move it.

Mr. Vice-President : Well, in that case the amendments to that amendment, that are Nos. 19 and 20, standing in the name of Pandit Thakur Dass Bhargava fall through. But do you want to move them, Mr. Bhargava? I find that they relate to not only amendment No. 1412, but to other amendments also.

Pandit Thakur Dass Bhargava (East Punjab : General) : Sir, though I do not want to move those amendments, with your permission, I would like to make a statement about them.

Mr. Vice-President : You can do so in the course of the general discussion. I shall bear that in mind. So I score them out. Then we come to amendment No. 1413, standing in the name of Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : I am not moving it, Sir.

(*Amendment No. 1414, first part, was not moved.*)

Mr. Vice-President : Then we come to the second part of No. 1414, second part of 1415 and No. 1421. These are of similar import and may, therefore, be considered together. Amendment No. 1415 may be moved. It stands in the name of Kazi Syed Karimuddin; I am referring to the second part of No. 1415.

Kazi Syed Karimuddin : Sir, I have moved both parts of No. 1415.

Mr. Vice-President : All right, I am sorry I did not follow. Then No. 1414 falls through, as Mr. Lari is absent. Then we come to amendment No. 1416 and amendment No. 1417, amendment No. 1416 stands in the name of Prof. K.T. Shah.

Prof. K.T. Shah (Bihar : General) : Mr. Vice-President, Sir, I beg to move :

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters', the words 'such members as shall, in the aggregate, secure one representative for every 500,000 of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

Sir, by this amendment, I seek to make three changes.

The first is to avoid a maximum number of representatives being fixed by the Constitution for the People's House of Representatives. It is, I think, not in accord with the correct principle of popular representation that it must be the people's voice which must be the final authority in the governance of a country calling itself a democracy. Under such a principle the Constitution should not fix permanently the maximum number of representatives for the popular chamber.

We have observed the tendency, during the last three or four census, towards a steady increase of the population of our country at every decennium. The last census shows an increase of as much as 15 per cent in ten years. If, now, you fix the absolute maximum number, it would happen that you might change the number of persons represented by each representative in an undesirable direction. That is to say, the representative character of each representative would become lesser and lesser, as he would be representing larger and larger numbers.

I feel, Sir, that if you make representation of very large numbers of voters to be concentrated on a single member, so to say, you may not have a correct verdict of the people on a multiplicity of issues that are usually placed before the electorate at a general election.

A general election—and that is presumably contemplated here—is always an occasion when a number of issues come before the voters, in which the people, that is, the voters are likely to be confused, because of the varying and often conflicting, pulls of the different issues on which they are asked to give each a single vote. This being the unavoidable case at each such election, I think it may be as well to fix no maximum number of representatives for the representation of the people. Instead we should allow the number to shape itself according to the varying population.

It is true that if your census is a decennial affair, it may not give you the correct guide for every election in the interval between two censuses assuming that elections come at least once in five years, if not more frequently. Even so, since we have agreed to take the last preceding census as the basis, and that census is now more than eight years old—apart altogether from the originally doubtful character of that census taken during the war,—the next general election may itself be not correctly representing all people, especially if you fix a maximum number of representatives, to start with. In other later general elections, the five-

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year interval would not make so great a variation. That variation may be about 5 per cent or 6 per cent or 7½ per cent. This only means that representatives would number so many more on that amount of change, it may not be impossible for a proper electoral machinery to cope with.

Taking that to be the case, I would suggest that a limit of 500,000 population be fixed as being entitled to be represented. This would be much more likely to reflect the real opinion of the people, even in a number of issues, that if you fix the total number of representatives at 500 as contemplated under this clause. The number would, no doubt, increase, if the population tends to increase. It is, therefore, possible that the maximum for the coming two decades may reach the figure of, say 600, or even more. Even with that number, I do not think that, for a country of the size and population of the Union of India, it is too large a number of representatives.

Anybody interested primarily in expediting things, and in governing the country according to a few people's will, will naturally not like large numbers of deliberation, and the larger the time taken in passing laws or resolutions, representatives. The larger the number the greater, of course, is the chance, of deliberation, and the larger the time taken in passing laws or resolutions. The scrutiny of Government's executive actions would also be from a greater variety of angles by interpellations and the like. Those, therefore, in favour of expediting public business may not quite like this suggestion.

Those, on the other hand, who think more of the people and their wishes, would not, and should not, find in this, in my opinion, a hindrance or handicap to good government. The possibility of varying or increasing number of representatives should not, by itself, be regarded as an objection. In fact, even in the clause as it stands, the very idea that you think it necessary to fix the maximum number of representatives indicates that, even in this scheme there is a possibility of variation in number; and as such, my amendment is, by itself, not to be condemned.

My second point is in relation to the scheme of voting. There are, in later clauses, some other amendments which I have tabled, and which when they come up, I will discuss. I will, therefore, not take up the time of the House at this moment.

As regards the scheme of voting, I only insist that voting should be by secret ballot, by adult citizens; and that it should be by means of a scheme of Proportional Representation under the device of the single transferable vote. I do not propose to descant at length, upon the theoretical grounds in favour of Proportional Representation or against it, as the previous speaker has placed a fairly exhaustive case before you. I would only like to add, lest I should be misunderstood, that the principle of Proportional Representation is not intended so much to perpetuate communal minorities, as to reflect the various shades of political opinion which after all, should be reflected in your Legislature, if you desire to be really a democratic government. The French system for instance, strictly speaking, is not based on Proportional Representation; and yet, different shades of political opinion are reflected in the French Assembly. Even so French Governments in the third Republic had an average life, it is said, of perhaps not more than eleven months. On that count, however, the principle is not necessarily to be condemned, as the

public opinion of all shades gets a chance of expression and there is in it, if not greater stability, at least greater reflection of popular will than would be the case in a system of absolute vote that is apparently contemplated here.

The possibility of securing varying shades of political opinion will give a chance, not only for minorities to be only reflected in the Legislature of the country, but also for them tc assert themselves, and to convert themselves into a majority, which, perhaps, those who might confuse Proportional Representation as synonymous with the possibility of communal representation would do well to consider. On these grounds, Sir, I commend this motion to the House.

Shri H.V. Kamath (C.P. & Berar : General) : Mr. Vice-President, I move, Sir :

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The clause as it appears in the Draft Constitution reads thus :

"(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters."

If my amendment is accepted by the House, the clause will read thus :

"Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States."

The House will see that my amendment makes for brevity, clarity and precision and further, seeks to eliminate the convolutions of language which mar the construction of the clause as it stands at present. I do hope that Dr. Ambedkar and the House will not have any difficulty in or objection to accepting it. I will only say one word more. If my amendment is accepted by the House, certain consequential changes will follow in sub-clause (2) of clause (5) and in the proviso thereto. In the sub-clause as well as in the proviso, the words "representatives of the States" will have to be altered to 'members' in conformity with the amendment which has been moved to sub-clause (a) of clause (5). I commend this amendment to the acceptance of the House.

Mr. Vice-President : Amendments Nos. 1418, 1419 and 1420 are of similar import. I allow Prof. Ranga to move amendment No. 1419.

(*Amendments Nos. 1418 to 1423 were not moved.*)

Prof. K.T. Shah : Mr. Vice-President, I beg to move :

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67 :—

'and Territories directly governed by the Centre'."

Sir, the existing clause provides only for those States which are mentioned in the Schedule attached. The Schedule does not mention considerable territories, with considerable population in them, which are directly administered by the Centre. Lest their claim to representation be overlooked altogether and they be denied representative institutions in themselves, and go without representation at the Centre also. I think it is but proper and necessary specifically to include them in this clause.

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It has been alleged, and I have heard it said on very high authority, that the people of some of these territories, of a given area now administered directly by the Centre, are so backward, so lacking in education and the country so undeveloped, as not to deserve representative institutions at all. The remark I am referring to was made at the Jaipur Sessions of the Congress with special reference to Cutch.

I was, I confess, surprised to hear such a sweeping condemnation being enunciated by such high authorities in respect of a territory such as Cutch, which is being directly administered by the Centre. Sir, quite a good proportion of the business enterprise and industrial activity of the city of Bombay has come from the Cutch people settled there. It is true that those Cutch people have more or less become permanent citizens of Bombay, though they retain their connection with the State of Cutch and may, under the changed conditions of today well make substantial contribution to the rapid advancement of the area and its inhabitants today. But that is no reason to calumniate the whole province or State as lacking in education, developments enterprise or understanding of the resources, or the possibilities of the State.

This, Sir, is, in my opinion, very unfair to a whole people who have made their contribution to the country's general awakening and advance. To deny the people there on such grounds, representation either in the State itself, or in the Centre as part of the Union, is highly retrograde, to say the least.

The possibility therefore, of other similar territories being also ignored and going unrepresented has become so vivid in my mind, that I have felt it necessary to table this amendment, and specifically to include them in this clause with the words that I have suggested being added. I commend this to the House.

Mr. Vice-President : The first part of amendment No. 1425 and amendment No. 1426 standing in the name of Mr. Kamath are identical. I propose that amendment No. 1425 may be moved, the first as well as the second part. Mr. Kamath, do you want your amendment No. 1426 to be put to vote?

Shri H.V. Kamath : I see that Dr. Ambedkar has stolen a march over me, and so I do not propose to move my amendment.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar (Bombay : General) : I am not moving it.

Mr. Vice-President : Then we come to amendment No. 1427 standing in the name of Prof. K.T. Shah.

Prof. K.T. Shah : Amendments Nos. 1428 and 1429 also stand in my name. Can I move all these together?

Mr. Vice-President : You can move them one after the other. After moving all the three amendments you can make one speech covering all of them.

Prof. K.T. Shah : Mr. Vice-President, Sir, I move :

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added :—

'so that each State being constituent part of the Union, or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million, or grouped with such adjoining States or Territories as together have a population of not less than a million.' "

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full stop be added; the word 'and' following immediately be deleted; and the word 'the' be printed with a capital 'T'."

Sir, the purpose of these amendments is consequential upon what I have already moved; that is to say, we should form constituencies in such a manner that each constituency has at least the representative possibility of two seats, not less than a million population, therefore, is the limit which I would suggest should be the unit in the device of Proportional Representation by which representation is to be secured.

Proportional Representation, Sir, would not be feasible or even possible for single member constituencies. At any rate it will not yield the same results as are expected by those who believe in the principle. It is but right, therefore, and proper that you should have multi-member constituencies; and the minimum must not be less than two.

It is on that basis, and this understanding of the principle we have already adopted in the Constitution of this very Assembly, that I have suggested a unit of a million population. I have also suggested, in a previous amendment, the minimum population requiring representation to be 500,000. These two together, I think, would provide every constituency with not less than two representatives.

Most of the States will be able, each by itself, to provide such constituencies. There will, of course, be some States which will be much larger; and as such the working of Proportional Representation would in them fit in very successfully. All States as well as territories governed from the Centre would by this means receive their full measure of representation. It would enrich the representative character of the Union Legislature; it would provide expression for all shades of opinion, it would help to place before the Union Legislature all aspects of the problems that come before it for legislation or otherwise for disposal.

As I have stated already, I think it is but right and proper that we should have constituencies arranged or grouped in such a manner, formed in such units, as would secure the fullest possible representation on a Proportional Representation basis for every constituent part of the Union which may also enable every shade of political opinion to be represented. Sir, I commend this to the House.

(*Amendment No. 1430 was not moved.*)

Shri H.V. Kamath : May I make a submission, Mr. Vice-President? I thought that Dr. Ambedkar was moving his amendment No. 1425 and so I said that my amendment would not be moved. It appears that Dr. Ambedkar is not moving his amendment. His amendment consists of two parts and he has not separated the two. Therefore, will you kindly permit me to move my amendment No. 1426?

Mr. Vice-President : All right.

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

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

Sub-clause (b) of clause (5) as it appears in the Draft Constitution reads as follows :—

"For the purpose of sub-clause (a), the States of India shall be divided, etc."

Now, obviously the words 'of India' are redundant and superflous, and in my judgment they should be deleted because the States in the Draft Constitution always mean the States of India. Therefore, Sir, I move that the words 'of India' should be deleted in this sub-clause, and if this is accepted, the sub-clause will read as follows :—

"For the purpose of sub-clause (a), the States shall be divided, etc."

This is quite clear. There is no need for me to expatiate upon this point. I commend his amendment to the House for its acceptance.

Prof. K.T. Shah : Mr. Vice-President, Sir, I move :

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

This is consequential, Sir, from the previous amendment that I have moved. In as much as I do not desire that a maximum figure should be fixed for representatives in the House of the People, it follows that such maximum or proportion being fixed as between the two chambers would also be out of place. If my previous amendments are accepted, then this would follow as a matter of course. I, therefore, do not think it necessary to take any further time of the House. I commend the amendment for the acceptance of the House.

Mr. Vice-President : Amendment No. 1432 is verbal and is therefore disallowed.

Amendment No. 1433 both alternatives and amendment No. 1437 are of similar import. Amendment No. 1437 may be moved. It stands in the name of Prof. Shibban Lal Saksena.

(*The amendments were not moved.*)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, with your permission and the permission of the House I wish to move amendment No. 1434 in a slightly altered form. There will be some verbal changes in accordance with a similar amendment which has already been accepted by the House.

I beg to move :

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

This is the form in which another similar amendment was found to be acceptable to the honourable Member, Dr. Ambedkar. This matter has already been discussed in the House and the principle has already been accepted in another context, namely, that if we have to depend upon a census, it must be a census of which the figures are available. We cannot depend upon a census for which figures are not yet available. If we are to hold an election almost immediately after a census is held, the figures will not be available. It takes about a year to make the figures available. We have to do a lot of things depending upon census figures before an election. In these circumstances one has to depend upon the previous census of which figures are available. This matter was well discussed in

the House and the principle was accepted and this amendment is practically consequential upon the acceptance of that motion.

Shri L. Krishnaswami Bharathi : Sir, I beg to move :

"That with reference to amendment No. 1434 of the List of Amendments, in sub-clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

Clause (c) reads as follows :

"The ratio between the number of Members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

As per clause (b), there shall not be less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population. That latitude being given, it is just possible that there may not be uniformity of representation throughout India. The object of this clause is to secure a uniform scale of representation throughout India, whatever it may be, and in order to secure this uniformity this clause is introduced. But the wording "members to be elected at any time for each territorial constituency" does not bring out the sense fully and hence my amendment that for the words "members to be elected at any time for", the words "representatives allotted to" be substituted. If my amendment is accepted the clause would read :

"The ratio between the number of representatives allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

It is in order to bring out the sense more clearly that this amendment is moved.

(*Amendments Nos. 1435 and 1436 were not moved.*)

Mr. Vice-President : No. 1438 is disallowed as being formal.

(*Amendments Nos. 1439, 1440, 1441 and 1442 were not moved.*)

Amendment No. 1443 is disallowed as being verbal.

(*Amendments Nos. 1444 and 1445 were not moved.*)

Mr. Naziruddin Ahmad : Sir, I beg to move

"That clause (7) of article 67 be omitted."

This clause deals with territories other than States. The objection to this clause is that it gives the right to Parliament to determine the representation of areas other than the States. With regard to these territories, I submit, as I submitted in connection with another similar amendment, that if any area is governed by any authority, that authority should decide its representation. That principle should be fixed in the Constitution. It should be left to an appropriate authority in the area to whom representation is given. There would be some authority functioning in those areas and it is for that authority to fix their own representation and not for Parliament. It may be a referendum or the like. In fact, it deprives certain areas of the right of self-determination.

Mr. Vice-President : Amendment No. 1447, Prof. K.T. Shah.

Prof. K.T. Shah : Mr. Vice-President, Sir, I beg to move :

"That in clause (7) of article 67 for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union' be substituted respectively."

The amendment clause would read :—

"Parliament shall, by law, provide for the representation, in the House of the People, of the Territories directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union."

That would put all those territories on a paper as between themselves.

I have already mentioned, Sir, that there are considerable chunks governed directly by the Centre; and perhaps there may be more hereafter, if new territories desire to form part of the Union. And if even for a while these are to be directly governed by the Centre, it is but right and fair that they should be also receiving some representation.

I would, therefore, make it compulsory by the Constitution that they too be provided with adequate representation. Their representation should be on the same basis as that for other States already forming part of the Union, *i.e.*, one representative for every 500,000 population. There should be no talk about any territory being more developed, and therefore better fitted to be represented, while others are called less developed and backward and therefore not fitted to be properly represented either in their own land or in the Union as part of the Union. This kind of talk might suit the alien power which ruled in the land up till 18 months ago; and for that power the entire country was deemed for a long time to be unfit for representative institutions. Had those ideas prevailed, we should not be shaping this Constitution for a free-India today. It is of the essence of such institutions and of the task of working them, that people learn to use them by using them. No amount of teaching their use will make people learn to use them as the actual responsibility of using them. Accordingly, I feel that this flows directly from the previous amendments which I have moved and should, as such, be accepted.

Sir, I commend it to the House.

Mr. Vice-President : Then we come to amendments Nos. 1448 and 1449 which are disallowed as they are merely verbal.

Amendment No. 1450 standing in the name of Pandit Lakshmi Kanta Maitra may be moved.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, I beg to move :

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

Clause (8) of article 67 provides that upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority in such a manner, with effect from such date, as Parliament by law may determine. My amendment is that this readjustment should be made on the basis of population. The

amendment is self-explanatory and I need not labour the point. I commend the amendment for the acceptance of the House.

Mr. Vice-President : There is an amendment to this amendment, No. 43 of List II, standing in the name of Mr. L.K. Bharathi.

Shri L. Krishnaswami Bharathi : I am moving it, Sir, I beg to move :

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted :—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House'."

Sir, sub-clause (8) of article 67 reads as follows :

"Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine."

The object of this sub-clause is, that after the elections to the Legislature—either the Council of States or the House of the People, as the case may be—census may happen to be taken and new figures may be available; and we have of course to adjust the number of seats in accordance with the census figures available then. But it may not be quite possible to provide representation in accordance with the figures available thereafter, but it has got to be done only at the subsequent elections. So in order to obviate this difficulty, whenever there is some census taken and figure available, in terms of which we have got to adjust, it has to be adjusted only later on at the subsequent election and should not have anything to do with the existing Council of States or the House of the People. A similar provision is found in article 149, sub-clause (4). It is an omission here and I have sought to bring it here so that it may be in line with the scheme as found in article 149. I hope this amendment will be accepted by the House.

Mr. Vice-President : Amendment No. 1451 standing in the name of Shri Nandlal comes next. The honourable Member is not in the House.

Amendment No. 1452 standing in the name of Mr. Mahboob Ali Baig may be moved.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. Vice-President, Sir, I beg to move :

"That to article 67, the following new clause (10) be added :—

'(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote'."

Sir, I am only proposing the extension of the principle which we accepted yesterday in the matter of election to the Council of States. I am very much gratified to find, Sir, that yesterday the House recognised the principle underlying this method of election and I need not repeat all the arguments that I adduced yesterday in support of this system and to establish the fact that this system of election is more democratic and more scientific. But by the speeches of some honourable Members of this House, especially my honourable Friend, Pandit Kunzru, an impression was created on this House that in that particular case, namely, in the case of the Council of States, the electorate therefore are the Members of the legislature, who were elected on a joint electorate and not on

[Mr. Mahboob Ali Baig Sahib]

communal electorate. Therefore, there was no danger, if this system is adopted for the election of the Council of States and of any council, of any communal party coming in. That was the reason, he said, he was supporting it. Thereby he meant, if I may be permitted to say inferentially, that if the method of election would enable communal parties to be returned to the legislature, he would not support it. My submission is that there is no scope for any communal body as such being returned by this method, and if it could be returned, it would be returned in the same way as any body holding different views from the majority party could be returned. If there is no objection to a section of people holding views different from the majority, they could get into the legislatures by this method. I do not see any reason why any communal body should have the right to be returned. The reason why Pandit Kunzru supported this method for the Council of States, he said, was that people holding different views must be enabled to be returned, although they may be holding the view which was not held by the majority. That was the reason why he said that proportional representation method is good, because it enabled people, who held different views from the majority, to enter the legislature.

Therefore, Sir, my submission is that if there is any defect in this system of election, according to me, it is this parliamentary democratic system, it is the political party system that is responsible and not the method as such on a former occasion. I said that because of this party system, this Parliamentary democracy where one party is returned and it tries to dominate another and make it impossible for the minority party to be returned and all repression and suppression takes place, it is for that reason, Sir, I said this form of Government based upon parliamentary democracy is not desirable. Whatever it is, Sir, my submission is this method of election, this method of proportional representation by single transferable vote will enable peoples and parties in the country, who hold views different from the majority party, to be represented in the legislatures. What is true in the case of election to the Council of States is equally true in the case of election to the House of the People. Why should it be different, I ask, if this method would enable a party or section of persons, who hold different views from those views held by the majority, if this method enables those persons to be represented there and thereby they form what is called 'an Opposition Block'? Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature. So, Sir, by this method and by this method alone, I submit there can be a strong opposition in a parliamentary democracy. So my submission is, in the first place, on principle, there is nothing wrong in it and as I said, it is more scientific and democratic, and I submit, that it will enable sections having different views from the majority party to be returned and thus form an opposition to the party in power. Otherwise, it will degenerate the party in power into a fascist body. Therefore, Sir, I commend this method even in the case of election to the House of the People.

Sir, I do not move the other alternative amendment.

Mr. Vice-President : The Article—clauses (5) up to the end—is now open for general discussion.

Pandit Thakur Dass Bhargava (East Punjab : General) : Mr. Vice-President, Sir, clause (5) of article 67 speaks of the fixation of 500 representatives to the House of the People and also says that these representatives shall be directly chosen by the electors and clause (b) speaks of territorial constituencies. I sent in amendments, in regard to these two sub-sections and the purport of the amendments was that a reference to article 292 be deleted, as also that the territorial constituencies should be of contiguous areas and there should be no special constituencies or reserved constituencies. As a matter of fact, this clause (5) only speaks of one method of the choice of the voters and does not say in what particular way these electors will have the right to choose the representatives. An amendment was sought to be moved by Mr. Karimuddin to the effect that the representation should be by way of proportional representation by the use of cumulative voting, which to my mind clearly means a reversion to separate electorates. I propose that these two clauses and the question of the reservation of seats under article 292 and other articles which relate to elections may be fully discussed at the time when we are on those articles and not separately here. Because, if we choose to make modifications in article 292 or 293 as they stand, the right of proper occasion to amend or adopt them will be when we will be considering these articles. Therefore; my humble submission is that in regard to clause (5) we may take it that unless articles 292 and 293 are disposed of, we shall not be debarred from moving amendments there and modifying them as we choose. I therefore propose that discussion about reservation of seats, delimitation of constituencies and the method of delimiting them be postponed to the time when we consider articles 292 and 293.

In regard to the rest, I also wanted to propose an amendment to clause (6) that illiteracy should also be regarded as one of the grounds for not giving a vote on the basis of adult suffrage. If a person is illiterate, he should not be granted the right to vote. As a matter of fact, my idea in moving this amendment was not to deprive any persons of their right of voting, because I am very much in favour of adult suffrage. I wanted that as the elections are not coming on before another two years or one year, by that time, every elector should educate himself and could at least know how to read and write, as in my opinion reading and writing can be acquired by any person in three months. It will give a great fillip to the drive for adult education and to the electors to make an attempt to know how to read and write, if we condition the exercise of the right of voting to literacy. When I consider, Sir, the number of electors which will come on the electoral roll if we allow the basis to be adult suffrage, I am astounded by the magnitude of the problem. According to calculations, I understand that there will be something like twelve crores of voters. In a population of thirty crores, it is not a wrong estimate to think that the number of voters may be twelve crores. If there are 500 representatives, it means that each constituency will consist of at least 240,000 voters, if there are single member constituencies. If there are multi-member constituencies, then, if a constituency is formed for the purpose of electing four members, there will be something like 960,000 voters. At the present time, in ordinary elections for the Central Legislative Assembly, we had from 8,000 to 40,000 voters. With this increase of numbers, I shudder to think how we will be able to arrange for the elections. It will require, not one or two days as at present for the elections; it will require, I think, about a month. The number of booths will

[Pandit Thakur Dass Bhargava]

be very large. I think the magnitude of the problem is such that it must give serious cause for doubt whether we would be able to hold these elections in the manner in which we want them to be held. How will this large electorate be educated? How will you approach these electors so that the elections might be good? When I consider that there is a proposal to have multiple constituencies, and reserved constituencies, the situation becomes all the worse. So far as I think, at present, a person belonging to the Depressed Classes, etc., is known only in his Taluka; he is not known over several districts. If the Constituency is spread over several districts, I do not know how the elections would be real. The electors will never have occasion to know who the person elected is. Therefore, to obviate this difficulty, I would suggest, for the first ten years, just limit this right of voting to literate people. We will be doing a thing which will be really useful. Otherwise, in my humble opinion, these elections will be a great farce. Therefore, my submission is that if the House is so advised, we should have the provision of literacy put in clause (6).

Similarly, I have to make one point more; that is about sub-clause (c) of clause (5). The words in the article are "as ascertained at the last preceding census." The population as ascertained at the last preceding census will, in many cases, be absolutely wrong. In East Punjab lakhs of people have come from West Punjab and gone away from East Punjab. Similarly in West Bengal, people are still coming in from East Bengal. In regard to Delhi, there has also been a large influx of population. The last preceding census will not give the correct figures and if we consider the present position, the figures will be quite incomparable with the real figures in which the population is to be found in these places. Therefore we shall have to have recourse to sum other expedient, and the expedient which has been suggested is in article 313. I doubt very much if we would be able to arrive at the real figures from the number of electors. The right figures about the population from the number of elector will be at best a conjecture and it will not be in accordance with the true principles set out in clauses (5) to (8). Therefore, my humble submission is that with regard to East Punjab and West Bengal, unless a census is taken, we will not be correct in our figures. This will entail a good length of time. If the elections are coming in 1952 or 1951, then the position can be solved; otherwise, you will have to take a census before these provisions can be given effect to, or the words "as ascertained at the last preceding census" will have no meaning for us. If these words are taken in their literal sense and no adaptation is made it would mean for such of the Muslims, about 50 lakhs as have left East Punjab, you will reserve about fifty seats in the local legislature whereas the population of the Muslims at present is said to be about two lakhs. These are real difficulties which have to be solved. Unless we solve these difficulties, my own apprehension is that there will be no real elections.

In regard to article 292, I have to submit one more word. In clause (5), the reference to article 292 is certainly not wanted, because article 292 deals with direct elections, in regard to constituencies and in regard to reserved constituencies also. The present position is that they are proposed to be chosen by direct elections. The reference to article 292 is absolutely unnecessary. Even if it is kept, I would, with your permission, repeat this that I take it that the reference to article 292 does not bind the House and we would be able to modify article 292. I do not

want to conceal my feelings from this House that I want that there should be no reservation of constituencies for any communities, *i.e.*, no reservation of seats for any community. I only want that so far as the Scheduled Castes are concerned, there may be reservation of representation, which we can do on the lines suggested in article 293. We do not want any reservation of seats because if you consider the whole question, and if you consider the multiple constituencies, the entire elections will be absolutely unreal. Our difficulty is that we have not realised how these constituencies will be formed. When the matter comes to the House in a concrete form, I am perfectly sure that the House will not even touch the reservation of seats with a pair of tongs.

With these remarks, Sir, I support article 67.

Shri Deshbandhu Gupta (Delhi) : *[Mr. Vice-President, I want to draw the attention of the House specially to parts (b) and (c) clause (5) of article No. 67. My learned Friend, Pandit Thakur Dass Bhargava, has also drawn the attention of the House and has pointed out that if we are relying on the last census figures for fixing the number of representatives then it would affect adversely, specially in the case of East Punjab, West Bengal and Delhi. I want to point out that so far as East Punjab, concerned only a little less of the population which has gone away from East Punjab to the Pakistan, has come from Pakistan to East Punjab, and therefore the population of East Punjab has not swollen much. But as regards Delhi, it is an admitted fact, that its population has greatly swollen by the influx of refugees more than in any other town. According to the last census, Delhi's population was about 9 lakhs, but at present it is estimated to be about 19 lakhs. Therefore, it would be very unfair for the Delhi province, should the number of representatives be fixed according to the last census.

Mr. Vice-President, that is why I want Dr. Ambedkar and others to keep this fact in view. I hope that in regard to Delhi and other cities, whose population has swollen apart from the natural causes, due to the partition of the country this fact would be borne in mind when seats are allotted to them. I think that in clause (c) if for the words 'actual population' the words 'actual number of voters' are inserted, then there would be no ground for any objection from anybody. Therefore, I want this fact to be borne in mind, and as has been provided by article 313 of the adaptation clause or under it, or in any other form, an assurance to this effect should be given; otherwise grave injustice would be done to Delhi and other towns, which have absorbed our refugee, uprooted brethren from Western Pakistan, who would be denied their due representation in the House.]

Shri Prabhudayal Himatsingka (West Bengal : General) : Mr. Vice-President, Sir, in connection with clause (5) of article 67, Pandit Thakur Dass Bhargava has tried to explain the difficulties that are likely to be encountered in having a proper election. The proposal is to have one member for five to seven and a half lakhs of persons and roughly speaking we may expect that there will be about three lakhs voters in each constituency. However if the election is expected to be properly held and in order to avoid the malpractices that are seen in elections on a large scale where a large number of voters are concerned, some device will have to be found whereby the voters may be identified and false voting may be eliminated.

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* [ ] Translation of Hindustani speech.

[Shri Prabhudayal Himatsingka]

Sir, we know from the elections that we have had to run in the past that where a large number of voters are concerned, a very large amount of malpractice is possible on account of the voters not being known to the persons or authority who are there as Polling Officers. So some method of identification should also be devised in connection with such elections.

As regards the different amendments which have been suggested about multiple constituencies and cumulative votes, Pandit Thakur Dass Bhargava has also explained that it will be a very wrong thing to do it because, as it is the constituency will be very big and if you have multiple seats, the troubles of a candidate can be better imagined than described. If you have multiple constituencies, even the best man cannot expect to be returned without a contest. If there are more than one seat in a constituency, there will be more candidates and everyone of them, whether he is the best man to be selected or not, will have to come by actual contest and there will be, if it is a four seat constituency, about twelve to thirteen lakhs of voters and if it is more, it will be similarly more and the trouble that a candidate will have to go through will be enormous.

Therefore, Sir, the various amendments that have been moved in order to have multiple constituencies or plural voting should be opposed and defeated.

With these words, I support the motion as it stands.

Mr. Vice-President : Sardar Bhopinder Singh Man. The time at our disposal is extremely limited. As there are quite a large number of honourable Members who want to speak, I am offering special facilities to those coming from East Punjab because they have very strong feelings on this matter, and I hope the House will see the reason for this special concession given to them. Now, you will kindly confine your remarks to as short a time as possible.

Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh) : *[Mr. Vice-President, while discussing this article, two points have emerged clearly on which we, as a minority, feel strongly. In your last meeting you had decided without any reservation that so far as minorities were concerned, they had been given reservation of seats on principle. While accepting this principle you had given them an option that if they decide to give it up, they could do so gladly. But I feel that while reopening this question, that offer has been withheld nay, the right is being snatched away from them. Where is the occasion, I fail to understand, for being in such a hurry, to make a change so early, and for snatching away a right which had been conferred on us in the last meeting? I can understand this much that after the expiry of ten years, when the minorities feel that the majority has gained their full confidence, then they should give up this right of their own accord.]

Mr. Vice-President : I am afraid that you are speaking on the right of separate representation : That has nothing to do with the clause in hand. I appeal to you to confine your remarks to the subject of the clause under discussion.

That is my final ruling.

* [ ] Translation of Hindustani speech.

Sardar Bhopinder Singh Man : *[Mr. Vice-President, I would like that at the time of forming these constituencies, particular care should be taken to make them plural constituencies. The right which you have conferred on the minorities can be preserved only if you make the constituencies in such a way that they should be able to represent themselves. It is necessary, because the minorities have not gained full confidence of the majority up till now. There is yet another point. Pandit Bhargava is trying to have the constituencies so shaped that the rural should be amalgamated with the urban constituencies. But the standard of literacy in the rural areas is so low that while competing with the urban areas, they can never succeed. Besides the old dispute between the producers and the consumers still exists. Whatever we produce we sell them in 'Mandies' and when 25,000 votes shall be pitted against us, to my mind, the people of the rural areas shall never be able to send their representatives while contesting with the people of urban areas and the stockists. What will be the result under such circumstances? The result will be that the producers whose standard of literacy is low and who live in far-off small hamlets, would not be able to send their representatives through elections. Another result will be that the 'Mandies' would become centre of activities for ever and the villages would be cut off from the political current of the country. The twenty or twenty-five thousand voters of mandies will always try to suppress the villagers politically. We in the Punjab feel that so long as there is fundamental difference between the producers and the consumers, they should have separate constituencies. Therefore, what we want is that the delimiting Committee should not be influenced by Pandit Bhargava's speech and this difference should be kept intact, namely, the rural constituencies should be kept separate from the urban constituencies.

There is yet another point. In East Punjab a large population is fluid. Some have migrated to Delhi and a part of it is going back out of Delhi. Then again it is not known what population has stayed in the Punjab and how much has migrated. In these circumstances, it is unavoidable that a census should be taken in East Punjab. To my mind, without an accurate census, confusion might prevail. Therefore, I am of the opinion that arrangements should be made for taking of a census immediately, and the rural and the urban constituencies should be formed separately and they should be plural.]

Sardar Hukam Singh (East Punjab : Sikh) : Mr. Vice-President, Sir, we have provided that reservation be made for minorities under the present Constitution, reservation of seats, I mean. Certainly there are two methods only by which we can safeguard the interests of minorities. Up to now, the minorities have enjoyed separate electorates and some weightage as well. That has gone, because we have decided that on principle and basically that is a wrong method and no minority should have any weightage or any separate electorate. There are, as I said, only two methods, one recommended by the Minorities Committee, that there should be reservation of seats and that is also provided in the Draft Constitution, under articles 292 to 299. I agree with Pandit Thakur Dass Bhargava when he said that it would be better if both these clauses were taken together, and the discussion of this part of article 67 taken up at the time when article 292 was also being discussed. The amendments that are now before the House, by

* [ ] Translation of Hindustani speech.

[Sardar Hukam Singh]

Mr. Karimuddin and another honourable Member, certainly are the opposite or the alternative of the reservation of seats, provided in those sections. Sir, I am of opinion that if separate electorates have perpetuated communalism, which is so detestable and reprehensible, this reservation of seats, does no less (*hear, hear*). I think it is rather more harmful for the minorities, and it does not safeguard their interests. But it is, on the other hand, beneficial to the majority. When you are reserving, say 30 per cent, for the minorities, indirectly you are reserving 70 per cent for the majority. This allowance or concession or option to contest unreserved seats as well, is in my opinion, very illusory when it is brought into actual practice. Further, this reservation, though it is not just now before the House, because the two methods are to be discussed side by side. I am taking it,—and I crave the indulgence of the House in listening to me patiently,—this reservation of seats is rather harmful and would create the same atmosphere that we abhor so much. When the minorities see that certain Members of their own community, offensive to them, are being pushed up and backed by the majority community, certainly the relations would get strained and our object would not be fulfilled at all. And secondly, under this reservation of seats, the majority would be able to secure some Members from the minorities of their own choice, while there will be a certain proportion that would be returned by the minorities themselves. So there will be two sections and a further rift would be created between the sections of the minority community itself.

Shri L. Krishnaswami Bharathi : Sir, on a point of order, we are not discussing here the question of reservation of seats, and so I would like to know if these remarks are relevant.

Mr. Vice-President : They are relevant in the sense that the honourable Member is defending proportional representation. Am I right?

Sardar Hukam Singh : Yes.

Shri L. Krishnaswami Bharathi : But this is a matter of great importance on which we will have to concentrate and so more time will have to be allotted if we are discussing it. I wanted to bring that aspect of the matter because it is a very big issue and...

Mr. Vice-President : In accordance with my general policy, I shall allow Sardar Hukam Singh to speak and to refer to the question of reservation of seats, by way of illustrating the advantages of the system under discussion.

Shri L. Krishnaswami Bharathi : Sir, I should not be understood as wishing to shut out such discussion at all, but what I wanted to...

Mr. Vice-President : Will the honourable Member please take his seat?

We must be generous and we as a majority community must be generous to the minorities (*hear, hear*). It has proved its generosity so far; let not that tradition be broken.

Now, Please continue, Sardar Hukam Singh.

Sardar Hukam Singh : I am thankful to the House and to the Vice-President, though I do not crave for any generosity at this moment. I will not discuss that point further.

Sir, it has been argued here by more than one Member that plural member constituencies and cumulative voting would be too costly and unworkable. My position is that if separate electorates are detestable and if reservation of seats is objectionable, then some method has to be devised by which the rights of minorities can be safeguarded and that this is the only method suggested in the amendments that can be considered. If it is cumbersome and if it is costly, then it has to be settled in accordance with the democratic principles that we are following now. And my submission is that this is the only mode by which we can satisfy the minorities and stick to our principles that we have chalked out so far.

Shri V. I. Muniswamy Pillai (Madras : General) : Mr. Vice-President, Sir,...

Mr. Vice-President : May I request the honourable Member to take as little time as possible. There are many honourable Members who desire to speak and I would like to accommodate as many of them as possible.

Shri V. I. Muniswamy Pillai : Sir, in supporting article 67, I may say that I specially welcome sub-clause (6) which envisages adult suffrage. Speaking for the Scheduled Castes I may say that this kind of election is highly needed at a time like this when we have just secured freedom for this country. Under the Poona Pact, the Scheduled Castes had to submit to two elections—the panel election and the general elections. I know as a matter of fact that this has caused great inconvenience to the candidates.

Sir, one of the Members of the Assembly has moved for the adoption of the cumulative system of voting. I feel that this cumulative system of voting under the present set-up is most dangerous, because the communities will have to go away from the main body of electors. So I feel that on no account should this cumulative system be encouraged. The distributive system of voting is bound to bring the various communities together and prove worthy of the labours undergone by them in maintaining the freedom that we have won.

One of the Members, speaking on this article, observed that reservation of seats for the minorities must go and, at the same time, generously stated that, so far as the Scheduled Castes are concerned, they should not be disturbed. Sir, I welcome the statement made by Pandit Bhargava. This matter of the reservation of seats and protection for the minorities has been dealt with in this sovereign body and we have come to certain decisions. If there is a feeling that this matter should be re-opened, the proper place to do that will be where we discuss articles 292 and 293. Whatever it may be, I feel and also every Member of the Scheduled Castes in this sovereign body feels that the protection given to this community should not be disturbed. You yourself know, Sir, in your tours throughout the country, the disabilities of the Harijan community. The Minorities Report has considered those things and this sovereign body after considering that report has agreed to give some protection to the minority communities. That being so, without taking more time of the House I will conclude by saying that the safeguards and the protection afforded to the Scheduled Castes and Tribes should not be disturbed. When we deal with articles 292 and 293, as I said, we can have elaborate discussion on the various points that may be raised then as regards protection for minorities.

Mr. Vice-President : Mr. Khandekar may now address the House. I expect him to confine his remarks to the matter under discussion and to take as little time as possible. There are limits to the patience of the majority community on this question.

Shri S. Nagappa (Madras : General) : My friends say that there is no limit to their patience.

Mr. Vice-President : That was a remark meant for Mr. Khandekar only.

Shri H.J. Khandekar (C.P. & Berar : General) : *[Mr. Vice-President, I rise to express my views on the matter that is at present engaging the attention of the House. When we go through clause (5) of article 67, we find that the provisions of this clause are subject to the provisions of articles 292 and 293. Article 292 provides for reservation of seats for minority communities and since I myself belong to a Scheduled Caste—a minority community, I am glad that the House has accepted the article. The Minorities Sub-Committee and the Advisory Committee had also recommended to the House for reservation of seats for minorities. I need not say much about the condition of the minority communities to which I belong. The Scheduled Castes constitute that section of the country which has been kept suppressed by the other sections for the last thousands of years and which has been denied social and political rights.

I may recall to you, Sir, that under the Government of India Act, 1919, provision had been made for the nomination of persons belonging to the Scheduled Castes for some seats reserved for this purpose in the Provincial Legislatures. Our representatives present at the Round Table Conference had made a demand that seats be reserved for Scheduled Castes according to the numerical strength. But to the misfortune of our community, Mr. Macdonald gave an award according to which the Scheduled Castes which have a population of 75 millions in the country, got only seventy-two seats out of a total of 1580 seats, that is the Macdonald Award allotted us seats many times less than what we should have been given, according to our population. I am very glad that when the Award was announced, Respected Bapu undertook a fast in Yervada Jail as a result of which the Poona Pact gave the Scheduled Castes 151 seats out of a total of 1580 in the Provincial Legislatures, *i.e.*, just double of what they had been given under the Macdonald Award. I therefore express gratitude to Respected Bapu on behalf of my community. But in this connection I can say that allotment of 151 seats was also not in proportion to our numerical strength and as my friend Mr. Muniswamy Pillai has observed, we had to contest two elections under the Poona Pact. First, for Panel election there was contest amongst ourselves and after that in the general election we contested the candidates of other communities. At that time there was cumulative system of voting for us and not the distributive system. My friend Mr. Kazi Syed Karimuddin has moved an amendment No. 1415 on the list, seeking to introduce cumulative system of voting. If it is accepted, elections will be held on the basis of cumulative system of voting. Under this system if there be two seats, one reserved and the other general in a constituency every voter would be given two ballot papers and he would have the option to cast both of his votes for one candidate or distribute these among two candidates. In this case naturally a

* [ ] Translation of Hindustani speech.

voter, to whichever community he may belong, will cast both of his votes for the candidate belonging to his community and not to person of other communities. Communal rivalry therefore will continue. We have to do away with communalism as early as possible and therefore I oppose that amendment. As I belong to Harijan community whose elections were so far held on the basis of the cumulative system of voting, I have more experience of it than others. I have still in my mind the disastrous results of the cumulative system.

The minorities Sub-Committee and the Advisory Sub-Committee which were formed by this Assembly and above all Dr. Ambedkar himself who has been the greatest supporter of separate electorate have disapproved of separate electorate and have, by voting for joint electorate, eliminated the canker of communalism from our polity. I thank them all for this. In the circumstances I have no option but to interpret this move of Kazi Syed Karimuddin as motivated by the desire to secure separate electorates by indirect means, for while on the one hand we would be abolishing separate electorate, on the other we would be retaining it by having the cumulative system of voting. If we accept the amendment, it is plain that its consequences would be that members of a community would under the cumulative system of voting, cast their votes for the candidate belonging to their community, and thus separate electorates will continue to exist indirectly. I therefore oppose the amendment moved by Mr. Kazi Syed Karimuddin.

There is another point to which I would like to draw the attention of Dr. Ambedkar, and I hope he would give his consideration to it. Sub-Clause 5(c) of the article refers to a census. A few days ago a clause in which the expression "atest census" occurs, was discussed and passed by this House. It would be better if we add the word 'latest' before the word 'census' in this clause also in order to bring it into uniformity with that clause. I may state the reason why I make this suggestion. In the next election to be held under article 292, minorities will have some reserved seats in the Provincial Assemblies. They will have one seat for every one hundred thousand of population and in the Central Assembly one seat for every million of population. I am sorry to have to say, Sir, that we do not trust the census figures recorded in 1941 because the population of Harijans shown in that census is very incorrect. Therefore, Sir, unless a fresh census is taken and the population of Harijans ascertained, I do not believe we would be allotted our due numbers of seats. I may submit, Sir, that according to our population there should have been sixty members from amongst our community in this House, because before partition our population was sixty millions. In this connection I am sorry to say, Sir, that in spite of the announcement of the British Government and the decision of the Congress, that Harijans would also have representation according to their population, only twenty-seven representatives of Harijans are here in this House. And I may add that it is something painful to me.

We would like to return our representatives according to our population. Even if it be found that it comes to only twenty millions we would not mind sending only twenty members. But a census must be taken before elections are held. I am sure our population can under no circumstances be only twenty millions. Even today when the country has been partitioned, our population is at least sixty millions. I make this assertion without referring to the exact figures of our population. But I am sure that if reservation of representation for the Scheduled Castes on the

[Shri H.J. Khandekar]

basis of one representative for every one hundred thousand of their population—is maintained in the next elections and for this purpose figures of their population are collected, it would be found that their population even now is not less than seven crores. It is a well known fact, Sir, that the birth rate is high among the poor. We have no money, no learning, but we possess great capacity for producing children. I emphatically say that we are not less than seventy millions today in India. In view of these facts fresh census should certainly be taken.

With these words, Sir, I would appeal to Honourable Dr. Ambedkar that while replying to the debate he would kindly make the position clear regarding the words "preceding census" that occur in this clause. I submit, Sir, that unless a fresh census is taken, neither the provision for reservation of seats, nor electorates would be helpful to any minority. It may be that if a fresh census is taken elections are delayed. But I do not think that it must needs be so. Even if the elections are to be delayed we should not be affected by that prospect. People of every section of the country say that there should be amelioration in the conditions of the Harijans. But this should not remain with these people merely a matter of lip sympathy. It should rather be their sincere desire and ought to be translated into practice. Even if elections are delayed by a year or so on account of the suggestion made above, we should not mind such delay.

With these words Sir, I support the article and oppose the amendment moved by Mr. Kazi Syed Karimuddin.]

Shri Biswanath Das (Orissa : General) : Sir, I have come to support the article and in doing so, I feel it necessary to place certain facts before that Assembly. Sir, I think that article 67 and 149 should have been discussed together because they are correlated and one is complementary or supplementary to the other. As such, I feel that it could have been a great convenience to the honourable Members of this House if both these articles had been discussed together. I have to place before the honourable Members of this House the immensity of the resolution that they are passing today. We are giving our seal of approval to the most important principle, namely the principle of adult suffrage, by which every adult—male or female—in this country irrespective of the fact that he is a plains-man or belonging to the hill tribes or to the Scheduled Caste, becomes a voter and as such shares the responsibilities and anxieties of the administration of the State and becomes an equal citizen absolutely and in all respects. Having adopted this important principle it is necessary that we realise the immensity of the proposal. This makes me feel that we will hereafter have an electorate which in no case will be less than twenty crores. It may be more. My honourable friend Pandit Thakur Dass Bhargava I think did less than justice when he stated that the number of voters may be somewhere between 15 and 16 crores. Our population is 32 crores and if those below 21 are eliminated I feel sure that the number of voters is bound to exceed 20 crores. 15 per cent is taken as children of the school going age, who are below 14. If that is so, I have no hesitation in saying that 25 per cent may as well be taken as people below the age of 21. As such three-fourths of the entire existing population may be taken as voters. Therefore, the country and the Government will have to keep themselves ready to meet the immensity of the proposal that they are accepting today. There would thus be a minimum of twenty

crores of voters, which would mean that there should be about 2 lakhs polling stations and four lakhs of polling officers. I do not know how long it will take to conduct and finish the elections. I therefore appeal to the Government and also to you as the person primarily in charge of this work, so far as we are here concerned, to take immediate action in time to set up the machinery to carry out this stupendous task. It is through you that we are devising a special agency for this purpose, namely the Election Commission but that does not minimise the tremendousness of the task.

Having stated so far about the immensity of the problem, I would come to two areas which give enough cause for anxiety. These are the States and provinces in the north and also the provinces of West Bengal and Assam. In these two different and distinct areas there has been huge migration of the population. Lakhs and millions of people have migrated either to Pakistan or have come away from there. We have reservation of seats; and not only that, in certain cases, as in the case of the aboriginal population, the Constitution has prescribed that whether they live on the hills or on the plains they have to be taken together and seats to be reserved on that basis. That being the position I think it would be doing a grave injustice to the people of East Punjab as also to the States bordering Pakistan in the North and also probably to the Union of Sourashtra and Bombay, as also to the two provinces of Assam and West Bengal, if a census is not taken. I think a census is called for, because of article 149. This article lays down that the basis of representation has to be devised on the figures of the previous census. The previous census is the one that was taken in 1941. It is a fact within common knowledge that due to the war and in the name of paper shortage and the like the then government did not think it necessary to take a full-fledged census. Not only that but what little information was gathered was also left aside with the result that an abridged census was taken. Ever since, much water has flown under the bridges. Therefore it is necessary that to be fair to these areas in the North-East and the North-West early census is necessary. A special census in these areas for this purpose should be undertaken. In this connection need I invite your attention to what has been done in Pakistan? In Pakistan they have undertaken a census in the Provinces of Sind and the West Punjab as also in East Bengal and they have come to certain conclusions for the purpose of representation in the Constituent Assembly after this census. What was done in Pakistan could have easily been done in India and need I say that even today it is not too late for a census to be taken in all seriousness without further delay.

Having said so much about census I come to another aspect of this question. Soon after passing the Third Reforms Act in the British Parliament the late lamented Gladstone declared in the House of Commons that the time has come when they should find more money and put forth all their exertions to educate their "little masters". Who are these little masters? These little masters are the voters : they are the real masters. What have you done to educate your little masters? In this country the percentage of literacy is about ten per cent. Female literacy is much lower; so also is the case with the Scheduled Castes. As regards literacy among the hill tribes whom you have enfranchised in full and given the right to vote, it is practically next to nothing. What a tremendous risk you have taken? You are calling upon them to vote, but who are they? A very highly inflammable class of people who have up to date absolutely no experience either of propaganda or of

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voting in elections. Therefore I warn you to take early steps in this regard, so that the difficulties that I have placed before you are minimised. And what have you done in this regard to minimise them? You have done nothing. Last year it was my misfortune to have an interpellation in the Constituent Assembly (Legislative) to know whether Government have undertaken to appoint an organisation to delimit the constituencies. The reply was that it has already been done. What is the sort of delimitation that you have already undertaken? The Provincial Governments are asked to delimit the constituencies; they have asked their officials and some blessed official sits and delimits the constituencies. Is that the sort of delimitation that you are going to have under this Constitution? I warn the Government, and through you, Sir, I beg of the honourable Members of this Constituent Assembly to see that these conditions are changed. Immediate action is necessary to see that delimitation of constituencies is undertaken and necessary steps in that regard should immediately be taken.

With these words, Sir, I fully support the article, but with the warning that I have given.

Maulana Hasrat Mohani (United Provinces : Muslim) : *[Sir, I had very little to say about article 67, but one thing has compelled me to speak something regarding this.]

Shri S. Nagappa : Mr. Vice-President, the Maulana can speak in English.

Mr. Vice-President : Can the honourable Member not speak in English?

Maulana Hasrat Mohani : I have to make an effort.

Mr. Vice-President : That does not matter, we care only for thoughts, not for your language.

Maulana Hasrat Mohani : *[And what is that mentioned in this article which has compelled me to express my thoughts? It is this : clause (5) (a) reads thus : "Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters." The meaning of this clause and of article 293 is that seats have been reserved for minorities. I am, therefore strongly opposed to reservation of seats and there should be no reservation under any circumstances. I say that there is absolutely no need of reservations, after we have made provision for joint electorates and adult franchise. The two cannot go together. When the electorates would be joint, it would mean that everybody will have the right to stand to contest from each and every constituency. On communal basis you are making its scope limited as you have already said that you would like to give reservations to the Muslims because they are in minority. I do not know about Scheduled Castes, but a friend of mine has just said that you would not like to give them any reservation. Why do you call the Muslims a minority? They can be termed as a minority only when they function as a communal body. So long as Muslims were in the Muslim League, they were in a minority. But if they elect to form a political party without any restriction leaving it open to any community, then you should remember that whenever political parties would be formed, the Muslims would give fight by forming coalitions.

* [ ] Translation of Hindustani speech.

Therefore, I say that Muslims would not like to be called a minority. To say that Muslims are in minority is to insult them. I cannot tolerate this even for a moment. I have had a talk with several Members. They have told me : We are conceding this to the Muslims out of generosity. I ask : Who is asking for this generosity? Muslims will become part of the majority party and they will become majority. We do not want any generosity or concession from you. Does any Muslim require it? Concession to whom? We refuse to accept any concession. In case majority party or the Congress party accepts reservation of seats, its claim for creating a secular State and of putting an end to communalism would be classified. I say, you have not put an end to communalism. The proof is that this hob-goblinn, namely that Muslims are 14 per cent and Hindus are 86 per cent, and that the Muslims being 14 per cent, reservation should be given to them—still persists in your mind. I think that the question of reservation of seats has been raised by the Nationalist Muslims who had always been your slaves and slaves of the Congress. You want to reserve these seats for them and when these 14 or 15 per cent seats are reserved they would get them first of all. I take the responsibility, we will isolate the nationalists. Muslims will form coalitions and shall defeat the purpose of your device and I am sure that the Muslims shall not remain in minority.]

Giani Gurmukh Singh Musafir (East Punjab : Sikh) : *[Mr. Vice-President, I had no mind to speak today but as an important matter is under discussion, I would very much like to express my opinion. I am therefore thankful to you, Sir, for giving me this opportunity to speak. Two points have been raised concerning article No. 67, one is regarding the census and the other about the constituencies. In clause (5) of the article there is a reference to article 292 which deals with the question of minorities and hence it would be relevant here to speak about the reservation of the minority problems. It would be to my liking if the chapter pertaining to the minorities is altogether removed; without that there can be no salvation for the country. There remains the question of reservation. Howsoever much one may ponder over the question, he is bound to come to the conclusion that reservation on population basis is of no good to the minorities; and particularly for the Sikhs, reservation is of no use. I am afraid, now the situation is taking such a turn—it may be said the Sikhs are more particular to reservation even than others. I know, at present such things pertaining to matters of policy and others alike, are going on, and which are quite natural during such interim periods. I will not go into the details. Our leaders might have before them some considerations on grounds of expediency and so I would not go into that matter. But this much I would like to make clear that if reservation is retained in the Constitution, it would not be because of the Sikhs. In other words, what I mean to say is that Sikhs would not be in the least benefited by reservation. To cramp them with reservation is to check all their progress. Of course I do think of the Harijans and Scheduled Castes in this connection. But at the same time I think that just as the poison of separate electorate is being removed from this Constitution, similarly no other canker should be allowed to remain by which the communalism may again spread. To achieve this end healthy conventions can be established. Suitable representation can be made through nominations as would leave no room for objection from any one.

* [ ] Translation of Hindustani speech.

[Giani Gurmukh Singh Musafir]

The second point is regarding the constituencies. Pandit Thakur Dass Bhargava had tabled an amendment but it was not moved, and he did not even press for it. This, however, is quite another matter. In my opinion, urban and rural constituencies should be kept separate. Time is not yet ripe to have joint electorates. People of rural areas need education first. They are very backward at present, while people of urban areas are advanced. If one is on the top and the other is on the floor, they cannot meet. In other words a motor-car and a tonga cannot be run together. It is necessary to gradually raise the level of the man at the bottom, and it will also be necessary for the man on the top to mould his mentality in such a way as to treat the man below like his own brother. Only after this has been done, the purpose will be achieved. I do not mean thereby that disparity between the urban and rural areas should be perpetuated, and I do not lay much emphasis on the point that village people are backward. It is possible that in other aspects there is more awakening in the rural areas, but it is a fact that they have not much resources. They are so placed that only our government can make any arrangements for them. At present access to villages is difficult. For these reasons I think that rural constituencies should be kept separate, otherwise village people would be at a disadvantage. With these words I support this article.]

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, out of the articles which we have passed so far excepting perhaps articles Nos. 13 and 25, which guarantee fundamental freedoms, this article I think is the most important article. Here we are giving the right to vote to every adult citizen of India, and I think, people will realize later on what this really means. The election so far has been held on a narrow franchise, and now if in the new census the population of India is nearly 35 crores, we should have an electorate of about 20 crores in the country. Even America has got.only about 5 or 6 crores of voters. But here 20 crores of voters will go to the polls to elect their representatives. I think this fundamental right of adult suffrage guaranteed to all people is the most important part of the Constitution. It has raised great hopes in us and today we are realising the ideal for which we have fought for the last so many years. I think that in clause (6), which guarantees this right, the word 'crime' has also been included as disqualifying a person from being a voter. I feel that even those persons who have been to jail, but have come back afterwards and reformed themselves should not be debarred from becoming voters, and I, therefore think that the word 'crime' should not have been there. I have no objection to all other conditions, non-residence, unsoundness of mind, etc. being there.

Then, Sir, this article is an omnibus article providing for the constitution of the Council of States and the House of the People. Sir, I cannot refrain from saying that I am one of those who believe in only one Chamber and not two Chambers. Here they have provided for two Chambers and the worst part of this is that in the Upper Chamber we shall have twelve nominated Members; and we passed the other day that even those Members, who have been nominated and who will never seek the vote of the people, can become Ministers also. I think this is a most undemocratic aspect of our Constitution. Everybody who was a specialist in literature, art and science could surely have got...

Mr. Vice-President : May I ask the honourable Member to refrain from referring to business which has already been passed. The present discussion is with regard to clause (5) up to the end. That was what was agreed to by the House.

Prof. Shibban Lal Saksena : If that is the position. I will refrain from referring to the earlier clauses, although I think we are discussing the whole article.

Then, Sir, another thing in this article is the provision for delimitation of constituencies having a population between 5 lakhs and 7½ lakhs. I think the upper limit was unnecessary. It is not provided anywhere how the exact figure between these two limits will be determined, but I think the average figure will be the figure suited for allotment of seats to every province, and will be somewhere about 6,25,000. I personally think that the clause as it stands, will create great difficulties.

There will have to be big multiple constituencies of 13 lakhs and twenty lakhs population and I do not think poor candidates will be in a position to contest in such constituencies. If we want reservation for minorities, big multiple constituencies cannot be avoided. Only those people who are rich will then be able to get elected. Besides reservations will keep communal passions alive. I therefore think we must have no reservations. In fact, I was very glad to hear my honourable Friends Maulana Hasrat Mohani and Giani Gurmukh Singh Musafir when they said that they do not want any reservation. I think this Constitution must completely abolish all reservation. Let us have a completely secular State where every one will be a free citizen of India and every one can get elected irrespective of his community. I am sure communal passions will die out in a few years and there will be no need for any reservation. I think the time has come and certainly by the time the elections are held, we shall require no special reservations. If we decide to have reservation for minorities, then the amendment which Dr. Ambedkar did not move should have been moved; otherwise, there will have to be very big constituencies. Even if there is to be one general seat, one Harijan seat and one other reserved Muslim seat in a particular constituency there will be about eleven lakhs of voters which each candidate will have to canvass and no ordinary person can approach eleven lakhs of voters with his limited resources. Then, there will have to be innumerable booths; I do not know how many booths will be required. I think it will be an impossible task and so even from practical considerations, I think reservations should cease. Again, it is also possible, if there are to be very big multiple constituencies, some people may not be able to get a fair chance; their sphere of influence may be broken up or it may be resumed for a minority community.

Therefore, the only possible and practical course is that there should be no reservations. I am sure the fear of the minorities will soon be removed and I am sure that the people who are now in favour of reservation will also come forward and say that they do not want any reservation. If no reservation is made, we must see that a larger number of members of the minority communities are returned than their population entitles them to.

Sir, the proviso to sub-clause (2) of clause (5) is proposed to be omitted. This is also not fair. Under article 67 clause (1), in the Council of States, the number of representatives of the States shall not exceed forty per cent. Here, in the Lower House the proportion is sought to be abolished. If the States remain to some extent what they are today, if they only accede to the extent of defence, communications, etc., this abolition of the proviso will not be possible. The number of representatives from the States may be larger than is warranted by their

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population. I think the original proposition was better. The States should have seats only in proportion to their population. If the States come into line with the provinces, and the distinction is obliterated, then of course there will be no objection to the omission of the proviso.

Sir, I had given notice of an amendment for the deletion of clause (7). My purpose was, I did not want that Parliament should have the power to make laws to provide for the representation in the House of the People of territories other than States. This is a matter for the Constitution and not for the Parliament. Parliament may always try to make laws in favour of the party which is in power. Parliament should be debarred from making laws in respect of such matters. I think clause (7) should be deleted, because it gives to Parliament the power of creating additional seats in the House of the People.

Sir, these are very important considerations. We have already discussed so many amendments and I think the verdict of the House will be soon known. Only those amendments which are accepted by Dr. Ambedkar will be accepted by the House. Even though this article is not as I wish it to be, still I think it is a very important article and it should be passed.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Mr. Vice-President Sir, I shall address myself only to some of the more important amendments of substance that have been moved relating to clauses (5) to (8) of article 67.

Sir, I am much obliged and it is very gratifying to see that members of the minority communities, particularly, my honourable Friends Mr. Karimuddin and Mr. Mahboob Ali Baig were against any reservation for their community. In its place they have suggested two methods of election; one, proportional representation by means of the single transferable vote, and the other proportional representation by means of cumulative vote.

Mahboob Ali Baig Sahib Bahadur : May I correct my friend? I never said anything about reservation of seats.

Shri M. Ananthasayanam Ayyangar : Very well; I stand corrected. So far as my friend Mr. Karimuddin is concerned, he did not want any reservation. In its place he wanted election by proportional representation by means of the cumulative vote. Mr. Mahboob Ali Baig evidently wants to run with the hare and hunt with the hounds. He wants both this and that; I will come to him later. The majority opinion seems to be against reservation that is provided for in articles 292 and 293. I also find that with the exception of the Scheduled Castes, so far as the provision for others is concerned, there is the other opinion also from members who do not belong to the minority community that such reservations ought not to exist. Of course, this matter will stand over and will be discussed more elaborately when we come to articles 292 and 293. In the interests of the minorities themselves, I would urge that it would not be very useful to them if they insist on reservation, because...

Mr. Vice-President : Are you speaking on article 292?

Shri M. Ananthasayanam Ayyangar: No; I am referring to the alternative that has been proposed.

Shri Jaspat Roy Kapoor (United Provinces : General) : Why not delete reference to article 292 here from this clause?

Shri M. Ananthasayanam Ayyangar : That is the subject matter of the amendment moved by my honourable Friend Mr. Karimuddin. He wanted reference to articles 292 and 293 to be omitted and in its place add something relating to the method of election : proportional representation by means of cumulative vote. Therefore, if I have said anything in regard to the absence of reservations, which is the substance of articles 292 and 293, I submit with all respect that I am absolutely relevant in what I have said. Mr. Karimuddin's amendment wants to do away with reservations referred to in article 292 and article 293 and in its place, he feels that it would be more useful if the minorities could have proportional representation with cumulative voting. Two methods of election have been suggested. With all respect to the mover, I would suggest that proportional representation by means of the single transferable vote is not practicable at all. These are large constituencies and each constituency will consist of population ranging between five lakhs and seven and a half lakhs. Further we are not an advanced country; many of the people are not literate. The literate population of our country is no more than fourteen per cent. Exercising preference by means of the single transferable vote is impossible. We commit mistakes even on the floor of the House in the Legislative side when we elect members of the Standing Committees in Legislature for the various Departments. We do not exercise our votes properly. Therefore it is impossible to expect the illiterate voters to be able to exercise their votes properly. For a long time to come it is unthinkable having regard to the low progress of literacy in our country.

Then as regards proportional representation by means of cumulative votes, my suggestion is that that has been tried regarding the scheduled caste primary election. I would refer to Volume III of the Constitutional Precedents published by Sir B.N. Rau; at page 161 he has appended an appendix to the Chapter on the system of representation. Therein he says—

> "The number of seats a party captures in an election depends on the correctness with which it has gauged the support it commands in each of the constituencies and set up the right number of candidates on its behalf."

As an illustration he says in the Appendix how the Congress lost both seats by miscalculation when it was possible for the Congress to have captured at least one seat. That is what happened in 1937 in the C.P. Legislative Assembly elections—Bhandars Sakoli (General Rural). Both seats were lost to the Congress. Then the Congress party contested in the Bombay Legislative Council, Bombay city and Suburban Districts, two out of four seats. If it had under-estimated or over-estimated its electoral strength and nominated less or more candidates, it would have lost a seat. Now therefore this cumulative election would not absolutely be appropriate.

Shri L. Krishnaswami Bharathi : That is not proportional representation.

Shri M. Ananthasayanam Ayyangar : That is also a kind of proportional representation. I advocate neither the system by single transferable vote nor by cumulative vote. The one is impossible and the other would not meet the purpose. In that way social justice would not be rendered. On these grounds neither the amendment of Mr. Karimuddin nor that of Mr. Baig is worth considering. I oppose both of them. Prof. Shah suggested that there ought not to be any restriction on the number of Members in the House of the People. He said there must be as many as

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possible. My impression is 500 is large enough. Already, in House which consists of three hundred members, almost everyday we have to ring the bell, to get a quorum; and so what is the good of multiplying the number? There will not be effective representation. The smaller the number of members, the more effective it will be. Of course it ought not to be too small. Five hundred seems to be quite a good number. Besides 500 is not such a fixed and an inviolable number at that: because under articles 292 and 293 provision is made for nomination in the case of Anglo-Indian community if they are not represented. Likewise, for the territories which did not form part of the States, the Parliament is entitled under the article clause (7), by law to provide for their representation in the House of the People. The five hundred under clause (5) are representatives only from States. There can be in addition to the five hundred, some Anglo-Indian members and also members representing territories other than those from the States. Under those circumstances five hundred is not a definite number; but it ought not to be increased enormously.

Then my friend, Pandit Thakur Dass Bhargava, suggested that a kind of qualification ought to be imposed, though he did not move the amendment that literates alone ought to be allowed to vote. Sir, I want a clause insisting that there must be imposition of penalty on those people who refrain from voting. For a long time to come unless people in this country are compelled to come to the Polling Station, many people may not care to exercise their votes at all and if you put a further qualification that they must be literate, I am sure none will take interest. You are giving adult suffrage and the vote of a single individual may not count. If most of our people are not literate till now, whose fault it is? It is too much to expect that everyone will become literate within a period of two years. Moreover, literacy is not the only qualification. I know a number of people who are not literate but have very good commonsense,—more than people with academic qualifications.

Pandit Thakur Dass Bhargava : Signing the name can be learnt in two months.

Shri M. Ananthasayanam Ayyangar : With what effect? It is idle to think that merely if a man is able to sign his name, he will immediately become such a literate and educated man as to exercise his vote properly; I should say such a qualification is unnecessary. Wisely he has not moved an amendment to that effect. On the other hand it may be necessary in the future years when the election becomes so costly and people may not come to the polling station that you may have to have a provision, as exists in some other constitutions, that there must be a compulsion on voters to come and vote. As regards early elections, I would wish that even from now the various provincial Governments must take up the task of making up the list of qualified voters and also delimiting constituencies. That is the object with which we have come to some of these articles and have taken up only those articles which relate to elections. We are also proceeding from here, with the leave of the House, to consider article 148. Therefore, I believe that the Central Government will take steps to issue instructions to Provincial Governments to prepare these lists and also delimit constituencies early with a view to have the elections early next year.

I support the formal amendments moved by my Friend Dr. Ambedkar and oppose the amendments moved by Mr. Karimuddin and Mr. Baig and also by Prof. Shah.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, Sir, I accept the amendments Nos. 1417, 1426, 1431 of Prof. Shah, 1434 as amended by the mover of that amendment and as amended by the amendment No. 42 of List II and No. 43 of List II. Of the other amendments, on a careful examination, I find that there is only one amendment on which I need offer any reply. That is amendment No. 1415 of my Friend Mr. Karimuddin. His amendment aims at prescribing that the election to the House of the People in the various States shall be in accordance with the proportional representation by single transferable vote. Now, I do not think it is possible to accept this amendment, because, so far as I am able to judge the merits of the system of proportional representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact, it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numericals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. That in itself, would, I think, exclude the system of proportional representation.

The second thing to which I like to draw the attention of the House is that at any rate, in my judgement, proportional representation is not suited to the form of government which this Constitution lays down. The form of government which this Constitution lays down is what is known as the parliamentary system of government, by which we understand that a government shall continue to be in office not necessarily for the full term prescribed by law, namely, five years, but so long as the Government continues to have the confidence of the majority of the House. Obviously it means that in the House where there is the parliamentary system of Government, you must necessarily have a party which is in majority and which is prepared to support the Government. Now, so far as I have been able to study the results of the systems of parliamentary or proportional representation, I think, it might be said that one of the disadvantages of proportional representation is the fragmentation of the legislature into a number of small groups. I think the House will know that although the British Parliament appointed a Royal Commission in the year 1910, for the purpose of considering whether their system of single-member constituency, with one man one vote, was better or whether the proportional representation system was better, it is, I think, a matter to be particularly noted that Parliament was not prepared to accept the recommendations of that Royal Commission. The reason which was given for not accepting it was, in my judgement, a very sound reason, that proportional representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the Government, with the result that the Government loosing the support of certain groups and units, would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for,

[The Honourable Dr. B.R. Ambedkar]

whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely, it must maintain a stable government and maintain law and order. (*Hear, hear*). I am therefore, very hesitant in accepting any system of election which would damage the stability of government. I am therefore, on that account, not prepared to accept this arrangement.

There is a third consideration which I think, it is necessary to bear in mind. In this country, for a long number of years, the people have been divided into majorities and minorities. I am not going into the question whether this division of the people into majorities and minorities was natural, or whether it was an artificial thing, or something which was deliberately calculated and brought about by somebody who was not friendly to the progress of this country. Whatever that may be, the fact remains that there have been these majorities and minorities in our country; and also that, at the initial stage when this Constituent Assembly met for the discussion of the principles on which the future Constitution of the country should be based, there was an agreement arrived at between the various minority communities and the majority community with regard to the system of representation. That agreement has been a matter of give and take. The minorities who, prior to that meeting of the Constituent Assembly, had been entrenched behind a system of separate electorates, were prepared, or became prepared to give up that system and the majority which believed that there ought to be no kind of special reservation to any particular community permitted, or rather agreed that while they would not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates. Now, my submission is this, that while it is still open to this House to revise any part of the clauses contained in this Draft Constitution and while it is open to this House to revise any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or by what I may call, a side-wind. It had better be done directly and it seems to me that the proper procedure for effecting a change in articles 292 and 293 would be to leave the matter to the wishes of the different minorities themselves. If any particular minority represented in this House said that it did not want any reservation, then it would be open to the House to remove the name of that particular minority from the provisions of article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely, did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then I think it would be just and proper that the minority should be permitted to retain what the Constituent Assembly has already given to it.

Pandit Thakur Dass Bhargava : But there was no agreement about reservation of seats among the communities and a number of amendments were moved by several Members for separate electorates and so on, but they were all voted down. There was no agreement at all in regard to these matters.

The Honourable Dr. B.R. Ambedkar : I was only saying that it may be taken away, not by force, but by consent. That is my proposition, and therefore; I submit

that this proportional representation is really taking away by the back-door what has already been granted to the minorities by this agreement, because proportional representation will not give to the minorities what they wanted, namely, a definite quota. It might give them a voice in the election of their representatives. Whether the minorities will be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, I submit, in fairness ought to be left to them. For these reasons, Sir, I am not prepared to accept the amendment of Mr. Karimuddin.

Mr. Vice-President : I shall now put the amendments, one by one, to the vote of the House.

Shri H.J. Khandekar : On a point of information, Sir, may I ask Dr. Ambedkar, what about the preceding census. He has not said anything when he amended article 35 the other day. About the preceding census, is he prepared to amend it by saying 'the latest census'?

Mr. Vice-President : Mr. Khandekar may come to the rostrum and speak.

The Honourable Dr. B.R. Ambedkar : I have accepted the amendment of Mr. Naziruddin Ahmad as amended by him and as amended by Shri Bhargava.

Mr. Vice-President : I shall now put the amendments to vote.

The question is :

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted :—

'Subject to the provisions of articles 292 and 293 of this Constitution';

and the following words be added at the end :—

'in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters', the words 'such members as shall in the aggregate, secure one representative for every five hundred thousand of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67 :—

'and Territory directly governed by the Centre'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

The amendment was negatived.

The Honourable Dr. B.R. Ambedkar : Amendment No. 1426 for dropping the words 'of India' may be put, Sir.

Mr. Vice-President : That comes later. I am putting the amendments to vote in the order in which they were moved.

The question is :

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added :—

'so that each State being constituent part of the Union or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full stop be added; the word 'and' following immediately be deleted; and the word 'the' be printed with a capital 'T'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That with reference to amendment No. 1434 of the List of Amendments, in sub-clause (c) of clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

The amendment was adopted.

Mr. Vice-President : I shall now put amendment No. 1434 as modified by the Mover himself to vote. Is it necessary for me to read out the amended amendment?

Honourable Members : No, Sir.

Mr. Vice-President : The question is :

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That clause (7) of Article 67 be omitted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union' be substituted respectively."

The amendment was adopted.

Mr. Vice-President : The question is :

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted :—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House'."

The amendment was adopted.

Mr. Vice-President : The question is :

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

The amendment was negatived.

Mr. Vice-President : I shall now put the first alternative in amendment No. 1452 to the vote of the House.

The question is :

"That to article 67, the following new clause (10) be added :—

'(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote.'"

The amendment was adopted.

Mr. Vice-President : I shall now put article 67, as amended to the vote of the House.

The question is :

"That article 67, as amended, stand part of the Constitution."

The motion was adopted.

Article 67, as amended, was added to the Constitution.

[18th May 1949]

Article 68

Mr. President : The motion is :

"That article 68 form part of the Constitution."

We shall now take up the amendments to this article.

(*Amendment Nos. 1453 and 1454 were not moved.*)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members

[Mr. President]

who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

The Honourable Dr. B.R. Ambedkar : The Drafting Committee may be very glad to follow that procedure.

Mr. President : It will save a lot of time and I will leave out all these verbal amendments or amendments which are of a drafting nature, and which do not touch the substance of the article.

Amendment No. 1456 stands in the name of Mr. Naziruddin Ahmad. It is also of drafting nature.

Mr. Naziruddin Ahmad : No, Sir. It is not of a drafting nature.

Mr. President : The amendment is for substituting the word "third" for the word "second".

Mr. Naziruddin Ahmad : Sir, I do not move it.

(*Amendment Nos. 1457, 1458, 1460 and 1461 were not moved.*)

Mr. President : Amendment No. 1459 is more or less of a drafting nature.

Amendment No. 1462 is verbal. Amendment No. 1463 is of a drafting nature.

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

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

(*The amendment to Amendment No. 1460 was not moved.*)

Mr. President : Amendment No. 1465 : that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

Prof. K. T. Shah (Bihar : General) : Mr. President, I move :

"That in the proviso to clause (2) of article 68, the full-stop at the end of the sentence be substituted by a semi-colon and the following be added :—

'provided further that the People's House, elected after the proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.'"

In suggesting this amendment, I want to emphasise two principles : one that any Parliament elected after or immediately after a great national emergency is

likely to be influenced very much by the very fact of that emergency. If, therefore, it is elected for the full period and not for the balance of the period that would then be remaining, it is likely that such a Parliament may be called upon to deal with issues that may never have figured, or figured in a minor key at the general election which elected that Parliament. I think, if Parliament is to represent and reflect the popular sentiments of the issues that come before it from time to time, its length should be not so long that it might cease to be in full harmony with popular sentiment that may be changing under changing circumstances from time to time. It is therefore, of the utmost importance that the life of the Parliament should not be too long.

By a previous amendment, I had tried to make the life four years. That however being merely a matter of relatively small importance, I did not choose to move that amendment. But, here, I should like to emphasise that the fact that Parliament has to be elected after the Proclamation has ceased, but the effect of the emergency has not passed away, is of importance, and that we should elect that Parliament only for the balance of the period for which its predecessor had been elected, and a balance still remains unexpired.

My reason, as I have already stated, is that a Parliament elected under the stress of a grave emergency, influenced by the effect of that emergency sufficient to cause a Proclamation or even a suspension of the Constitution, would not be reflecting the normal sentiment of the people. It is, therefore, best that in order to secure continued representation of the people properly and the popular opinion fully, Parliament should be elected only for the balance of the period.

If that principal is accepted, then, I think the next clause follows as a mere corollary. That is to say, in every case, after a Proclamation of a state of emergency, any Parliament elected should be elected only for the balance of the period and not for the full period that would normally be prescribed under the Constitution.

It would also serve, I think, though I do not attach much magic to that, the purpose of maintaining a certain symmetry in our constitutional development, a period of five years being selected as the normal life of a popular legislature, and as such that quinquennial period should go on repeating from time to time in regular series, any interruption caused by the occurrence of an emergency such as has been provided for in this section being guarded against by permitting the new Parliament to be elected only for the balance of the period remaining unexpired at the time of the emergency.

I think this is a very simple matter, and if accepted, it would make Parliament always more fully in accord with the popular sentiment than it would be if you allow it to be elected for a full period even though elected under the stress of a great national emergency which has passed, but whose effects are not over.

I commend the motion to the House.

Mr. President : There is one difficulty. You have not moved the other amendment which stood in your name fixing the period to four years.

Prof. K. T. Shah : I am quite willing to make that five.

Mr. President : Could you do that at this stage !

Prof. K.T. Shah : I am in your hands. I deliberately did not move it.

Mr. President : We shall consider that later. Mr. Mihir Lal Chattopadhyay.

Mr. Mihir Lal Chattopadhyay (West Bengal : General) : I am not moving my amendment.

Mr. President : Two amendments have been moved, one by Dr. Ambedkar and the other by Prof. K.T. Shah. Both of them and the article are open for discussion.

Mr. Tajamul Hussain (Bihar : Muslim) : Mr. President, I rise to oppose the amendment moved by the Honourable Dr. Ambedkar. My reason for opposing it is this. His amendment is that after the word 'President' the words 'with the consent of the Parliament' be inserted. Article 68 says :

"That the period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year, etc."

Supposing the Parliament is not in session, then what are we to do in that case? After all the President represents the whole of India. He must have some very wide powers and this power should, in my opinion, be left in the hands of the President specially when the Parliament may not be in session and it is a matter of emergency. Therefore I oppose the amendment and I want the proviso to remain as it is in the Draft Constitution.

The next is the amendment of Professor Shah. I have two objections to it. It may be a verbal objection. After all, this is an amendment and if it is passed, it will go down in the Statute Book. So every word must be correct. Here he uses the words 'People's House'. There is no such thing as 'People's House' in the Draft Constitution. It is the House of the People. Another thing is as you yourself have pointed out to my Friend Mr. K.T. Shah that the period he mentions is 4 years while we have already accepted that the period should be five years. With these two objections to this amendment, I trust the House will agree with me and not accept either of these two amendments and let the words as mentioned in the Draft Constitution remain.

Shri R.K. Sidhwa (C.P. & Berar : General) : Mr. President, with regard to my Friend Professor Shah's amendment, he desires that in the event of an emergency when the House is dissolved, the term of the Parliament should be not five years but the remaining period from which the original House was dissolved. To me it seems peculiar. If the House is to be dissolved, it will be dissolved, under extraordinary conditions and the House is not going to be dissolved on a mere petty issue. When there is a deadlock in the House, when the Ministry is not stable or the House is not functioning alright, then somebody would step in to dissolve so that a new House could be formed, and for that purpose surely the electorate has to be told that the members who have been returned have not functioned well and therefore there had been a deadlock and the proceedings of the House could not be carried out and therefore the full period of five years should be given to that new House. Professor Shah has not quoted any instance whereby he could have told the House that in the event of dissolution there have been instances of this nature that he desired that had been introduced. I know of an instance in India when an Assembly was dissolved after the election within

one year when there was a deadlock and the electorates returned absolutely 50 per cent new members, and the House functioned for the full period. It should be so because if in the past members had not behaved well, it was no reason why the new members should be deprived of the full period. I therefore contend that the full period should be allowed to the new House as is prevalent everywhere in the world and the right of the new members should not be deprived because of the mistake or misbehaviour of the previous members. I, therefore, oppose this amendment.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I am thankful to Dr. Ambedkar for the amendment which he has moved. But I personally felt that the proviso itself should go. It will mean that under some emergencies the House which is elected for five years may last even up to ten years. Suppose a war intervenes and an emergency is declared, and there are no elections. The war may be prolonged one—such a thing occurred in England only recently and the Parliament then continued for nine years. America even in the midst of war had her elections and after four years they had a new House of Representatives as well as a New Senate at the very height of war. I feel that the people must have an opportunity of electing their representatives every five years and no emergency should be permitted to take away this right of the people. If in certain circumstances the life of the Parliament has to be extended, some limit should be placed on the period up to which its life may be increased. This limit should not exceed one year.

Mr. President : The honourable Member has given no notice of any amendment for omitting the proviso.

Prof. Shibban Lal Saksena : I am speaking on the motion.

Mr. President : You are opposing the whole proviso. That is your speech. Dr. Ambedkar could not move an amendment to that effect even at this stage. I do not think that question arises.

Prof. Shibban Lal Saksena : This is a lacuna in the Constitution and it will deprive the people of the right to elect their representatives after every five years.

Shri T.T. Krishnamachari : Mr. President, Sir, so far as the amendment No. 1464 is concerned, I think the House will pass it without demur, but in regard to professor Shah's amendment I must say that I perfectly sympathise with him in that he has taken considerable pains to visualise a contingency that might occur; but there are certain aspects of the matter which defeat the very purpose that he has in mind. Actually his amendment has not been very carefully worded to suit contingencies where the period of emergency might be say for four and a half years. If the period of emergency is for four and a half years, is the new House to be elected only for six months and if the emergency continues for five years, for how long is the new House to be elected? These are the absurdities that arise if the amendment is accepted, because when we meticulously look for contigencies which will arise in the future we are apt to overlook certain other contingencies which will make our ideas perhaps infructuous as we are not able to provide for all possible things that might arise. So while I perfectly sympathise with Professor Shah's idea that elections like a Khaki election should be avoided if possible and the House that has been elected on that basis should not be

[Shri T.T. Krishnamachari]

perpetuated, I think human ingenuity is powerless against such things happening. So I would appeal to him not to press his amendment because it contains in itself germs which defeat the purpose for which he has tabled his amendment. So, I think barring Dr. Ambedkar's amendment which I hope the House will accept, the article can go in as it is.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I do not think that anything has been said in the course of the debate on my amendment, No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties which arise from it, have already been pointed out by my Friend Mr. T.T. Krishnamachari. Election, after all, is not a simple matter. It involves a tremendous amount of cost, and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I, quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

Mr. President : I will now put the amendment, No. 1464.

The question is :

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

The amendment was adopted.

Mr. President : Then there is the further proviso suggested by Prof. Shah in his amendment No. 1466.

The question is :

"That in the proviso to clause (2) of article 68, the full-stop at the end be substituted by a semi-colon and the following be added :

'Provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years.' "

The amendment was negatived.

Mr. President : Then I put the whole article as amended by Dr. Ambedkar's amendment.

The question is :

"That article 68, as amended, stand part of the Constitution."

The motion was adopted.

Article 68 as amended, was added to the Constitution.

Article 68-A

Mr. President : Now I come to the new article sought to be put in article 68-A. Dr. Ambedkar.

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

"That the following new article be inserted after article 68 :—

'68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he :—

(*a*) is a citizen of India;

(*b*) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(*c*) Possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

Mr. President : There are certain amendments to this : No. 80 in the list of amendments to amendments, by Mr. Naziruddin Ahmad. This also seems to be a drafting amendment, and I would leave it to the Drafting Committee to settle it, in consultation with the mover.

Then No. 81 also looks like a drafting amendment. It seeks to add the words "and voter" at the end. I leave it also because it is more or less of a drafting nature.

(*Amendments Nos. 82, 83 and No. 84 were not moved.*)

Then we come to the other list which has been circulated today. Amendment No. 4 of that list, by Sardar Hukam Singh and Mr. Lakshminarayan Sahu.

(*The amendment was not moved*).

(*Amendments Nos. 5 and 6 were also not moved.*)

I have got notice today of another amendment by Shrimati Durgabai.

Shrimati G. Durgabai : Sir, I beg to move :

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The object of this is to lower the age to 30 from 35 for a seat in the Council of States. It was held for some time that greater age confers greater wisdom on men and women, but in the new conditions we find our boys and girls more precocious and more alive to their sense of responsibilities. Wisdom does not depend on age. It was also held that the upper House consisted of elders who should be of a higher age as it was a revising chamber which would act as a check on hasty legislation. But that is an old story and the old order has been replaced by the new. As I said our boys and girls are now more precocious and the educational curriculum is now so broad-based that it will educate them very well in respect of their civic rights and duties. I, therefore, think we should give a chance to these younger people to be trained in the affairs of State. I said wisdom does not depend on age. Our present Prime Minister became President of the Congress before he was 40 and Pitt was 24 when he became Prime Minister of England. Therefore we have no reason to fear that because a man is only 30 he will not be able to perform his functions in relation to the State. I hope the House will accept this amendment. Sir, I move.

Mr. President : The amendment and the original proposition are both open to discussion now.

Shri H.V. Kamath (C.P. & Berar : General) : Sir, I was happy to hear my honourable friend Shrimati Durgabai say that wisdom does not depend on age; I hope she will agree that it is irrespective of sex as well. (Several honourable Members : "Question".) Those friends who question this will answer their own question by coming here and convincing this House. This Constitution does not discriminate against sex and I hope that with our traditions of philosopher women like Gargi, Maitreyi and Ubhayabharati, wisdom will not discriminate against sex. Our greatest epic, the Mahabharata—has recognised this in a well-known *shloka* which runs as follows :

न तेन वृद्धो भवति येनास्य पलितं शिरः
यो वै युवाप्यधीयानस्तं देवाः स्थविरं विदुः

Na tena Vriddhò bhavati Yenásya palitam shirah
Yo Vai yuvapyadhiyanastam devah sthaviram viduh.

It means :

A person is not old or wise, merely because his hair has turned white.

I have therefore no hesitation in supporting Shrimati Durgabai's amendment lowering the age limit for membership of the Council of States. I would have gone further and made the age limit the same for both Houses and reduced it to 21. It was said that Pitt became Prime Minister of England at an early age. I think he entered Parliament at 21 or a little over 21, and became Prime Minister at 24. These are of course exceptions and we cannot legislate on the basis of exceptions. But on the whole I think it is wise to lower it from 35 to 30. There may, however be one difficulty about this. I shall invite your attention to article 152, under which, in the case of the Legislature of a State, the age is 35 for membership of the Upper House. I hope that when we come to that article this amendment will be borne in mind, and what we have done for the Upper House

in the Centre will apply to the Upper Houses of the provinces or States, and the age limit there also will be lowered to 30 years. When a person below 35 can fill a seat in the Upper House in the Centre there is no reason why he cannot do it in the States. Another difficulty, which perhaps is not of much moment, is article 55(3) which we have passed already and cannot now amend, wherein it is laid down that in order to be Vice-President a person must have completed 35 years. Now the Council of States will be presided over by a person who is a member of the Council. In Shrimati Durgabai's amendment the age limit is proposed to be lowered from 35 to 30. It means that we are reduced to this position, that every member of the Council of State will not be qualified to contest or stand for the election of the Vice-President of the Council of State, because if a person is between 30 and 35 he will not be eligible for election. Merely because he is below 35 he will not be able to fill the office of Vice-President. This is an anomaly which is rather distasteful to me. The person is elected to the Council of State, and the Council of State can elect a Vice-President from among themselves but this age bar comes in the way, which is to my mind unfortunate. If this article is adopted I see no way of getting over this difficulty unless the article already passed is amended suitably. A person who is a member of the House must be *ipso facto* eligible for any election that may be held by the House. But under the amendment of Shrimati Durgabai this is made an impossibility simply because a man happens to be between 30 and 35. If a man is fit to occupy a seat in the Upper House I see no reason why he should not be competent to fill the office of the Vice-President of the Council of State, but should be debarred merely because of age. I hope the wise men of the Drafting Committee will look into this anomaly and try to rectify it as far as their wisdom permits them to do so.

Mr. President : I do not think there is any inconsistency or contradiction between the two. This question may be considered by the Drafting Committee.

Prof. Shibban Lal Saksena : Sir, I frankly confess that I am not happy over the amendment of Dr. Ambedkar. I do not think it improves the constitution. As has been pointed out there have been cases in the world where younger men than 25 years of age have occupied the highest positions. The case of the younger Pitt was just cited : Shankaracharya became a world teacher when he was 22 and died when he was only 32. Alexander had become a world conqueror when less than 25 years of age and died when he was 32. Our country of 300 millions may produce precocious young men fit to occupy the highest positions at an age younger than 25 and they should not be deprived of the opportunity.

Part (2) of this amendment unnecessarily restricts young voters from becoming candidates. This clause will disqualify persons for election who state their age as being less than 35. This question of age should have no connection with the qualification of a man to become a candidate for election.

The third part is even more dangerous. A parliament of today may impose such restrictions as might enable the party in power to defeat its opponents.The party in power by their majority may pass laws and prescribe qualifications for candidates which might help the party against their opponents. This power which is being given to the Parliament to prescribe qualifications for candidates by a simple majority is dangerous. I therefore think that the whole amendment is not very happy and I would urge Dr. Ambedkar to see whether he cannot withdraw it.

Mr. Tajamul Husain : Sir, I rise to support the amendment to the amendment moved by my honourable Friend Shrimati Durgabai. The amendment which Dr. Ambedkar has moved is that the age of a person who wants to be a candidate for a seat in the Council of State must be atleast 35. The amendment to that amendment is that the age should be 30. In fact I am of opinion that it should be less than 30. When a person has attained his majority he should be eligible. As there is no amendment to this effect I have no alternative but to support the amendment moved by Shrimati Durgabai.

Sir, I am reminded of a Persian Couplet which says :

Bazurgi ba aql ast na ba sal. Kawangri ba dil ast na ba mal.

The first part means that seniority is not according to age but according to wisdom. I shall not translate the second part. If a person is a genius, why prevent him from entering the Council of State though he may be under 30? Mr. Kamath mentioned the example of the younger Pitt. There was the case of Shankaracharya who died at the age of 33 but before that he had attained the position of a world teacher. There were the instances of Rama, Krishna and Buddha, who attained enlightenment when very young. There are many other instances in history. Sir, I strongly support the amendment moved by Shrimati Durgabai.

As regards the amendment of Dr. Ambedkar I do not see eye to eye with it. There are three qualifications mentioned. I am of opinion that the qualification of a person to fill a seat in the Parliament is that he should be a voter on the list. The moment a man's name is on the voters' list you cannot prevent him from either standing for election or voting. The election Officer will be there and after the identification is completed nobody can prevent him from voting. If he is not 35 but 25 why prevent him from standing as a candidate? The ordinary principle of law is that if a person can vote he can also stand for election. This amendment will go against a well recognised principle as it will mean that a voter cannot stand for election. This should be withdrawn by Dr. Ambedkar. Once a man is a voter he should be eligible for election and therefore Sir, I oppose the amendment of Dr. Ambedkar with the request that he should make a suitable change in it.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Sir, the amendment moved by my Friend Dr. Ambedkar is not an innocent one. It is a dangerous one and is opposed to democratic principles.

In the previous article, No. 67, clause (6), the qualification for a person to become a voter are mentioned. It is definitely stated there under what circumstances he can be a voter and under what circumstances he cannot be a voter. You have clearly stated that he must be a man of 21 years of age. Such a person not otherwise disqualified under this Constitution or any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practices shall be entitled to be registered as a voter at such elections. So, Sir, in this clause you have definitely laid down the principles on which this Constitution or any Act of Parliament might disqualify a person from becoming a voter. But what do we find in this amendment now? In this amendment, clause (3) is an omnibus clause which gives power to the future Parliament to disqualify a person from becoming a member of Parliament for any reason whatsoever. You have

not circumscribed the circumstances with regard to which a disqualification may be legislated for, as we have done in the case of a voter. So, a reactionary Parliament, a capitalist Parliament might legislate saying that in order that a person may be enabled to stand for election he must own 5,000 acres of land or pay one lakh of rupees as income-tax. You can imagine, Sir, how a reactionary Parliament in future might restrict the membership of Parliament to such persons as they consider fit in their own view. Sir, what we have provided for in this Parliament, that is adult suffrage, might be taken away later. What is given by one hand might be taken away by the other by prescribing impossible proprietary qualifications, for instance. Thus a citizen may be deprived of his right to stand for election in these circumstances.

Further, it is a recognised principle that when you are making a Constitution you should leave the future legislature to lay down the qualifications of persons who want to stand for election. It is surprising that while unnecessary provisions have been introduced in the Constitution, the most important provision which qualifies or disqualifies a man from becoming a member of this Parliament is sought to be left to the future Parliament. That is against principle; as Dr. Ambedkar himself has said, you are now preparing a machinery for qualifying a person to be a citizen and who, under certain circumstances, becomes a voter and a member of Parliament or a Minister or President or Vice-President. While you prescribed qualifications for a voter, while you prescribed qualifications for a man to become a President or Vice-President and so on and so forth, there is no reason why you should, in the case of a person who should be made eligible to stand for election, leave the matter to a future Parliament. It is dangerous and it is opposed to principle. That is the most important and dangerous provision in the first part of this amendment. As for clause (b) I am one with those who consider that when once you have been declared as a voter you must be entitled to stand for election. The very fact that you are broad-basing representation to Parliament by giving suffrage to persons of a certain age with certain qualifications must enable every voter to stand for election. I know there are Constitutions which provide different qualifications for persons to become members of Parliament. That is true. It is true more in the case of the Council of States than in the case of the House of the People. Whatever that might be, I might even consent to raising the age-limit for a member who seeks election, but I am opposed to the future Parliament being given the right to legislate with regard to the qualifications or disqualifications for a man becoming a Member of Parliament. I humbly submit that Dr. Ambedkar will take into consideration this serious objection and withdraw his amendment and bring it forward if necessary with suitable amendments.

Shri T.T. Krishnamachari : Mr. President, Sir, I have only to say a few words, about the amendment of Shrimati Durgabai to the amendment moved by Dr. Ambedkar. Objection has been taken to this amendment by my honourable friend Shri Kamath on the ground that while the qualifying age for a Vice-President who is Chairman of the Council of State happens to be 35, there is no point in reducing the age of the members of that body. I am afraid my honourable Friend has found an inconsistency in this particular amendment without really examining why the age of the Vice-President has been fixed at 35. I would ask him to look

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into article 47 which fixes the age of the President at 35. Naturally, since the Vice-President is expected to take the place of the President when there is a vacancy, article 55 has fixed the age of the Vice-President also at 35. This has no relation at all to the age of the members of the Council of State. So there is no anomaly at all. I would point out, in fixing a definite age as qualifying age for membership of the Council of State which is lower than the age fixed for its Chairman. I hope the House will appreciate that there is no anomaly and that the age of the Vice-President has been fixed at 35 for altogether different reasons. It has nothing to do with the qualifying age of the members of the Council of State. So far as the other points raised against Dr. Ambedkar's amendment are concerned, I think Dr. Ambedkar will adequately answer them, though I feel that the objections are trifling and beside the mark, for the reason that it does not necessarily mean that the qualifications of a candidate should also be the qualifications of the voter. They have in the past even in our own legislature been different and it is so in very many other countries. So there is no very great sin in having one set of qualifications for candidates and another set of qualifications less rigid for the voters. Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amended by Shrimati Durgabai's amendment.

The Honourable Dr. B.R. Ambedkar : I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President : Do you wish to reply?

The Honourable Dr. B.R. Ambedkar : I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty-five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further it is still open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President : I will now put the amendment to vote, and also the article if the amendment is accepted as amended. Before doing so, I desire to make an observation but not with a view to influencing the vote of the House. In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges are required to possess very high qualifications for helping the Judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all and a legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is non-sensical and the wisdom of all the lawyers and all the Judges will be required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it, would have to put up with it.

The question is :

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 68-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 68-A, as amended, was added to the Constitution.

Article 69

Mr. President : There are certain amendments. No. 1469 by Shri Brajeshwar Prasad.

(*The amendment was not moved.*)

Prof. K.T. Shah : Mr. President, Sir, I beg to move :

"That in clause (1) of article 69 for the words 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

With this change, the amended article would read :—

"The Houses of Parliament shall be summoned to meet once at least in every year at the beginning thereof, and more than three months shall not intervene between their last sitting in one session and the date appointed, for their first sitting in the next session."

May I point out, Sir, before commending this motion to the House, that there is a later amendment of mine which is complementary to this, and, if read together, might save the time of the House, and also make the point I am going to make more intelligible. So, if you will permit me to move the later one now (No. 1474), it would be better.

Mr. President : Yes.

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

"That after clause (1) of article 69 the following proviso be inserted :

'Provided that Parliament or either House thereof, once summoned and in session, shall continue to remain so during the year; and each sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment or prorogations.' "

Sir, this clause seems to me to have been provided in conformity with the prevailing practice under which the legislature sits at two sessions during the year, the budget session, and the legislative session usually held in the autumn. Now, to my mind, this practice has arisen out of the convenience of the then Government, and also because the functions of the Parliament in those days were very limited. The powers and authority, and therefore, the work coming to the share of the then Legislature was of an extremely limited nature, and therefore limited sittings were naturally deemed to be sufficient to cope with the work then coming before Parliament. With the increase in the work of Parliament, and with the greater responsibility following upon that work, with the increase also in the number of members, from about 150 to 500 at least under this Constitution when it comes into operation, it seems to me that the sittings cannot be and should not be interrupted in the manner in which they used to be interrupted by

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something like six months, and the business of the House should not be allowed to be broken up in the manner that was customary in the past.

It is the practice in England, also, to regard the Parliament's sessions as a continuous one for the whole Parliamentary year, notwithstanding holidays for Christmas, Easter and other occasions. The British Parliament works for something like two hundred days in the year, as against less than 100 days' work by our Legislature. Our Parliament does, if I may say so without any disrespect, a very limited amount of work, at least as measured by the hours we put in. We work five days a week of $3^3/_4$ hours each or less than 24 hours per week, half a normal worker's week. Naturally, therefore, the work of the Parliament, whether in regard to the supervision of administration or in regard to acting as the financial watch-dog, or any matters of policy, let alone all the details of legislation, has to be very hurriedly and sketchily done. It cannot be done within the limited time, and the very short hours during which the Indian legislature had been accustomed to sit all this time.

As illustration of my arguments, may I mention, that it is within the experience of most of us, for instance, that during question time, a majority of the questions put down for the day remain unanswered on the floor of the House. This is the one method, or criticising, scrutinising, supervising, controlling and checking the acts of the administration. But under the limited time available to do other business, this duty cannot really be discharged in the manner that it should be discharged. There are numerous restrictions or conditions to guard against the right of interpellation being abused, about notice, the form of the question, and the manner in which supplementaries can be put. The entire province of keeping the general administration of the country under check cannot, by this means of questions, be satisfactorily carried out, simply because the time at our disposal is so limited to get through all the work that comes before the House.

There are other aspects of parliamentary duties, which suffer similarly and for the same reason. Consider, for instance the Budget. We have now a Budget of some 350 crores; votes for crores upon crores are passed with hardly more than two or three hours discussion, of which the Minister proposing the demand for grant takes away more than half the time, in either proposing or replying. For a total Defence Budget of Rs. 160 crores in round terms we could give only $3^3/_4$ hours, so that the actual suggestions made by the House have to be limited to a very, very small fraction of the time available. Our discussion can hardly get time for constructive, helpful suggestion. I consider this incompatible with the full discharge of parliamentary duties, and with the full working of the democratic machine, if the popular sentiment is to be properly and fully expressed in Parliament on matters of such momentous importance.

When the present practice was laid down, it was quite possible, because more than half the budget of the country was outside our competence to discuss. A good portion of the administrative activities was also barred from discussion or review by the Assembly. The limited time, therefore, may have sufficed at that time. But with the new Constitution, with the new powers and with the increased responsibility as also with the increased membership, I think the restriction of the House by the Constitution to something like 100 days session in the year at

most is, to say the least, not allowing sufficient scope for the discharge of parliamentary responsibility.

I am aware that the word "at least" is there. I realise, therefore, that there is nothing to bar parliament being called into session for a longer period, and its remaining in session for a longer period. But the very fact that such a term has to be introduced in the Constitution, that such a provision has to be made in so many words, that the maximum permissible interval is six months, and that it is not left to Parliament to regulate its own procedure, its own sittings, its own timings, seem to me indicative that the mind of the draftsman is still obsessed with the practice we have been hitherto following. I consider it objectionable; and if we are to get away from that practice, it is important that an amendment of the kind that I am suggesting should be accepted.

It is all the more important because large issues of policy, large matters, not only of voting funds, but determining the country's future growth, that is to shape the future of this country for years to come, have to be very scantily treated; and the Parliament's response to it, the discussion in Parliament about it, becomes, to say the least, perfunctory. Time is an important element in allowing a proper consideration. I am, therefore, suggesting that between any two sessions of Parliament in a year not more than three months should elapse; and that the year's sessions should be regarded as a continuous single annual session, during which the work of Parliament should be performed, should be carried out with the utmost possible sense of responsibility that the representatives of the people feel they owe to the electors.

The details of the sittings, the details of procedure, etc., should naturally be left to the House, as they are provided for in this Constitution. I have nothing more to say about that. I do think that judging from the experience we have had so far, and judging from the fact that provision has had to be expressly inserted regarding the number of sittings that the Parliament should make in a year, or the frequency with which Parliament should be called into session during the year, it is imperative that we must amend the provisions by some such manner as I am suggesting. I do hope that the reason I have adduced would commend itself to the House and that my amendments will be accepted.

(*Amendment No. 7 in the names of Shri Lakshminarayan Sahu and Sardar Hukam Singh was not moved.*)

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

"That in clause (1) of article 69, for the word 'twice' the word 'thrice' be substituted."

I am afraid that when this article 69 was framed by the Drafting Committee, they were not able to shake off the incubus of the Government of India Act. Dr. Ambedkar when he moved the resolution for the consideration of the Draft Constitution admitted that much of this Constitution has been influenced by the Government of India Act and wisely too, but here I think that his provision about summoning the Parliament at least twice during the year was more or less copied bodily, copied verbatim from the Government of India Act without any consideration as to what additional duties and responsibilities have devolved or are going to devolve upon the Parliament of Free India. It is well-known that the American Congress and the British Parliament meet for nearly 8 or 9 months every year.

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The business of the State in modern times has become so intricate and elaborate of course, I am talking of Parliament in a democracy and not under dictatorship and I hope we are going to have democracy in this country and not dictatorship—that no Parliament in a democracy can fulfil its obligations to the people and fulfil its duties and responsibilities unless the Parliament sat every year for over six months to say the least. During the last Budget session of the Assembly there was a flagrant instance of a Minister of Government confessing to the Assembly that certain expenditure was incurred in a supplementary manner in anticipation of the approval of sanction of the Assembly. Dr. Matthai, the Finance Minister for the Government when he presented his supplementary demands got them passed through—I would have said rushed through, but after all we are all members trusting one another, having full confidence in one another—in half a day or perhaps less than two hours. He was constrained to admit to the House "I have no explanation to offer why sufficient time was not given to the Assembly to discuss or why so much expenditure was incurred without the sanction of the House." My honourable Friend Prof. K.T. Shah said that the figure ran into crores of rupees and such a huge amount of expenditure was incurred without the approval or sanction of the Parliament. Dr. Matthai contented himself with saying that it was incurred in anticipation of the approval or the sanction of the House, and the House just tittered, laughed and passed the supplementary demands. This irregularity, Sir, would have been obviated if Parliament had sat and assembled during the year from time to time, not merely during those prescribed periods, prescribed during the British regime—Summer session and the Autumn session—had Parliament met more often, and various items of expenditure had been presented to the Assembly on various occasions—then this sort of confession by a Minister of a Government, which is to say the least, not very happy, would not have been made and there would have been no cause for Minister of Government to make such a confession. The honourable Speaker of the Assembly Mr. Mavalankar in an informal talk with some of us during the last session said : "We cannot get through the business if we go on like this. If we want to do justice to ourselves and to the country, it is imperative and obligatory that the Parliament sits for not less than seven or eight months in the year."

I hope Dr. Ambedkar, on behalf of the Government, visualises such a position and is convinced of the necessity for Parliament meeting more often and for longer periods than it does at present. I would not have pressed this amendment but for the fact that in human affairs the minimum prescribed tends to become the maximum. In economic matters we have the classic instance of the minimum wage; the minimum wage tends in most industries to become the maximum wage. Here in a similar manner, I am afraid the minimum prescribed will tend to become the maximum. We have had the experience during the British regime. The Government of India Act laid down that Parliament shall assemble at least twice every year; there has hardly been any year in which Parliament met more than twice a year. Therefore, I move that the Constitution should lay down that Parliament should meet at least thrice a year : the budget session which is a long session, a session in the middle of the year, say July or August for two months, and again in the autumn or winter, October or November. Then only, we shall be able to discharge our responsibility to the people and to the country. I move, Sir.

Mr. President : Amendment No. 1472 is more or less of a drafting nature.

(*Amendment No. 1473 was not moved.*)

Amendment No. 1475 is also of a drafting nature. Amendment No. 1476 is also of a drafting nature. Prof. Shah, amendment No. 1477 also appears to me to be of a drafting nature. If you agree, we may leave it there.

Prof. K. T. Shah : I think there is a question of substance in it.

Sir, I beg to move :

"That in sub-clause (a) of clause (2) of article 69, the words 'the Houses or either House of' be deleted."

The amended clause would read :

"(2) Subject to the provisions of this article, the President may from time to time—
(a) summon Parliament to meet at such time and place as he thinks fit."

That is to say, the authority of the President is not required for summoning either House as I conceive it here. Normally, the Upper House is, according to the theory of this Constitution, a continuous body, not liable to dissolution. Therefore, it is always there : If this provision ever should apply, it would apply only to the House of the People, so far as summoning is concerned.

I am not quite clear myself whether, at the beginning of any year, the Upper House also would have to be summoned; or whether, in continuous existence, it may be taken to be sitting; or its own procedure may regulate its being called into session.

In order to get round that difficulty, I have simply suggested the omission of these words, particularising either House of Parliament, and confining the wording only to the summoning of Parliament. There is a difference, I submit, in using the term Parliament, and particularising either House of Parliament, as it suggests the authority of the President even for the other body which is continuously in session. If it is considered that notwithstanding the Upper House being continuously in session, at each occasion it has to be summoned,—at least each year it has to be summoned,—apart from a joint session, of course, I think that is a way of looking at this provision which seems to me to be somewhat anomalous. I am therefore suggesting that purpose, whatever that purpose may be, would be served by keeping the term Parliament instead of particularising 'either House of Parliament'. I therefore commend this amendment to the House.

Mr. President : No. 1478.

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

"That at the end of sub-clause (a) of clause (2) of article 69 the following be added :—

'Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People for a period of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.' "

This, Sir, is a serious matter, implying that in case the President does not summon the Houses of Parliament for a period longer than permitted under the

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Constitution, we must have some machinery to counteract such an eventuality. Power is, therefore, given, under this amendment, to the Speaker or the Chairman of the Upper House to convene each his own respective House, without waiting for the authority of the President to do so, and without the President doing so himself.

It may be suggested that this is an attitude of suspicion; or lack of confidence in the President : and therefore it is a point which ought not to be provided for in this Constitution. Written Constitutions, particularly of the kind that we are drafting for India ought to provide against such contingencies as have either occurred in our own history, or have occurred elsewhere. We must learn from our own as well as from other people's experience. It is necessary for us to guard against their recurrence if you consider such developments undesirable. Presidents there have been in the history of other countries, if not our own, who have taken the law into their own hands; and have by the very power of the Constitution so to say subverted utterly, and undone the intent and purpose of the Constitution. In case such a contingency should occur there must be provision in the Constitution itself to remedy it; and we should not wait for an amendment of the Constitution when such difficulty actually occurs to help us to guard against the consequences of such difficulties.

I am therefore suggesting that if at any time, for any reason, the President does not convince,—it may never happen, but it is a possibility which is worthwhile guarding against—either House of Parliament; does not convene the House of the People for more than 90 days after its last adjournment, power must be available to the presiding authority of either House to take action, to call the House into session and continue the work of that House. The feeling of suspicion, if it is so alleged, is an outcome of the knowledge of past history of other countries. There is besides no guarantee that such a thing will not happen at all in this country. If you really are of opinion that there is no reason for us either to anticipate or fear that such a thing should ever occur on this soil, why have any written Constitution at all? A few minutes ago, an amendment was moved by the Chairman of the Drafting Committee himself to a previous article which transferred power originally vested in the President, from the President to Parliament itself for extending the life of Parliament in the case of emergency.

Now if you yourself are aware that such a power may be liable to be abused, and if you want to guard against such an abuse by providing that action may be taken by Parliament only, I see nothing wrong in my suggesting that in the event of contingencies of the kind I am apprehending occurring, there must be machinery available in the Constitution itself to meet the situation. We should not wait for a later change or amendment of the Constitution whereby automatically, and with the minimum of friction, we may be able to achieve our objective.

As I said before the history of the world is full of incidents of that character by which Constitutions have been subverted. It is, therefore, only a mark of prudence that we should at this time take heed of such a contingency or possibility and make provision accordingly. I accordingly commend this amendment also to the House.

Mr. President : The next is also yours, 1479.

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

"That in sub-clause (b) of clause (2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

This I think is consequential on my previous suggestions and therefore if the previous one is accepted, I hope this also will be accepted.

(*Amendments Nos. 1480 and 1481 were not moved.*)

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

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :—

'on the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.' "

I also move :

"That after clause (2) of article 69, the following be inserted :—

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course :

Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.' "

Sir, this amendment follows the same logic that I tried to put before the House a little while ago. In the first of these amendments I am trying to say that, in the event of Parliament having to be dissolved earlier than its normal period, *i.e.*, before five years, there must be some special reasons why such a dissolution is deemed necessary. My amendment does not seek to place any bar upon such dissolution being made. I only suggest that it shall be on the advice of the Prime Minister, as it will of course be in the normal course; and not on the authority of the President. I only require that the Prime Minister shall record his reasons in writing. For those reasons may constitute, in my opinion, valuable Constitutional precedents for future, and may be of immense value in subsequent generations.

On that basis, therefore, the first amendment is, I hope, utterly innocuous, and would be acceptable to the House. It is doing no more than giving constitutional authority and mandate for reasons to be recorded by the Prime Minister every time that he requires the dissolution of the House of the People earlier than its normal term.

In regard to the second amendment the matter is a little more serious. It contemplates the possibility of the President being unable or unwilling to call

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Parliament together. That is a contingency that cannot be utterly ignored at all. It may not happen frequently—let us hope it will not happen at all. In that contingency I suggest that the Prime Minister should be entitled to request the presiding authority of either House to convene each its own House, and to continue with such business of Parliament as may be impending or may be necessary. In the second proviso I further contemplate the possibility of the Prime Minister refusing or unwilling to make such a request, and the President being also unable or unwilling to convene Parliament together. In that case on the assumption that the two principal authorities, the two Chief Executive authorities of the country, are either unable or unwilling to make such a request, or to carry out their own constitutional duty, power should be reserved to the presiding authority of the House—of either House—to convene its own body into session, and continue the business of the country as in normal course.

Mr. President : Will you please say how No. 1483 differs from No. 1478?

Prof. K.T. Shah : In the case of No. 1478 it is only the President that is thought of, and the Prime Minister is not interposed with a request to summon either House. The proviso makes it clear further that if the President and the Prime Minister be both unwilling to do so, then the presiding authority of either House should call the meeting. In No. 1483 power is given to the presiding authority of either House to do so, irrespective of those two conditions which are inserted later on in No. 1483, that I think is the difference between the two amendments.

Mr. President : I thought one was covered by the other.

Prof. K.T. Shah : To some extent. The later one is more specific. The Prime Minister is the moving authority in the first case. But if he is not willing to move, then the power operates. But the power can operate also independently of any question of the ability or willingness of the executive.

Mr. President : Supposing No. 1478 is carried, do you think No. 1483 is necessary?

Prof. K.T. Shah : No. That is the difficulty of moving these together before vote is taken on any. If No. 1478 is carried, then I myself would say it is unnecessary to move these. But I am putting the various things in my name, as I have thought of several contingencies, and if one is not carried another might be acceptable. With my experience of these amendments, I thought perhaps it might be as well to guard against such responsibilities. That is why I am commanding these motions to the House. I hope they will be accepted.

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

Shri R.K. Sidhwa : Mr. President, Sir, article 69 relates to the summoning of the sessions of the Houses of Parliament. It says that the Houses of Parliament shall meet compulsory twice a year, and leaves it to the choice of the President, if he feels it necessary, to summon it from time to time. That proviso exists in the 1935 Act also. I think in the 1935 Act, instead of "twice" it is only "once". From experience I have seen that generally Ministers are reluctant to face the legislature and therefore, they avoid calling the sessions of the legislature, except in some cases when the session is to be held under the law. Under the new set up, when

we are framing our Constitution on the British Parliamentary system, I fail to understand why for the purpose of procedure of our business, we shall also not follow the same procedure. I have seen from my experience of the last two years that important official business even has been held over for want of time. Several Ministers have got, according to them, other important work to perform and they have no time for legislative business. As an illustration, I may mention that during the last session of the Parliament, eleven important official Bills had to be held over, not to speak of many important non-official Bills and Resolutions. Now, these important Bills could have been disposed off if we had continued sitting until the beginning of this session of the Constitution making body and thus we would have saved from waste of one full month in-between. But the Ministers were busy with their ordinary routine work. I therefore, say that some new procedure has to be found out, as is done in Parliament in England where they do not require their Ministers to come up every time to pilot the business, but entrust the work to their deputies. It cannot be advanced as an excuse by the Minister that they had not the necessary time, and therefore they could not complete the work. There should be a rule, as in England that Parliament should sit continuously throughout the year. Under the rules we have a question-hour and it is a very crucial hour for the honourable Ministers, because that is the hour when the Members are supposed to get information from the Government, and I know in some cases the Ministers wanted to do away with this question hour on certain days in order to cope with the accumulation of other work. It did actually happen so, although it is compulsory under rules. In the British Parliament also this question-hour is considered very important. There they have night sittings also. Some of our Members here, I know are averse to sitting longer hours. But I humbly submit that the Members themselves should feel that under the new conditions they will have to give more time to this work. If we cannot devote more time, we certainly will not be discharging our duty towards our constituencies, and we will have no place in the new setup. In the new setup, when there will be six hundred members in our Parliament, I want to know how the work will be disposed off if there is going to be only two sittings in a year : I feel more sittings will have to be called, by law. Sir, the argument is advanced that when legislative business has got to be brought before Parliament, the Parliament will be summoned. But I have given you an illustration of important official business being held over, for want of time. It has been held over to the autumn session. I am sure it will not be finished in that session also, and will have to go to the next year's Budget Session. And in the Budget Session, we know crores and crores of rupees and Supplementary Demands up to about Rs. 80 crores were disposed of in three hours, despite protests from members. No more time was given, and the excuse was that we have no other time available. This method we have to change, if we really want to represent the people, and if we really want to scrutinise important items of the budget affecting our finances. And therefore, I contend that the four days that had been allowed to the Budget discussion, which of course by our agitation was increased to five days, is quite insufficient to dispose of a budget of about three hundred crores and also the Railway Budget. In all we took only three weeks as against three to four months in the British Parliament. Of course, under the rules, before 31st March, we have to pass the expenditure. But why not adopt the procedure of the British Parliament

[Shri R.K. Sidhwa]

where payment to the services is made by a particular date? After that the discussions on various items of the budget can continue. If in the new People's Parliament of ours we are not allowed full time for discussion of the budget, then I submit in all humility, that it will be a mockery of democracy. We are told that we follow to other system of government except the British Parliament. But why do not you follow it in all respects, and not merely take it when it suits you and leave it out when it does not? I am very strongly of the opinion that a House of six hundred members, the real representatives of the people, will have no opportunity to serve the people if you have only two sessions. At present budget session lasts from February to about tenth of April, it is only 53 days, deducting Saturdays and Sundays. The Autumn session is only three weeks, which minus Saturdays and Sundays comes to only about 16 or 17 days. My point, therefore, is that the session should last continuously for the year, except for a month or two months' intervening for recess, as it exists in Parliament. I hope Dr. Ambedkar will examine my arguments and, if he finds they are just, and reasonable see that the necessary provisions are made in the Act. It will smoothen the procedure and disposal will be much quicker. We are complaining of delays in correspondence etc. in the offices. But are we ourselves quick enough in the disposal of legislative business? It is disgraceful for us that during the last few months for want of time important official business had to be held over to the next session. If the Ministers feel that legislative business requires more sittings, then the Members have no business to say, "no." But members also have become lukewarm and when they find Ministers unwilling to continue they also agree to the adjournment of the House. I therefore think that for the better disposal of business in future a suitable amendment should be made.

Mr. President : I desire to point out to honourable Members that at the rate at which we are going we may have to follow Mr. Sidhwa's advice and sit throughout the year; and I hope Members will consent not only to longer sessions but to longer sittings every day and, instead of one sitting only, have two or three sittings every day if necessary. Personally I have no objection to that, because I want the Constitution to be finished as soon as possible. I hope honourable Members will bear Mr. Sidhwa's remarks in mind whenever the question comes up of increasing the number of sittings or the number of hours.

Mr. Tajamul Husain : Sir, I will first deal with the amendment of Mr. Kamath which wants there should be three sessions of Parliament instead of two as is mentioned in the Draft Constitution. I support this amendment, because it is common experience that in the budget session which is generally for two months we are not able to do anything except pass the budget and a few Bills. Therefore I support the proposal for three sessions, *viz.*, the budget session, the summer session and the autumn session. There is a similar amendment by Prof. Shah (No. 1470) which wants that Parliament should be called at the beginning of the year and should continue throughout the year with intervals in-between. This also appears to be reasonable, and it does not matter to me which one of these two is accepted.

Another amendment has been moved by Prof. Shah with which I agree, that if the President of the Republic is unable to summon the legislature either the

Chairman of the Council of States or the Speaker of the Lower House should have power to summon it. If they also do not do that the Prime Minister should in writing make a request to these two gentlemen to summon it. But supposing they refuse what will happen? In such case I think the Prime Minister himself should have power to call the Houses of Parliament. This is only to provide for an emergency and the Prime Minister is surely more important than anybody else. If he thinks there is an emergency to justify calling the Parliament, he should have power to do so. Sir, I support this amendment also.

Prof. Shibban Lal Saksena : Sir, this article has been criticised from two points of view,—*viz.*, that the sittings of Parliament should be continuous and the President should not have the power to stultify the legislature by refusing to summon it. On the first point, I agree with Mr. Kamath and Mr. Sidhwa. The meetings of our present Parliament are too few and even Ministers complain that they have no time to be able to give an account of their actions throughout the year during the budget discussions. In fact they have resented only one or two hours being given to them for this purpose. I am sure my honourable Friend Dr. Ambedkar himself must have felt that the House has not been sitting long enough. We should follow the House of Commons in this respect and I hope the example left by the foreign rulers who had set up a mock Parliament in India will not be continued any longer, and our Parliament will be a Parliament in the real sense of the term. It will have the opportunity to scrutinise every pie of expenditure and taxation. We should have very much longer sittings of the Parliament to enable it to discharge its duties properly. As regards the amendment of Prof. Shah about the summoning of Parliament by the Speaker etc., I think under our Constitution which is modelled on the British system, the President is only a substitute for the King and as such he has not much power. Therefore I do not think Prof. Shah's fears are justified and therefore these provisions are unnecessary. It would have been proper under the American type of Constitution because there the President has very great powers and can defeat the purpose of the legislature, but in our Constitution where he is merely a symbolic head he can do no harm. After all there are provisions to remove him by impeachment, though I hope such occasions will not arise. I therefore think Prof. Shah's amendment is not proper. But as regards the sittings of Parliament I agree we should have continuous sessions of the Parliament.

The Honourable Dr. B.R. Ambedkar : Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in the Government of India

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Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that?

The Honourable Dr. B. R. Ambedkar : As I was going to explain the same mentality which prevailed in the past of the executive not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it?

The Honourable Dr. B.R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by questions or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies.

Again, there may be a further reason which may compel the executive to summon the legislative more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shah wants to omit the words "either House" from clause 67 (2) (a). I could not understand his argument. He seemed to convey the impression—he will correct me if I am wrong—that because the upper chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years; but the summoning of that House for transacting business is a matter that still remains. The House is not going to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the Legislature where the President has failed to perform his duty must be vested either in the Speaker of the Lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if I have understood it correctly, the proposition of Prof. K.T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason purely out of wantonness or cussedness, refuses to summon it, I think we have already got a very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reason does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it

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means that the Executive Government has no business which it can place before the House for transaction. Because, that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment No. 1482 moved by Prof. K.T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the House should be dissolved and a case where the Prime Minister writes a letter stating that the House should be dissolved. Professor K.T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K.T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it the King has a right to dissolve Parliament. He generally dissolves it on the advice of the Prime Minister, but at one time, certainly at the time when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this: it was agreed by all politicians that, according to the convention then understood; the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the House may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the House if he was prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a Constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the

House seems to be useless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for *bona fide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the House as a whole. Therefore I do not think that this amendment should be accepted.

Mr. President : I shall now put the amendments to vote one by one.

The question is :

"That in clause (1) of article 69, for the words 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 69, for the word 'twice' the word 'thrice' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That after clause (1) of article 69, the following proviso be inserted :—

'Provided that Parliament or either House thereof, once summoned and in session, shall continue to remain so during the year; and such sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogation.' "

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 69, the words 'the Houses or either House of' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That at the end of sub-clause (a) of clause (2) of article 69, the following be added :—

'Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People, or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective house which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.'"

The amendment was negatived.

Mr. President : The question is :

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :—

'On the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.' "

The amendment was negatived.

Mr. President : The question is :

"That after clause (2) of article 69, the following be inserted :

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course :

'Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.' "

The amendment was negatived.

Mr. President : The question is :

"That is sub-clause (b) of clause (2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

The amendment was negatived.

Mr. President : All the amendments have been rejected.

The question is :

"That article 69 stand part of the Constitution."

The motion was adopted.

Article 69 was added to the Constitution.

Article 73 **[19th May 1949]**

Mr. Tajamul Husain : Sir, before we proceed I would like to know whether you could now take up article 73 as we were given to understand that only those articles will be taken up for discussion which relate to election matters, so that the electoral rolls may be prepared as soon as possible. I submit that article 73 does not deal with election matters : it deals with the offices of the President, Vice-President and so on.

Mr. President : We wanted to take up the articles dealing with election matters but I was told that honourable Members were not yet quite ready and wanted a day or two before those articles could be taken up. That is why I have accommodated them and we shall go on with those articles from Monday next.

The motion is :

"That article 73 form part of the Constitution."

(*Amendments Nos. 1499, 1500 and 1501 were not moved.*)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I would like to move amendment No. 1502. It is not a formal amendment.

Sir, I beg to move :

"That in clause (2) of article 73, for the words 'another member' the words 'a member' be substituted."

The text as it stands rather favours the election of 'another member' and not the member who has ceased to be the Deputy Chairman. According to article 74, a Deputy Chairman shall vacate his office if he ceases to be a member or he may resign. When an election of a Deputy Chairman takes place he would be debarred from contesting for no fault of his. I submit that for the words 'another member' the words 'a member' be substituted, leaving it open to the outgoing Deputy Chairman to contest the seat if he has meanwhile been re-elected.

There is however one contingency in sub-clause (c) of article 74 where the Deputy Chairman may be removed for want of confidence. I do not know whether it is desired to allow him also to contest. At any rate, this is a matter which requires consideration and I shall be content if it is considered by the Drafting Committee, because there is a complication in sub-clause (c). It may be desired that he may not be allowed to contest, but in the other case there is no reason why he should not be allowed to be a candidate.

There is one other thing which I would suggest here, if I am permitted. Clause (1) of article 73 is a repetition of what we have already accepted and it is a mere duplication. Clause (1) says : "The Vice-President shall be the *ex-officio* Chairman of the Council of State," I beg to draw the attention of the House to article 53. This is identical with clause (1) of article 73.

Article 53 also runs to the same effect. It says : "The Vice-President shall be *ex-officio* Chairman of the Council of States". There are certain conditions and there is a proviso. I submit that the same provision, word for word, has already been accepted in article 53 which is fuller and more complete. At any rate we have made the same provision in identical terms in article 53. Therefore sub-clause (1) is a mere duplication. We certainly do not desire to have two Chairmen of the Council of States. Therefore clause (1) should be deleted or the two clauses may be put separately and clause (1) ruled out. I hope that the Honourable Dr. Ambedkar will consider this and see whether we should provide for the same thing twice.

Mr. Tajamul Husain : Sir, Mr. Naziruddin Ahmad wants that instead of the words 'another Member' there should be the words 'a Member'. I oppose it. My reason is this : clause (2) of article 73 runs thus :

"The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof."

The point is this : Supposing a Deputy Chairman has been removed from office for certain reasons, if the word 'another' is there the Council cannot choose him, but some other member. That is why the word 'another' is put in. When a Deputy Chairman resigns or if he is not wanted again—if he is removed we cannot have him again—another member will have to be chosen. If you have the words 'a member' there, the Council may choose the same member again. Therefore the words 'another member' are more appropriate and more correct and better than the words 'a member'. I oppose the amendment.

The Honourable Dr. B.R. Ambedkar (Bombay : General) : Mr. President Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House and obviously, that person having ceased to be a member of the House, you cannot say that they may elect 'a member' which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is 'another member' because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is 'another member'.

Mr. President : The question is :

"That in clause (2) of article 73, for the words 'another member' the words 'a member' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 73 stand part of the Constitution."

The motion was adopted.

Article 73 was added to the Constitution.

Article 74

Mr. President : Article 74 is for consideration. Amendment No. 1503 is covered by another already passed.

(*Amendments Nos. 1504 to 1508 were not moved.*)

Mr. President : As there are no amendments to article 74 I will put it to the House.

The question is :

"That article 74 stand part of the Constitution."

The motion was adopted.

Article 74 was added to the Constitution.

Article 75

Mr. President : Article 75 is for consideration.

(*Amendments Nos. 1509, 1510 and 1511 were not moved.*)

There is an amendment to amendment No. 1511. As amendment No. 1511 is not moved, it does not arise.

The question is :

"That article 75 stand part of the Constitution."

The motion was adopted.

Article 75 was added to the Constitution.

Mr. President : There is notice of a new article 75-A—amendment No. 28 of List II.

New Article 75-A

Shri T.T. Krishnamachari (Madras : General) : Sir, I beg to move :

"That after article 75, the following new article be inserted :—

'75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting, from which the Chairman or, as the case may be, the Deputy Chairman, is absent.' "

Sir, the reason for this new article is that in the event of proceedings being taken against the Chairman or the Deputy Chairman for their removal, the Chairman or the Deputy Chairman might be present in the House to answer the charges against him; and if he is present, unless it is expressly stated that he will not preside, the Chairman or, when he is absent, the Deputy Chairman will have to preside. In order to obviate this particular difficulty, this new article is being moved.

Dr. P.S. Deshmukh (C.P. & Berar : General) : I cannot hear anything.

Shri T.T. Krishnamachari : This amendment is being moved to overcome the technical difficulty that will arise in the case of proceedings against the Chairman or the Deputy Chairman, as the case may be, of the Council of States. The article is self-explanatory and the difficulty that it seeks to overcome will be clear to any Member who reads the article.

Shri H. V. Kamath : Mr. President, Sir, I feel that the article as has been moved before the House suffers from a slight lacuna. The lacuna has arisen because the article merely says that the Chairman or the Deputy Chairman shall not preside on any occasion when the question of his removal from office is under consideration. So long as the article does not provide specifically, does not lay down explicitly in so many words that somebody else from the House or outside the House shall preside on such occasions, the article as it stands, cannot to my mind be clear in its significance or its import. The article must at the same time state that the House shall elect somebody from within the House or appoint somebody else to preside on such occasions. Otherwise, it will mean that when the question of removal of the Chairman is under consideration, the Chairman shall not preside; but who will preside? I feel that this lacuna must be removed before the article is passed by the House. The article as it stands cannot be accepted by the House.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this : If the Chairman is being tried, so to say—I am using the popular phrase—then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause

[The Honourable Dr. B.R. Ambedkar]

(2) of article 75 will apply. Clause (2) of article 75 says that "During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council, shall act as Chairman." Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President : The question is :

"That after article 75, the following new article be inserted : —

'75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.' "

The motion was adopted.

Article 75-A was added to the Constitution.

Article 79

Mr. President : The motion is :

"That article 79 form part of the Constitution."

(*Amendments Nos. 1532, 1533 and 1534 were not moved.*)

Mr. President : There is no amendment moved to article 79.

The question is :

"That article 79 stand part of the Constitution."

The motion was adopted.

Article 79 was added to the Constitution.

New Article 79-A

Mr. President : There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B.R. Ambedkar : I would like this to stand over.

Mr. President : Article 79-A stands over. There is another article 79-A given notice of by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move :

"That after article 79, the following new article be inserted :—

'79-A. (1) The Chairman shall preside at a meeting of the Council of States, and in his absence, the Deputy Chairman shall preside; and in his absence, any one of the panel of Chairmen appointed by the Chairman and selected by him for the purpose, shall preside; and in their absence any member of the Council of States elected by the Council shall preside.

(2) At a meeting of the House of the People the Speaker shall preside and in his absence, the Deputy Speaker shall preside, and in his absence a member of the panel of Chairmen appointed by the Speaker and selected by him for the purpose, and in their absence, any member elected by the House shall preside.

(3) At a joint...'. "

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this is already provided in article 75.

Mr. President : Clauses (1) and (2) are already covered by articles 75 and 78.

Mr. Naziruddin Ahmad : In that case, I shall move clause (3).

The Honourable Shri K. Santhanam : Even clause (3) has been provided for.

Mr. President : Clause (3) is covered by article 98 (4). If you want to move your amendment; you can take it up then. That would be the proper stage.

Mr. Naziruddin Ahmad : But a duplicate provision has today already been accepted by the House.

Article 80

Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80. The motion is :

"That article 80 form part of the Constitution."

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

"That in clause (1) of article 80, for the words 'Save as provided in this Constitution' the words 'Save as otherwise provided in this Constitution' be substituted."

Sir, this is just a slip and it has to be corrected.

Mr. President : Amendment No. 1537. I take it this amendment is of a drafting nature. Amendment No. 1538. Mr. Kamath, this is covered by the amendment which has just been moved.

Shri H.V. Kamath : The second part is new, Sir.

Mr. President : You may move the second part.

Shri H.V. Kamath : Sir, may I at the very outset bring to your notice that I had sent five amendments separately, but they have been brought together, three in one amendment No. 1538 and two as amendment 1541. I do not wish to blame the office in any way; the office is working very hard and it is quite possible that on account of pressure of work this has happened. I would only crave your indulgence to move these amendments separately.

Mr. President : Yes.

Shri H.V. Kamath : I shall move only the last two portions in 1538, and also by your leave, 1541 because that relates to the same clause.

Mr. President : Yes.

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

"That in clause (1) of article 80 after the words 'at any sitting' the words 'of either House' be inserted and the words 'other than the Chairman or Speaker or person acting as such' be deleted."

and further :

"That in the second paragraph of clause (1) of article 80 before the words 'The Chairman' the words 'Provided that' be inserted."

I am not moving the second half of the amendment 1541.

Shri T.T. Krishnamachari : May I point out that the House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath?

The Honourable Dr. B.R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T.T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H.V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus :—

"Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting.

Provided that the Chairman or Speaker, etc."

I do not wish to expatiate upon this amendment. I think these amendments are fairly obvious because the first amendment seeks to insert the words 'of either House'. It stands to reason that we must make every thing clear. There is the other clause subsequent to that which refers to joint sitting of the Houses.

As regards the other two amendments which in my view must be taken together or rejected together, I would only say that at times I feel that this Draft Constitution has been encumbered with needless verbiage, words which might have been reduced in number, words which might have been omitted. I am aware that the elephant is one of our emblems but I am sure the House does not agree that we should make the Constitution an elephantine one. Our sages and wise men have written sciences and philosophy in brief Sutras and one of our greatest men—I think it was Vyasa himself who took pride in his sloka when he said :

"श्लोकार्धेन प्रवक्ष्यामि यदुक्तं ग्रंथकोटिभि:"

(*Shlokardhena pravakshyami yaduktam granthakotibhim.*)

[What crores of Granthas have said I will say in half a verse.]

But here we are repeating words which are absolutely unnecessary and which might have been easily, without any detraction of meaning or derogation to the propriety of the article, omitted. I wish we had a Constitution much less bulky. The other day some friends of mine who were students in a college wrote to me after they had pursued the Draft Constitution—they are students of politics—they said half in jest and half in earnest that the future generation of students will curse many of us who have presented the country with such a bulky document.

Mr. President : Is all this necessary for this amendment?

Shri H.V. Kamath : I only wanted to make my point clear. I will come straight to the point, as you have been pleased to remark that it is not necessary for the amendment. I only wish to say that here in clause (1) of article 80 we find that

these words 'Chairman or Speaker or person acting as such' has been repeated in the first para as well as the second para. In the first para, the meaning is quite clear without the incorporation of these words 'other than the Chairman or Speaker etc.'. If they just add a proviso like, 'Provided that' the meaning that the draftsmen have in mind will be clearly brought out and we will be saved the burden of at least 8 or 9 words in this one article. If we proceed in this fashion with many articles, I am sure that at least a thousand words might be omitted from this Constitution.

I therefore move the latter two-third portions of No. 1538 and the first half of No. 1541 and commend these for the acceptance of the House.

(*Amendments Nos. 1542, 1543, 1544, 1545, 1546, 1547 and 1548 were not moved.*)

Mr. President : No. 87 of Amendment to Amendments.

Acharya Jugal Kishore (United Provinces : General) : Sir, I move :

"That with reference to amendment No. 1536 of the List of Amendments in Clause (1) of article 80, after the word 'sitting' where it occurs for the first time the words 'of either House' be inserted."

This is only a verbal change and I hope the House will accept the amendment.

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

Mr. Naziruddin Ahmad : Mr. President, Sir, with regard to article 80, I have to point out one drafting lacuna for the consideration of the Drafting Committee. After clause (1) there is a complete paragraph which should bear a clause number. I think this is an isolated instance where a paragraph has not been numbered. This paragraph should be numbered 1(a) and the subsequent clauses re-numbered.

With regard to another aspect of drafting, I would suggest for the consideration of the Drafting Committee this : In certain places in article, 78, 79, 80, 81, and 82, the word "the" has been treated with considerable amount of affection. It has been used rather very freely. But in other places there is considerable amount of antipathy to the word "the", as for instance in article 79, there is the expression "the Chairman", "the Deputy Chairman", "the Speaker", "the Deputy Speaker" etc. But in articles 78, 80 and 81, the word "the" in similar context does not appear. But the word again appears in article 82.

Shri M. Ananthasayanam Ayyangar (Madras : General) : On a point of order Sir, you have ruled out verbal amendments. Is it open to my Friend to speak on these verbal amendments? It is for the purpose of enabling us to get along with the substantial portion of the work and to confine ourselves to the substance and in order not to spend away time that you have ruled out verbal amendments. Then what is the use of taking up our time in another form by speaking on them?

Mr. President : I only wanted to know on which side the Member's sympathies lay, whether in favour of or against the word "the". That apart, I would request the honourable Member to discuss it with the Members of the Drafting Committee.

Mr. Naziruddin Ahmad : Sir, I have already finished. But let me point out that my honourable friend in taking up this point of order has taken up more time than I would have done. I have simply pointed out these two points for the kind consideration of the Drafting Committee and I have finished.

Prof. Shibban Lal Saksena : Mr. President, Sir, my objection to this article is with regard to the words "joint sittings of the Houses". In this Draft Constitution, it is article 88 that deals with joint sittings of both Houses. That is a question of principle, and I am one of those who think that there should be no joint sittings of the two Houses. Therefore, I hope that even if this article is passed just now as it is, and if article 88 is amended or dropped. I hope this portion of article 80 also will be dropped.

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H.V. Kamath : Which of my amendments? I moved three amendments, separately.

The Honourable Dr. B.R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendment as it stands is a single one.

Shri H.V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out. Firstly, adding "of either House" after the words "at any sitting". Secondly deletion of the words "other than the Chairman or Speaker or person acting as such". Thirdly inserting the words "provided that" at the commencement of the second para. I would like to know which of these three the honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourable Dr. B.R. Ambedkar : I am referring to the honourable Member's amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H.V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

"Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be..."

The Honourable Dr. B.R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

Mr. President : That covers the first part of your amendment. Then there is the second part of the amendment. I would rather begin with amendment No. 1536.

The question is :

"That in clause (1) of article 80, for the words 'Save as provided in this Constitution' the words 'Save as otherwise provided in this Constitution' be substituted."

The amendment was adopted.

Mr. President : Then we come to No. 87 on the List of amendments to amendments, moved by Acharya Jugal Kishore.

The question is :

"That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word 'sitting', where it occurs for the first time, the words 'of either House' be inserted."

The amendment was adopted.

Mr. President : Then we come to the third amendment which is Mr. Kamath's amendment. It is to this effect.

"That the words in the first paragraph of clause (1) 'otherwise than the Chairman or Speaker or person acting as such' be deleted, and at the beginning of the second paragraph 'provided that' be added, with of course, necessary changes in the punctuation."

The amendment was negatived.

Mr. President : Then I put the article, as amended to vote.

The question is :

"That article 80, as amended, stand part of the Constitution."

The article, as amended, was adopted.

Article 80, as amended, was added to the Constitution.

[20th May 1949]

Article 87

Mr. President : The House will take up article 87 for consideration. I find that amendment No. 1638 of Professor Shah is covered by article 98 which comes a little later.

Prof. K. T. Shah (Bihar : General) : Sir, the second part is not covered. I shall move the second part only. Sir, I beg to move :

"That the following new clause be inserted before clause (1) of article 87 :—

'Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.'"

Sir, I consider this a very important right of the people, and a privilege of Parliament, if I may say so, that the people whom the Parliament is supposed to represent should have the right to approach directly the sovereign legislature, and place before it grievances, or cases which require Parliament's attention as the body concerned in any legislation pending before it.

Such petitions may also be in regard to any financial matter or administrative acts. In all such cases, in the ordinary way, unless some privilege of this kind is provided, the people, who theoretically are supposed to be sovereign will have actually no right of presenting their grievances, or views on any given matter to the sovereign legislature.

It may be—it frequently happens—that given the life of Parliament extending over five years, the House of the People elected four or five years before such an occasion arises, may have ceased to be in real contact, and therefore any real response to the wishes of the people, which in the period during which it has been in sessions, has changed and is changing considerably, may be impossible.

[Prof. K.T. Shah]

Nor is there any regular machinery by which Parliament may from time to time be able to test popular opinion, except in so far as the Ministry or Government chooses to place these matters before it. I suggest that the people should have the right of direct access for placing before Parliament on any given subject their views, and getting the Parliament's reactions thereon. It is in this country an old privilege of the poorest, that fancying themselves aggrieved, or any individual fancying himself aggrieved, had a direct right of access to the Sovereign, even in the days of the old absolute emperors. In modern times, when we profess so much regard to the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people, I think it is not asking too much at all to suggest that this which forms admittedly the right of the people and the privilege of Parliament in Britain on which our Constitution is modelled, should also be included in our Constitution, namely that the people should have the right of direct access to Parliament and present petitions for that purpose.

I do not quite like the word 'petition' myself; but, as it has been used and as it is of popular use, in this matter I have adopted the word in presenting this part of my amendment. Another amendment had been tabled by me which I have however not moved, in which I was seeking to reverse the process, namely that Parliament should also, on given issues, ask or try to ascertain the opinion of the people, so to say by a parliamentary referendum, rather than by a Governmental referendum. I felt, however, that given the present tendency, given the accepted traditions, it might sound too novel or too radical to suggest that Parliament should ask the people their opinion, though in the strict theory of our democracy, in my opinion at any rate, it would be nothing unusual if some such procedure had been included. I repeat that that particular amendment I have decided not to move. But I think this one, its counterpart, is perfectly orthodox, and correct, and there ought to be no objection to it from any quarter, because it is a recognised thing. It is being frequently done, and there is no reason to believe that in this country it would either be unwanted or abused. I commend the motion to the House.

(*Amendment Nos. 1639, 1640 and 1641 were not moved.*)

Prof. K.T. Shah : Nos. 1642 and 1643 are on a similar subject. May I move them together, Sir? It will save time.

Mr. President : Professor Shah may move amendments Nos. 1642 and 1643 together.

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

"That in clause (5) of article 87, after the words 'A Bill which' the words 'has been passed by the Council of States and' and after the words 'the House of the People' the words 'shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned of the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be brought back to the House of the People but shall be deemed to have been passed by both Houses of Parliament and shall forthwith sent up for the assent of the President' be inserted respectively."

and

"That after clause (5) of article 87, the following new clauses be inserted :—

'(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.' "

Sir, these are intended to economise the time of the House, and simplify its procedure in enacting legislative proposals coming before Parliament. It may be that a Bill after it has been duly passed by the Council of States, in all its stages in that House, and before it is sent up to the House of the People, the contingency may arise that the Lower House is dissolved before it takes up the Bill. I suggest that such a Bill should not be deemed to have lapsed altogether; and that if it is agreed to by the new House of the People in the same form in which the Council of States had passed it, it should be deemed to have been passed by both Houses of Parliament, and be sent up to the President for assent. That is to say, it would not be returned a second time to the Council of States after being passed through all stages by the new House of the People as a new Bill brought in for the first time before the House, and then once again go through all the stages in the Upper House.

I think this stands to reason, especially having regard to the fact that both Houses are equally competent to initiate and deal with all Bills except money Bills. It may be in practice that the most important legislative proposals will originate in the Lower House. If not passed in the Lower House before dissolution, then automatically all such legislation pending there at any stage would be deemed to have lapsed, if the House is dissolved. But in the event of the Lower House passing any legislation in all its stages before its dissolution, and having so passed, sending up the proposal to the Upper House before it itself is dissolved, there should be no need to regard that Bill as having lapsed, because it has already been duly passed by the House of the People. The Upper House may then take it up and carry it through in all its stages, and if the Upper House agrees to it in the same form in which the Bill was sent up by the House of the People, there ought to be no need to send it back to the new Lower House elected after the dissolution.

I can conceive of a contingency in which this position may be abused; *i.e.* when controversial legislation may have been hurried through almost in the last days when the House of the People is likely to be dissolved, and the Upper House also being in sympathy with it might pass through all stages such Bills

[Prof. K.T. Shah]

before the new Lower House can take up the matter. Difficulties of this nature might arise, especially if the newly-elected House is dominated by a different party from that which preceded it. In that contingency, however, there is no need to fear that the will of the people will not prevail, because either the Council of States may not pass the legislation passed by the previous House of the People, or if passed by it, it may not be assented to by the President. There is also nothing to prevent the new Lower House from enacting any other Bill contravening or rejecting the measure passed by its predecessor at the last moment. I think that by this amendment time would be saved, simplification of procedure would be assured, and duplication of work avoided.

No doubt these are merely procedural matters, which can be regulated primarily by each House of Parliament by rules. But if injunctions of this kind are incorporated in the Constitution itself, my amendment is necessary, as it will help to economise time. I commend it for the acceptance of the House.

Mr. President : I have received notice of certain amendments by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : There are two amendments. One is to article 87 and the other is to article 88. I am not moving the amendment to article 87.

Mr. President : These are all the amendments that we have got. Now the amendments and the original proposition are open to discussion.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I am opposed to clause (2) of article 87 wherein it is stated that no Bill shall be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses. I do not see why in a democratic state, the representatives of the people should be placed on a par with the nominated representatives of the provincial governments. The supremacy of the Lower House must be recognised if democratic institutions are to function efficiently. It has been said that this clause is in conformity with the federal principles which have been agreed to in the beginning. I for one, Sir, do not see why anyone should trot out such an argument now. I do not consider this Draft Constitution to be purely federal in character. It is partly federal and partly unitary and more unitary than federal in character. When we accepted federation the position prevailing in India was quite different. We did not accept the principle of federalism to accommodate the provinces. The provinces were never in our minds when we accepted the federal principle. We accepted federalism in order to meet the challenge of the Two-Nations theory of the late lamented Mr. Jinnah. We accepted federalism in order to persuade the Indian Princes to surrender a part of their sovereignty. Now the position is entirely changed. This country, Sir, has been unfortunately partitioned. The Princes today have been liquidated. The States today are in a far worse position than the Indian Provinces. Last time when the Constituent Assembly met I had spoken in this House in favour of a unitary State. Sir, I do not know what is in the mind of our Constitutional pandits. Federation tends towards a unitary form of Government. I do not know of a single instance in history where a unitary form of Government has degenerated into federalism. As far as federalism is concerned, Sir, almost in all federal countries the Constitution has

tended towards a unitary form of Government. I visualize the role of a second chamber at the Centre merely as an advisory body. It should be a check upon hasty legislation, but to emphasize the federal character of the Constitution will be a retrograde step and those persons who talk and emphasize this aspect of our Constitution do a great disservice to the country. The Provinces were always subordinate to the Government of India and to say now that they have got autonomous and federal powers is really to turn the hands of the clock back. We are reversing Sir, the process of history; we are emphasizing federalism, which is conservative in character and is full of weakness. Sir, I oppose clause (2) of article 87.

Mr. President :The question is :

"That the following new clause be inserted before clause (1) of article 87 :—

'(1) Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.' "

The amendment was negatived.

Mr. President : The question is :

"That in clause (5) of article 87, after the words 'A Bill which' the words 'has been passed by the Council of States and' and after the words 'in the House of the People' the words 'shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States, the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States, such a Bill shall not be passed by both Houses of Parliament and shall forthwith sent up for the assent of the President' be inserted respectively."

The amendment was negatived.

Mr. President : The question is :

"That after clause (5) of article 87, the following new clauses be inserted :—

'(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.'"

The amendment was negatived.

Mr. President : The question is :

"That article 87 stand part of the Constitution."

The motion was adopted.

Article 87 was added to the Constitution.

Article 88

Mr. President : The motion is :

"That article 88 form part of the Constitution."

(*Amendment No. 1644 was not moved.*)

Shri H.V. Kamath (C.P. & Berar : General) : Mr. President, I move :

"That in clause (1) of article 88, after the words 'if after a Bill' the words 'other than a Money Bill or other financial Bill' be inserted."

Shri M. Ananthasayanam Ayyangar : May I ask the honourable Member to see the proviso to article 88 which says : "Provided that nothing in this clause shall apply to a Money Bill." What is the advantage in transposing this clause ?

Shri H.V. Kamath : Then the proviso itself must be altered. Sir, it is more or less a formal amendment, but it makes for clarity. I am all for brevity, but not at the expense of clarity and precision. Articles 89 and 97 deal with Money Bills and other financial Bills. Therefore, when we refer to a Bill in article 88, it would have been far happier and far clearer if we had laid it down specifically that the Bill referred to in this article was something different from or something other than a Money Bill or other financial Bill. My honourable Friend, Mr. Ananthasayanam Ayyangar, has rightly pointed out, and I am grateful to him for having done so, that there is a proviso here at the foot of clause (1) to this article referring to the exception made in regard to Money Bills. But, Sir, the language used in article 87 reads : "Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills." So if we want to be consistent in our language and in our phraseology, I think Mr. Ayyangar would agree that even the proviso should have been drafted in consonance with the language used in article 87. Article 87 refers to not merely Money Bills, but Money Bills and other financial Bills, and therefore, I would accept an amendment if moved by Mr. Ayyangar modifying the proviso in the light of my amendment and including other financial Bills along with Money Bills referred to in this Proviso.

Mr. President : What will be the effect, supposing your amendment is accepted and the proviso is not deleted? There is no amendment to delete the proviso.

Shri H.V. Kamath : That is unfortunate, I realise. But unless the proviso is modified suitably a sort of lacuna will remain. If you would permit Mr. Ayyangar or anyone else to move a suitable amendment to the proviso itself including financial Bills with Money Bills referred to in this proviso, then it would meet my objection completely; otherwise, I fear there would be a lacuna which might do violence to the consistency of language used in the two articles.

Shri Prabhudayal Himatsingka (West Bengal : General) : There is amendment No. 1649 to delete the proviso to clause (1) of article 88.

Shri H.V. Kamath : If that is accepted and mine is also accepted, that suits the situation admirably. I therefore move my amendment.

(*Amendments Nos. 1646, 1647, 1648 and 1649 were not moved.*)

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

"That in clause (2) of article 88, for the words 'both Houses are' the words 'the House referred to in sub-clause (c) of that clause is' be substituted."

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(*Amendment No. 1652 was not moved.*)

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

"That in clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

(*Amendment No. 1654 was not moved.*)

The Honourable Shri K. Santhanam : Sir, I move :

"That in clause (4) of article 88, the words 'total number of' be deleted."

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent.

The point here is simple. What is intended is that the decision of the joint sittings should be taken by a simple majority. In all such cases, the usual wording is majority of the Members of both the Houses present and voting. The wording, 'total number' is generally used only in connection with absolute majority.

The Honourable Dr. B.R. Ambedkar : I shall be grateful if my honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards?

The Honourable Shri K. Santhanam : I agree, Sir.

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

"That in clause (4) of article 88, the words 'for the purposes of this Constitution' be deleted."

Sir, this to my mind, is an instance where these words could be omitted without sacrificing precision or clarity of meaning intended by this article. Whatever is drafted here, whatever article comes before the House is for the purposes of this Constitution. We are dealing with the Constitution. Nobody, I am sure, would presume to say that anything which is embodied in this Constitution is for purposes other than this Constitution. Therefore, it is to my mind redundant, needless and superfluous to state in any article, or in this article for the matter of that, that the result of the voting shall be deemed to be for the purposes of this Constitution. I therefore move that these words which are to my mind unnecessary may be deleted. I move my amendment.

Mr. President : Amendment No. 1657 : I think it is a drafting amendment.

(*Amendments Nos. 1658 and 1659 were not moved.*)

Shri T.T. Krishnamachari : I am afraid the amendment is of a drafting nature, seeking to omit certain words which are redundant.

Mr. President : Amendment No. 1660 is of a drafting nature.

(*Amendment No. 1661 was not moved.*)

Mr. President : I have received notice of an amendment from Prof. Shibban Lal Saksena, that for article 88, the following be substituted. I am afraid that it is not an amendment to any amendment. To which amendment is this an amendment?

Prof. Shibban Lal Saksena : To any of these.

Mr. President : How will you put it? It is an amendment to the original article and not an amendment to any amendment. You cannot circumvent the rule about time by merely saying that these are amendments to amendments. This is really not an amendment to any amendment. Notice of this should have been given before.

Prof. Shibban Lal Saksena : It is an amendment to amendment No. 1650.

Mr. President : How will you substitute the whole of article 88 in the place of these words?

Prof. Shibban Lal Saksena : What I am suggesting is that a joint sitting should be avoided.

Mr. President : That is a different matter. I entirely see that point that you want to avoid joint sittings. But you should have given notice of this in due time. You want to bring in this amendment which goes to the root of the whole matter in the shape of an amendment to an amendment, with which it does not fit in at all.

Prof. Shibban Lal Saksena : This procedure has been adopted throughout in bringing such amendments.

Mr. President : I do not think I can allow this kind of amendment which is really not an amendment to an amendment.

Prof. Shibban Lal Saksena : Then, may I speak on the clause, Sir?

Mr. President : Yes, I shall see if all the amendments have been moved.

The article as well as the amendments are now open for discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, in this article a provision has been made by which in the case of disagreement over Bills between the Lower House and the Upper House, there shall be a joint sitting to solve the dispute. I had given notice of an amendment which you have thought fit to rule out but I hope that the purpose of that amendment is worth consideration by the House.

Firstly, I do not think that an Upper Chamber is a very good institution. I am opposed to that itself. But, as the House has accepted that, I do not want to say anything more about it. What I do want to say is that the Upper House should not have an authority out of all proportion to its importance. We have based our Constitution on the model of the British Parliament. There we have got the House of Lords and the House of Commons; but, authority of the House of Lords is very much restricted. What I want is that here too the Upper House should have limited authority and this should not be almost equal in power with the Lower House, as it becomes if there are joint sittings. According to the present draft, a Bill which is passed in the House of the People will go to the Upper House and if rejected there, then there will be a joint session in which the members of both

Houses will sit and decide the matter, by simple majority. Thus the Upper House may succeed in rejecting a Bill passed by the House of the People which will not have sufficient authority to give effect to the legislation by its own simple majority. I think the Upper House, even though it will be elected by the Provincial Legislatures, will not be as representative of the People as the Lower House. The Lower House will be directly elected. The Upper House will be elected by the Lower Houses and will have also some element which will be nominated by the President. Secondly, it will be a House, one-third of whose members will be elected every second year so that at least 2/3rds of the members will not represent the new spirit but will be persons who shall have been elected 2 years and 4 years before. I therefore, think that the Upper House will not represent the feelings of the people of the time and to give the members of that House the same status as the members of the Lower House is, I think, reactionary. Even if we want to give the Upper House some status, we must give it only that authority which the House of Lords has got in England by the Act of 1911. When the House of Lords does not agree to a Bill passed by the House of Commons, it automatically becomes law after the lapse of a particular period. In our Constitution if the Upper House rejects a Bill, there will be a joint sitting and the fate of the Bill will be decided by the joint sitting. I think the British model which we have adopted should also be adopted in the present case as well, and if a Bill is rejected by the Council of States, then the will of the House of the People should prevail, and the Bill must become law, irrespective of the fact that the Council of States has rejected it. If the Council of States delays the consideration of the Bill and the delay is longer than a specific period, then the Bill should be taken as passed. The Upper House should not be in a position to stultify a Bill passed by the Lower House. That is a very salutary principle and even in England where the institution of Upper House began, they thought it fit to limit the powers of the Upper House and it is not allowed to stultify the voice of the people expressed by the House of Commons. By providing for a joint session we are giving the Upper House a vital power, the power to act as a check on the progress and the wishes of the people who may like legislation passed at a rapid speed to bring our country abreast of the great nations of the world. In our country when we are so much backward, we shall need to go quickly and we do not need such brakes from the Upper House as the clause provides. I, therefore, feel that the practice in Britain should be adopted. This provision of the British Parliament has been copied by other Commonwealth countries as well. In Australia if in six months the Bill is not considered by the Upper House, then the House of People passes a Resolution that the Bill should be passed. In England even that is not required; so the purpose in both places is the same, that the House of Commons should have the final say and its voice should not be stultified by the Upper House. I therefore hope that in considering this clause, members will bear in mind that they are laying down a principle which may act as a brake on our progress. I do not want that this provision should disgrace the Constitution which we are passing for our new Free Independent Democratic Republic. I therefore hope that this provision for a joint sitting of both the Houses should not be accepted by the House and I hope that my words will be borne in mind by the House.

Shri Chimanlal Chakubhai Shah (Saurashtra) : Mr. President, Sir, I oppose the amendment moved by Mr. Saksena.

Mr. President : I did not allow him to move the amendment. He spoke opposing the article.

Shri Chimanlal Chakubhai Shah : I speak in support of the article. Under article 87 we have provided that a Bill shall not become an Act unless assented to by both the Houses. That is a thing which we are perfectly clear about. Then the question arises as to what to do when there is a difference of opinion between the two Houses. It is possible that we may say that where there is difference of opinion, we will leave the matter at that stage and allow the Bill to lapse and not make it an Act. That would be following the American model but there are some who feel that it should not be left at that stage and we should provide some machinery by which the difference of opinion between the two Houses can be resolved. There are three or four ways in which that machinery can be provided. One is the British model under which after a certain lapse of time the Bill passed by the Lower House automatically becomes an Act if certified by the Speaker. Then there is the Irish model under which the Lower House should again pass a Resolution accepting the Bill once more on which it will become an Act. But the analogy between these two models and our model has no application at all, because both those are Unitary Constitutions whereas ours is a Federal Constitution. In a Federal Constitution, the Upper House is composed of the representatives of the various units or States. It is not like the House of Lords which is hereditary or which by its very character is conservative. Our Upper House is elected by the representatives of the various States and therefore it is as representative as the Lower House itself in a particular manner. The object of providing an Upper House in the Centre is to see that the States' voice or the voice of the units is adequately represented. Therefore the third way of providing to resolve the deadlock is by Joint Session. Now that is not a very ideal solution no doubt but it is a solution which is as good as possibly can be conceived of. When both the Houses meet together it is possible that either by compromise they resolve their differences or the majority of the Lower House will carry the day. But it is not right to say that the Lower House alone will be the sole judge of a particular Bill and that after a particular lapse of time the Upper House will have no voice, because the Upper House is intended to represent in a Federal Constitution the voice of the units and they are as much elected representatives of the people as the members of the Lower House. I, therefore, submit that the solution embodied in section 88, if not ideal, is as good as can be conceived of in a Federal Constitution and to copy the British model is not proper because the composition of the House of Lords is entirely different from the one which we have conceived of under our Constitution, and secondly it is a Unitary Constitution whose model can have no application to a Federal Constitution. I, therefore support article 88.

Shri M. Ananthasayanam Ayyangar : Sir, I am only trying to answer the point raised by my Friend, Mr. Kamath, by pointing out to him that there is a proviso under article 88 that—

"Provided that nothing in this clause shall apply to a Money Bill."

But he thinks this is not exhaustive and therefore wants to put in the words "or other financial Bill". With all respect to him, Sir, I submit that these words ought not to be there, and I say this for these reasons. In this article a difference

has been made between Money Bills and other Financial Bills. Money Bills come under article 90 which says—

"For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters..."

It is only in cases where these matters alone are dealt with in a particular Bill that a procedure is prescribed, as distinct from other financial Bills where not finance matters exclusively, but other matters also are incidentally raised. It is only a Bill which relates only to those matters provided in article 90 that can be introduced only in the House of the People. So far as the Upper House is concerned, it has no jurisdiction in these matters except in the matter of recommendations which should be sent to the House of the People. The House of the People may or may not accept the recommendation. In either case the Bill be considered to have been passed by both the Houses. So far as other financial Bills are concerned, another procedure is prescribed; and if any question arises as to whether a Bill is exclusively a Money Bill or not, the decision of the Speaker of the House of the People is to be final. So far as other matters are concerned, they can be introduced in both Houses of Parliament and both Houses have jurisdiction to go into them. Under article 88, they have exempted Money Bills alone. With respect to any other financial Bill, other than Money Bills, which deals with other matters also, both Houses have got jurisdiction. In the case of Money Bills, they have to be introduced only in the Lower House; the Upper House can only recommend. I would, therefore, submit that this amendment is unnecessary and contrary to the scheme of the Act. So Mr. Kamath's amendment is out of order.

Shri S. Nagappa (Madras : General) : Mr. President, Sir, it was not my intention to speak on this article, but coming as I do from Madras I have been experiencing how the two Chambers have been working, and how the Upper Chamber retards the work of the Legislature. So far as the Congress Legislative Party is concerned, it is meeting more or less as a joint sitting, for everything that has to be passed in the Legislature is being discussed there. As is well-known, it is in the Lower House that all Bills originate, but its number happens to be 215 and in a joint sitting with the Upper House, it is not a deciding factor. So the Upper House restrains legislation that is passed by the Lower Chamber. If the Upper Chamber does not agree with anything, it can suggest amendments, and send back the Bill to the Lower Chamber, and it is the duty of the Lower Chamber to rectify any defects. If the Lower Chamber does not agree and there is a dispute, then there is a suggestion in the clause for joint sittings. If there is a clear division, say of 100 on one side and 150 on the other, then practically the Lower Chamber will become the deciding factor in the joint sitting. But the Upper Chamber does not represent the people directly. The Upper Chambers as constituted today happen to be representatives of the petty bourgeoisie and bureaucrats, and wherever there is any trend towards progressive legislation, they try to delay matters and even to torpedo legislation passed by the Lower Chamber. As a common man, as a layman, that is how I feel about this matter Whether there should be an Upper Chamber or not was considered by the Provincial Legislature and I was against it for a very long time. But we are now going to have adult suffrage and all sorts of people will be getting into our

[Shri S. Nagappa]

legislatures, may be people of experience and also people of little experience. So it is better to have experienced politicians nominated in the Upper Chamber so that we may have their experience and guidance. That was the reason which made me support the proposal to have an Upper Chamber. I do not think there was such a provision in the 1935 Act; but after all we did not work that Act fully. We had experience of it only for about a year and a half from 1937 to 1939. Within this period I do not think we ever had occasion to have a joint sitting. But as I said, in the Congress Legislative Party, we members who belong to both Chambers assemble and discuss and decide, and so we were practically having joint sittings. We also found that progressive legislations brought in by members of the Lower Chamber were more or less retarded or delayed by the Members of the Upper Chamber. But anyhow, the Honourable Dr. Ambedkar has explained that as it is constituted, the Upper Chamber will not act as a check or rather that it will not stand in the way of progressive legislation. The people to be elected to the Upper House will not be elected from the landlords or zamindars, but by the people of the Lower Chambers; so I agree to this. The members of the Lower Chambers will understand what sort of people are to be elected to the Upper House. That does not mean, however, that once elected it will be the will of the people who elected them that will prevail. It is the will of the people who are elected that will prevail in the House. That is the point to be considered to see that progressive legislations are not checked. In my opinion, in order to have a kind of check over the hasty legislations of the Lower Chamber, it would be better to have a time-limit during which the Upper Chamber must deal with a particular question. During that period the Upper Chamber must either accept the legislation passed by the Lower Chamber or send it back to the Lower Chamber for rectifying any defects. If the Lower Chamber sticks to its own guns, and says that it will not yield, then by the sheer lapse of time it would become the law. That, I think would have been better than having joint sittings. But anyhow there is provision in this Constitution that after ten years, if the people feel the necessity for it, they can change any clause or article in it, and they say, "practice makes a man perfect." After some time, as in the future legislature there will be the real representatives of the people, they will be in a position to know actually the difficulties they have to face because of this clause, and they may effect the necessary change. Sir, with these words, I conclude.

The Honourable Dr. B.R. Ambedkar : Sir, there is only one amendment moved by my friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words "for the purposes of this Constitution". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provision contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the Constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a

joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words "for the purposes of this Constitution" are in my judgement necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification for the fear they have expressed, but as other Members have pointed out this is not in any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it is and see what happens in course of time. If their fears come true I have no doubt that some honourable Member will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

Shri H. V. Kamath : In view of the light shed on my amendment No. 1645 by Mr. Ananthasayanam Ayyangar, I beg leave of the House to withdraw the amendment.

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

Mr. President : The question is :

"That in clause (2) of article 88, for the words 'both Houses are' the words 'the House referred to in sub-clause (c) of that clause is' be substituted."

The motion was adopted.

Mr. President : The question is :

"That in clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

The motion was adopted.

Shri H.V. Kamath : In view of the clarification made by the Honourable Dr. Ambedkar I beg leave of the House to withdraw my amendment No. 1656.

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

Mr. President : There have been two amendments which have been adopted to this article 88. I shall now put the amended article to the House.

The question is :

"That article 88, as amended, stand part of the Constitution."

The motion was adopted.

Article 88, as amended, was added to the Constitution.

[10th June 1949]

Article 98

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

"That in clause (1) of article 98, for the words 'Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution' the words 'subject to the provisions of this Constitution, either House of Parliament may make rules for regulating' be substituted."

[Shri H.V. Kamath]

There are two separate amendments in this : one is the transposition of a phrase in one clause and the other is substitution of the word 'each' by the word 'either'. These are amendments of a drafting nature but in my humble judgment I believe that this is better English and it conforms more to the rules of syntax. I do not think there will be any objection or difficulty in the way of accepting this amendment and I hope the House will endorse my suggestion. Sir, I move.

(*Amendments Nos. 1725 and 1726 were not moved.*)

Mr. Naziruddin Ahmad : Sir, I have to move my amendment No. 1727 not because I want to move it but because on this hangs the amendment of another honourable Member. I move it to accommodate the honourable Member. I beg to move :

"That clause (4) of article 98 be omitted."

Shri Jaspat Roy Kapoor (United Provinces : General) : Before moving my amendment, I would like to thank my honourable Friend, Mr. Naziruddin Ahmad, for having moved his amendment No. 1727, for that enables me to move my amendment to this amendment.

Sir, I am not moving amendment No. 14. I am moving amendment No. 15 only.

I move :

"That with reference to amendment No. 1727 of the List of Amendments, in clause (4) of article 98, after the word 'absence' the words 'the Chairman of the Council of States, or in the absence of both' be inserted."

Thereafter clause (4) would read :

"At a sitting of the two Houses the Speaker of the House of the People, or in his absence the Chairman of the Council of States or in the absence of both such person as may be determined by rules of procedure made under clause (3) of this article, shall preside."

The Drafting Committee has appended a note to this clause (4) at the bottom of page 44, saying that the Committee is of opinion that the Speaker of Parliament, as the House of the People is the more numerous body. That of the House of the people should preside at a joint sitting of the two Houses is good so far as it goes but when the Speaker of the House of the People is absent I think the appropriate procedure would be to permit the Chairman of the Council of States to preside. The Chairman of the Council of States is an elected person, elected by both Houses of Parliament and as such he enjoys fully the confidence of both Houses of Parliament, and I see no reason, Sir, when the Speaker of the House of the People is not present, why in his absence the Chairman of the Council of States should not be authorised to preside. Clause (4) as it stands says : "That in the absence of the Speaker of the House of the People such other person shall preside as may be determined by rules of procedure made under clause (3) of this article."

Now this practically shuts out the Chairman of the Council of States from presiding, for I think it will not be seriously contended that the Chairman of the Council of States may be permitted to preside over the joint sittings in accordance with rules that may be framed under clause (3). The President, when framing

such rule in consultation with the Chairman of the Council of States, I am sure, will not have before him the proposal emanating from the Chairman of the Council of States himself that he should be authorised to preside in the absence of the Speaker of the House of the People, because he must be a very presumptuous Chairman of the Council of States, a person who has absolutely no delicacies, who would be so audacious as to put forward such a suggestion to the President that he should be authorised to preside in such a contingency. I think it is necessary, therefore, that we should provide in clause (4) that when the Speaker of the House of the People is absent, the Chairman of the Council of the States should preside.

Sir, I beg to move.

(*Amendments Nos. 1728 and 1729 were not moved.*)

Mr. President : So all the amendments have been moved of which we have received notice. Does any one now like to speak?

Shri T.T. Krishnamachari : Sir, while I quite admit the logic of the amendment moved by Mr. Kapoor—I do not know what Dr. Ambedkar will do in the matter, but my own feeling is that the clause as it is had better stand rather than be amended by the suggestion of Mr. Jaspat Roy Kapoor for this reason : The proper arrangement will be that either the Chairman of the Council of States should preside, and in his absence the Speaker should preside; or the arrangement should stand as it is, because the Chairman of the Council of States happens to the Vice-President of India, and has a unique position, second only to that of the President, and perhaps the Premier or somebody like that. To put him in a position below the Speaker would mean a very invidious distinction—making a person who is likely to succeed the President or take over his duties under certain circumstances to be put below the Speaker of the House of the People.

Again there might be some objection to put the Speaker below the Chairman of the Council because that might involve a question of rivalry between the two Houses as to which House takes the first place. It is a very delicate and difficult position, and I think the Drafting Committee has solved the position by eliminating the Chairman of the Council of States who is the Vice-President from the picture altogether, and it is best from all points of view that once the two Houses sit together, the Vice-President who is Chairman of the Council goes out completely from the picture and the Speaker presides. The acceptance of the suggestion of Mr. Jaspat Roy Kapoor though it might look logical, is, I think, likely to create a delicate situation which had better be avoided by the article being allowed to remain as it is.

Shri K.M. Munshi (Bombay : General) : Sir, I think it would be best to leave the article as it is, without incorporating the Chairman of the Upper House. The reason is very simple. The Chairman of the Upper House is also the Vice-President and if we put the Speaker in the first instance it would not be right to put the Chairman next after him, and it may be that it would not be advisable to have a person who would be acting as a President in some temporary capacity or the other as the Speaker or the Chairman of this joint sitting. It is from that point of view that it would be very inproper, and I think it must be left to the rules of decide whether he should preside or not : but putting him expressly in this

[Shri K.M. Munshi]

manner would be stultifying his position as Vice-President of the Union and it is very advisable to keep it as it is.

The Honourable Dr. B.R. Ambedkar : All that I can say is that I cannot accept Mr. Jaspat Roy Kapoor's amendment. It is much better that the matter be left elastic to be provided for by rules. With regard to Mr. Kamath's amendment, I certainly feel drawn to it. But for the moment I cannot commit myself, but I can assure him that this matter will be considered by the Drafting Committee.

Mr. President : Then I do not put Mr. Kamath's amendment to the vote. I treat it as a drafting amendment which the Drafting Committee will consider.

With regard to Mr. Jaspat Roy Kapoor's amendment No. 15, I would like to draw Dr. Ambedkar's attention to one point. In clause (2) of article 98 we have the words :

"With respect to the Legislature of the Dominion of India."

In another place we have used the expression "Constituent Assembly of India". I suppose Dr. Ambedkar would like to have the same expression here also?

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

Mr. President : I was pointing out that here in this clause (2), the expression "Legislature of the Dominion of India" occurs. Perhaps, the expression 'Constituent Assembly of India' will be better?

The Honourable Dr. B.R. Ambedkar : We have now got two Assemblies so to say, the Constituent Assembly sitting as Constituent Assembly and the Constituent Assembly sitting as legislature. We have rules on both sides. I think therefore it would be desirable to retain the words 'Dominion of India', so that we could adopt the rules which are prevalent on the other side.

Shri Jaspat Roy Kapoor : My submission is that for the words 'Legislature of the Dominion of India' we may have the words 'Constituent Assembly of India' and the word 'Legislative' within brackets. That is how we have been describing our Constituent Assembly when it functions as Legislature.

The Honourable Dr. B.R. Ambedkar : We have to use the language of the Indian Independence Act. We have to restrict ourselves to the terminology of that Act.

Mr. President : If it will not create any difficulty, I do not mind it.

I will put the amendment moved by Shri Jaspat Roy Kapoor to vote.

Shri Jaspat Roy Kapoor : Sir, I seek leave of the House to withdraw it. I do not want it to have the fate of a defeated amendment.

Mr. President : If the House grants him leave to withdraw his amendment, it may be withdrawn.

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

Mr. President : The question is :

"That article 98 stand part of the Constitution."

The motion was adopted.

Article 98 was added to the Constitution.

[13th June 1949]

Article 226

The Honourable Dr. B.R. Ambedkar : I formally move amendment No. 2775.

Then I move an amendment to this.

Sir, I move :

"That for amendment No. 2775 of the List of Amendments, the following be substituted —

'That article 226 be renumbered as clause (1) of article 226, and

(a) at the end of the said clause as so renumbered the words 'while the resolution remains in force' be added; and

(b) after clause (1) of article 226, as so renumbered, the following clauses be added :—

(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.' "

(*Amendment No. 2776 was not moved.*)

Prof. Shibban Lal Saksena : Mr. President, Sir, this is a very contentious article and Dr. Ambedkar has tried to carry away some portion of its sting by his amendment, but I only want to say, Sir, that the amendment has made the article almost useless for the purpose for which it is intended. It was intended by this article that if a large number of provinces desired that in some matter there should be co-ordination among them and because they have not got singly the power to frame any such law for co-ordinating the efforts of those provinces, they may ask their representatives in the Council of States to pass a resolution by two-thirds majority giving the power to the Parliament to legislate on that subject also. For instance let us suppose that there is an emergency about food in four or five provinces. Unless there is some law relating to the control and distribution of food in all these provinces, it will be of no use for a single province to pass any law to meet the emergency, for food as such may be a provincial subject, and the Centre will then have no right to frame any legislation about it. Therefore, this article only gives power to the Upper House to pass a resolution by two-thirds majority to ask the Parliament to pass some law which might tide over the emergency and help those four or five provinces.

Now, Sir, this article as originally intended was to give this power without any limit of time and that means that until the emergency lasted, it could remain. But some people have seen in this article a limitation of the powers of Provincial autonomy, and therefore they resented the old article and the amendment of Dr. Ambedkar is to meet that view-point. By reducing the period to one year, I do not see how any emergency can really be met. So every year there shall have to be a vote of the Council of States and only if the Council agrees to extend the

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period by another year, the legislation undertaken by the Parliament in the preceding year will continue. On the off-chance of having that vote, I do not think any major schemes can be undertaken. I think therefore it is much better, instead of saying that every year a new resolution will have to be passed, to state that at least in the first instance, the resolution of the Council of States will confer power for three years and after that, it could be extended year by year, until the emergency is over. Therefore, I think that if the purpose for which this article is put in is to be achieved, then, the period of one year should be changed to three years in the first instance and then one year afterwards. That would give Parliament power to make laws for three years in the first instance and their life may be extended year by year by two-thirds majority of the Upper House. There can be no comprehensive planning for one year. It is quite possible that in the next year there may be a new election of one-third of the members' and they may not pass that law, and it may so happen that the whole of the money spent in the first year may become a waste. This fixing of the period of one year may work as a serious handicap. I would therefore request Dr. Ambedkar himself to amendment by saying three years in the first instance, which period will be extended from year to year if required. In fact, in America where Parliament has got no power to legislate on subjects which are within the jurisdiction of the States, it has been felt that there is very great difficulty in meeting such an emergency and they are able to carry on their schemes which require the concurrence of the States by a sort of allurement to finance the schemes. This article was intended to overcome that difficulty. I therefore request the House that even at this late stage the period may be fixed as three years, as the article as it stands at present is meaningless.

Shri H.V. Pataskar (Bombay : General) : Mr. President, Sir, this is a very important article and I think it deserves more attention so far as the question of the powers of the Sates are concerned.

With reference to the provisions which we have already passed, we have three lists : (i) the Union List which contains the subjects which are entirely within the jurisdiction of Parliament to pass laws regulating them; (ii) the Concurrent List regarding which both the States as well as the Parliament can legislate, and in that connection, legislation of Parliament will certainly prevail as against the legislation passed by the States; (iii) the States List, that is, one regarding which the States alone will have jurisdiction to pass legislation. I would also like to draw the attention of the House to the fact that with respect to what remains outside the purview of any of these lists, these matters are being handed over to the Union Parliament, that is, all the residuary powers are with the Union Parliament. Therefore, the only power that will be left with the States will be those that will be included in what will be later on determined as the States List.

It would be open to the House looking to the condition in the country to reduce the number of subjects that will be included in the States List. This may have to be done for various reasons. There is the acute problem of food which is not only confronting us, but also many other countries of the world. It may become necessary that the matter should be taken over by the Union Parliament. Similarly, there may be other subjects, like those necessary for the peace and security of

the country. It may become necessary that some of the subjects which were originally included in the States List will have to be included in the Union List. Under these circumstances it is a matter for serious consideration whether we should now enact this article 226.

It may be argued that there are cases in which the State can legislate only in respect of the area which is included in its jurisdiction and a problem may arise which requires that there should be legislation applicable to more than one State and in that case certainly it becomes necessary that the Union Parliament shall pass that legislation as the State will have no power to pass such legislation. But for that, we are making provision in article 229, that if the State Assembly and the Council, if one is there, together so decide, the Union Parliament will be given power to legislate even in respect of State subjects. That also, to my mind, is necessary. But it has to be considered seriously whether power under article 226 is necessary, and what is its implication. Article 226 says : "Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws..." The main ground on which this power is proposed to be given is that in the national interests, the Parliament should make laws for the States. If it is really a matter of national interest I do not understand why the State itself will not either pass the legislation itself or be willing to consent to legislation by Parliament. Why should we presume that the State will assume such an anti-national attitude? There are other provisions in the Constitution under which on the ground of national interest, emergency, etc. Parliament can interfere. Particularly the wording in article 226, "in the national interest, Parliament should make laws" is something which implies that that the Centre requires legislation by Parliament in a matter of national importance, which the State is not prepared to pass. In respect of the meagre subjects which are left for legislation by the States, I think such cases are likely to be very rare. I do not think that article 226 is at all necessary. Of course, as I said, this deserves to be discussed before we come to a particular conclusion. I do not say that I am opposed to it; I would be prepared to accept it; for after all, one may come to a different conclusion. After considering the other side's views, I only wish to point out that to allow this article to be passed without considering all the aspects will not be happy from any point of view.

Shri O.V. Alagesan (Madras : General) : Mr. President, Sir, I see great mischief in this article. It is contended on the other side that this is only an extended and indirect version of article 229 that is to follow. If it is so innocent as that, my feeling is that it is redundant. This article provides for interference in matters contained in the States List by the Central Government through the agency of the Council of States. The saving feature is, it is said, that in the Council of States the representatives of the various States are going to sit and they are not likely to overlook the interests of the States concerned and to re-inforce this, matters like food are brought into the picture. In matters like food it will be in the interest of the States concerned if the Centre steps in and comes to their rescue. In such cases the States will certainly avail themselves of the provision made in article 229. They will have the good sense to request the Centre to step in and legislate in such matters which will be beyond their power

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or capacity to deal with. Now, I would like to put a pointed question to Dr. Ambedkar. For instance, now there is a situation prevailing in the State of Hyderabad and in Madras Presidency. In some of the border areas in these two States there is disturbance of public peace. Now I would like to ask whether it will be proper, under similar circumstances for the Centre to intervene and take over the entire portfolio of law and order from the two States concerned and step in. Sir, I am sure that it will be a mockery of provincial autonomy if such a thing happens. So, my point is that this article, if it is only an extended version of article 229, is superfluous but if there is something behind it, if it is intended that the Centre should go beyond what is contained in article 229, then it is surely mischievous and need not find a place here. Dr. Ambedkar's original amendment has provided for three years. I should like to know from my friends who have contended that it is necessary that this provision of three years should be there, whether an emergency can be called an emergency if it is going to last for three years and more. Then it will cease to be an emergency and become a permanent feature. So the present amendment has tried to modify the vigour of this section which has great potentiality for mischief to interfere with provincial autonomy. I would request Dr. Ambedkar even at this late stage, if it would be possible for him, to withdraw this article and assure that there will be no interference with provincial autonomy.

Shri T.T. Krishnamachari : Mr. President, Sir, the amendment moved by Dr. Ambedkar to article 226 undoubtedly requires some explanation. I heard with attention the remarks of my honourable Friend Mr. Pataskar and also of my Friend Mr. Alagesan. The House will realise that the article as amended by Dr. Ambedkar's amendment seems totally different to the article as it originally stood in the Draft, and the article as it originally stood in the Draft was intended to cover any lacuna that might exist in the distribution of powers wherein it is necessary that the Centre should co-ordinate the activities of the provinces quickly without going through the process indicated by Article 229 and also to cover cases where there is a certain amount of overlapping. The article as it stood originally had also this disadvantage *viz.*, that it sought to put the power over the particular subject which the Centre was attracting, to itself by means of a resolution passed by the Council of States and, so to say, placing it permanently, for ever, in the Concurrent List; that was its main defect. When a particular action was taken and the field of provincial autonomy was encroached upon; very necessarily perhaps there must be a time-limit for the continuance in force of such action. It is no use putting that subject permanently in the Concurrent List. I have no doubt that it is this aspect of the matter that made Dr. Ambedkar give notice of a previous amendment *viz.*, limiting the scope of action that might be taken by Parliament by the authorisation provided in the manner indicated in 226 to a period of three years. There would according to that scheme be no objection to renewing it for a further period of three years and also to renew it thereafter provided a certain amount of time is allowed to lapse between lapsing of that particular resolution and a fresh resolution to be moved on the same lines. I do see the force of the arguments of my honourable Friend Mr. Pataskar and the previous speaker in the objections raised by them to the scheme of this article. I am one of those who believes and believes very firmly that wherever we assign

to the provinces a certain field in which they could act, we must leave the provinces entirely in sole charge of that field, not because of any rigid adherence to theoretical reasons that the federalism adopted by us should be pure and we should not have a mixed kind of federalism such as exists in Canada, but merely because I feel that the responsibilities of Provincial Ministers must be laid squarely on them and there should be no opportunity provided for them to take shelter under the plea of divided responsibility between the Centre and the Provinces. Sir, on this particular point I hold strong views and I do feel that when we consider this whole chapter of distribution of powers we must have that particular fact in view all the time. It does not matter if the powers that are given to provinces do not cover a very wide range. It may be necessary for the Centre to have a larger amount of powers. That does not really interfere with the provinces working smoothly so long as within the scheme of powers allotted to provinces there is no interference from the Centre. Looked at from that point of view, 226 as it originally stood was undoubtedly objectionable that notwithstanding the fact that the Centre is empowered by the Council of States in which the component States are adequately represented and that act of empowering the Parliament is by a two-third majority which implied that the States agree to the Centre attracting to itself that provincial power. I do feel that it might conceivably be the thin end of the wedge of the encouragement of the Centre attracting to itself greater powers from the provinces, so that in this process of integration of powers at the Centre for the purpose of uniformity of action in avowedly important matters the general idea that the Centre must have larger powers would come to be accepted. Looked at from the other point of view *viz.*, from the economic objectives to which we are wedded, economic intervention of the Centre becomes more than a formal necessity—all these facts will undoubtedly work for larger aggregation of powers in the Centre at the expense of the States and it is also true that in the other Federations or quasi-Federations as they exist today like U.S.A., Australia and Canada, we find the process of the Centre attracting to itself powers to a greater degree as time goes on is going on rapidly whether constitutionally or by reason of Judicial pronouncements or by the exigencies of time, so much so that we have found a check to this movement of attracting powers to Centre by the adverse vote on the referendum passed by the people of Australia in respect of a demand made by the Federal Ministry for greater powers to Centre for the purpose of executing their post-war plans. There is a lesson to be learnt for us from what has happened in Australia even while the referendum has been backed not by one party but by both parties. Both parties wanted greater power to the Centre but the referendum has unfortunately been negatived. Therefore it seems to me that in this scheme of distribution of powers which will be supplemented by the financial powers following in a later chapter, then ultimately by the scheme in the three parts of Schedule VII, we should be very careful to leave to the provinces or as it is now called to the States, certain amount of power intact. I would at the appropriate time suggest that where it is necessary for the Centre to have powers to co-ordinate action by the various units for vital reasons, it is better to put that subject in the Concurrent List rather than leave it in the States List and at the same time make inroads into this field by various other devices. Not merely by the device envisaged in this article but there are other devices as well and there will be time enough for me to deal with those devices at the

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appropriate time and suggest safeguards against these being used. Therefore while I do hold that article 226 as it originally stood was objectionable and—if I may borrow a word from the previous speaker—even mischievous, and one that sought to detract from the States the full quantum of responsibility that ought to be with them, I feel that the amendment takes away the substance of this objection against article 226. Again, I can see the argument of my Friend Mr. Pataskar who perhaps might appreciate the necessity for a provision like article 226 but fails to see the necessity for a provision similar to the one that the amendment envisages, particularly in view of there being a subsequent article 229. I am afraid, Sir, that Mr. Pataskar has not appreciated the scope of article 229 which, as will be realised, is a reproduction of a similar section, *i.e.*, section 103, of the Government of India Act. And it is worthwhile, even at this stage, as a comparison has been made between 226 and 229, to find out on how many occasions the provisions of a similar section of the Government of India Act have been used. I do recollect that some time in 1939 Resolutions were moved in the various provinces empowering the Centre to undertake legislation in respect of drug control. I also remember, two years back before the Centre embarked on this Damodar Valley Corporation enactment, two Governments—Bihar and Bengal—had to pass legislation under the powers vested in them under section 103. So article 229 provides for co-ordinate action in matters in which the provinces are primarily interested, and more often than not, it will happen that only two provinces are interested and an enabling provision is provided so that there may be co-ordinating legislation by the Centre. And it has to be remembered that this process also takes a lot of time. To get a province to move, you want the co-operation of the executive, you want the co-operation of the members of the legislature; and it takes a lot of time. And if it did happen that the Centre wanted some powers in respect of an urgent matter where the provisions of the emergency sections need not and could not be involved, naturally there should be some method by which the Centre could act. It may be that some lawyer here might say that since residuary powers are left to the Centre the precedent created by the judgment of the Canadian case—Attorney-General of Ontario *versus* Canada Temperance Association—might probably be utilised because of the fact that the residuary powers are left to the Centre in this Constitution like the Canadian constitution. But again there is this difficulty, as Prof. K.C. Wheare, an authority on federalism, has pointed out, the very idea of precisely delineating powers that has been undertaken in Schedule 7 of the Government of India Act which we have followed closely and further improved upon in Schedule 7 of the Draft Constitution would not permit room for taking advantage of an interpretation of the residuary powers as meaning that the Centre can interfere in a matter which is avowedly within the province of the State and where the Centre has really no business, except in the public interest, to interfere. So I do believe that there is some utility in article 226 as amended by the amendment moved by Dr. Ambedkar which takes away all the sting that might have been attached to the original article or as the article would have been as altered by Dr. Ambedkar's original amendment. The position as it would be if the article is accepted in its present form is that the matter will have to be brought before the Council of States every year; by way of a resolution so as to keep the Parliamentary enactment made

under the authority of the resolution alive. And we have not put a time limit. There is no question of the whole thing lapsing at the end of three years or six years. If the emergency continues one can take that the Council of States will be responsive enough to realise the need for keeping alive legislation enacted under cover of this Resolution and go on extending the life of such enactment by a fresh Resolution year after year. We have had experience on the other side of the House of certain enactment which have economic implications being extended year after year by a resolution of the House; and I do not suppose that except for asking questions there has been any serious opposition to giving Government these powers, provided Government convinces the House of the necessity of retaining those powers. At the same time it preserves a certain amount of freedom of action on the part of the States. If after the first year perhaps a snatch vote or something like that enables the Centre to undertake legislation which infringes ostensibly and avowedly into the field of provincial autonomy, there is enough scope for the provinces or States to tell their representatives in the Council of State that when it came up for renewal next year they should not renew it. And if at all there is any mischief, it would be only for one year. But it is very unlikely when the powers are so restricted and are conceded for a year and are to be renewed year by year by a Resolution of the Council of States, that Parliament or the central executive will embark on any action under article 226 without fully satisfying themselves of the need for emergent action, and also at the same time providing against treading on the corns of the Members of the State Legislatures and the executive Government of the States. I feel, Sir, that the balance of advantage seems to be in retaining a provision of this nature as amended by Dr. Ambedkar's Amendment No. 194. The mischief, if at all there is any, is restricted to a very limited period; and the very fact that it is limited to a very short period itself offers no temptation for the Centre using it as a means of augmenting its own power; and if it is used at all, it will be used for a valid and definitely useful purpose to which by and large the component States are not likely to object. I felt, Sir, that even though I was taking the time of the House in a matter which did not seem to provoke very much of a controversy at this moment, it is very necessary, in order to dispel mistaken ideas that might exist in the States, that this Draft Constitution has been so framed that it tends to help in attracting all the powers to the Centre, that the field of provincial autonomy left was very restricted. It is to counter this idea that this particular article has been carefully considered, the pros and cons have been fully canvassed and this amendment has been introduced as being such as provides for minimum interference with provincial autonomy and only in cases where the emergency is very great and the safeguards against any mischief are contained in the provisions of the amendment itself. I do hope that the House will accept Dr. Ambedkar's amendment and the people of this country at large, will be convinced of the *bona fides* of us in this House whose intentions are to preserve provincial autonomy as far as possible, and to the extent that we have conferred provincial autonomy on the States, to keep those powers intact without undue interference. Sir, I support the amendment.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support the article as it stands for two or three reasons. I do not regard this article as designed to cover any period of emergency; there are other emergency provisions in the

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Constitution for that purpose. It is clear that when a subject has assumed the proportions of national importance the Central Government should interfere. A provincial subject can become a central subject if it has assumed the proportions of national importance. When our national economy is in the incipient stage of development, we cannot make a water-tight or rigid distinction between central and provincial subjects. There are no central and provincial subjects. All subjects must remain integrated. I think that, whatever the intentions of the members of the Drafting Committee may be, this article may be utilised for the purpose of constitutional amendment.

When the people at the Centre realize that it is no longer feasible and proper to keep a subject under the Provincial List they can make it a Central subject without undergoing the cumbersome procedure of a Constitutional amendment. The procedure laid down is that the Council of States by a two-thirds majority can recommend to the Government to take the administration of that subject into its own hands. I do not think that this procedure is proper. I feel that the duty of determining which subject has assumed the proportion of national importance should be left to the leaders at the Centre and not in the hands of the members of the Council of States. They are in a far better position to take a detached view of things. There is a world of difference between a provincial capital and Delhi. The people at Delhi can know whether a subject has assumed the proportions of national importance or not. People living in the provinces are engrossed with provincial problems; their outlook is narrow and circumscribed. Therefore, to leave it to the representatives of the Provincial Legislatures sitting in the Council of States to move such a resolution is really nullifying the good that can accrue to the Centre if the power to move such a resolution is vested in the House of the people.

I feel that the period which has been prescribed in the amendment, namely, that such a step can be taken only for one year is not proper. How can a subject which has assumed the proportions of national importance become a provincial subject again after a period of one year? Today it is a subject of national importance, but tomorrow it becomes a subject of provincial importance! I think people have no vision of what they are going to do. In a developing economy I am quite sure that most of the subjects that have been placed in the Provincial List will become Central subjects. It is no use frustrating and creating obstacles in the way of the Central Government. Let us not emphasize centrifugal tendencies.

Shri B.M. Gupte (Bombay : General) : Sir, I am inclined to oppose both the original Draft and the amendment moved by Dr. Ambedkar. I certainly concede that the amendment moved by Dr. Ambedkar takes away some of the rigour of the original proposition. But in my opinion it yet remains objectionable.

My first objection is that it is not proper to allow only one House, namely, the Upper House to amend the Constitution which has got a sanctity of its own. There is the article 304 which lays down particular provisions, with some definite kind of majority, for amendment of the Constitution. Of course it is desirable to have some elasticity. Therefore, I would not have minded if the continuance of

the resolution had been secured by a vote of the State Legislatures concerned. As it is, borrowing the phraseology used in another context, I might say that if the resolution really reflects the opinion of the State Legislatures it is useless. But if it does not reflect the opinion of the State Legislatures it is mischievous. If it reflected the opinion of the State Legislature there was no difficulty at all in getting the item passed in the various State Legislatures. If, on the other hand, it did not reflect their opinion then of course we were going counter to the wishes of those who were responsible according to the Constitution for these subjects. I do admit that there might be a time when such a power to the Centre is required. Then, provided for a definite emergency like that. But in the absence of any emergency, to amend the Constitution by such a resolution is not proper. The Council of States' resolution stands for one year. Why not make it renewable on this definite condition that before the expiry of that period a majority of the State Legislature should pass resolutions asking for the continuance of that resolution say for two years or three years? Thereafter, if the amendment is to continue, then it should be done by the usual manner laid down by article 304. In view of these fundamental objections of allowing only the Upper House without Parliament having any say and without the Legislature of the State having any say in the matter, I suggest it is worthwhile considering whether the article should be maintained in this form.

Shri Mahavir Tyagi (United Provinces : General) : Sir, I think the original article was much better worded and was more useful than the amendment proposed. Although the amendment does not substantially change the meaning or the motive, the original article was quite sufficient for the purposes for which we are providing. There is a tendency in the country as well as in this House and people still feel that the Provinces will enjoy autonomy, that the States will be autonomous States or something like that. They have enjoyed this feeling for some time past. Although the whole country has now become independent and autonomous they do not yet feel the pleasure of enjoying this all-India autonomy and of merging their own entity into this all-India autonomy. So there is a sort of orthodox feeling of clinging to some powers as if the Provinces can do better.

The States are analogous to various parts of the human body. Each part cannot go absolutely separate and become autonomous; it is a connected whole. The manner in which we have been making our Constitution so far also proves that we agree to the idea of constituting our State as one whole and constituting these various Provinces and States as limbs of that one body. The very fact that Parliament will enact laws whenever and with regard to whichever province it is necessary to get laws enacted from the Centre shows that this exception to the routine shall be taken only when there is some necessity and that too when the Council of States themselves by two-thirds majority decide in its favour. Suppose there is some financial crisis of a very dangerous or severe type in one province. Suppose the resolution requested Parliament to enact a law in this respect for six months. According to the amendment of Dr. Ambedkar, after six months the law will lose its force. So after six months the Council of States has again to sit and extend the period so as to enable Parliament to extend the law. This is a cumbersome process.

[Shri Mahavir Tyagi]

What is the harm, why should we suspect the motive even if the period six months or one year, is not mentioned at all? A body which can enact a law can also de-act it. Especially when particular care is taken to see that there is no encroachment on the rights of the subjects, there is no reason to think that there will be occasion for interference. If a neighbouring State feels that the situation in the adjoining State is adversely affecting its administration it should move the Centre to intervene, by such legislation as will improve the peace and prosperity of the whole of India. I submit that the original clause seems to be much better than the amendment moved by Dr. Ambedkar. The amendment of Dr. Ambedkar does not improve the meaning of the article or the intent of the Constituent Assembly. If the period is to be first six and then another six months it will needlessly lead to extra expenditure and delay matters.

Sir, there is a feeling in some big provinces which are financially well off that they must have full autonomy and that there should be no interference by the Centre. There are certain provinces in which a certain class of people are in a majority : they desire to be independent of the Centre. This is but the same old conception of the Muslim League days. A certain community which was in the majority in a certain province wanted to have full autonomy so that nobody could interfere with it, even though that interference might be in the interests of India as a whole. That was the old tendency. I do not want to criticise them. But it is a fact that some provinces, that have enough revenues at their disposal, resent interference by the Centre even though it is necessary in the interests of the whole of India. In Russia too the Centre has such powers of interference even though the villages there have autonomous powers even in matters judicial. But then all that power is dependent on the Central Government approving the exercise of those powers. The direction of the supreme policy is vested in the Centre. Our Union can be strong only when the Centre is fully empowered to make laws uniformly applicable to the whole of India. With these words I support the original article.

Shri V.S. Sarwate (Madhya Bharat) : Mr. President, I think that the article as it stands encroached upon the powers of the Provinces. However, it would have been in the fitness of things if, in cases of emergency, the Centre has the power to legislate for the whole of India. But the wording, as it is used, seems to be much wider than is required for emergencies. It says :'When it is necessary or expedient in the national interests.' The national interest give much wider scope than emergencies. As this is so, the arguments in favour of the Centre legislating for emergencies do not apply. It seems to me the power given here is wider than is necessary.

The Honourable Shri K. Santhanam : The 'emergency' is dealt with in the next article.

Shri V.S. Sarwate : If that is the case, then this is unnecessary here. I would further submit that the idea behind empowering the Council of States to pass a resolution seems to be this. Supposing a case arises when it is necessary that the Centre should legislate. If this provision be not there, the alternative would be for all the Provinces and States to pass a resolution that the Centre should legislate in that particular emergency. To avoid that cumbrous process the Council of States which is mostly composed of representatives of the States has been empowered to pass a resolution. On the first occasion it may be proper for the Centre to take appropriate action, based on that resolution.

But on the second occasion, *i.e.*, when an occasion arises for repeating the resolution, it could have been better left to the provinces to pass a resolution. It should be left to the provinces to decide whether an emergency exists or not. If the provinces are satisfied that an emergency exists, they will pass a resolution that the Centre should legislate for the whole of India. So, in my judgement, it seems that to empower the Council of States to pass such a resolution again and again is unjustified. In the first instance, it may be justified. It may in such cases be proper. But if the same state of things continues, it should be left to the provinces to judge of the circumstances and to pass the necessary resolution. What I mean to say is this : The Council of State should have power to pass a resolution only once. It should not have the power to pass a resolution again. In that case it should be left to the provinces to pass a resolution. With this observation, I support the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, Sir, I support article 226. Article 223 gives residuary powers to the Parliament. Article 227 gives powers to the Parliament in cases of national emergencies, when an Emergency Proclamation is in force, and article 229 gives powers to the provinces to pass a resolution in their legislatures asking the Centre to take action. Article 226, when a question assumes national importance or becomes a matter of national interest gives a speedier procedure than what is contained in article 229. Much of the mischief that was originally contained in the original article has been taken away by the recent amendment moved by Dr. Ambedkar and Mr. T. T. Krishnamachari. If a resolution is passed year after year by Parliament, where is the harm? After all, who are the members of the Council of State? They are representatives elected by the Lower Houses of the provinces. If really such a resolution were to be against the interests of the States, the State legislatures can represent to the Centre that such a resolution is against the interests of the States. In fact, there is no question of encroachment of the provincial powers at all here. It is only in cases of real national emergency, when a question has assumed national importance a speedier remedy is provided under 226. If a resolution passed by the Council of States is against the interests of any State, that State can be expected to pull up their members and to make sure that such a resolution is not passed at the next session after one year. A resolution passed under 226 normally continues only for one year and only when a national emergency continues to persist year after year a further resolution for one year can be passed. Giving such power to the Council of States is very necessary under the circumstances and I heartily support this article, Sir.

Shri M. Ananthasayanam Ayyangar : The question may now be put.

Mr. President : The question is :

"That the question be now put."

The Motion was adopted.

Mr. President : Before I put the amendment to the vote, do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B.R. Ambedkar : Much has already been said. Unless you desire me to speak, I would rather not say anything.

Mr. President : That is your choice.

The question is :

"That for amendment No. 2775 of the List of Amendments, the following be substituted : —

"That article 226 be re-numbered as clause (1) of article 226, and

(*a*) at the end of the said clause as so re-numbered the words, 'while the resolution remains in force 'be added; and

(*b*) after clause (1) of article 226, as so re-numbered, the following clauses be added:—

'(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.'"

The amendment was adopted.

Mr. President : There is no amendment to this article.

"That article 226 as amended, stand part of the Constitution."

The motion was adopted.

Article 226, as amended, was added to the Constitution.

[8th September 1949]

Article 282-C

Mr. President : We go to 282-C.

Shri Brajeshwar Prasad : Sir, I move :

"That in clause (1) of the proposed article 282C the words 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do' be deleted and after the words 'other provisions of this Chapter' the words 'the Union Public Service Commission shall' be inserted."

The whole aim of Article 282C is to protect the Federal foundations of this Constitution. Therefore this power has been given to the Upper Chamber. They have the right to take the initiative in the matter and the Lower House has no power in this respect. Secondly, not only they have this power of moving this resolution but something like a veto power has been given to them. A resolution must be passed by two-third members of the House. I do not see any reason why the Federal foundations of this Constitution should be protected. Our Constitution is not merely federal in character but it is also unitary in character. There is no reason why the unitary foundations of this Constitution should not be protected. Federal Government tends towards unitary type of Government. It would be wrong on our part to put the hands of the clock back. I am in favour that all services in the country should be centralised and I am convinced that

there are no classes of persons in this country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this country who want to protect the federal sentiments? I come to the industrial workers in this land. Sir, Karl Marx had the vision to see that the industrial workers are international minded. Circumstanced as they are today in this world there is no course left open to them but to become champions of internationalism. Therefore these industrial workers are not at all in any way champions of local rights.

Mr. President : All this is quite irrelevant to the amendment.

Shri Brajeshwar Prasad : The whole aim of this article is to protect the Federal Constitution or else there is no meaning in giving this power. I want to deal with the theoretical foundations of this Constitution. If you want me to speak only on the provisions and not to deal with the philosophical background I am quite prepared to do so.

Mr. President : I think you had better confine yourself to the amendment tabled by you instead of talking of the background.

Shri Brajeshwar Prasad : Well, Sir, there is no danger if this power is vested in the hands of Parliament instead of vesting this power in the Upper Chamber because thereby you give the power to the Central Ministry, and no Ministry in its senses would resort to a process of centralisation of services unless a need has been felt for it and unless it has developed the technical resources for that purpose. The other part of the amendment says that the power to regulate recruitment and conditions of service should be placed in the hands of Parliament. I have suggested that this power should be vested in the Union Public Service Commission.

I had more to say, but since you Sir, do not want that I should deal with the theoretical foundations of this article, I stop here.

Mr. President : Yes, because that is merely speculation. Then we come to No. 249 of Dr. Deshmukh. But that is a drafting amendment, I think. Then No. 250.

Dr. P.S. Deshmukh (C.P. & Berar : General) : They are of a Drafting nature, and I am prepared to leave them to the Drafting Committee.

Mr. President : No. 251 also is of a drafting nature.

Dr. P.S. Deshmukh : But I should like to speak on the amendments.

Mr. President : Very well, after I have finished with these. No. 368 Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras : General) : Sir, with your permission I move the amendment standing in my name :

"That in amendment No. 2 of List I (Seventh Week), in clause (1) of the proposed new article 282C, after the words 'Union and the States' the words 'giving equal opportunities to all unrepresented communities' be inserted."

This clause envisages giving power to Parliament to make laws for the creation of more all-India services coming under the Union and the States, regulate recruitment and so on, I feel it my duty to bring to the notice of the

[Shri V. I. Muniswamy Pillay]

House the paucity of members of the backward communities in the services, both at the Centre and in the Provinces. Sir, due to the influences that have been exercised by some privileged communities, it was not possible for these backward communities to get their adequate share in the services. Since this clause wants to make laws for the rules and regulation of recruitment, I feel that accurate statistics must be obtained before any law is made, so as to find out the number of persons serving, belonging to the various communities in the provinces and in the Union, and to make such laws so that those people who are being left out from the services may get equal opportunities with the rest, in all the services.

Mr. President : Mr. Muniswamy Pillay, there is another provision which directly provides for that. Is it necessary to bring this here, in this round-about fashion?

Shri V. I. Muniswamy Pillay : There is one impediment in the way. Some of my friends who spoke yesterday were referring to the knowledge of the official language. I think, Sir, since we have a clause coming later, about the language, it is not advisable that any "stick to"—should be made about the official language. But I feel that the language which at present is adopted in all the provinces should be the order of the day, until Parliament by law at a later date affirms what the language in the province and the State should be. With these words, I strongly support the amendment that has been brought forward by Dr. Ambedkar.

Mr. President : There is no other amendment to this article. You wanted to speak, Dr. Deshmukh.

Dr. P.S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words :

"If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do."

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B.R. Ambedkar : Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two-thirds of the members of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282C.

Mr. President : I put Shri Brajeshwar Prasad's amendment in two parts. The first part is this. The question is :

"That in clause (1) of the proposed article 282C, the words if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do' be deleted."

The amendment was negatived.

Mr. President : Then the second part. The question is :

"That in clause (1) of the proposed article 282C after the words 'other provisions of Chapter' the words 'the Union Public Service Commission shall' be inserted."

The amendment was negatived.

Mr. President : Then there is the amendment moved by Shri Muniswamy Pillay.

Shri V.I. Muniswamy Pillay : I would like to withdraw that amendment. The Amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the article as moved by Dr. Ambedkar. The question is :

"That proposed article 282C stand part of the Constitution."

The motion was adopted.

Article 282C was added to the Constitution.

[13th October 1949]

Article 67 —*Reopened*

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

"That clause (9) of article 67 be omitted."

[Shri T.T. Krishnamachari]

This clause (9) reads as follows :—

"When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article."

Sir, this will no longer be necessary and a contingency like this will be adequately provided for in article 3B because I think there will be no necessity for providing for small States in the present state of the States, which are in Part III. So clause (9) of article 67 may be omitted.

Mr. President : Does anyone wish to say anything about it? The question is:

"That clause (9) of article 67 be omitted."

The amendment was adopted.

[14th October 1949]

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

"That clause (6) of article 67 be omitted."

This is a very important clause and I can appreciate the vigilance of my honourable Friend Mr. Shibban Lal Saksena in moving a negative amendment to this amendment. I would at once tell the House that this important clause which deals with election to the House of the People on the basis of adult franchise is not being omitted in any lighthearted manner. I would like to ask the House to refer to article 289-B which reads thus :—

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult franchise; that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled, to be registered as a voter at any such election."

Substantially the whole of clause (6) of article 67 has been produced in 289-B which the Drafting Committee felt was the proper place for putting in the qualifications of voters. Therefore, Sir, clause (6) of article 67 is no longer necessary and that is the provocation for my moving this amendment.

(*Prof. Shibban Lal Saksena did not move his amendment.*)

Mr. President : The question is :

"That clause (6) of article 67 be omitted."

The amendment was adopted.

[17th October 1949]

Schedule III-A

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

"That after Schedule III, the following Schedule be inserted :

'SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1 *States*	2 *Total Seats*
1. Assam	6
2. Bengal	14
3. Bihar	21
4. Bombay	17
5. Koshal-Vidarbh	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. United Provinces	30
TOTAL	144

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

1 *States and Groups of States*	2 *Total Seats*
1. Ajmer 2. Coorg	1
3. Bhopal	1
4. Bilaspur 5. Himachal Pradesh	1
6. Cooch-Behar	1
7. Delhi	1
8. Kutch	1
9. Manipur 10. Tripura	1
11. Rampur	1
TOTAL	8

[Shri T.T. Krishnamachari]

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

1	2
States	*Total Seats*
1. Hyderabad	11
2. Jammu & Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL SEATS	205.' "

Sir, these are three tables, one relating to the States specified in Part I, the second relates to States specified in Part II and the third relates to States specified in Part III, and the total number of seats allotted happens to be 205. I would explain, Sir, that the relative article in the Constitution happens to be 67, clauses (1), (2), (3) and (4), and, as honourable Members will realise, that under clause (1) the maximum has been fixed at 250, out of which twelve members, shall be nominated by the President and the rest will be representatives of the States. The basis of the scheme envisaged in these tables is the decision of the Union Constitution Committee at a meeting held on the 1st December 1948 at which the following Members of this House were present :

The Honourable Shri Jawaharlal Nehru.

The Honourable Shri Jagjivan Ram.

The Honourable Dr. B.R. Ambedkar.

Shri K. M. Munshi.

Prof. K.T. Shah.

Shri. T.T. Krishnamachari, and

Mr. B.H. Zaidi.

If I may be permitted, I will read the relevant portion of the Committee's report.

"The Committee did not go into the details of the revised scheme of allocation of seats in the Council of States prepared by office, as owing to mergers of various types the position of the Indian States is still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The Committee while reiterating their previous decision that the representation of units in the Council of States shall be on the scale of one representative for every million of the population up to five millions of the population plus one representative for every additional two millions of the population there-after, considered it unnecessary to adhere to the other decision that the maximum number of representatives from anyone unit shall be limited to twenty-five. It was found that only two States, namely Madras and United Provinces would be affected by the imposition of such a limitation and that an abrogation of this limit while securing uniformity would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67 (1) of the Draft Constitution."

Sir, it is on the basis of this report made by the Union Constitution Committee that one seat should be allotted to every million up to five millions and thereafter one seat for every additional two millions, that this total has been worked out, and, as honourable Members will see, the total number comes to 205 plus twelve to be nominated by the President, *i.e.* 217. We still have thirty-three seats in hand before reaching the maximum number mentioned in article 67(1).

I would like to say why this is necessary because we could have adopted a different scheme even though it may be in contravention of the recommendations of the Union Constitution Committee. It may be, as honourable Members of the House will understand, that there is a further splitting up of the Units in Part I. If that will be the case, the number will naturally be increased because by every splitting up of the Units, the commitments will increase by at least five. These reallocations by reason of action taken by future Governments under article 3 of this Constitution may necessitate the raising of this number 217 to a still higher figure, and therefore provision has been made by following the system indicated by the Union Constitution Committee's report, *viz.* one seat for every millions up to five million and one seat for every additional two millions thereafter, which, I think, is a very fair arrangement and will allow freedom of action so far as the future is concerned. I would not claim any infallibility so far as these figures are concerned. May be that the thing might be arranged in some other manner. For instance, regrouping in regard to States in Part II may be taken exception to. It is a matter of opinion.

I think on the whole the scheme is fair, but should honourable Members of this House or people outside have any objection, of course those objections will be examined and those objections will be placed before you and if you will permit me, the necessary amendments will be moved at a later stage, but I do not think that in the face of the arrangement placed before the House any serious alteration would become necessary between now and the Third Reading stage.

I would like to mention another factor that by reason of making this amendment, I would also have to make three consequential amendments, because of certain variations that have occurred. For one thing, article 67 (1a) refers to Schedule III-B. An amendment will be necessary in regard to this particular sub-clause in the article. An amendment would also be necessary in article 4 because while taking into consideration article 4 we had omitted to mention along with the First Schedule the Schedule relating to the Table of Seats in the Council of States. Article 4 reads thus :

"Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary."

Any alteration of the First Schedule will entail the alteration of Schedule III. The First Schedule and the Third Schedule have got to be taken together. I will move an amendment later for putting in Schedule III-A in article 4. These amendments will be moved subsequently if the amendment that I have now moved for the incorporation of Schedule III-A containing the Tables of Seats in the Council of States is accepted by the House.

Shri H.V. Kamath : I do not know why my esteemed friend once again referred to my honourable Colleagues as "people inside the House".

Mr. President : He said, "honourable Members and people outside".

The question is :

"That after Schedule III, the following Schedule be inserted :

'SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first Column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or States, as the case may be.

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6. Rajasthan	9
7. Saurashtra	4
8. Travancore Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL STATES	205.'"

The motion was adopted.

Schedule III-A was added to the Constitution.

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

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B' the word, figure and letter 'Schedule III-A' be substituted."

I have already explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is merely consequential. The question is :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B' the word', figure and letter 'Schedule III-A' be substituted."

The amendment was adopted.

Appendix VII

Articles of Constitution and Corresponding Articles of Draft Constitution Relating to Council of States Discussed in Constituent Assembly

Article in the Constitution of India	*Corresponding Articles in the Draft Constitution*	*Date(s) of Discussion*
79	66	3 January, 1949
80-81	67	3-4 January, 1949 13,14 and 17 October, 1949
83	68	18 May, 1949
84	68-A	18 May, 1949
85	69	18 May, 1949
89	73	19 May, 1949
90	74	19 May, 1949
91	75	19 May, 1949
92	75-A	19 May, 1949
97	79	19 May, 1949
98	79-A	19 May, 1949
107	87	20 May, 1949
108	88	20 May, 1949
118	98	10 June, 1949
249	226	13 June, 1949
312	282-C*	8 September, 1949

*Article 282-B in the Draft Constitution became article 282-C as a result of an amendment moved and adopted in the Constituent Assembly.

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