Tuesday, 14th June, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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VOLUME VIII—16th May to 16th June 1949

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 14*th June,* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 111-A—(*Contd.*)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, yesterday, I drew the attention of the House to article 112 which we have already accepted. I submit that the acceptance of that article has involved us into a commitment to a policy.

Article 112 enables the Supreme Court to permit an appeal in a criminal case by special leave. This involves the acceptance of the formula that appeals in criminal cases should also lie on a certificate given by the High Court. The House will be pleased to consider the situation. At present appeals to the Privy Council in criminal matters lie first of all on a certificate given by the High Court concerned. If that is refused, then, the Privy Council may allow an appeal by special leave. Special leave is a residuary provision to guard against the High Court improperly refusing to grant the requisite certificate. I submit that article 112 has committed us to the acceptance of the principle that appeals must lie also on a certificate by the High Court concerned in criminal cases. In fact, it is highly convenient as a preliminary step to allow the High Court to grant or refuse a certificate. The convenience is obvious. The High Court has, where it is asked to give a certificate, already considered the matter more or less fully in an appellate or revisional capacity, since it is against a judgment or order of the High Court that an appeal is sought to the Supreme Court. The High Court is thus already in possession of the facts relating or relevant to an appeal to the Supreme Court. There are many High Courts already in the provinces and there will be many more in the integrated States. There will be more than a dozen High Courts in the territory of India. It would be very convenient for these High Courts to be in a position to grant or refuse the certificate in the first instance. Therefore, this obvious and convenient course should be adopted. In case the certificate is refused, it can be taken for granted in most cases that it has been properly refused. If thereafter any application for special leave is made to the Supreme Court, in nine cases out of ten, that application will be refused because the question of law, or the suitability, otherwise, for purposes of appeal has already been fully considered by the High Court in refusing the certificate. In such a case, it will reduce the number of applications to the Supreme Court for special leave as it has already reduced the number of applications for special leave to the Privy Council. I therefore, submit that the provision for a certificate by the High Court is not only a very logical measure, but at the same time, a convenient one and it will prove in the long run to be economical. It sometimes happens, however, that the High Court refuses to grant the certificate even in a suitable case. In those limited cases, it should be the privilege of the highest Court to grant special leave. The question of possible congestion of work in the Supreme Court

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has induced many honourable Members to oppose the provisions of these amendments. It is said that we do not know how many appeals in criminal cases there would be in the Supreme Court. The fear of creating a serious congestion in that Court and also the fear that we will have to employ more Judges to deal with those cases is behind this opposition. I submit, however, that this fear is unjustified. So far as the question of law is concerned, it is only a 'substantial question of law' which will enable a party successfully to obtain a certificate or special leave. A substantial question of law must be clearly appreciated. In fact it is not any question of law but a substantial question of law and I submit that a substantial question of law is very restricted in its scope. It is a very high standard of error or irregularity in law and it is already well established that an error as to the procedural law such as, error in framing a charge or similar other matters prescribed by the Code of Criminal Procedure or other procedural law relating to criminal matters, and a violation of these laws does not as a matter of law create a sufficient grievance in law even in the High Court or other Appellate Courts and will not be ground for the Supreme Court, for under section 537 of Criminal Procedure Code, any error of procedure would not be a material ground for interference in a criminal case unless it has in fact also resulted in prejudice to the party. So a substantial question of law is reduced to a very short compass that if it is an error of procedural law, it must be sufficiently serious in its consequences upon the case which must have caused real and substantial prejudice to the party. Therefore the condition as to a "substantial question of law" will eliminate all questions of errors of procedure which do not go to the root of the matter, which really do not affect the merits of the case, and therefore, there is no fear of congestion of cases on this ground. Then there are other procedural errors, namely, in a Session trial there may be misdirections to the Jury. It has also been held that this is not a sufficient ground to interfere unless it has on facts led to failure of justice. Therefore the fear that there would be congestion of cases if we allow substantial question of law to justify appeals to the Supreme Court is unjustified. Then with regard to references by Session Judges under section 307 of the Code of Criminal Procedure against the verdict of a Jury, in the latest Privy Council case of Ram Anugrah Singh, it was held in 1946 that unless the verdict of the Jury is clearly unreasonable so that no reasonable body of men could come to that conclusion, unless this ground is made out, even serious misdirection of even mis-reception of material evidence, contrary to Evidence Act, will not be a sufficient ground even for High Court to interfere, and I submit, would also be no ground for interference before the Supreme Court. I therefore submit that the condition of substantial question of law is a sufficient safeguard against frivolous appeals being taken to Supreme Court. It is only when very substantial injustice has resulted from any errors of procedure or any mis-reception even of material evidence there would be an appeal and there would be a certificate or special leave. But any question relating to composition of the crime is really a serious matter. We have recently a case decided by the Privy Council in 1945 saying that under section 34 of the Penal Code which was supposed to be applicable to all cases where several persons acted or purported to have acted with similar intention does not constitute an offence. In fact a clarification of this matter in this case has ruled out a large number of offences centering round section 34 of the Penal Code. Another important principle has been decided by Privy Council in 1947 in Srinivas Mall's case, that criminal intention and knowledge is a necessary condition although it may not be mentioned in the penal law concerned. Unless criminal knowledge or criminal intention, commonly called *mens rea* is clearly or necessarily ruled out by the penal law, it is a necessary ingredient of the offence. It must be proved that the accused had

some criminal knowledge or intention. On these matters the Privy Council has laid stress on the real elements of crime and the materials that go to constitute the crime. This is highly important, and substantial grounds of law will mostly centre round errors as to the elements of a crime or serious errors as to the law of procedure or evidence. I therefore submit that there is no fear of any serious congestion of cases. The Privy Council has always summarily rejected applications for special leave which did not raise very substantial errors or actual prejudice. It is only two or three cases in the year—at any rate not more than half-a-dozen cases in a year, that they have interfered. I have no doubt that in granting a certificate the High Court will exercise the greatest caution and will confine itself to granting certificate in cases only where the penal laws have been misinterpreted or that there has been any gross violation of the rules of procedure or evidence to the prejudice of a party that a certificate will be given and I have no doubt whatsoever that under article 112 the Supreme Court will also exercise a restraining influence on indiscriminate appeals. Then there is a condition that Advocates appearing in the High Court and also before the Privy Council are required to certify that there are substantial grounds for the appeal and in case any frivolous application is made for a certificate or special leave, that is always a matter for serious comment and that will again act as a restraining influence on frivolous application. This wholesome practice will no doubt also be observed in the Supreme Court but these matters must be left to the Supreme Court to deal with. The Federal Court has already shown that they do not like appeals made without sufficient or without at least arguable grounds. Considering the matter from this point of view, the fear of congestion of criminal cases in Supreme Court is to my mind merely conjectural. I do not think more than a few dozens of cases will come to Supreme Court and that should not terrorise us into complete inactivity and taking no decision whatsoever on this matter. Considering the matter from every conceivable point of view, we must allow appeals in serious cases where injustice has as a matter of fact been done by the High Court and by other Courts, and appeals should only be allowed on substantial questions of law which is a very difficult condition—it is not a frivolous appeal that has any chance of success and we must allow appeals to the Supreme Court on substantial grounds of law. I have however in my amendment stressed two other matters which require consideration. I have said that appeals must also lie from the final decision of any tribunal other than High Court from which no appeals for revision lies to High Court. It is open to the Legislature to set up a special tribunal and it is quite competent to so provide that its decision will be inviolate and no appeal will lie to High Court or any other Court. In such cases, appeal should also lie on the certificate of the tribunal on the usual grounds. In such a case the High Court will have no power to grant certificate because we are ensuring a certificate from High Court from its own decision. It is therefore also necessary to provide for appeals from the decision of tribunals from which no appeal or motion lies to the High Court. In such cases a certificate for appeal from such tribunal would be needed; and the residuary article 112 is already there. So, such tribunals from which no appeal or motion lies to the High Court in criminal cases, may also be authorised. Otherwise there will be a lacuna.

Then there are matters which are neither civil nor criminal. Civil matters are provided for in article 111, and we want to provide for appeals in criminal cases in article 111-A. But there are anomalous cases which neither civil nor criminal, *e.g.*, contempt of court cases, when a party or witness or advocate or any one else brings the Court into contempt or disrepute. In such cases the High Court has summary power to deal with the recalcitrant party by fine or even imprisonment. In such cases there should be an appeal in important cases where a substantial question of law is

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involved. In two recent contempt of court cases that went up to the Privy Council—one from the colonies and one from the Allahabad High Court—it was found that parties had been wrongly punished on a misconception of law. And Lord Atkins delivering the judgment of the Privy Council pointed out gross inaccuracies in the conception of contempt of court. Important questions of law and principle arise in these cases and provision should be made for an appeal, provided a substantial question of law is involved or the matter is a fit one for appeal. So these two classes of cases—that is, appeals from tribunals from which no motion or appeal lies to the High Court, and contempt of Court cases—should be included to prevent any lacuna. We are framing the Constitution for a long time and should leave no loopholes which will call for early amendments. In civil cases we have limited the valuation to Rs. 20,000; but in criminal cases we cannot limit the value of a man's life and liberty. We cannot hang or imprison an innocent man without giving him a right of appeal. Even if one innocent man dies or is imprisoned, the sighs of his widow or orphan children will cry for justice. The House, I submit, should rise to the occasion and give justice to a poor man whose life may be considered by cynics to be below Rs. 20,000.

Mr. President : Dr. Ambedkar will now move his amendment.

The Honourable Dr. B. R. Ambedkar : (Bombay: General) : Sir, I move :

"That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A, the following be substituted :—

Appellate jurisdiction of Supreme Court with regard to criminal matters.

111-A. The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India—

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

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

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

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

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

I do not wish to say anything at this stage but I shall reserve my remarks towards the end after hearing the course of debate on my new amendment.

Pandit Thakur Das Bhargava (East Punjab : General) : Mr. President, Sir, the amendment which has been moved by Dr. Ambedkar just now is one which I hope will find acceptance from all Members of this House. This amendment is in effect the same of which I gave notice (No. 17) except in regard to revisional powers of enhancement. In regard to all other matters it is substantially the same and I have no hesitation in congratulating Dr. Ambedkar and those who have brought about this compromise on this issue.

Coming to the merits of the question I beg to submit this amendment, though satisfactory from the practical point of view, is certainly neither logical nor theoretically right. In the first instance, if it be accepted as an axiom in criminal jurisprudence that at least one appeal should be provided to every person who has been convicted in a court of law, this amendment fails to achieve the object. Under part (a) of this amendment the only occasion where an appeal is allowed in respect of an order against the order of acquittal is when a person has been sentenced to death. May I humbly ask if, for a person who after he has been acquitted and in the appeal against him has been sentenced to transportation for life, or even to five years or a single day or even fine, is there occasion for appeal for him in the High Court or any other Court? Are we to understand that persons who are sentenced to death are the only persons who are aggrieved and who require the right of appeal? In my humble judgment every person who after acquittal has been sentenced in appeal should possess the inherent right to appeal. I agree that if there are thousands of such appeals our Supreme Court will be flooded with cases and in practice there will be great difficulty. All the same, I must submit to this House that it must take care to see that some provision is made somewhere—either in the High Courts or in the Supreme Court—that every such convicted person has got a chance to appeal.

This new article 111-A here is practically on a par with article 111 on the civil side. I complained last time when I was speaking on article 110 that as a matter of fact the provisions of article 111 also are not satisfactory in so far that they proceed on a basis which is not acceptable to me or which should not be acceptable to the House. We passed the Objective Resolution. We passed the Fundamental Rights in article 8, and under article 15, that there shall be equality before law and equal opportunity for every person. Now, the provision contained in article 111 and those proposed in article 111-A go against the very grain of our Objectives Resolution as well as the Fundamental Rights, because in the matter of justice, in the matter of securing equality of treatment we cannot differentiate between a person who has been convicted to death and a person who has been fined or given one day's imprisonment—as we cannot distinguish between a person who is rich enough and can afford to have a dispute with regard to Rs. 20,000 and a person who is very poor and has a dispute only for Rs. 200. There is absolutely no difference in principle between the two. I must submit that that is not be right way of looking at things. In so far as equality of treatment and opportunities is concerned, our law must be based upon an ideal in which every person has got an equal right to go before the law and have his case decided. As I submitted, this is not logical and not theoretically right.

The proviso with regard to (c) is a thing which should not have been put in here. In regard to article 111 on the civil side the only requirement is that the High Court has to certify that the case is a fit one for appeal to the Supreme Court. But in regard to the criminal side these restrictions—unnecessary restrictions in my opinion—have been placed in regard to part (c) which say that the Supreme Court shall make certain rules and the High Court shall attach certain conditions. On the civil side there are no such restrictions and it passes my understanding why there should be these restrictions on the criminal side. When the High Court itself certifies that the case is a fit case for appeal, it is an absolute case for appeal. Who are we do say anything further? Can we not trust our own High Courts, instead of restricting it by certain rules made by the Supreme Court and certain conditions attached by the High Court itself? It is not a question of giving the right to the private citizen. I can understand the logic of those who say that a private person as such should not be given the right

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to go to the Supreme Court. I can understand that the High Court, so far as provincial autonomy is concerned, must be the last word in regard to the liberties as well as the properties of a citizen. And if a person wants to go to the Supreme Court, it must be in the fewest of cases. I can understand that ideal. All the same, when in regard to civil appeals we are giving certain rights it is but natural that in regard to criminal side also you must give equal rights, if not more. After all we are not interested in seeing that provision is made for a large number of appeals, but in seeing that justice is done and justice is rightly administered.

I have one word more to say and that is in regard to the powers of the Supreme Court. As we have seen, articles 109, 110, 111, 111-A and 112 are the five articles under which the machinery is provided by which appeals can go to the Supreme Court. We have seen under article 25 of the Constitution that every citizen has been guaranteed Fundamental Rights and the Supreme Court has been made the custodian of those rights. But I do not find any provision in our Constitution which lays down in what manner and under what method the Supreme Court shall exercise those powers and secure those rights to the citizens. Much has been said about article 112 and I will not dilate on it because we have already passed it. All the same I must submit one aspect of the case and that too very humbly and in my own way. If the Supreme Court has jurisdiction and if people can go to it and their rights are to be secured through it we have to arm the Supreme Court with full powers. I am not talking of powers to the citizen but of giving powers to the Supreme Court itself so that it may do justice. In article 118 we have stated that the Supreme Court shall be able to pass orders necessary for doing complete justice. But all the same I know that in regard to procedural matters even now the Supreme Court is not really supreme. It is true that the Supreme Court has been given jurisdiction over some cases where the supreme penalty of law is provided. But in many cases the procedure is so defective that a person sentenced to transportation for life *e.g.*, by conviction in High Court when appeal against acquittal has been accepted, has not got any right of appeal.

If you refer to article 15 which we have already passed you will see that so far as the question of procedure is concerned it is still within the purview of the Legislature to make this or that procedure and the Supreme Court has no hand whatsoever in checking that procedure. Unless and until we make it clear that so far as the ultimate destiny of a person is concerned, so far as the ultimate arbitrament of the rights of a citizen is concerned the Supreme Court has got powers even over the Legislature we will not secure the rights to the citizen. So far as the liberty of a citizen is concerned it should be secured even against the Legislature.

I have given notice of amendments to article 109-A, 113-A and 114-A also and they must also be considered in this connection because ultimately on the powers that we give to the Supreme Court depend the rights of the people. When the Privy Council has so far been enjoying these powers under section 112 under the principles of natural justice, the same powers may be given to our Supreme Court in regard to natural justice so that it can do complete justice, not according to a particular law or a particular provision or a particular regulation but according to those principles which are known, which are established and which are fundamental in their importance. We will be securing our full rights only if the House agrees to see that the powers of the Supreme Court are enlarged to the fullest possible extent. So far as the present amendment goes I have nothing more to submit except to say that I am very glad that the efforts of all of us have succeeded in producing a compromise acceptable to all.

Prof. Shibban Lal Saksena : (United Provinces : General) : Mr. President, the amendment moved by Dr. Ambedkar really makes criminal appeals to be on a par with civil appeals. I argue the other day that every man who is sentenced to death should have the right to have his case reviewed by the Supreme Court before the sentence is carried out. I remember the difficulties of the poor men under sentence of death. I have lived in cells with condemned men and I know their feelings. Hardly one among a score of such people could afford to take their appeal to the Privy Council. It is stated here that if the High Court certifies that the case is a fit one for appeal to the Supreme Court, the Supreme Court shall have power to hear it. It will not go to the Supreme Court automatically. I feel that a man who is condemned to death but who may not have the means to file an appeal or to get the necessary certificate should also have his appeal heard by the Supreme Court as of right. Nobody should be hanged unless his case is reviewed by the Supreme Court. According to the present amendment of Dr. Ambedkar, only about 100 out of 1000 murder appeals, *i.e.* about 10 per cent. will have the right to be heard by the Supreme Court if all the accused are able to bear the expenses thereof. So the richest men alone will get the right of appeal to the Supreme Court and poor men will be hanged without any hearing by the Supreme Court. Poor men cannot thus get justice even after this amendment is passed. I therefore think that although the amendment is a compromise, the poor condemned prisoners will not get justice even under it.

The second part of the amendment provides : "Parliament may by law confer on the Supreme Court any further powers," I hope the working of this article will soon convince the Parliament that everybody who is under sentence of death should have a right to go to the Supreme Court in appeal automatically without any expense. Unless the Supreme Court has finally rejected his appeal, he should not be hanged. I have nothing more to say on this question.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, at long last we now see the prospect of termination of the very long-drawn debate that has gone on the question of investing the Supreme Court with powers of appeal in criminal matters. You were pleased to point out that the matter had been debated at sufficient length and that no further time should be spent in repetition of the arguments already advanced. I will keep that observation in view in the few remarks that I oppose to make in connection with this amendment which has been moved by Dr. Ambedkar.

The House will realise that a considerable section of it is greatly exercised over the question as to whether or not the right of appeal in criminal cases should be embodied in the Constitution itself. There are two clear-cut sets of differences of opinion with regard to this. It has been held by one section that this right need not be conferred by the Constitution itself, but that Parliament should be left in future to legislate and confer such powers as it may think necessary in criminal matters. But Members like us are firmly of the view that, whereas provision was being made in the Constitution itself for appeals in civil matters, there was absolutely no justification for not embodying the same right of appeal in criminal matters. We feel that we should not give the country the impression that we allow to property more sanctity than to human life.

Now, after all these discussions, I think what has been crystallised it to be found in the amendment moved by Dr. Ambedkar. The main demand of a considerable section of the House was that in cases involving capital punishment there should be a right of appeal provided in the Constitution itself. I firmly held that view, but the objection was that there would be such a plethora of criminal cases involving death sentences that a very large number of judges would have to be appointed to decide them. I particularly drew attention to two categories of cases in which death sentence was imposed; a person is

[Pandit Lakshmi Kanta Maitra]

acquitted by the Sessions Court of a charge of murder, the Government prefers an appeal against the acquittal and the High Court reverses the judgment of the Lower Court and sentences the man of death. Such a man should have the right of appeal, where the judgment of the High Court reversing the judgment of the lower court may be contested.

I am very glad that in the amendment moved by Dr. Ambedkar to this article this has been specifically provided. I would particularly ask my friends to scan the expressions used in the connection which if properly understood will eliminate all chances of further debate on this article. New article 111-A proposed, says :

> "(1) The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India—
>
> (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him do death...."

That covers the category of cases on which we laid great stress. Clause (1) (b) covers another class of cases where the High Court has got inherent power to withdraw to its own file and try any case pending in Lower Court. This is inherent in the High Court; the High Court, as a court of record, has got this power. In such a trial, if the accused is sentenced to death, that virtually becomes the first sentence and rightly therefore an appeal has been provided for such a contingency. The third paragraph deals with criminal matters provided that the cases which come up are amenable to the rules made by the Supreme Court or by the High Court. If these rules are complied with, then these will be fit cases for intervention by or for appeal to the Supreme Court. Now, this generally disposes of the matters which require to be embodied. Again, clause (2) provides for additional powers to the Supreme Court, that is to say, the future Parliament of this country may by law confer upon the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court, subject to such conditions and limitations as may be specified in such law. This is expected to cover cases for instance, of revisional jurisdiction just as is exercised by the High Courts now. I therefore am inclined to think that this is a comprehensive amendment, and I am satisfied that this brings about a compromise between the opposing views, and the legal profession to which I have the honour to belong will be grateful to Dr. Ambedkar for his spirit of accommodation shown in this respect. I think, Sir, that the form in which this amendment has ultimately emerged meets the requirements of our case and deserves the fullest support of this House.

Shri Krishna Chandra Sharma (United Provinces : General) : Mr. President, Sir, as I said the other day, in view of the provisions *viz*. articles 110 and 112 already passed by the House, I do not see the necessity for further provisions for appeals from the High Court to the Supreme Court. Sir, much has been said about the life and liberty of the person. I think there is a misunderstanding with regard to the procedure in criminal cases as against the procedure in civil cases. In a criminal case the serious cases come first before the committing Magistrate. The committing Magistrate takes evidence ; the defence can take the statements of the witnesses in the Police diaries and can get the witnesses confronted with the statements before the Police. That is one stage in which the prosecution witnesses are cross-examined, their veracity tested, their *bona fides* questioned, and there is a good chance for the defence to plead that the case is a bogus case, without any foundation, is based on something which is not truth and there being no *prima facie* case, plead for discharge. And then, Sir, from the committing Magistrate the case goes to the Sessions Judge. Again the defence has got the right to cross-examine

witnesses. The defence can again call for the witnesses' statement made before the Police and also the statements made before the committing Magistrate, and then confront the prosecution witnesses with those statements and produce defence. The fullest opportunity is given to the defence to place its case. The trial is by jury, or with the aid of assessors.

Mr. President : The honourable Member's argument comes to this that there should be no appeal. As there is no amendment that there should be no appeal, I do not think this argument will help the House at all.

Shri Krishna Chandra Sharma : My submission is that I do not support sub-clauses (a) and (b), though I support sub-clause(c) and clause (2) of the amendment. What I beg to submit is that there is enough chance, enough opportunity, for the accused to cross-examine and to test the evidence and then to put the whole case before the Sessions Court, and after the Sessions Court, he has got the right of appeal to the High Court. Sub clause (a) says that if the High Court has on appeal reversed the order of acquittal of an accused, the accused should have at least one right of appeal. My submission is that it is not the accused alone who is the aggrieved party. In the case of a child murdered in the street, the mother of the child is also an aggrieved party. If the accused has a right of appeal on conviction, the mother of the child murdered in the street has equal right to go before the Court and say, "the man has murdered my child. I have a grievance against the fellow. The stability of the State demands, the cause of prevention of crime demands that the man must be hanged." It is wrong to say that the accused alone is an aggrieved party and as such on conviction must have the right of appeal. With equal force, with equal reason it can be pleaded that the aggrieved party is the women whose child has been murdered and as such she has got as much right to go to the superior court and say that the accused must be changed.

Pandit Lakshmi Kanta Maitra : That right is exercised by the High Court when there is an acquittal.

Shri Krishna Chandra Sharma : The right of the deceased's mother to approach the State for appeal is equally sound as the right of appeal of the accused to the High Court against his conviction. So it is not right to hold that the accused must have at least one right of appeal on conviction, and if convicted for the first time for murder, under sub-clause (a) he must have the right of appeal to the Supreme Court. I see no soundness in this argument. Another thing I would submit and that is this : There is a lot of talk about the life and liberty of the person. When the question of the Parliament conferring jurisdiction on the Supreme Court was discussed, Mr. Lari said, "Parliament is a question of the party; it is a question of the Cabinet and it is a question of the Prime Minister." I beg to submit that it does not look very nice to talk of finer things in a country where women are raped on the road or a child is murdered for a two rupee worth necklace, or a *mochi* is killed in the street of a city because he refuses to accept six pies instead of his demand of one anna or murder is usual in a quarrel over water in the field. You have to take notice of facts as they are. After all justice is related to conditions of life. Justice is only the will of the people, and the will of the people is represented by the Parliament. I beg again to submit that the people who are too wise and the people who are actually too foolish would never make a stable society. It is the people who talk of these finer things who never care for the stability of the society, for the stability of the State. Take for instance the case of Austria. There are too many scientists; there have been too many lawyers, too many philosophers, too many men of letters, men of genius and they will all differ and would never agree. The net result was that Austria was one country in the whole history of human

[Shri Krishna Chandra Sharma]

organization which never got a stabilised State, which never got peace and order, despite the fact that some of the persons born in Austria were the greatest men in the world, in the field of science, in the field of philosophy; and there is the case of the other people who are too foolish to understand the urgency of the situation.

Mr. President : I am afraid the honourable Member is going much beyond his point.

Shri Krishna Chandra Sharma : So my submission is that the question of justice, the question of personal liberty, the question of life is a question related to facts, related to conditions and you cannot run away from the conditions as they prevail in the development of society.

As regards clause (b) in most of the cases a case is withdrawn from the subordinate court on the application of the accused. And in rare instances, it is withdrawn at the instance of the prosecution. It is always pleaded that there is a reasonable apprehension that justice would not be done in the case at the place where the case is being tried. The case is withdrawn from the subordinate court to the High Court; it is withdrawn with the conditions prevailing in that area or the conditions in the court are such that there is reasonable apprehension that justice would not be done there. So, Sir, for the better condition and the sense of confidence, the High Court takes up the case. I say that if the reason underlying is to create a sense of security, a sense of confidence and the High Court judge looks into every aspect of the question, discusses the fact—the evidence has already been discussed, cross-examined and tested I—do not see any reason that there is any cause to reopen the case again before the Supreme Court. For, after all, what would the Supreme Court do? The Supreme Court would discuss the abstract questions of justice. As I already said, life is too much a living thing and differs from the abstract principle and justice need not only be done to the accused, but justice must needs be done to the aggrieved party, to the State, because the State wants stability, the aggrieved party wants revenge and society wants the prevention of crime. All these factors are important and have to be considered and taking all these factors in conjunction with the state of society such as is in this country, I beg to submit that we need not go any further than the High Court and the High Court should be the final forum in criminal cases.

I would support sub-clause (c) and if in any case it is so important, there are any legal points and from the point of view of justice it covers so many other questions, so many other cases or it is a general question of law that there should be uniformity on the principle of law or interpretation thereof, I would submit that sub-clause (c) of the amendment has a case, and may be supported and so also clause (2). I am fortified by a provision in the American Constitution with regard to the Supreme Court. The provision runs :

"*Sub-section* (2) *of article* 3.—In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact with such exception under such application as the courts shall make."

Sir, in the American Constitution, it is said that the judiciary is supreme and it dominates, as against the English Constitution where the Parliament is supreme or against the present Indian Constitution where the executive dominate. So if in America where the judiciary dominates, there is a provision that the power of the Supreme Court would be conditioned or subject

to the law of Parliament, I see no reason why we should go further than the American Constitution. As to what sort of appellate jurisdiction exists in America at present, I beg to read from a book on American Constitution by Prof. Zink :

> "At different periods in the history of the United States the exact extent of appellate jurisdiction has varied, but there has been a general trend in the direction of cutting it down. When W.H. Taft became Chief Justice, he found that the Supreme Court was distinctly behind in its docket and devised means for a more prompt disposal of its work. Acting on such recommendations Congress further limited the cases that could be appealed to the court as a matter of right, much to the consternation of many lawyers who felt that almost every case of more than routine consequence ought to be permitted a hearing in the highest court of the land. At present only two varieties of cases may be carried as a matter of right beyond the highest state court or the circuit court of appeales in the federal system (1) where it is asserted that a right or provision of the national Constitution, treaties, or statutes has been denied or ignored, and (2) where a state law or a provision of a State Constitution is alleged to conflict with the national Constitution, treaties made under the authority thereof, or laws passed in pursuance thereof."

This is the position of the American Supreme Court. As I submitted before, it is accepted that in the American Constitution the judiciary is supreme. Where the judiciary is supreme, the state of affairs are as I quoted from the book. So, Sir, in our country where conditions prevail which require speedy justice and prevention of crime, I do not see any reason for the power being given to the appellate court as in sub-clauses (a) and (b); I would, of course, gladly support the provision in sub-clause (c) and the provision in clause (2).

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, amongst the chorus of praise which this amendment has received from all sections of the House, I am extremely reluctant to make any observations which may sound a note of dissent. It must be taken on the whole that the speeches indicate that the amendment proposed by Dr. Ambedkar has the general support of the House, but at the same time I feel it my duty to refer to one or two points as it may serve to indicate what exactly is the scope of this article 111-A.

The latter part of it, the proviso, is a reproduction of section 411-A of the Criminal Procedure Code relating to appeal from the sentences of the High Court. Under this clause, an appeal shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require. Under clause (c) it is open to the Supreme Court to lay down any restrictions, any conditions as to the right of appeal. Similarly, the High Court may also lay down any conditions as it chooses in regard to the right of appeal. I feel some difficulty, Sir, in finding how this clause takes us further than article 112 of the constitution. Under article 112, the Supreme Court has an unfettered discretion to grant special leave in any criminal case. The terms of article 112 are in no way restricted or conditioned by any such clauses. Supposing for example, in the exercise of its power, the Supreme Court lays down certain conditions, and certain restrictions for the exercise of the power of certification by the High Court, is it intended so far as the High Court is concerned, it will be subject to such conditions as may be laid down by the Supreme Court? Though the conditions themselves will be laid down by the Supreme Court, it is the High Court that is invested with the power to grant a certificate. We will take it that the Supreme Court lays down a rule that a High Court can certify only cases where there is a particular kind of miscarriage of justice, misdirection to the jury or admission of inadmissible evidence or some other thing. Are we to take it that in the exercise of its jurisdiction under article 112. The Supreme Court is not fettered by these rules which are laid down for the benefit of the High Court under clause (c) ? That is a point on which I have no doubt Dr. Ambedkar will enlighten the House : that is, sub-clause (c) taken along with article 112 of the Constitution. If the distinction is

[Shri Alladi Krishnaswami Ayyar]

between certification by the High Court and grant of leave by the Supreme Court, I should think it is meaningless. It is inconceivable that the Supreme Court should say that so far as the High Court is concerned, it may not certify unless certain conditions are satisfied, but so far as the Supreme Court is concerned, it continues to have an unfettered discretion under article 112. That is the point on which I feel some difficulty.

Then, again, with regard to sub-clauses (a) and (b), the position is this. Sub-Clause (a) says : "if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death". That clause will apply to a case where a Full Bench of the High Court has reversed the judgment of the Session Court in a jury trial. An exactly similar case arose recently in Madras wherein a Full Bench of the Madras High Court refused to interfere, and the Privy Council reversed the decision, and the case came back to the High Court and ultimately, the party was acquitted. That is a case where conceivably there has already been an appeal provided within the precincts of the High Court. So far as sub-clause (b) is concerned, that is a case which the High Court has withdrawn for trial before itself from any court subordinate to itself. So far as cases covered by clause (b) are concerned, an appeal will lie directly to the Supreme Court from a decision of a single judge, whereas in the other case, presumably, an appeal will have to be tried in the High Court before an appeal is launched in the Supreme Court.

These are some of the considerations which have induced me in leaning more in favour of, and supporting the amendment which was tabled by Dr. Ambedkar yesterday. It is not that I am hard upon the criminals or that I do not sympathise with the lot of people who may be convicted for murder. Whereas all these considerations can be dealt with in a general revision of criminal law by Parliament they cannot be adequately dealt with in a single article of the Constitution. That is the only reason for which I contended some time ago in connection with the discussion under another article that the matter may conceivably be taken by Parliament. Anyhow, I do not want to sound a note of dissent from what is conceived to be in the larger interests of the criminals of this country. We have also no data exactly as to in how many cases the High Court has interfered with cases of acquittal by the court of first instance. These are the considerations which could be legitimately taken into account in Parliament in making a general legislation. I would have very much preferred Parliament legislating; anyhow, I wanted to place these observations before the House for what they are worth.

Shri Raj Bahadur (United State of Matsya) : Mr. President, I am afraid I may perhaps surprise and disappoint some of my Friends by giving expression to certain doubts and misgivings, about the desirability and wisdom of incorporating this provision in our Constitution at the present juncture and in the present state of our society.

I know that there is ample justification for the view that an accused person must be given the fullest opportunity for defence in a court of law. His right of appeal must not be impaired or restricted in any shape or form. I also recognise the soundness of the healthy principle that the innocence of an accused person must be taken for granted as a presumption unless it is rebutted by solid evidence. Nevertheless, there is another side of the case also. Viewed from the side of the complainant, from the side of the family which has been deprived of one of its near and dear ones by the foul hand of a murderer, is it not simply shocking that under the grab of an appeal, an accused person is provided with an opportunity to postpone or procrastinate the hand of justice? It is very well known what the feeling of the common man in the country is, about the delay in the trial of the Gandhi murder case. Without offering any

remarks on the merits of the case which is still *sub-judice,* I am simply voicing the feeling of the man in the street when I say that in a case where the murder took place in broad day light, in the presence of hundreds of persons, the trial has been hanging fire for over an year. We have got to see that justice is not only done, but it appeals also to be done, and done speedily.

I may submit that the object of criminal justice is three-fold : it is punitive, preventive, and reformative. I submit that so far as the right of appeal is concerned there is a view-point that this right of appeal also constitutes the right to delay justice. It is a sort of thing which is very much like the right of "filibustering" enjoyed by the Parliamentarians. I may point out that while this right of appeal may not detract ultimately from the punitive aspect of justice but it may, in a certain measure, detract from its preventive and reformative purposes. It is therefore proper that this aspect of the case must not be lost sight of by us. We know that the system of administration of justice that we have inherited was foisted on the country by the British, and although much can be said in favour or against it, it cannot be denied that it suffers essentially from three fundamental defects, namely, it is very expensive, it involves a lot of delay and at the same time it gives scope for perjury and fabrication of evidence. So the basic question, and the fundamental issue that is before us is not merely giving the right of appeal to a person convicted and sentenced to death here or there before the Supreme Court, but that at some stage—whether the stage has come now or will come in the future is itself another debatable question—we have to take in hand the question and grapple with the problem of the reform of our laws and the entire system of administration of justice. It is a crucial question. Now if we analyse the official amendment—as I would like to call it—we may see that clauses (a) and (b) of the new article give a very limited scope for appeals—we know that it is only once in a blue-moon that an order or acquittal is reversed by the High Court, and that it is also very rare that a High Court takes over a case and decides it itself. So the only right of appeal which may be granted in a substantial number of cases would be the one falling under the purview of sub-clause (c). The very application of this article would, thus, depend upon the rules which have to be made under the proviso attached to the said sub-clause. So everything depends upon the rules; but there is another point also. My honourable and learned Friend Pandit Thakur Das Bhargava happened to observe during the course of his speech to-day that there is justification not only for appeals in cases of sentences of death but in other cases also and that we should take that question also in hand. With all respect to the erudition and experience of my learned Friend Pandit Bhargava I submit that this is bound to involve the same problem, the problem of—to use the rather stale phrase— "Justice delayed is Justice denied". Obviously also if every criminal case is allowed to go in appeal to the Supreme Court it is bound to result in a considerable amount of delay in the disposal of cases. This would not inspire much confidence in the system of administration of justice. Law's delays have been proverbial ever since Shakespeare wrote Hamlet. We have to make some such provision in our laws that at least in our country we find out or evolve some method by which we may eliminate those delays. I submit that we should also not lose sight of the fact that recently there has been an appreciable rise in the incidence of crime in our country. Everybody we have reports from provinces and we read reports of crimes in the newspapers. We see that there is almost a sort of crime wave in some parts of the country at least—we cannot lose sight of the happenings that are taking place on our Eastern and Western borders. We cannot lose sight of these facts as also of the incidents that are taking place in Calcutta and around it. We have to take into account the fact that there is bloodshed and turmoil in our neighbouring countries. Only this morning papers showed that while there were wars and battles raging already in the countries on our eastern borders, there has been bombing in a neighbouring country on our western side also. At

[Shri Raj Bahadur]

such a critical juncture it is only proper that we must see that there are no inordinate delays in the disposal of cases and in the administration of justice in our country. I submit that, as the guardians of the freedom and liberty that we have won for the country, we must see that this is not lost in a chaos of crime and lawlessness. I would request that in my humble opinion the question of right of appeals in these cases may better be left over to the Parliament to deal with.

Dr. Bakshi Tek Chand (East Punjab : General) : Mr. President, Sir I have only a few words to say on article 111-A in the form in which it has now emerged in the last amendment which Dr. Ambedkar has moved this morning. This amendment, if I may say with respect, is substantially the same which I had moved yesterday in supersession of the other amendment Nos. 26 and 27 of which notice had been given by me earlier. The only difference between my amendment and the present amendment of Dr. Ambedkar is that clause (b) has been added to meet a certain type of cases—very rare, indeed—which was not covered by my amendment, *viz.*, when a High Court has withdrawn a case from a subordinate Court for trial by itself and at the conclusion of the trial has convicted the accused and sentenced him to death. I think cases of this kind will not be more than two or three in the whole of India in the course of a year. Still this was an omission in the amendment which I had moved and, I agree that the proposed clause (b) incorporated in the article.

On the amended article, different viewpoints have been presented to the House today by honourable Members who have taken part in the debate. On the one hand some Members have said that the right of appeal, given by this amendment, is very limited and it should be enlarged so as to include all cases in which the High Court has on reversal of the order of acquittal passed a sentence on the accused person whether of transportation for life or a lesser sentence. This is the view which Pandit Bhargava strongly urged the other day and has also repeated today. With great respect, I submit that this would be enlarging the scope of the article to unreasonable limits. It will be admitted that it is not desirable to convert the Supreme Court into a Court of criminal appeal for all cases. If that were so, then having regard to the volume of criminal litigation in this country, even in cases of murder or other serious crimes, the Supreme Court will be flooded with criminal appeals. It has been said that expense and enlargement of personnel of the Supreme Court should not stand in the way of giving relief to persons convicted in criminal matters, as life and liberty of human beings is more important than property, with regard to which Civil appeals have been provided for in article 111. But that is hardly a correct view of the case. Life and liberty is certainly more important than property but an unrestricted right of appeal either in civil or criminal matters will do incalculable harm to society. Take an ordinary murder case. In the Presidency towns the trial is held in the High Court sessions assisted by a jury, and in the mofussil and in provinces where the High Court has no original jurisdiction, the accused is tried by a Sessions Judge with the aid of a jury or assessors. In most cases the decision turns on a pure question of fact, and the Sessions Judge after hearing the evidence has convicted the accused and passed a sentence which may be one of death. An appeal is allowed to the High Court as of right; even if three is no appeal by the accused the sentence of death passed by the Sessions Judge has to be confirmed by the High Court. In either case the High Court goes through the whole evidence over again and if it finds that the man has been rightly convicted on the evidence, there are concurrent findings on facts. In such a case it will be undesirable to allow a second appeal to the Supreme

Court. It is not permitted in any country in the world. After all, there must be some limit to appeals and further appeals. It would be wrong in cases where the High Court has agreed with the trial court on questions of fact even if the case is of murder, and the sentence is of death, to allow a further appeal as of right to the Supreme Court. The number of such cases in India including the States under the jurisdiction of the Supreme Court will certainly exceed one thousand a year. And it would be dangerous to allow unrestricted appeals in every such case. It will be remembered that in civil cases the Privy Council has made it a rule of practice not to disturb concurrent findings on facts. If the same rule is applied to criminal cases, in most cases it will be sheer waste of time and money to allow further appeals. The Supreme Court is not likely to differ on pure questions of fact, where on an examination of the evidence, both the trial court and the High Court have concurred. Appeals should be allowed in exceptional cases only and that is what the amendment of Dr. Ambedkar contemplates. Sub-clause (a) confers an important right and remedies an existing lacuna in the law. This relates to cases where a man acquitted by the Sessions Court in the mofussil or at the High Court Sessions in the Presidency towns is, on appeal against such acquittal by the provincial Government, convicted by the Appellate Bench. Here in the first place there is the initial presumption of law that every person is presumed to be innocent until he is proved to be guilty. This presumption is further strengthened by the fact that the trial judge has found him innocent. If against this double presumption, the Appellate Bench finds him guilty and sentences him to death, it is certainly a matter which requires further investigation and the amendment seeks to give a right of appeal to the Supreme Court in such cases. It really is analogous to article 111 dealing with appeals in civil cases where the value of property is Rs. 20,000 or more and the judgment of the Appellate Court is one of reversal of that of the trial court.

Sub-clause (b) relates as I have said already, to a more limited class of cases and really is a corollary to sub-clause (a).

With regard to sub-clause (c) certain apprehensions have been expressed by honourable Members. Shri Alladi Krishnaswami Ayyar thinks that it will come in conflict with article 112, which gives the Supreme Court power to grant special leave to appeal in criminal cases. With great respect I fail to see any conflict between the two. The power of the Supreme Court to grant special leave to appeal is of a peculiar nature. This is at present done in exercise of the Royal prerogative which His Majesty the King exercises through the Judicial Committee of the Privy Council. In the Constitution, the Supreme Court will be invested with the same power by article 112. As I submitted the other day in regard to article 112, it is very much restricted in its scope. The Supreme Court has discretion, which it may exercise in any way it likes and in any kind of case civil, criminal or any other proceeding decided by any court subordinate to it. At present the Privy Council grants leave only in rare cases, where it is of opinion that some principles of natural justice have been departed from,—a phrase which is vague and undefined. It does not cover substantial and serious errors of law or even miscarriage of justice. It is, therefore necessary to provide for appeals in such cases in which the High Court certifies that the case is a fit one for appeal to the Supreme Court. This is sought to be done in clause (c) and its proviso which have been taken verbatim from sub-section (iv) of section 411-A, which was introduced in the Criminal Procedure Code by Act XXVI of 1943. That sub-section however, is limited to cases in which a person has been tried in the original side of a Presidency High Court and has been convicted. Before 1943 there was no right of appeal in such cases, unless the Advocate-General certified that it was a fit case for further appeal; and the matter ended there. It was felt in many cases that though there had been gross miscarriage of justice, yet there was not even one appeal. In 1943 by the amending Act

[Dr. Bakhshi Tek Chand]

an appeal was allowed to a convicted person on questions of law, or even on questions of fact if the trial judge certified that the case was a fit one for appeal or if the Appellate Bench found that the case was one requiring further consideration even on facts.

Then there is the further provision in sub-section (iv) that if the Appellate Bench is satisfied that the case is a fit one for further appeal to the Privy Council, it may give the certificate and the appeal will lie to the Privy Council. This provision, however, is limited only to those cases in which the trial has been on the original side of the High Court. Take for instance the province of Madras. If the crime has been committed within the limits of the presidency town of Madras then the section 411-A applies. But if the crime is committed, say, ten miles beyond or in another place like Trichinopoly or Tanjore, then there is no right of appeal at all to the Appellate Bench nor can the case go to the Privy Council even on certificate by the High Court. What clause (c) of the proposed article 111-A seeks to do is to extend the same provision and the same privilege to persons outside the Presidency towns, that is to say, to the mofussil, in the three Presidencies of Bengal, Bombay and Madras, as well as to other provinces. I submit that is a provision to which no reasonable objection can be taken.

My learned Friend Mr. Raj Bahadur thinks that this article will open the flood-gates of litigation and that every case, regardless of the nature of the crime or of the sentence passed, would be open to appeal to the Supreme Court. With great respect I submit that that is not so. It is only in a very limited class of cases that the High Court is likely to certify that the case is a fit one for appeal. Judges who have themselves decided a particular case are not likely to grant a certificate lightly. They will do in so very very rare cases only. So far as I am aware, after 1943 when section 411-A was enacted, there have not been more than three or four cases in which appeals have gone to the Privy Council. I do not think, that there will be more than eight or ten such cases throughout the year from the whole country. It will only be in a few cases, in which the question involved is of such great and general importance that the High Court will ask the Supreme Court to pronounce an authoritative judgment upon it. I submit, that these provisions are very very salutary and they should be incorporated in the Constitution.

I have only one word to say as regards what my Friend Mr. Naziruddin Ahmad said about contempt of court cases. He thought an appeal should be allowed in those cases as of right. Much as one would like cases in which a person has been convicted for contempt of court to be further reviewed, I am afraid, to allow an appeal to the Supreme Court in every such cases would be going too far. If there is an important question involved in a case, resort can be had to sub-clause (c) of article 111-A.

The provisions of the article in the form in which it has been moved by Dr. Ambedkar in amendment No. 198 meet all the requirements of the case and I would ask the honourable Members to accept it. The apprehensions of those who think that it will encourage crime, I submit, are wholly groundless. Equally groundless are the apprehensions of those who think that it is unduly limited in scope. It is a well-balanced and salutary provision which should find a place in the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I rise to make just a few observations in order to give the House the correct idea of what is proposed to be done by the introduction of this new article 111-A. The first thing which I should make clear is that it is not the intention of article 111-A to confer general criminal appellate jurisdiction upon the Supreme Court. The jurisdiction sought to be conferred is of a very limited character.

In showing the necessity why it is desirable in my judgment to confer appellate criminal jurisdiction upon the Supreme Court as specified the sub-clauses of article 111-A. I proposed to separate sub-clauses (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death: in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that has to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where has been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

Mr. President : May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

The Honourable Dr. B. R. Ambedkar : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been condemned to death he should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case is the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused, person; the Government which has been invested with a right of appeal against the acquittal appeals to the High Court, and the High Court in its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a sessions court he acquits a criminal; then the Government takes an appeal to the High Court on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

Mr. Naziruddin Ahmad : There is a right of appeal in such cases.

The Honourable Dr. B. R. Ambedkar : No. No appeal from the High Court.

Mr. Naziruddin Ahmad : Under section 411-A of the Criminal Procedure Code.

The Honourable Dr. B. R. Ambedkar : Section 411-A applies only to the High Courts of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Courts have acted under section 506. Section 411-A is confined to appeals from the judgment of High Courts sitting on the original side, in sessions. Therefore, Sir....

Pandit Lakshmi Kanta Maitra : Section 526 generally refers to transfer of cases.

The Honourable Dr. B. R. Ambedkar : When a case is transferred and tried by the High Court, there is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principles that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clauses (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the High Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub-clauses (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411, so far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a fit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the provision contained in section 411 of the Criminal Procedure Code. There are two courses open to this House: either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding—to take away a judicial right which has already become, so to say, a vested right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apply to all the High Courts. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Courts. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Court have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty: in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely "Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require." Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

Pandit Lakshmi Kanta Maitra : Modified by the proviso.

The Honourable Dr. B. R. Ambedkar : Yes, as modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clause (a), (b) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this: It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this: should we make it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law, leave the time, the circumstances and the choice to the Parliament of the day?

The Honourable Shri K. Santhanam (Madras: General): May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

The Honourable Dr. B. R. Ambedkar : I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

The Honourable Shri K. Santhanam : It deals with the jurisdiction of the Supreme Court in relation to matters contained in the Union List.

The Honourable Dr. B. R. Ambedkar : Yes, but supposing they want to enlarge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my Friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (3). His first question was, what is the use of having sub-clause (3) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with if, *viz.*, rules to be made by the Supreme Court.

Pandit Lakshmi Kanta Maitra : It is sub-clause (c) and not sub-clause (3).

The Honourable Dr. B. R. Ambedkar : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) as it is by the provisions laid down in the proviso. The first thing I would like to remind my Friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My. Friend, Mr. Alladi Krishnaswami Ayyar, will remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) or article 111, hedged as it is with all the limitations as to the rules to be made by the Supreme Court as a man of commonsense. I should think that there must be some residue of good left in sub-clause (c) here, not withstanding the limitations contained in the provision. My Friend also stated that there is a

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provision contained in article 112 which confers upon the Supreme Court the right to admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or matter. His point was that if that is there, why have sub-clause (c)? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil matters, why have sub-clause (c) in clause (1) of Article 111-A. My answer to him is this: If we can have sub-clause (c) in civil matters, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c), though we have 112? The point to be borne in mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the matter.

Shri Alladi Krishnaswami Ayyar : There is a condition in the case of civil appeals.

The Honourable Dr. B. R. Ambedkar : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt about it that sub-clause (c) will have some value. I therefore submit, Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my Friend will now withdraw their amendments and accept mine.

Shri C. Subramaniam (Madras: General): On a point of clarification, as to the implication of the difference of language...

The Honourable Dr. B. R. Ambedkar : It is too late now.

Mr. President : The Honourable Doctor has not shown in his reply why he makes a distinction between cases in which sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgment of acquittal.

The Honourable Dr. B. R. Ambedkar : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an accused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of difference is that in the case of enhancement the proceedings are converted into regular appeal so that in the case of enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

Mr. President : Supposing in a case the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by

way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

The Honourable Dr. B. R. Ambedkar : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under clause (2).

Mr. President : It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

Shri H. V. Pataskar (Bombay: General): I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar. Now there is a new amendment which has come today, namely No. 198 and the wording there is: "Parliament may by law confer on the Supreme Court any further powers to entertain etc." My amendment was also on principle the same with respect to the Supreme Court being enabled to hear certain appeals, but with respect to the wording, it is liable to be interpreted differently and to my mind is in conflict with article 112 as it stands, because under article 112, there is already jurisdiction to the Supreme Court.

Mr. President : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those honourable Members who think that their amendments are covered by the new amendment of Dr. Ambedkar. I hope, would withdraw them.

The question is:

"That with reference to amendment Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A the following be substituted:—

Appellate jurisdiction of Supreme Court with regard to Criminal matters.

111-A. (1) The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India—

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

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

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

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

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

The amendment was adopted.

Mr. President : I shall take the other amendments, and I shall see how far the other amendments are covered by this. There are several amendments moved, and so I shall take each one of them and see how far that amendment is covered by the amendment which has been carried and to the extent it is not covered, I shall have to put that to vote.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : That simplifies the matter. There are so many of them.

Shri Jaspat Roy Kapoor (United Provinces: General): The whole of my amendment (No. 22) is not covered by Dr. Ambedkar's new amendment. It does not include the case to which you have drawn his attention, namely, the case of death penalty being imposed in revision. However, I withdraw my amendment.

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

Shri H. V. Pataskar : I would like to withdraw amendment No. 25 standing in my name.

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

Mr. Naziruddin Ahmad : Sir. I would ask leave to withdraw amendment No. 33.

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

Mr. Naziruddin Ahmad : I have amendment No. 41 which is not fully covered by Dr. Ambedkar's amendment. There are three points which are not covered.

Mr. President : Then you do not withdraw it?

Mr. Naziruddin Ahmad : I do not, Sir.

Mr. President : Then, I will put amendment No. 41 which is not covered by Dr. Ambedkar's amendment, to vote.

Mr. President : The question is:

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

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

(a) against any sentence of death:

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

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

The amendment was negatived.

Mr. President : The question is:

"That article 111-A, as amended, stand part of the Constitution."

The amendment was adopted.

Article 111-A, as amended, was added to the Constitution.

New Article 103-A

Mr. President : This is a new article sought to be added by Dr. P. K. Sen by his amendment No. 1870 which is printed at page 190 of the first volume of amendments. The honourable Member though he is not here now had

moved this amendment and therefore, it has to be put to vote or discussed, if any one wishes to say anything. (No Member rose)

I shall put it to vote.

The question is:

"That after article 103, the following new article be inserted:—

'103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other then that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India. Depute a judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a Proclamation of Emergency is in force, if such appointment is certified by the President to be necessary in the national interest.' "

The amendment was negatived.

Article 164

Shrimati Purnima Banerji (United Provinces: General): Mr. President, I have a suggestion to make with regard to this article. This article refers to the method of voting in the Houses of the Legislature Assembly of a State and the Legislative Council of States and its right to function notwithstanding vacancies in these Houses. In article 164 there is also a passing reference to a joint sitting of both the Houses. I suggest, Sir, that article 172 where the question of "joint sitting" is taken up in greater detail, and which involves certain principles in which we are all interested should be taken up first. I therefore suggest that article 172 should be taken before this article is taken because once we pass this article dealing with the question of joint sittings we shall be committed to the principle of joint sitting and all the aspects of the problem will not be placed before the House.

Mr. President : Therefore, you suggest that this should not be taken now?

Shrimati Purnima Banerji : Yes, Sir.

An Honourable member : It should be taken after article 172.

Shri T. T. Krishnamachari : (Madras: General): While I appreciate Shrimati Purnima Banerji's suggestion, the words relating to a "joint sitting" here come only by the way, and if we decide to alter the appropriate articles in a different way, the Drafting Committee might just delete the words occurring here that relate to a joint sitting. If there is no reference to a joint sitting in the appropriate article, this will automatically go. There is no substance attached so far as the reference to "joint sitting" is concerned in this particular article. It is left to the Chair. If you permit the Drafting Committee to make the changes at the appropriate time in the article this article might be discussed.

Mr. President : I think it does not really touch the question whether we should have a joint sitting or not. If the other parts of the Constitution do not provide for a joint Session, then, this article will not operate at all, so far as joint sitting are concerned, and the particular expression may even be dropped later on. There is no reason for holding it up. We may take it up and dispose of it.

Dr. Ambedkar, you may move amendment 2389, though it is a formal one.

Shri Mohan Lal Gautam (United Provinces: General): I take it, Sir, that your ruling is that even if we pass this article, it will have no prejudicial effect so far as article 172 is concerned.

Mr. President : Yes; That is what I have said.

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

"That in clause (1) of article 164 for the words 'Save as provided' the words 'Save as otherwise provided' be substituted".

(Amendment Nos. 2390 to 2396 were not moved.)

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

"That with reference to amendment No. 2389 of the List of Amendments, in clause (1) of article 164, for the words 'in a House' the words 'at any sitting of a House' be substituted."

To this there is another amendment;

Sir, I move:

"That with reference to amendment No. 61 above, in clause (1) of article 164 for the words 'in a House or a' the words 'at any sitting of a House or' be substituted."

The object of this amendment is obviously to make a necessary improvement in the drafting of this article and I hope it will be appreciated by Dr. Ambedkar and that he will readily accept it.

Mr. President : The question is:

"That in clause (1) of article 164 for the words 'Save as provided' the words 'Save as otherwise provided' be substituted."

The amendment was adopted.

Mr. President : Then, I shall put amendment 62 which will cover the other amendment also.

The question is:

"That in clause (1) of article 164, for the words 'in a House or a' the words 'at any sitting of a House or' be substituted".

The amendment was adopted.

Mr. President : The question is:

"That article 164, as amended, stand part of the Constitution."

The motion was adopted.

Article 164, as amended, was added to the Constitution.

New Article 167-A

Mr. President : We now take article 167-A, amendment No. 65. This arises out of amendment No. 2441 and this is for the addition of another article after article 167.

Shri B. A. Mandloi (C.P. & Berar: General): Mr. President, I beg to move amendment No. 2441 on page 247 of Volume I.—

"That after article 168, the following new article 168-A be inserted:—

'168-A. On a question being raised or having arisen whether a member has incurred the penalty for the breach or breaches mentioned in article 168, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be, shall refer the matter to the Committee of Privileges or to a sub-committee appointed by him for its report. The Chairman or the Speaker shall give his decision after the report has been discussed in the House-Council and the decision of the Chairman or Speaker, shall be final'."

Sir, the House has passed article 167 and 168 regarding the disqualification for membership, and the penalty for sitting and voting before making the declaration prescribed in article 165 or when not qualified, or when disqualified.

Having accepted these articles, naturally, the question arises as to who is the person to decide the question whether a particular member has incurred a disqualification or not. Therefore, the necessity to incorporate a new article to empower a particular person or authority to give decision on these questions arises.

Now, if we agree to this course, two important things have to be borne in mind: that the decision of the person or authority so empowered should be final, *viz.*, the decision of the person or authority duly empowered should not be challenged in a court of law, which would necessarily prolong the litigation and defeat the very object of the articles. Therefore, whatever authority is empowered to give a decision, its decision should be final. The other important thing to be borne in mind is that the matter should be decided as early as possible, because, under article 168, there is a penalty of Rs. 500 a day for a member who is under a disqualification and who sits or takes part in the proceedings, or votes on a particular motion. As soon as the question is raised that a particular member is under a disability, that particular member would naturally like the decision to be given as early as possible. Where he takes part in the proceedings and ultimately the decision goes against him, then, he would be liable to a penalty and if, as a prudent man, he does not take part in the proceedings and ultimately the decision goes in his favour, then, he loses his valuable right of participating in the deliberations. Therefore two important factors have to be borne in mind, *viz*., that the decision should be final and that it should be given as early as possible. My submission is that the Speaker or the Chairman of the Assembly or the Legislative Council are quite competent persons who should be empowered to give decisions on such questions. We know, Sir, that the Chairman and the Speaker are required to give important rulings on questions raised in the House on the spur of the moment, and they are very competent persons to give the decision whether a particular person has incurred the disability or not. I have in my amendment suggested that the matter should be referred to a Sub-Committee or to a Committee of Privileges and as soon as the matter is shifted by that Committee, the report would be placed before the House when it will be discussed and ultimately the Speaker or Chairman would be in a position to give its decision on such matters and therefore I submit that this amendment of mine should be accepted by the House.

Mr. President : You may move your amendment No. 65 also.

Shri B. A. Mandloi : I have moved my original amendment No. 2441. Amendment No. 65 is an amendment to my amendment. I am not moving amendment No. 65. My honourable Friend Shri T.T. Krishnamachari may move amendment No. 65.

Shri T. T. Krishnamachari : If he is not moving, I shall move No. 65. Sir, I beg to move:

"That in place of No. 2441, the following new article be inserted:—

'167-A. (2) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualification mentioned in clause (1) of the last preceding article the question shall be referred for the decision of the Governor and his decision shall be final.

Decisions on questions as to disqualification of members.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion'."

Sir, I would ask the House to accept this amended version of the amendment moved by the Honourable Mr. Mandloi for this reason, that there are certain difficulties in the matter of practical application if amendment No. 2441 is accepted, *viz.*, that there will undoubtedly be a time, even if we are

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to endow the Speaker of a House with all the powers to put into operation the disqualifications under 167, when the Speaker will not have been elected and for another even the member who is elected as Speaker might be subject to some of the disqualifications and, as the scheme now stands, the permanent Head of the State will be the person who can take action. The doubt can be raised that once the Speaker is elected, his powers should not be infringed upon. I do believe on a previous occasion also in connection with the articles relating to Parliament this difficulty was felt but we got over it by the provision that in regard to all that has to be done in a House, if the President has powers, they will be delegated to the appropriate authority who might happen to be the Speaker. It is not likely that in this instance the Governor will act in this entirely unilaterally; he will act on the advice of his Ministers and naturally they will not do anything without consulting the Speaker. The second clause presupposes the bringing into being of an Election Commission which finds mention here for the first time and it relates to the Chapter on Elections articles 289 onwards, and the Drafting Committee have proposed by appropriate amendments to bring into being an Election Commission which will have the final say in all election matters. Therefore in order to prevent the Governor from acting himself or even acting on the advice of his Ministers from motives which might not be proper, the second clause lays the responsibility on the Governor and his advisers to obtain the opinion of the Election Commissioner or whoever decides the matter on behalf on the Election Commissioner. I believe this amendment covers the lacuna which my honourable Friend Mr. Mandloi wanted to fill in by his amendment No. 2441. The prestige of the Speaker is not involved in this because we are not taking away any power from the Speaker but we are only contemplating what is to happen when the Speaker may not have come into being. I do hope the House will accept this amended version of Mr. Mandloi's amendment No. 2441.

Kazi Syed Karimuddin (C.P. & Berar. Muslim): Sir, I would like to move No. 66 which stands also in my name. Mr. President, I beg to move:

"That in amendment No. 65 above, in the proposed new article 167-A—

(i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its' be substituted; and

(ii) clause (2) and the figure '(1)' occurring at the beginning of clause (1) be deleted."

Sir, I have heard Mr. Mandloi. According to him the Speaker will be the proper authority and on the report of the Committee to be appointed by him this decision should be finally made by the Speaker. I have two objections to his amendment, first that the point about the disqualifications of a member is very important and it has to be enquired into in great detail. Of course the members of the Committee that would be appointed must belong to a political party and the decision in regard to disqualification of members should not be entrusted to members of a political party. Therefore, it is better that this matter is entrusted to the Election Commission. But in the amendment moved by Mr. T. T. Krishnamachari it is said in clause (2) that before giving any decision on any such question the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion. According to this sub-clause (2) the Governor becomes only the Post Office, because when once it is said that the opinion of the Governor shall be final and the same breath it is stated that he will be bound by the opinion of the Election Commissioner, then why not accept the decision of the Election Commission and say its decision will be final and it will be pronounced by the Election Commissioner? Therefore I have moved this amendment and I commend it to the House.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, I find Mr. Mandloi's amendment quite specific and distinct from the one moved by Mr. Krishnamachari. Mr. Mandloi's amendment relates only to article 168, and he wants the subject matter of breaches of the article to be decided by the Chairman or the Speaker, whereas Mr. Krishnamachari's amendment is a general one relating to disqualifications. Election malpractices or corruption should certainly go to an Election Commission. Article 168 reads:

"If a person sits or votes.....before he has complied with the requirements of article 165 etc."

Article 165 relates to oath of a member, and if he refuses to take the oath it would not be proper to send it to an Election Commission. In the past the Speaker has refused to allow such a member to speak and Mr. Mandloi wants to give the Speaker this right, while Mr. Krishnamachari's amendment is a general one relating to disqualification.

Mr. President : It does not relate to article 165 only; in the subsequent portion it relates to other things also.

Shri R. K. Sidhva : My point is about refusal to take oath. Then there are also matters like insanity. If a member is insane it is for the Speaker to decide.

Mr. President : What is he take an office of profit after election or becomes insolvent? These are covered by article 167.

Shri R. K. Sidhva : These cases should go for inquiry. But if he does not take the oath would you allow him to sit in the Assembly? I submit the thing is confused and should be made clear.

Prof. Shibban Lal Saksena : Sir, I agree with Mr. Sidhva that there is some confusion in the amendment moved by my Friend Mr. Krishnamachari. Mr. Mandloi pointed out a lacuna in article 168 he said the Speaker should decide whether a person has incurred the prescribed penalty or not. There are two things involved in this matter; (i) whether the person is disqualified to sit in the chamber or not, (ii) whether he has incurred a penalty or not. The conditions of becoming disqualified are contained in article 167, on the basis of which it should be decided whether a disqualification has been incurred or not. This obviously the Election Commission alone can decide properly. As regards not taking the oath, etc., the Speaker should be the person to decide straightaway. So there should be two new clauses, 167-A and 168-A. It should be mentioned in 167-A that question whether a member has become subject to any of the disqualifications should go to the Election Commission; and in 168-A it should be mentioned that the Speaker should decide whether a member has incurred the penalty or not. Bringing in the Governor will nor improve matters and he should have nothing to do with it. The Election Commission will say whether there is a disqualification or not and the Speaker will decide whether the penalty has been incurred or note. There is some inconsistency and it should therefore be divided into two parts as I have suggested, *viz.*, 167-A and 168-A, relating to disqualification, to be decided by the Election Commission, and penalty, to be decided by the Speaker.

The Honourable Shri K. Santhanam : Sir, I think the objection to asking the Governor to decide is mistaken because the whole new clause refers to disqualifications mentioned in 167(1). Not taking the oath of office is not a disqualification. Until the person takes the oath he is not entitled to act and after some time his seat will become vacant automatically. It is no disqualification and my honourable Friend Mr. Sidhva may be assured that in this matter the Election Commissioner or the Governor does not come into the picture. But many of the disqualifications will require detailed investigations,

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e.g., whether a person owns allegiance to a foreign power, etc. Here records and evidence will have to be called for and surely the Speaker should not be made a judicial officer for this purpose and correspond with officials, etc. Another fundamental principle is that the Speaker should not come into a position of conflict with a member. No one knows what the result of the investigation is going to be, but during the process of investigation, if the Speaker conducts it, the relations between him and the member are bound to be strained. It is not therefore right to invest the Speaker with any such functions. In some Parliaments the Parliament itself sets up a Credential Committee or some such machinery to investigate such matters and pronounce judgment. We can certainly adopt such a procedure, but having set up an Election Commission which will be competent to deal with such matters it is not necessary to devise such a procedure. So far as the Governor is concerned, he is brought in merely because he is the executive head and the convenient instrumentality by which the thing can be done. He himself has no discretion in the matter and his decision will be bound by the opinion of the Election Commission. One amendment suggests: why not bring in the Election Commission direct? It is simply because the matter has to go through the executive head of the State. It is only on an understanding of the correct procedure that it has been put in. As a matter of fact it is the Election Commission which will be invested with jurisdiction to go into all these matters and pronounce whether a Member is qualified or disqualified.

Another point has been raised that under article 168 when a decision on disqualification of membership is pending for a long time a member who attends the House may be put to very heavy penalties. It is quite true. But there is nothing which compels a Member who is charged with disqualification to attend the House. He attends at his own risk. If he is absolutely certain that he is not disqualified he is certainly entitled to take the risk and attend. But if he does attend while a charge of disqualification is pending and if finally it is proved that he is actually disqualified, then he has taken a deliberate and calculated risk and he must pay the penalty. I do not think he deserves so much sympathy. I think the clause as it has been moved by my honourable Friend Mr. T.T. Krishnamachari ought to be supported.

Mr. Tajamul Husain (Bihar: Muslim): Sir, a person cannot be a member of a provincial legislature if he is a government servant or is of unsound mind or is an undischarged insolvent or is a foreigner or is disqualified by law. This is a very sound principle. The question now before us is who is to declare the members disqualified. We have got amendments here. One amendment says that the Speaker should refer the matter to the Committee of Privileges—the Speaker of the Legislative Assembly or the Chairman of the Legislative Council—the matter will be discussed by the Committee and then the Speaker or Chairman will decide it. The other amendment suggests that the Governor should decide it after consulting the Election Commission.

There is one flaw as regards the former amendment and it is this. Suppose there is no Committee of Privileges. So far we have not got any Committee of Privileges in the Draft Constitution. Then what are we to do? Another point is that the House may not be sitting. When the House is called and the matter is discussed it will mean considerable delay. There should be a quick decision and for this the Governor is the best person. The only objection in leaving it to the Governor is that he will be guided by the Cabinet by the Prime Minister. But in this matter the Prime Minister will have nothing to do and the Governor will not consult the Prime Minister. He will consult

the Election Commission which is the sole authority. And whatever the Election Commission report, that will be final and binding on the Governor. Therefore, out of these two amendments I think the second amendment seems more reasonable and it should be accepted.

Pandit Thakur Das Bhargava : Sir, a perusal of amendment Nos. 65 and 2441 leaves no doubt in my mind that they envisage different sets of facts. Amendment No. 65 is clear that so far as the question relates to part (1) of article 167 it is a matter within the jurisdiction of the Election Commission and on the advice of the Election Commission the Governor shall decide the question. In regard to article 168, an amendment has been moved that the Speaker should be given power. May I humbly submit that so far as article 168 is concerned it describes the offence, which will be governed by the law of the land. Let us examine what the offence is. The offence lies in this, that a member who is fully cognizant of the fact that he is committing a crime yet persists in attending the House. A member who has not taken the oath has no right to attend the House. He knows he has not taken the oath, yet he persists in sitting in the House. Similarly when he knows that he is not qualified or disqualified.....

Mr. President : Can he sit in the House at all if he has not taken the oath?

Shri R. K. Sidhwa : He can sit in the House but cannot participate in the debate unless he takes the oath. He cannot vote.

Mr. President : But does he become a member before he takes the oath?

Shri R. K. Sidhwa : Yes, that has been held by previous Speakers.

Mr. President : I find article 165 is clear. It says:

"Every member ..... shall, before taking this seat, make and subscribe before the Governor.....a declaration according to the form set out for the purpose in the Third Schedule."

So he has to take the oath before he sits.

Pandit Thakur Das Bhargava : So a person who has not taken the oath fully knows that he is committing a crime and therefore he is a person who should be dealt with under the ordinary law of the land and the Speaker does not come in at all. We are here considering the case of a person who is to his own knowledge committing an offence. He should be dealt with under the ordinary law of the land and he will be fined and the fine will be recovered as a debt due to the State. I do not therefore think that the House should accept the amendment moved by Mr. Mandloi. I support the amendment moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Sir, various points have been raised in the course of this debate and I should like to deal with them only one by one. If I heard my Friend Mr. Sidhva correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhwa : Why should it go to the Election Commission?

The Honourable Dr. B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused: there is only disability of taking part in the proceedings of the House.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the main amendment moved by my honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not expressly stated it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned. I find no difficulty in accepting it.

Now I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If Members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgement or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e) I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167. I would therefore with your permission propose to amend clause (2) thus: "Before giving any decision on any question relating to disqualifications arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar: What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the Course of the election, after the election has taken place and the member has taken his seat.

Mr. President : Is not the election Commission entitled to deal with such cases?

The Honourable Dr. B. R. Ambedkar: Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of court that he has committed offences under the Election Act. That would also come under (e) After a man has taken his seat.....

Mr. President : It seems to me that there are two kinds of disqualifications. A Member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar: That would depend upon what sort of procedure we lay down at a later stage.

Mr. President : But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar: That is what (e) provides for.

Mr. President : Then other disqualifications may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

The Honourable Dr. B.R. Ambedkar: Those are dealt with Here. They are all about sitting members.

Shri L. Krishnaswami Bharathi : Please read the amendment.

The Honourable Dr. B. R. Ambedkar: There are two sorts of disqualifications: disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are choosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam : Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar: That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provisions permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things jumped together.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, there are now different disqualifications set out against becoming a member and against continuing to a member. Both are covered by article 167 (1). To make it clearer it is necessary to say that a person shall be disqualified for being chosen as, or for continuing to be a member of the legislature. If it is necessary to make it clearer we may do so.

Pandit Hirday Nath Kunzru (United Provinces: General): A closure motion was moved and you accepted it. I should have thought therefore that Dr. Ambedkar's reply to the debate would put an end to the discussion on the subject.

Mr. President : I am sorry I missed the point.

Shri M. Ananthasayanam Ayyangar : May I make one submission to you. I am not going to speak. I bow to your ruling. Dr. Ambedkar has tried to move an amendment in his final reply. Otherwise if the motion moved by Mr. T.T. Krishnamachari is put to the vote, I have no objection. I have come here to suggest that Dr. Ambedkar should withdraw his amendment which he tried to move in his reply.

Mr. President : You have now done that. I am sorry I had forgotten that closure has been adopted.

Shri R. K. Sidhva : What about Dr. Ambedkar's amendment? We cannot accept it as an amendment at this stage.

Mr. President : If it had been accepted by the mover, it could have been a different matter. The question is:

"That in amendment No. 65 of List I in the proposed new article 167-A

(i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its' be substituted; and

(ii) clause (2) and the brackets and figure '(1)' occurring at the beginning of the article be deleted."

The amendment was negatived.

Mr. President : Then Mr. T.T. Krishnamachari's amendment.

Some Honourable Members: With or without Dr. Ambedkar's amendment?

Mr. President : Without. The question is:

"That for amendment No. 2441 of the List of Amendments, the following be substituted:—

'That after article 167, the following new article be inserted:—

167-A. (1) If any question arises as to whether a member of a house of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of last preceding article, the question shall be referred for the decision of the Governor and his decision shall be final.

Decision on questions as to disqualification of members.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.' "

The amendment was adopted.

Mr. President : Since this amendment is passed, Mr. Mandloi's amendment falls through. The question is:

"That new article 167-A stand part of the Constitution."

The motion was adopted.

New article 167-A was added to the Constitution.

Article 171

Mr. President : There is only one amendment to this article, No. 67.

Shri Satish Chandra (United Provinces: General): I do not wish to move the amendment, but I would like to have clarification that the ruling you have given just now in respect of article 164 will also apply to this article, and if the principle of joint sittings of the two Houses of the state legislature is not accepted later on, all the consequential amendments to this article will be made by the Drafting Committee.

Mr. President : Yes, I think it will apply to this also.

The question is:

"That article 171 stand part of the Constitution."

The motion was adopted.

Article 171 was added to the Constitution.

Article 175

Mr. President : There are certain amendments to this.

There is one by Sardar Bhopinder Singh Man.

Shri T.T. Krishnamachari : Articles 175 and 176 may be held over.

Shri M. Ananthasayanam Ayyangar : What about 172?

Mr. President : It is being held over. It is not being taken up today.

Article 187

(Amendment Nos. 2524 to 2529 were not moved)

Pandit Hirday Nath Kunzru : Mr. President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 187, for the words 'six weeks from the reassembly of the Legislature' the words 'two weeks from the promulgation of any Ordinance' be substituted."

With your permission, Sir, I should like to move another amendment which is consequential to the amendment that I have moved. I moved:

"That the Explanation to clause (2) of article 187 be deleted."

Sir, a similar question came up for discussion the other day with regard to the duration of the Ordinances issued by the Governor-General. May position today on this question is generally what it was the other day, but I feel that where the members of the Legislature live in a compact area, an area which is much smaller than that from which the members of the Central Legislature are drawn, it should be comparatively speaking much easier for them to meet. The period of fourteen days during which I should like an ordinance issued by the Governor to be placed before the Legislature should therefore be employed for the purpose.

The article as it is, Sir, provides an Ordinance issued by the Governor shall remain in force as long as the Legislature of his province does not meet. Even when the legislature meets it will remain in force for six weeks from the re-assembly of the Legislature "unless before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or as the case may be on the resolution being agreed to by the Council." This means that as there may be an interval of more than five months between two sessions of the legislatures, it is obvious that an Ordinance issued by a Governor may remain in force for as long as five months or any period less than six month and six weeks more.

The explanation to clause (2) says that when there are two Houses of the Legislature to a State and they re-assemble on different dates the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause. Suppose that the Second House meets a month later than the Assembly. This will mean that the Ordinance will remain in force for some period less than six months *plus* the period of one month during which the Second House does not meet *plus* six weeks, unless before the expiry of six weeks a resolution disapproving of it is passed by the Legislative Assembly and is agreed

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to by the Legislative Council. Now it seems to me to be wholly unnecessary that an Ordinance which is an executive act should remain in force for so long a period. If an emergency arises requiring the promulgation of an Ordinance, requiring the executive to act without securing the permission of the Legislature, it is necessary that the Legislature should be summoned without unnecessary delay. I think therefore that the period during which it may remain in force should be reduced considerably.

The question then arises what should be the period that might be allowed to elapse before the Legislature meets to consider the Ordinance? I think that even in the biggest province two weeks will be ample for the meeting of the Legislature. It is clear, Sir, that if the Legislature were sitting when the emergency arose, then, however great and serious the emergency might be and however necessary it might be in the opinion of the executive to take immediate action, the executive would not be able to act without having a law passed by the Legislature. When the Legislature is not sitting , it is reasonable that the executive should be allowed to promulgate a measure that would have the same effect as an Act of the Legislature, but whatever the nature of the emergency may be, it can not justify the continuance of the Ordnance even for a day longer than is necessary to summon the Legislature and place the whole matter before it. The existence of a crisis, Sir, does not justify the executive in proceeding in such a way that an Ordinance passed by it may remain in force for as long as possible under the provisions of this article. The point of view of the executive should be not to delay the meeting of the legislature so that the Ordinance may remain in force as long as is possible legally, but to summon the legislature and place the matter before it as early as possible. It is only if it acts in this manner that its action will be in consonance with the spirit of the Constitution and the powers of the legislature in regard to all matters needing legislative sanction. I think, therefore, Sir, that my amendment is thoroughly reasonable. It will give the executive the power to act in at emergency and it will also enable the representative of the people to see that the ordinance does not remain in force unnecessarily,or, if it goes beyond the needs of the case, is modified in accordance with the judgment of the legislature.

As I pointed out the other day, the objection to a procedure of the kind lid down in this article is not merely that it unnecessarily prolongs the duration of an Ordinance, but that it prevents the legislature from considering whether the terms of the Ordinance are justified by the emergency. The legislature when it meets, may either disapprove of the Ordinance or if it agrees with the executive in thinking that a special situation calling for special action exists, may feel that the Ordinance confers excessive powers on the executive and may modify it in such a way as to safeguard the liberties of the ordinary man in so far as this is consistent with the existence of an emergency. When a crisis occurs, it does not mean that the rights of the people are to be suspended altogether. A situation may arise where this has to be done; but such a situation will obviously be of an exceptional character. In other situations requiring special action to be taken, the ordinary rights of the citizen should be protected as far as possible. It is necessary, therefore, that any Ordinance that is passed by the executive should be submitted to the scrutiny of the representatives of the people as early as possible.

(Amendment Nos. 2531, 2533 and 2534 were not moved.)

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That for amendment Nos. 2523, 2525, 2526, 2527, 1529, 2530 or 2532 to 2534 of the List of Amendments, the following be substituted:—

(i) That in clause (1) of article 187, for the words 'for him to take immediate action, he may promulgate such Ordinances as the circumstances

appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted, and the proviso to the clause be deleted.

(ii) That in clause (2) of article 137, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' be substituted.

(iii) That in sub-clause (b) of clause (2) of article 187 for the word 'Governor' the word 'President' be substituted.

(iv) That in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

Sir, after these amendments, the article will read as follows:

"187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary that immediate action be taken, he shall report the matter to the President who may then promulgate such ordinances as the circumstance appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution, or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the President.

Explanation.—Where the House of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor or by the President, it shall be void."

Sir, I did not wish that our Constitution should be disfigured by any power of making Ordinances by the President or by anybody else. But, now the House has already accepted that the President shall have the power of making Ordinances on certain occasions. I only want that if Ordinance making power is to be provided for, then this power should be confined only to the President and should not be conferred on each and every Governor. There may about thirty Governors in the Country. I want that this power, which is an extraordinary one, should be confined only to the President of the Union. Therefore, I say if an emergency arises instead of the Governor himself passing an Odinance, he must report the matter to the President who may then promulgate such Ordinances as may appear to him to be necessary. Of course, the Governor will have to justify to the President that it is necessary that such an extraordinary measure should be taken. The President and the Prime Minister will consider and take proper steps. An Ordinance in effect means the taking away of the entire power of the legislature and therefore, it should not be freely resorted to. In the Constitution for Free India which we are framing, we are still thinking in terms of the period of slavery through which we have just passed. I hope very soon the times will change and people will insist that no Ordinance should be passed and that everything should be done by the legislature by the peoples' representatives, and them, we shall resent any Governor issuing any Ordinance. I therefore think that this power of making Ordinances should not be conferred on every Governor, but should be conferred on the President only, if at all. When any

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particular province wants an Ordinance, that Governor should report the matter to the President and shall then consider whether an Ordinance should be promulgated or not. That would also keep the Center informed of the situation in the provinces and would ensure that the Ordinances that are passed are passed after careful consideration.

The rest of my amendments are only consequential so that the main amendment is that the power of making Ordinances should be reserved to the President and should not be given to anybody else. I hope this amendment will commend itself to the House and will be accepted.

Shri Jaspat Roy Kapoor : Sir, my amendment No. 74 being more in the nature of a drafting amendment, I will simply wish that the Drafting Committee may take it into consideration while giving final touches to the Draft.

Pandit Thakur Das Bhargava : I submit the same thing with regard to amendment no. 75, Sir.

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

(No Member rose)

The question is:

"That for amendment Nos. 2523, 2525, 2526, 2527, 2529, 2530, or 2532 to 2534 of the List of Amendments, the following be substituted:—

(i) That in clause (1) of article 187, for the words 'for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted.

(ii) That in clause (2) of article 187, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' be substituted.

(iii) That in sub-clause (b) of clause (2) of article 187 for the words 'Governor' the word 'President' be substituted.

(iv) That in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (a) of clause (2) of article 187 for the words 'six weeks from the re-assembly of the Legislature' the words 'two weeks from the promulgation of any Ordinance' be substituted." and

"That the Explanation to clause (2) of article 187 be deleted."

The amendments were negatived.

Mr. President : The question is:

"That article 187 stand part of the Constitution."

The motion was adopted.

Article 187 was added to the Constitution.

New Article 196-A

Mr. President : We take 196-A. This is an amendment No. 2639, of which Dr. P.K. Sen has given notice. A similar amendment relating to Supreme Court was moved by Dr. Sen, but was negatived today.

(Amendment No. 2639 was not moved.)

So it is dropped.

Article 203

Mr. President : We take up 203.

The Honourable Dr. B. R. Ambedkar: It is to be held over.

Shri T. T. Krishnamachari : 203 (2) (b)—there is the question of whether the particular sub-clause should be retained or modified. We require some time and might be ready with it tomorrow.

Article 208

Mr. President : We take up 208. There is no amendment to that.

That question is:

"That article 208 stand part of the Constitution."

The motion was adopted.

Article 208 was added to the Constitution.

Article 209

Mr. President : Article 209. There is no amendment to this either.

The question is:

"That article 209 stand part of the Constitution."

The motion was adopted.

Article 209 was added to the Constitution.

New Article 209-A

Mr. President : There are certain new articles proposed No. 209-A.

The Honourable Dr. B. R. Ambedkar: 209-A is to be held over.

Mr. President : Mr. Shibban Lal Saksena has given notice of one.

Prof. Shibban Lal Saksena : That also may be held over.

Pandit Hirday Nath Kunzru : Sir, I suggest in view of the Kangaroo procedure that is being adopted in regard to the discussion of the Constitution that all the articles should be postponed today and that we should be told definitely which articles will be discussed tomorrow. The procedure that is being adopted—for no fault of yours—is very inconvenient.

Mr. President : So far as today's Order Paper is concerned, that particular article which have been taken up are mentioned in it.

Pandit Hirday Nath Kunzru : What you have said is perfectly true but suppose it is put down on the Order Paper that the Constitution will be discussed this does not mean that any Member of the House can come prepared to deal with all the articles in the Draft Constitution on one and the same day.

Mr. President : So, far as today's Order Paper is concerned, the particular article which have been taken up are mentioned and I have taken them up in the order in which they are mentioned on the Order Paper. There was a complaint made the other day and so I suggested that the particular article should be mentioned.

I think we had better adjourn till 8 A.M. tomorrow.

The Assembly then adjourned till Eight of the Clock on Wednesday the 15th June 1949.