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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 16*th September* 1949

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

DRAFT CONSTITUTION—(*Contd.*)

New Article 15 A—(*Contd.*)

(Shri Jaspat Roy Kapoor rose in his seat.)

Mr. President : Do you want to say anything?

Shri Jaspat Roy Kapoor (United Provinces: General) : Sir, I want to speak on article 15 A.

Mr. President : Yes, we shall continue the discussion of article 15 A. Mr. Jaspat Roy Kapoor.

Shri Ram Sahai (Madhya Bharat) : *[Sir, I would like to know if you could give us an idea of the remaining programme of the House. It would have been convenient to us if you had made an announcement in this connection at the time the Assembly commenced its sitting today. I may draw your attention, to the fact that you had told us, you would be making this announcement today.]*

Mr. President : *[I did not make the announcement in the beginning on account of certain difficulties.] I would request Members not to prolong the discussion, because, after all, it deals with a subject which was discussed in the last session at great length, and we want to get through all this within today and tomorrow, if possible. If all this is discussed and finished, tomorrow there are certain other items which will come in later, namely, the Preamble and the first article.]*

Shri T. T. Krishnamachari (Madras: General) : The Preamble won't be taken up now, but at the end.

Mr. President : Very well. The first article will come, and we shall have also the Bill. The House now knows the amount of work which has to be gone through between today and tomorrow and if you take that into consideration, I hope the Members will curtail the discussion as much as possible so that we might finish the discussion tomorrow and end the session tomorrow.

Shri Jaspat Roy Kapoor : Sir, I assure you that, I will scrupulously respect your wishes in fact it is no pleasure to refer to article 15 A, the whole article is jarring to the ear and is one more illustration of the conservatism which characterises the chapter on Fundamental Rights. The chapter can more appropriately be called 'Limitations on Fundamental Rights" or after the words "Fundamental Rights" we can add the words "and limitations thereon". For the emphasis seems to be not so much on rights of liberty as on restrictions and limitations thereof.

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*[ ] Translation of Hindustani speech.

[Shri Jaspat Roy Kapoor]

I will only refer to four or five points. There are, firstly, two clause of persons who may be arrested : (1) those arrested on a specific charge, and (2) those who are to be detained, not for any specific offence, but because their detention is thought necessary in the interests of the State. With regard to the first class of persons, they are being given no new rights whatever. The article says that no person shall be arrested without the authority of a magistrate. But that right every citizen has got under the Criminal Procedure Code. It may be said that that Code can be changed by Parliament or even by the provincial legislature. But still, trusting in the good sense of the legislatures as we do, we may take it that they are not going to provide for detention, even on a specific charge, beyond 24 hours without the authority of a magistrate. Therefore, the right conceded here is one which the citizen already enjoys. It is further provided that he shall be produced after 24 hours of his arrest before a magistrate. That provision also appears in the Criminal Procedure Code. Therefore this article confers nothing that is new or guarantees nothing which any legislature would not provide for.

With regard to the second class of persons, *i.e.,* persons who are, to be detained for security purposes, they are being given no rights worth the name in this article. Clause 3(b) provides that "Nothing in this article shall apply to any person who is arrested under any law providing for preventive detention", which means that the elementary right of not being detained beyond 24 hours except under the authority of a magistrate is being denied to the person detained, and he can continue to be detained for any length of time, subject of course to certain provisions of the law under which he may be detained. But that is another thing. It may be said that no preventive law would provide for the arrest and detention of a person without the authority of a magistrate. That means that you are depending on the good sense of the legislature. If so, there is no occasion for guaranteeing anything in the chapter on fundamental rights. In this chapter we must provide for certain essential fundamental rights irrespective of the fact that the legislature may or may not be reasonable. So this right of not being detained except with the authority of a magistrate is not being conceded to a person who is to be detained for security purposes.

Then, the person detained may be continued in detention for any length of time, except that if it goes beyond three months the advice of an advisory board would be necessary. Even here we find that after the board has considered his case he can continue to be detained for any length of time. That I consider to be very unfair. I think we should provide for the periodical review of such cases. I gave notice of an amendment to that effect but could not move it, as I was unfortunately unable to be present here when its turn came. But if it appears to be necessary to Dr. Ambedkar I think he can make a provision here to that effect. What I suggest is that the case should be reviewed every three months or even after longer intervals, so that the person detained may have the satisfaction of knowing that his case is being periodically reviewed. Otherwise it will mean that if, after three months of detention, the Advisory Board feels that he should continue to be detained, his case will not be reviewed at all thereafter and he will be at the mercy of the executive for any number of years.

Shri Brajeshwar Prasad (Bihar : General) : Is it a fact that he will be detained for any number of years, or will a maximum limit be prescribed by Parliament.

Shri Jaspat Roy Kapoor : It is not obligatory on Parliament to prescribe any maximum limit. Clause (4) says that Parliament may, if it so chooses,

enact such a law, but it does not impose any obligation on Parliament. And besides a person detained under a law enacted by Parliament under clause (4) would not have, according to clause (3), proviso (b), the benefit of review of his case at all by the Advisory Board.

Shri Brajeshwar Prasad : If Parliament makes a law it will have to lay down a maximum limit.

Shri Jaspat Roy Kapoor : Yes, but is it obligatory on Parliament to make such a law ? And even if it does make the law, where is it prescribed that the maximum *must* be fixed and even if it is fixed, is any period being suggested here? Must not this Assembly suggest to Parliament for its guidance that such and such a period shall be the maximum period of detention which must be provided in the law which Parliament may make ? You are again leaving the whole thing to the good sense of Parliament. If so, why make an unnecessary show of this article 15 A by saying that you are conceding certain fundamental rights, whereas, as a matter of fact, you are suggesting the extent to which the legislature can freely go to impose limitations on personal liberty ? So far as detenus are concerned, they are given no protection in this chapter and I submit that this is very hard and strikes at the very root of fundamental rights and personal liberty. The person detained may be kept in detention without the sanction of the magistrate and for any length of time and without even reason for detention being told to him. There shall be only one review of his case and there shall be no periodical review. I submit, if nothing else is conceded by the Honourable Dr. Ambedkar, at least this one thing should be conceded, namely, that the cases of such persons shall be reviewed periodically after every three months, or it may be even after six months : otherwise, once a person is detained, and once the Advisory Board agrees to his detention for a period longer than three months, the fate of that person is virtually sealed and he is doomed. He is absolutely at the mercy of the Executive. After six months, after nine months and even after twelve months the conditions in the country may change. Something more may come to light and those changed circumstances, those new things must be placed before the Advisory Board, and the Advisory Board, in view of the changed conditions and the fresh facts coming to light and being placed before them, should be in a position to advise the Government whether continued detention for another six, nine or twelve months is necessary. This is a very simple and reasonable thing. Let not this last ray of hope which may be created in the detenus be taken away altogether. We who have had the good fortune, I should certainly say, of being detained during the various *satyagraha* movements, know how many of us anxiously looked forward to the expiry of the period of six months, whereafter we used to think and hope that our cases would be reviewed by the authorities and that they might consider it advisable and necessary to release some of us. Let us not forget these feelings and the experiences which we have bad, and let us not forget that though today we are in power, who knows tomorrow someone else may be in power and may be in the position in which the present detenus are! So, whosoever may be detained, let him have these fundamental rights. Without even these rights being guaranteed here it is a huge joke to ask us to accept this article as even guaranteeing fundamental rights, whereas in fact it works more the other way about.

Shri M. Ananthasayanam Ayyangar (Madras: General): I would have very much liked to retain the words "due process of law" in the original article itself, but unfortunately our other friends differed and ultimately the House accepted the change of expression "procedure prescribed by law". My honourable Friend, the Chairman of the Drafting Committee himself felt that it was too wide and therefore there was not that guarantee of expression in article 15 as modified and which might not be a fundamental right, because Parliament can do whatever it likes. Therefore there is not anything like an

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inherent right which Parliament cannot remove. Another fundamental to be incorporated or implemented in a clause in the Constitution must be such as cannot be taken away by a provision of Parliament except under exceptional circumstances. That kind of limitation is not there in article 15 as passed. That is why the Honourable Dr. Ambedkar and the Drafting Committee have thought it to add these clauses by way of caution. It is no doubt true that these clauses find a place in the Criminal Procedure Code today but the necessity of incorporating these in the Constitution itself is this. It might be possible that what is now prevalent or what now obtains in the Code might itself be modified. As a matter of fact, many of my friends want some more restrictions to be imposed here, to prevent Parliament later on from modifying the rules and the Criminal Procedure Code in such a manner that the safeguards might be taken away. For instance, exception is taken to the words "as soon as may be". They want it to be done within 24 hours. I find there is a practical difficulty in this matter. Under section 107 of the Criminal Procedure Code, as soon as a man is arrested, he must with reasonable speed be taken before a Magistrate. It does not matter whether that Magistrate has jurisdiction over that case or not. There is that lacuna. But a Third Class Magistrate—unless a Second Class Magistrate is empowered—would not be authorised to commit or remand the prisoner into custody for a period of 15 days. Under the existing Criminal Procedure Code this is a defect. The man who is not in charge, who will not ultimately take the responsibility for hearing the case may remand to police custody for a further period of 15 days. There it is. In section 167 it is clear that the police who make an application that the accused must be further remanded to custody, must lay sufficient grounds before the Magistrate, the information that they have, the accusation against him, the charges that will be ultimately developed—all these matters have to be placed before the Magistrate to enable him to come to a conclusion as to whether it is necessary to remand the accused further for a period of 15 days. It may be possible for the police officer to give that information straightaway, in which case, the amendment asking for information within 24 hours is legitimate. But there may be cases where it may not be possible to give that information. The very object of remanding will be frustrated by giving the information straightaway within 24 hours. What is the object of remanding a man to custody ? It is to prevent him from tampering with the evidence that might be possible. In very serious cases this is a handicap. The man accused very often interferes with evidence and makes it impossible for that evidence to come about.

Under these circumstances, I have doubts in my mind as to whether it will be prudent in every case to give information to the accused within 24 hours of whatever information the police may have. There may be cases where the police may abuse that power and in their enthusiasm merely on suspicion they may arrest a person and also desire a remand to custody for a period of 15 days. Here in our own Government, in a Government where there will be a majority in favour of the popular Government, that Government may not easily allow such abuses. The balance of convenience is in favour of allowing this clause to remain as it is instead of substituting it by a period of 24 hours. It may be dangerous to give information before the evidence is ripe, and can be placed before the Magistrate and the accused.

As regards the suggestion made that at the end of article 15 (a) (i) the words "to consult a legal practitioner of his choice and also be defended in a court of law" be added, I agree with it. In many cases we know—as in the 1942 movement—there was more right to cross-examine witnesses.

Shri K. Kamaraj (Madras : General) : If the choice of a person for instance a Communist of the day, is a Russian lawyer, would you allow it ?

Shri M. Ananthasayanam Ayyanger : A Russian lawyer is good for Russia, but a different kind of lawyer will be good for us. Let us not be prejudiced against lawyers. As a matter of fact, but for 'lawyers, this Constitution would not have come into existence. They are contributing a lot to the world. I do not want to dilate upon this. We can quarrel every day with a lawyer but you cannot get rid of him nor dispense with his services. More often than not, he is the victim of reproach and unfortunate misunderstanding. He has done yeoman service to the cause of freedom. Therefore this power or this right must be conferred by Statute. I would urge upon my honourable Friend, Dr. Ambedkar, whether the right to be defended by a lawyer and the right of cross examining witnesses ought not to be conferred here. In cases of emergency, nothing can be done. But normally, this is what ought to be conceded to any person who is arrested.

There is an amendment which was tabled by my honourable Friend Pandit Thakur Das Bhargava that there must be a clause to say that the trial must be speedy. The present provisions in the Cr. P. C. are sufficient and hence there need not be a clause to this effect. In the nature of it the expression "speedy" is indefinite. What is speedy in one case may not be speedy in another. So such a clause is unnecessary.

I am in favour of making it obligatory that in every case where there is a punishment imposed or a sentence of punishment made there must be at least one right of appeal, because we cannot entrust the liberty of a person into the hands of only one individual. The present criminal law has been made with a view to protect property much more than a person. It is unfortunate that the previous government and those who conquered us did not value the human personality as much as they did property. That has to be changed. We are not giving the right of vote according to the property of a man, not even according to his literacy. Under the Constitution every human being is entitled to vote. Therefore every human being is entitled to be protected at any cost : the human personality is sacred. Judging from that standpoint I would allow at least one right of appeal which should be incorporated in the Constitution itself.

As regards preventive detention my honourable Friend Dr. Bakshi Tek Chand has taken exception to the provision being made in the Constitution itself. He said that in no constitution in the world such preventive detention is provided for, meaning thereby that Parliament is not prevented from enacting a law subsequently, for the purpose of preventing the committal of any offence. It is not by virtue of this clause that Parliament is clothed with that power. We shall assume that, that power is not here. Unless you say definitely that there should be no preventive detention would it not be open to Parliament.....

Pandit Thakur Das Bhargava (East Punjab : General) : According to the present section the Parliament will not be able subsequently to enact that any person can be detained for less than three months. This gives power for three months practically to the local executive to put a man in prison without his being brought to trial. The Parliament subsequently will not be able to tamper with the period of three months. That is the difficulty.

Shri M. Ananthasayanam Ayyangar : The provision reads:

"An Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

From this I do not read that Parliament would not be empowered to change even the period of three months. All that it says is that it clothes the authorities with the power to detain for three months at the most. They cannot go beyond the period of three months without placing the matter before the

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Advisory Board. It does not speak of the Parliament's right. The main point is this. When a man is arrested his case must be placed before the Advisory Board. I believe, in spite of the wording, that Parliament has the right to say that notwithstanding this clause immediately after a man is arrested for purposes of preventive detention, his case shall go before the Board and it would be open to the Board to come to any conclusion, even to say that the man may be let off even within three months.

Shri Jaspat Roy Kapoor : Will a person detained under a law enacted under clause (4) have the benefit of a review by the Board?

Shri M. Ananthasayanam Ayyangar : Yes.

Shri Jaspat Roy Kapoor : No. He will not have that benefit.

Shri M. Ananthasayanam Ayyangar : The clause reads:

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law-providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained."

It is true that this apparently seems to apply only to cases where a man is sought to be detained beyond three months. If it is for a period below three months, whether Parliament has a right or not is not clear from this. As I read the article it is not intended to curtail the rights of Parliament. It may take away the right to get information from the police. It might be open to Parliament to empower the police not to give any such information at all. In those details Parliament's power of restricting the liberty of the citizen is taken away. Otherwise wherever an Advisory Board is appointed, whether Parliament prescribes the law or not, a man cannot be detained for more than three months unless the matter is decided by the Board. Parliament has to enact a law under what circumstances and what officer and of what rank can detain man for purposes of preventive detention.

I find here a lacuna. It is not clear to me whether it is open to the Advisory Board to review cases from time to time, say once in three to six months. The cases of people detained in 1942 were reviewed once in six months. There is no such provision in proviso (a) as worded here. The proviso ought to be suitably amended 'so as to give the power of review to the Board to look into these matters. The Chairman of the Drafting Committee has been able to imagine a number of hardships and has tried to make provision for all of them but there is one thing wanting. He has never been for even a period of three months in jail at any time and therefore he has not thought of the hardships suffered by others, Even the previous government made a provision to review cases once in six months, though it may be said that such a provision for review was useless. But that is a different matter. We must provide here for review from time to time. The Advisory Board should not sit once for all. There may be other circumstances which may necessitate a man's release after a period of three or six months. So this provision must be subject to a law providing for review from time to time.

Lastly, our friends have tabled an amendment that the maximum period for which any such person may be detained may not be more than one year. While I agree that in the first instance it ought to be three months and should not exceed one year, there may be exceptional cases as in a state of emergency. In cases other than such there may be a restriction of one year.....

Pandit Thakur Das Bhargava : In an emergency these provisions will not have any force at all.

Shri M. Ananthasayanam Ayyangar : If these are intended in ordinary cases there might be a political party whose agitation is accompanied by plucking off of eyes or cutting off of arms and other barbaric methods by friends who are as dark in colour as we are. I do not know what to do with them. These have become a part of their tactics and I do not know whether they are likely to change. Under those circumstances in the interest of the State is it not reasonable that we should make provision without limiting the period of detention ? It might be that the officers or the executive might abuse this power. So I would say a year in the first instance, but in exceptional cases it may be continued for a year more. We should also fix the maximum period for which any such person should be detained. It may also be considered whether it ought not to be left to Parliament to fix the maximum according to the exigencies of the circumstances. If the period is now prescribed as one year, it may not be possible to change it except by an amendment to the Constitution which requires two-thirds majority. I am not fully in agreement with this. I therefore welcome a modification in the form suggested. Otherwise, the procedure 'as enacted by law' would throw open the flood-gates and Government will be able to curtail the liberty of the citizen and put him in jail even recklessly. If there is a political rival capable of fighting you at the elections the possibility is that you will clap him in jail. Therefore, this clause may be a little improved by provision that a lawyer might be engaged to defend a person Provision may also be made to enable the Advisory Board to review the cases within three months and also fix a period or empower Parliament to effect a change when necessary in this respect.

Shri Mahavir Tyagi (United Provinces: General) : Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : I shall try hereafter to acquire that experience.

Shri Mahavir Tyagi : I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with his own hands will give him that privilege in his life-time. There will come a day when they will be detained under the provisions of the very same clauses which they are making, (Interruption). Then they will realise their mistake. It is all safe as long as the House is sitting and the Members are sitting on these Benches. But then let us not make provisions which will be applied against us very soon. There might come a time when these very clauses which we are now considering will be used freely by a Government against its political opponents.

Sir, in this article we are required to grant rights and privileges to the people, but along with them I am surprised to find that it has occurred to the Drafting Committee and their friends and advisers to provide herein penal clauses also. This is a charter of freedom that we are considering. But is this a proper place for providing for the curtailment of that very freedom and liberty? When freedom is being guaranteed, why does the Drafting Committee think it fit to introduce provisions for detaining people and curbing the freedom? This is an article which will enable the future Government to detain people and deprive them of their liberty rather than guarantee it.

Sir, life, liberty and pursuit of happiness are the three chief fundamental rights of every individual. The state comes into being not because it has any inherent right of its own, but because the individual, who has inherent rights of life and liberty, foregoes a part of his own rights and deposits it with the State. Every individual is born equal. That is one principle. So every

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individual has the inherent right of freedom of life, of liberty and of option for the pursuit of happiness. These rights are inherent and inalienable. Even if one chooses to alienate these rights, I submit, he cannot do so because they are inherent in him and they are inalienable. But the individual voluntarily transfers some, of his inherent rights and pools them to the cumulative store of social rights known as the State.

The State is thus organised and constituted, not by depriving people of their inherent rights, but by the voluntary will of the people to enhance those rights and enrich the individual freedom. Individuals agree to form a society In the hope and with the intention that society, with the stock of cumulative rights contributed by them will help the individual in becoming richer with his freedom and freer in his pursuit of prosperity and happiness. So that the State would safeguard his individual freedom against the interference of another individual.

Now we are making a Constitution guaranteeing these inherent rights. What relevancy is there for a detention clause in the Constitution which is meant to guarantee fundamental rights to the citizens ? I am afraid the introduction here of a clause of this kind changes the chapter of fundamental rights into a penal code worse than the Defence of India Rules of the old government. I have suffered under the Defence of India Rules long detentions. I have suffered from such detention. How I wish Dr. Ambedkar was with me in jail after being arrested and hand-cuffed for a whole night ? I wish he had had my experience. If he had been hand-cuffed along with me, he would have experienced the misery. I fear, Sir, the provisions now proposed by him would recoil on himself. Sir, as soon as another political party comes to power, he along with his colleagues will become the victims of the provisions now being made by him.

Shri Brajeshwar Prasad : Constitution or no-Constitution.

Shri Mahavir Tyagi : In Urdu there is a couplet which says:

'Kas rahe hain apni minquaron se halqa jalka'.

That is what really we are doing. We are making it easy and convenient and legal for the future Governments to detain us. That is the meaning Sir, I do not wish to say more on this point. I only wanted to warn the House that if we pass this article as it is we will simply be making a provision which will be used against us.

Mr. President : That you have done. So far as the details are concerned, they have been dealt with by other speakers in great detail.

Shri Mahavir Tyagi : If you think so, I shall now merely refer to the defects of the provision.

Mr. President : The defects have been pointed out by other speakers in great detail. You will be only repeating them hereafter.

Shri Mahavir Tyagi : No, Sir, I, will not repeat their arguments.

Here it is mentioned that "nothing in this article shall apply (a) to any person who for the time being is an enemy alien" this is agreed-and "(b) to any person who is arrested under any law providing for preventive detention." Now, Sir, such persons as are detained under any law of preventive detention will have the privilege, according to the proviso, of their cases being judged by an Advisory Board. Persons who are detained by the Government for more than three months, their cases will be judged or at least reviewed by an

Advisory Board, but the cases of such persons, as come under clause (4) will not be reviewed at all. It is said "unless such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article" which means, Sir, that all such cases of detention which come under such laws which are enacted by Parliament under clause (4) shall have no privilege of revision by any Advisory Board. I want to know why the privilege of report by the Advisory Board is not given to cases of detention under the provisions of any law made by Parliament under clause (4). When we are providing for an Advisory Board here, we could also include the cases of such persons as are detained under any law which Parliament may hereafter make under clause (4). My Friend, Pandit Thakur Das Bhargava, has really done a wrong to the House by pressing his demand for safeguards against the misuse of article 15. Instead of giving more guarantees, Dr. Ambedkar has only brought in a couple of clauses from the Criminal Procedure Code which are no new guarantees, and immediately along with those clauses he has brought in a clause for detention.

I say, Sir, that it is not the business of the Constituent Assembly to vest in the hands of the future governments powers to detain people. It is for the coming generations to do that, if they think it necessary and if they want to incur the displeasure of the people by enacting such laws. It is not the business of the Constituent Assembly. In no constitution of the world have I read of such criminal law being enacted by the constitution-makers. We are here to guarantee the rights of the people and not to make criminal laws to deprive people of their rights. We have given here no right of referendum no right of recall, to the people, and still every fundamental right which has been given has been restricted by something or the other. And in this article particularly it is not only restriction, but it is a case of contradiction, total contradiction of the rights. I can never agree to the incorporation of this article.

I would ask Dr. Ambedkar and the Drafting Committee if they are also prepared to arm, the people also with the power to overthrow a government which works destructively against the fundamental rights which they have granted to them. Surely the people have got the right to overthrow, abolish or alter such a government and to constitute another government which they think would be more likely to effect their safety and happiness.

Shri T. T. Krishnamachari : It is an extra-constitutional right.

Shri Mahavir Tyagi : The constitution must also say something about the power of the people. Have you given the people anywhere the right to overthrow the government which acts destructively against the rights of the people? That inherent right of the people you have not guaranteed. It is not for us to guarantee the rights of the Government alone. We have to see that government has rights but the people also must have rights. It will be a totalitarian government that we will be having immediately after we pass this Constitution, and I must warn the House that if they bring in so many restrictions on the rights of the people and arm the government with powers to be used against the people, the people may not like this dreadful concentration of power in the government. The government can only have those rights which individuals voluntarily surrender to the government . No government has a right to have powers which individuals are not prepared voluntarily to contribute to it. With these words, I request the Drafting Committee to withdraw this article altogether.

Dr. P. K. Sen (Bihar: General) : Mr. President, Sir, after the eloquent appeal of my honourable Friend, Mr. Tyagi, it may be rather dull and drab for the House to hear me speak in a different vein. There is no question at all that the individual has rights which have got to be protected, but at the

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same time I think, judging from the trend of this debate from the very beginning up till now, the House is agreed that there are circumstances which compel the world today—not only our country but every country—to take certain measures which may defend the State against subversive measures. The only question is how far and to what extent individual right, the fundamental right to liberty and freedom, and safety and security of the person, should be circumscribed in the interests of the security and safety of the State as a whole. It is the old question of individual *versus* State and the extent to which the rights of either should be adjusted so that, not by destroying individual liberty but by circumscribing it to a certain extent, the welfare of the whole State may be secured.

Sir, I do not propose at all to go through all the details which have already been placed before the House by my honourable Friends, Pandit Thakur Das Bhargava and Dr. Bakhshi Tek Chand and several other speakers. The whole dispute as to whether it should be "due process of law" or "the procedure established by law", and the history of it all has been discussed. The only short point upon which I wish to address the House today is in support of the amendment brought forward by my honourable Friend, Dr. Bakhshi Tek Chand, in regard to informing the detenu, the person arrested, of the grounds on which he has been arrested. This is really the minimum that can be done and should be done. It has been hinted that the Honourable Dr. Ambedkar was inclined to accept the amendment but that he was overborne by "extraneous forces." It has even been suggested that Dr. Ambedkar has appeared in this House in double personality,—the one Dr. Ambedkar, plain and simple as he is intensely in sympathy with the individual as regards rights and liberties and the other somewhat like the ghost of himself, as it were, like the perturbed spirit in Hamlet hovering about and over his innate love of freedom and yet being overborne by other forces. I do not believe it, Sir. I do not believe that he is capable of it or that the Drafting Committee is capable of it. Let us not regard the Drafting Committee or those who are in charge of these articles before they are finally shaped as if they were an Opposition or as if we were in opposition to them. The simple question is this : Whether the modicum that should be allowed to the citizen has been allowed or not. I do believe that when a man has been detained, it is unquestionably his right to know the grounds upon which he has been arrested and detained. This is the minimum that can be done. The Board has already been provided for in the article constituted of judges of the High Court, or those who have been judges of the High Court or those who are qualified to be judges of the High Court. Such a Board is to go into the question as to whether or not the grounds are sufficient or not; and the whole affair as to whether three months should be the limit or whether the period could be enhanced or enlarged is to be in the hands of the Board. If that be so, it is the simplest thing in the world for the Board to know what the grounds of arrest are.

It is not suggested at all that the whole of the evidence should be placed before the person arrested, because it is a notorious fact that in regard to these persons who are charged with subversive activities the evidence is very difficult to find, the evidence may also be counteracted by concocted evidence, and therefore, it is not necessary at all for the purpose of acquainting him with the ground of his detention or arrest that he should be given all the materials or data of the evidence. That, I take it, is not suggested in the amendment. All that is suggested is that the moment a man is arrested the matter should be in the hands of this Particular Board which will be

appointed, and that Board having gone into the matter should at once inform him of the ground of his arrest so that he may know where he is. It may be that there are circumstances which he can disclose from which it will be found that he was arrested on no ground at all. I therefore, most emphatically submit that this amendment should be accepted.

As regards the other points urged, I will not repeat them. There may be certain things in the provisions of the article which appear to be rather against the fundamental rights, but as I have said, having regard to the troublous times which not only this country, but all countries in the world are passing through, some special measures for the security of the State are necessary and I hope the House in considering article 15 A will not lose sight of that fact and will not be carried away by emotion so as to think that it can make a clear sweep of the whole article (15A). That extreme view I am not prepared to subscribe to. I do submit, therefore, that the Drafting Committee would be pleased to consider this amendment very seriously and accept it. I thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. President, Sir, the article placed before us by Dr. Ambedkar deals with two matters, the conversion of the ordinary rights enjoyed by accused persons under the Criminal Procedure Code into constitutional guarantees and the manner in which persons detained under preventive detention laws should be dealt with. So far as the first question is concerned, it has been so fully dealt with that I do not want to deal with it except to say that I agree with the proposal of Pandit Thakur Das Bhargava that if an accused person is allowed to be detained for more than 24 hours by the Magistrate, he should record his reasons for doing so in writing that the accused person should have the right of examining the prosecution witnesses and of producing his defence and that at least one appeal should be allowed against every conviction. It is true, Sir, that most of these rights are enjoyed under the present Criminal law by accused persons, but if any of the rights now enjoyed is to become a constitutional right, it is desirable that the Constitution should contain the most important of those rights without which there cannot be a fair trial.

Now I come to the second part of Dr. Ambedkar's amendment. Clause (3) of this amendment says :

"Nothing in this article shall apply—to any person who is arrested under any law providing for preventive detention :

Under the various provincial Public Security Acts a man has to be informed almost as soon as he is arrested of the reasons for his arrest and detention; yet when we are dealing with this matter in connection with the Constitution, we are not giving a detained person the right that he now enjoys under the Provincial Public Security Acts. I think therefore that whether a detainee's case goes before the Advisory Board or not, he should be informed of the grounds on which he is detained as soon after his arrest as possible and should be given an opportunity of submitting his explanation to the Government. I should further like to submit that when a case is placed before the Advisory Board, the detainee should be given an opportunity of submitting a further representation to the Board, should he so desire. Besides, the Board should be at liberty to ask the Government to place the explanation of the detenu before it. If the Government do not choose to inform the Board of the explanation submitted by the accused, the Board should be at liberty to set him free.'

[Pandit Hirday Nath Kunzru]

The second suggestion that I should like to make, in connection with clause (3) is that whether a State Government is required to place the cases of detenus periodically before the Advisory Board or not, there ought to be a limit to the period for which a man can be detained. After all, the judicial review provided for in this clause will proceed only on the basis of written charges and replies. No witnesses will be produced, the detainee will not be represented by counsel and he, will not have an opportunity of cross examining the prosecution witnesses. It is possible therefore that even the Advisory Board may arrive at a wrong decision. The materials placed before it by the Government justifying the detention of a person will consist, I suppose, of police reports; and these reports, to put it mildly, may not always be correct. The Advisory Board will have to proceed only on the basis of police reports and however wise its personnel, it may not always be able to arrive at correct decisions. I think, therefore, that a limit should be set to the period for which a man can be detained.

Now, I come to the case of a man detained under a Parliamentary statute. We are told that Parliament being the supreme legislative body in the country and representative of the entire country it may be supposed to be not merely willing, but anxious to do justice to all classes of people. There is, therefore, no reason why its *bona fides* should be questioned or its powers should be curtailed by the Constitution. We have, Sir, in the United States a body known as the Congress which, in that country, is as supreme ask Parliament will be in this country. Nevertheless, the Constitution of the United States limits the powers of this body in respect of the arrest of persons, searches of dwelling places, and so on. We may, therefore, without casting any reflection on Parliament and without unduly derogating from its authority, provide in our Constitution some of the safeguards, or rather something remotely resembling the safeguards provided in the United States Constitution. Even if my proposal is accepted that is, even if Parliament is required to fix a period for the detention of a person, we shall be far from having provided all those guarantees of liberty that the United States Constitution does.

The United States Government is today controlling the administration of Japan. A Military Commander exercises ultimate authority there. But notwithstanding the abnormal position that prevails in Japan, the Japanese people have been given in substance all those Constitutional guarantees that the people of the United States enjoy under the Constitution of that country. In order to give an illustration of what I mean I shall read out only one provision of the Japanese Constitution. This provision is embodied in article 35 and runs as follows :-

> "The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon a warrant issued only for probable cause and particularly describing the place to be searched and the things to be seized, or except as provided for by article 33."

The exception provided for in article 33 relates to the arrest of a person while committing a crime.

The situation in India, even if it may not be supposed to be normal, is far better than the situation in Japan. But, the House has shown its unwillingness to give our people those guarantees of liberty that the people of Japan have been provided with notwithstanding the, extraordinary situation existing there. If the article under discussion is passed, the Central Government and the Provincial Governments will have the right of detaining persons under special laws. We shall be far behind the United States Constitution or the Japanese Constitution in regard to this matter. In these circumstances, I think it is necessary that we should restrain the power

of the executive to detain persons without trial so as to ensure that the detainees are not kept in detention for an indefinite length of time. This is the least that we can do for those who are deprived of their liberty.

I do not know, Sir, whether my suggestions will find favour with the Drafting Committee and the House. But I have no doubt whatsoever that the safeguards that I have suggested can be provided without affecting in the least the power of the Executive to deal even with such emergencies as may not be constitutionally recognised as such. It will have the power to arrest people and detain them. All that it will not be able to do is to detain them without limit of time.

It may be said that it is quite possible that it may not be desirable in the public interest that a person who is regarded as highly dangerous by the Executive should be set at liberty even after six months or a year. It is possible to conceive of such a case. If Government comes across such a case it will be able to deal with it by setting the man concerned at liberty, watching his behaviour for some time and then re-arrest him after some time if he does not behave properly; but there is no justification whatsoever for allowing any Government even with the approval of the Advisory Board to go on detaining a man not merely for months but for years.

Shri B. M. Gupta (Bombay: General) : Intervening at this late stage of the debate I shall be very brief. With regard to the details, they have been discussed at great length and I shall not traverse the same ground over again. I will only say that I am entirely in favour of liberalizing the provision as far as it is possible to be done. With regard to the general nature of the provision I will say that it is not an article over which one can enthuse. It is after all an attempt to rescue something out of fire and it should be judged in that light. It is an attempt to rescue something out of fire that eliminated the phrase "due process of law". Article 15 concerns the most vital of all the Fundamental Rights, *viz*., the right to life and personal liberty. Those of us who advocated the adoption of that phrase wanted to give that right the essence of Fundamental Right. And what is the essence of Fundamental Right ? In the small field of the basic needs of the civilized man, the limitation on the sovereignty of the Legislature and to that extent the supremacy of the judiciary, are the essence of the Fundamental Right, unfortunately we were defeated. This provision does not at all seek to restore that supremacy. Dr. Ambedkar has rightly said that article 15 gave a *carte blanche* for the arrest of any person under circumstances that Parliament may think fit. That right was there and it is not claimed that this article substantially restricts that right. Dr. Ambedkar is satisfied that these provisions are sufficient to guard against illegal and arbitrary arrest : but are they sufficient to prevent the Parliament from making any provision with regard to preventive detention ? That is the real test, and I submit that these safeguards are very minor safeguards. Clauses (1) and (2) of the article give no new rights at all. They are old rights—only they are made more difficult of abrogation. And the third point is in regard to the Advisory Committee. These are very minor safeguards and we can say that they are only small mercies. I am not against accepting them for whatever they are worth; but their real nature must be understood.

I do not blame Dr. Ambedkar or the Drafting Committee. We are all labouring in these matters under two handicaps. One of them is that many of the provisions come here as a result of prolonged discussion and negotiation between various schools of thought and various shades of opinion. It is often said that the thing is an integrated whole and we have to take it as a whole or reject it as a whole. We have to pay this price for agreement

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and concoct. I do not therefore grudge it. But the other difficulty is greater. On occasions like this sympathies of most of us go out to the high principles which in the past we proclaimed from housetops. But there are other friends who occupy seats of authority and responsibility throughout the country. They warn us that the aftermath of war and partition has unchained forces which if allowed to gain upper-hand will engulf the country in anarchy and ruin. They therefore advocate that Parliament must be able to pass laws arming the Executive with adequate powers to check these forces of violence, anarchy and disorder. They are great patriots and our trusted leaders. Many of us are not convinced that dire results would necessarily follow the adoption of the phrase "due process of law". But the difficulty is this, that even if we were to stand for our own convictions there is no scope far experimenting in such matters. There is a saying in Marathi that whether a thing is a poison or not cannot be tested by swallowing it; because if it is a poison the man dies. So in such matters there is no scope for experiment and we have therefore to heed to the warnings given by our leaders.

This does not mean that these provisions could not be liberalised. Even Dr. Ambedkar himself has said that these provisions could be expanded to add some more safeguards; but in substance we have ultimately to respect the warnings of our leaders and in these circumstances what should be our attitude ? Or at least what is my attitude ? My attitude is one of indifference. These are minor safeguards. Let them come for whatever they are worth. I will not oppose them with the vehemence of Pandit Bhargava or Bakhshi Tek Chand because after all they can do no harm. At the same time, if they are withdrawn by the Drafting Committee because of the opposition to them, then also no tears will be shed over their exit.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, while I support the new article 15 A moved by Dr. Ambedkar, I shall make a few observations on the subject under consideration. I know that I will be exhausting the patience of the House only if I have also taken some time to speak on this matter. But I feel strongly that I should make a few points and remarks on the speeches made during the debate in this House.

I have heard the honourable Members who were the enthusiastic champions of individual freedom and individual liberty, even to the extent of placing the exigencies of individual liberty above the exigencies of the State, describing this article as the Crown of all our failures. Sir, the question before us is this, whether the exigencies of the freedom of individuals or the exigencies of the State is more important. When it comes to a question of shaking the very foundations of the State, which State stands not for the freedom of one individual but of several individuals, I yield the first place to the State. I say this because I know that in my love and enthusiasm for individual freedom, I only stand for myself, and my interests; and the State is far superior, because it stands for the freedom and liberty of several individuals like myself. I do not think there can be a greater champion and advocate of individual freedom than De Valera the product of this century with the best democratic traditions. What is it that he has done? The very first thing that he did after becoming President was to pass a number of Public Security Acts. He had no other go. He had to do it, because a situation arose when he himself was to be murdered, what was he to do ?

My friends who spoke here have criticised the power that is being exercised in the matter of arrest and detentions. But they have not examined the position when this power is to be exercised, and under what circumstances. The

power is to be exercised only in cases when the individual tampers with the public order, as is mentioned in Concurrent List or with the Defence Services of the country. I need only ask you, to go to my part of the country, Madras, Malabar, Vijayawada. I may tell you, and I may draw your attention that no wife, no mother is feeling secure; they are not sure when their husbands would come back, whether they would return home or not. Such is the position. Also the menfolk when they go out, are not quite sure by the time they return home, whether the wife or the daughters are safe there in the house. That is the position. In that case, what is the State to do? What is the Government to do, to assure some kind of safety and security to these people ? Only in those conditions, when there is ample justification will the State resort to arrests and detentions.

This new article 15A introduced by Dr. Ambedkar is a very happy compromise. Think of the 1818 Regulation which had no time limit at all. Thereafter came the Public Security Acts of the various provinces. Now the Board has been introduced in this new article. The Board has got to go through these cases. Also in no case is the detention to go beyond three months, and if it has to exceed, then the Board has got to report. The Court has got to examine the papers and representations made by the Executive, very carefully. Dr. Ambedkar has very ably explained the limitations and the restrictions over this power, and I do not want to repeat them because I may be taking up too much time of the House. One point is that in no case is the detention to exceed three months. If it has to exceed, then the Board has to get a report and on that report only can the detention exceed; and also there is Parliament which would make the law, describing all such cases in which such detention thus got to exceed this period. These are the restrictions which are there to limit this power.

Sir, I do not want to go into the various amendments introduced by my honourable Friend Pandit Thakur Das Bhargava. He said : Give the right of appeal, at least once, and also the provisions for periodical reviews and conditional releases and so on. Dr. Ambedkar will deal with these points. I will only mention one or two points raised by my friend Shrimati Purnima Banerji in her amendments. I must say that I am very much in sympathy with two of her amendments. One of them provided for the personal appearance of the person detained, before the Board, to give reasons and explanations. I think the drafting Committee should have no difficulty in agreeing to that. After all, the Board will not lose much by at least having a look at the person detained and receiving his explanations and reasons. I do not know whether it raises any administrative difficulty, but that will be dealt with by the Drafting Committee. I have confidence in the Government. Can there be a greater advocate and champion of personal freedom than our government, our Prime Minister, and our Deputy Prime Minister who always are here to give relief to the poor and the needy and those who suffer ?

Another amendment of Shrimati Purnima Banerji asks for the maintenance of the dependents of the person detained. Yes, here also I am very much in sympathy with her point, for if the person detained is a bread-winner, then his dependents, his immediate dependents have got to be provided. It would be better to give some sort of guarantee about this, instead of leaving it to Executive Power and to their sweet will. But how is it practicable? That is the question. There are many people who ‘are poor in our country. Her point is that about fifty per cent of the cases would result in releases or discharges. And she also says that the benefit of doubt might be given to the accused in these cases. Are the dependents of the man detained to suffer indefinitely? That is her question. But I say, this is a question which has always been considered by the government of the province and in deserving

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cases, the necessary relief is being provided. But in another way it might be argued that this is putting a premium on delinquency; if he is assured of provision for his family he might go on committing crimes and challenging the foundations of the State. I think it is better to leave this matter to the provincial Governments or which ever Governments might deal with these cases.

Then, Sir, I think the words "legal practitioner" in article 15A(1) require some explanation. We know that Mr. Kasim Razvi engaged counsel from England whose appearance was refused. Now should it be open to this man to engage any one from any place ? If there are rules to cover this point I have no objection : otherwise I suggest that after the words "legal practitioner" the words "qualified or authorised to appear in these cases" may be added.

Sir, I commend this article for the acceptance of the House.

Mr. President : I understand Dr. Ambedkar has to make certain suggestions to meet the criticisms that have been made against this article. I would therefore give him a chance to speak at this stage and if any further question arises we can consider it.

Babu Ramnarayan Singh (Bihar: General) : Does he agree to remove the article altogether ?

Mr. President : No.

The Honourable Dr. B. R. Ambedkar : Sir, I really did not think that so much of the time of the House would be taken up in the discussion of this article 15-A. As I said, I myself and a large majority of the Drafting Committee as well as members of the public feel that in view of the language of article 15, *viz*., that arrest may be made in accordance with a procedure laid down by the law, we had not given sufficient attention to the safety and security of individual freedom. Ever since that article was adopted I and my friends had been trying in some way to restore the content of due procedure in its fundamentals without using the words "due process". I should have thought that Members who are interested in the liberty of the individual would be more than satisfied for being able to have the prospect before them of the provisions contained in article 15-A and that they would have accepted this with good grace. But I am sorry that is not the spirit which actuates those who have taken part in this debate and put themselves in the position of not merely critics but adversaries of this article. In fact their extreme love of liberty has gone to such a length that they even told me that it would be much better to withdraw this article itself.

Now, Sir, I am not prepared to accept that advice because I have not the least doubt in my mind that that is not the way of wisdom and therefore I will stick to article 15-A. I quite appreciate that there are certain points which have been made by the various critics which require sympathetic consideration, and I am prepared to bestow such consideration upon the points that have been raised and to suggest to the House certain amendments which I think will remove the criticism which has been made that certain fundamentals have been omitted from the draft article 15-A. In replying to the criticism I propose to separate the general part of the article from the special part which deals with preventive detention; I will take preventive detention separately.

Now turning to clause (1) of article 15-A, I think there were three suggestions made. One is with regard to the words "as soon as may be". There are amendments suggested by Members that these words should be deleted and in place of those words "fifteen days" and in some places "seven days"

are suggested. In my judgment, these amendments show a complete misunderstanding of what the words "as soon as may be" mean in the context in which they are used. These words are integrally connected with clause (2) and they cannot, in my judgment, be read otherwise than by reference to the provisions contained in clause (2), which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that "as soon as" cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those amendments are entirely misplaced and are not wanted.

The second point raised is that while we have given in clause (1) of article 15-A a right to an accused person to consult a legal practitioner of his choice, we have made no provision for permitting him to conduct his defence by a legal practitioner. In other words, a distinction is made between the right to consult and the right to be defended. Personally I thought that the words "to consult" included also the right to be defended because consultation would be utterly purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity or any argument that may be raised that consultation is used in a limited sense, I am prepared to add after the words "to consult" the words "and be defended by a legal practitioner", so that there would be both the right to consult and also the right to be defended. A question has been raised by the last speaker as to the meaning of the words "legal practitioner of his choice". No doubt the words "of his choice" are important and they have been deliberately used, because we do not want the Government of the day to foist upon an accused person a counsel whom the Government may think fit to appear in his case because the accused person may not have confidence in him. Therefore we have used the words "of his choice". But the words "of his choice" are qualified by the words "legal practitioner". By the phrase "legal practitioner" is meant what we usually understand, namely, a practitioner who by the rules of the High Court or of the Court concerned, is entitled to practise.

Now, Sir, I come to clause (2). The principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whom he wanted to take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate" : the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice : whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near about, or Whether we should go in search of a First Class Magistrate. I think

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"the nearest Magistrate" is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment—" the nearest First Class Magistrate"—it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.

Now, those are the general provisions as contained in article 15 (a), and I am sure.....

Pandit Thakur Das Bhargava : Kindly consider....

The Honourable Dr. B. R. Ambedkar : Now, my Friend, Pandit Thakur Das Bhargava has raised the question of the right of cross-examination.

Pandit Thakur Das Bhargava : And for reasons recorded.

The Honourable Dr. B. R. Ambedkar : Well, that I think is a salutary provision, because I think that the provision which occurs in several provisions of the Criminal Procedure Code making it obligatory upon the Magistrate to record his reasons in writing enables the High Court to consider whether the discretion left in the Magistrate has been judicially exercised. I quite agree that that is a very salutary provision, but I really want my friend to consider whether in a matter of this kind, where what is involved is remand to custody for a further period, the Magistrate will not have the authority to consider whether the charge framed against the accused by the police is *prima facie* borne out.

Pandit Thakur Das Bhargava : At present also under section 167(3) these words are there. It is today incumbent upon every Magistrate to whom a person is taken to record the reasons if he allows the detention to continue.

The Honourable Dr. B. R. Ambedkar : That is quite true. They are there, But are they very necessary?

Pandit Thakur Das Bhargava : Absolutely necessary?

The Honourable Dr. B. R. Ambedkar : Personally, I do not think they are necessary. Let us take the worst case. A Magistrate, in order to please the police, so to say, got into the habit of granting constant remands, one after the other, thereby enabling the police to keep the accused in custody. Is it the case that there. is no remedy open to the accused? I think the accused has the remedy to go to High Court for revision and say that the procedure of the Court is being abused.

Pandit Thakur Das Bhargava : How can a poor person go to the High Court?

The Honourable Dr. B. R. Ambedkar : I do not want to close my mind on it. If there is the necessity I think the Drafting Committee may be left to consider this matter at a later stage, whether the introduction of these words are necessary. As at present advised, we think those words are not necessary.

Now I come to the second part of article 15(3) dealing with preventive detention. My Friend, Mr. Tyagi, has been quite enraged against this part of the article. Well, I think I can forgive my Friend, Mr. Tyagi, on that ground because after all, he is not a lawyer and he does not really know what is happening. He suddenly wakes up, when something which is intelligible to a common mind, crops up without realizing that what crops up and what makes

him awake is really merely consequential. But I cannot forgive the lawyer members of the House for the attitude that they have taken.

What is it that we are doing? Let me explain to the House what we are doing now. We had before us the three Lists contained in the Seventh Schedule. In the three Lists there were included two entries dealing with preventive detention, one in List I and another in List III. Supposing now, this part of the article dealing with preventive detention was dropped. What would be the effect of it ? The effect of it would be that the Provincial Legislatures as well as the Central Legislature would be at complete liberty to make any kind of law with preventive detention, because if this Constitution does not by a specific article put a limitation upon the exercise of making any law which we have now given both to the Centre and to the Provinces, there would be no liberty left, and Parliament and the Legislatures of the States would be at complete liberty to make any kind of law dealing with preventive detention. Do the lawyer Members of the House want that sort of liberty to be given to the Legislatures of the States and Parliament? My submission is that if their attitude was as expressed today, that we ought to have no such provision, then what they ought to have done was to have objected to those entries in List I and List III. We are trying to rescue the thing. We have given power to the Legislatures of the State and Parliament to make laws regarding preventive detention. What I am trying to do is to curtail that power and put a limitation upon it. I am not doing worse. You have done worse.

Coming to the specific provision contained in the second part, I will first....

Pandit Thakur Das Bhargava : Who made those Lists?

The Honourable Dr. B. R. Ambedkar : I made them: you passed them I had these limitations in mind. Now I come to the proviso to clause 3 (b).

Shri Mahavir Tyagi : Will you help laymen to understand as to why you have not provided for the revision by the Advisory Board of the cases under clause (4) ?

The Honourable Dr. B. R. Ambedkar : I cannot explain to him the legal points in this House. This House is not a law class and I cannot indulge in that kind of explanation now. The honourable Member is my friend; if he does not understand he can come and ask me afterwards.

Now I will deal with the proviso which is subject to two sorts of criticisms. One criticism is this : that in the case of persons who are being arrested and detained under the ordinary law as distinct from the law dealing with preventive detention, we have made provision in clause (1) of article 15 A. that the accused person shall be informed of the grounds of his arrest. I said we do not make any such provision in the case of a person who is detained under preventive detention. I think that is a legitimate criticism. I am prepared to redress the position, because I find that, even under the existing laws made by the various provincial governments relating to preventive detention, they have made provision for the information of the accused regarding the grounds on which he has been detained. I personally do not see any reason why when provinces who are anxious to have preventive, detention laws have this provision, the Constitution should not embody it. Therefore I am prepared to incorporate the following clause after clause (3) in article 15 :

112 A, Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article, the authority making an order shall.....

Babu Ramnarayan Singh : Sir, Dr. Ambedkar says that provinces want the inclusion of this clause . . . .

Mr. President : He has not said anything of that sort. What he has said is that several of the Acts which have been passed by the provinces for preventive detention contain certain provisions. He wants to incorporate a similar provision in this article.

Babu Ramnarayan Singh : I wanted to know whether we are passing legislation at the dictates of the provinces.

Mr. President : Nothing of the sort.

The Honourable Dr. B. R. Ambedkar : I find that Mr. Ramnarayan Singh is somewhat disaffected with the provincial government to which he belongs.

As I was saying I think this provision ought to do :

After clause (3) of article 15 A the following clause be inserted:

"(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the order.

(b) Nothing in clause (3a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which that authority considers to be against the public interest to disclose."

These are the exact words in some of the Acts of the provinces and I do not see any reason why they should not be introduced here, so that this ground of criticism that we are detaining a person merely because his case comes under preventive detention, without even informing him of the grounds on which we detain him. Now that is met by the amendment which I have proposed.

The other question is.....

The Honourable Shri K. Santhanam (Madras : General) : Is it in addition to the provision in clause (1) ? There is already a provision that no person shall be detained in custody without being informed.

The Honourable Dr. B. R. Ambedkar : It does not deal with persons arrested for preventive detention.

The Honourable Shri K. Santhanam : Does it not include a person who is arrested for preventive purposes ? I thought clause (1) includes every kind of detention.

The Honourable Dr. B. R. Ambedkar : No. That is not our understanding anyhow. The cases are divided into two categories.

Shri Mahavir Tyagi : He is a lawyer.

The Honourable Dr. B. R. Ambedkar : That is in a court of law, not here.

Mr. President : He is not a lawyer.

The Honourable Dr. B. R. Ambedkar : I think it would be much better to say : Nothing in clauses (1) and (2) shall apply to clause (3). That is the intention. So I have met that part of their criticism.

Now I come to the question of three months' detention without enquiry or trial. Some Members have said that it should not be more than 15 days and others have suggested some other period and so on. I would like to tell the House why exactly we thought that three months was a tolerable period and 15 months too long. It was represented to us that the cases of detenus may be considerable. We do not know how the situation in this country will develop what would be the circumstances which would face the country when the Constitution comes into operation, whether the people, and parties in this

country would behave in a constitutional manner in the matter of getting hold of power, or whether they would resort to unconstitutional methods for carrying out their purposes. It all of us follow purely constitutional methods to achieve our objective, I think the situation would have been different and probably the necessity of having preventive detention might not be there at all.

But I think in making a law we ought to take into consideration the worst and not the best. Therefore if we follow upon that position, namely, that there may be many parties and people who may not be patient enough, if I may say so, to follow constitutional methods but are impatient in reaching their objective and for that purpose resort to unconstitutional methods, then there may be a large number of people who may have to be detained by the executive. Supposing there is a large number of people to be detained because of their illegal or unlawful activities and we want to give effect to the provisions contained in sub-clause (a) of that proviso, what would be the situation? Would it be possible for the executive to prepare the cases, say against one hundred people who may have been detained in custody, prepare the brief, collect all the information and submit the cases to the Advisory Board? Is that a practical possibility? Is it a practical possibility for the Advisory Board to dispose of so many cases within three months, because I will say that the provisions contained in sub-clause (a) of the proviso are peremptory in that if they want to detain a person beyond three months they must obtain an order from the Advisory Board to that effect.

Therefore, having regard to the administrative difficulties in this matter, the Drafting Committee felt that the exigencies of the situation would be met by putting a time limit of three months. There is no other intention on the part of the Drafting Committee in prescribing this particular time limit and I hope having regard to the facts to which I have referred the House will agree that this is as good and as reasonable a provision that could be made.

Now I come to the Advisory Board. Two points have been raised. One is what is the procedure of the Advisory Board. Sub-clause (a) does not make any specific reference to the procedure to be followed by the Advisory Board. Pointed questions have been asked whether under sub-clause (a) the executive would be required to place before the Advisory Board all the papers connected with the case which have led them to detain the man under preventive custody.

The pointed question has been asked whether the accused person would be entitled to appear before the Board, cross-examine the witnesses, and make his own statement. It is quite true that this sub-clause (a) is silent as to the procedure to be followed in an enquiry which is to be conducted by the Advisory Board. Supposing this sub-clause (a) is not improved and remains as it is, what would be, the consequences ? As I read it, the obtaining the report in support of the order is an obligatory provision. It would be illegal on the part of the executive to detain a man beyond three months unless they have on the day on which the three months period expires in their possession a recommendation of the Advisory Board. Therefore, if the executive Government were not to place before the Advisory Board the papers on which they rely, they stand to lose considerably, that is to say, they will forfeit their authority to detain a man beyond three months.

Therefore, in their own interest it would be desirable, I think necessary, for the executive Government to place before the Advisory Board the documents on which they rely. if they do not, they will be taking a very grave risk in the matter of administration of the preventive law. That in itself, in my judgement is enough of a protection that the executive will place before it.

[The Honourable Dr. B. R. Ambedkar]

If my friends are not satisfied with that, I have another proposal and that is that, without making any specific provisions with regard to procedure to be followed in sub-clause (a) itself, to add at the end of sub-clause (4) the following words :-"and Parliament may also prescribe the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article." I am prepared to give the power to Parliament to make provision with regard to the procedure that may be followed by the Advisory Board. I think that ought to meet the exigencies of the situation.

Sir, these are all the amendments I am prepared to make in response to the criticisms that have been levelled against the different parts of the article 15 A.

I will now proceed to discuss some miscellaneous suggestions.

Shri Jaspat Roy Kapoor : In that case, probably sub-section (b) of the proviso to clause (2) will go?

The Honourable Dr. B. R. Ambedkar : Nothing will go.

Dr. Bakhshi Tek Chand (East Punjab: General) : You have agreed that the grounds of the detention will be communicated to the person affected and his explanation taken.

The Honourable Dr. B. R. Ambedkar : And he will also be given an opportunity to put in a written statement.

Dr. Bakhshi Tek Chand : Will you agree also to the other point to which I drew attention, namely, that as in the Madras Act, the explanation will be placed before the Board?

The Honourable Dr. B. R. Ambedkar : All papers may be placed before him. That is what I say.

Dr. Bakhshi Tek Chand : All papers may not be placed before him. I have some experience. They will say that this is a very small matter. If you give him an opportunity to submit an explanation within a specified time, why do you fight shy of incorporating this provision? In sub-clause (2) of sub-section (1) of section 3 of the, Madras Act there is provision that the explanation will be placed before, the Board.

The Honourable Dr. B. R. Ambedkar : That, I consider, is implicit in what I said.

Dr. Bakhshi Tek Chand : Why not make it clear? It is not there in the Bombay Act or in the United Provinces Act.

The Honourable Dr. B. R. Ambedkar : As I stated, in the requirement regarding the submission of papers to the Advisory Board under sub-clause (a) is implicit the submission of a statement by the accused. If that is not so, I am now making a further provision that Parliament may by law prescribe the procedure, in which case Parliament may categorically say that these papers shall be submitted to the Advisory Board. Now I am not prepared to make any further concession at all.

Shri Mahavir Tyagi : Dr. Ambedkar will please give me one minute?

The Honourable Dr. B. R. Ambedkar : Not now.

Shri Mahavir Tyagi : I want to know whether the detenus under clause (4), according to the law made by Parliament or by the provinces, will have the benefit of their case being reviewed by the tribunal?

Sir, I want to know whether the detenus who will be detained under the Act which Parliament will enact under clause (4) will have the privilege of their case being reviewed by the tribunal proposed?

The Honourable Dr. B. R. Ambedkar : My Friend Mr. Tyagi is acting as though he is overwhelmed by the fear that he himself is going to be a detenu. I do not see any prospect of that.

Shri Mahavir Tyagi : I am trying to safeguard your position.

The Honourable Dr. B. R. Ambedkar : I will now deal will certain miscellaneous suggestions made.

Pandit Thakur Das Bhargava : What about the safeguards regarding cross examination and defence?

The Honourable Dr. B. R. Ambedkar : The right of cross-examination is already there in the Criminal Procedure Code and in the Evidence Act. Unless a provincial Government goes absolutely stark mad and takes away these provisions it is unnecessary to make any provision of that sort. Defending includes cross-examination.

Pandit Thakur Das Bhargava : They even try to usurp power to this extent.

The Honourable Dr. B. R. Ambedkar : If you can give a single instance in India where the right of cross-examination has been taken away, I can understand it. I have not seen any such case.

Sir, the question of the maximum sentence has been raised. Those who want that a maximum sentence may be fixed will please note the provisions of clause (4) where it has been definitely stated that in making such a law, Parliament will also fix the maximum period.

Pandit Hirday Nath Kunzru : The word is 'may'.

The Honourable Dr. B. R. Ambedkar : 'May' is 'shall'.

Pandit Hirday Nath Kunzru : Parliament may or may not do that.

The Honourable Dr. B. R. Ambedkar : That is true, but if it does, it will fix the maximum.

Another question raised is as regards the maintenance of the detenus and their families.

Shri Jaspat Roy Kapoor : What about periodical reviews?

The Honourable Dr. B. R. Ambedkar : I am coming to that. That is not a matter which we can introduce in the Constitution itself. For instance, it may be necessary in some cases and may not be necessary in other cases. Besides, clause (4) gives power to Parliament also to provide that maintenance shall be given.

Personally, myself, I think the argument in favour of maintenance is very weak. If a man is really digging into the foundations of the State and if he is arrested for that, he may have the right to be fed when he is in prison; but he has very little right to ask for maintenance. However, *ex gratia*, Parliament and the Legislature may make provision. I think such a provision is possible under any Act that Parliament may make under clause (4).

With regard to the review of the cases of detenus, there again, I do not see why it should not be possible for either the provincial Governments in their own law to make provision for periodical review or for Parliament in enacting a law under clause (4) to provide for periodical review. I think this is a purely administrative matter and can be regulated by law.

[The Honourable Dr. B. R. Ambedkar]

My Friend Mr. Ananthasayanam Ayyangar, said that I really do not have much feeling for the detenus, because I was never in jail, but I can tell him that if anybody in the last Cabinet was responsible for the introduction of a rule regarding review, it was myself. A very large part of the Cabinet was opposed to it. I and one other European member of the Cabinet fought for it and got it. So, it is not necessary to go to jail to feel for freedom and liberty.

Then there is another point which was raised by my Friend, Mr. Kamath. He asked me whether it was possible for the High Courts to issue writs for the benefit of the accused, in cases of preventive detention. Obviously the position is this. A writ of *habeas corpus* can be asked for and issued in any case, but the other writs depend upon the circumstances of each different man, because the object of the writ of *habeas corpus* is a very limited one. It is limited to finding out by the court whether the man has been arrested under law, or whether he has been arrested merely by executive whim. Once the High Court is satisfied that the man is arrested under some law, *habeas corpus* must come to an end. If he has not been arrested under any law, obviously the party affected may ask for any other writ which may be necessary and appropriate for redressing the wrong. That is my reply to Mr. Kamath.

Sir, I hope that with the amendments I have suggested the House will be in a position to accept the article 15 A.

Shri H. V. Kamath (C. P. & Berar: General) : My question is whether we have provided in the article for this purpose.

The Honourable Dr. B. R. Ambedkar : It is not necessary. Everybody knows it. If you get into trouble, you can engage a lawyer who will let you know everything.

Shri H. V. Kamath : I shall engage yourself.

Mr. President : Is it necessary to have any further discussion?

The Honourable Dr. B. R. Ambedkar : The question may now be put.

Shri T. T. Krishnamachari : The House has discussed this for six hours already.

Sardar Hukam Singh (East Punjab Sikh) : From this corner I have been trying to catch your eye but without success. I would like to say a few words if you would permit me.

Shri Brajeshwar Prasad : I have been standing since yesterday.

Prof. Shibban Lal Saksena (United Provinces: General): This is a very important article in the Constitution and deals with personal freedom and liberty. The debate on this should not be curtailed.

Mr. President : I am entirely in the hands of the House. Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I do not think I can give Dr. Ambedkar another right of reply.

The Honourable Dr. B. R. Ambedkar : I do not think so, Sir. Nobody said anything.

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

The Honourable Dr. B. R. Ambedkar : They might all be withdrawn.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : New clauses have just been added. Will they be put to the vote now?

Mr. President : Yes, just now.

Mr. Naziruddin Ahmad : It will be difficult to follow them without copies.

Dr. Bakhshi Tek Chand : They are not new amendments in any sense and it is not necessary to have further time to discuss them. Only some amendments of Dr. Bhargava have been accepted in part. There has been sufficient discussion on them.

Mr. President : I was just going to say that myself.

The question is :

"That after article 15 the following new articles be added :—

'15A. No procedure within the meaning of the preceding section shall be deemed to be established by law if it is inconsistent with any of the following principles :—

(i) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest and detained further only by the authority of the Magistrate for reasons recorded.

(ii) Every person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public trial unless special law or public interests demand a trial in camera.

(v) Every person shall have the right of cross-examining the witness produced against him and producing his defence.

(vi) Every convicted person shall have the right of at least one appeal against his conviction.'

'I5B. No procedure within the meaning of Section 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles :—

(i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention, conditional or absolute release and other incidental and necessary orders.

(iii) No such detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for wilful disobedience of lawful orders and violation of jail rules.' "

The amendment was negatived.

Mr. President : Then No. 3. Is it necessary to read the amendment ?

Pandit Thakur Das Bhargava : They need not be read. Such of the amendments as have been accepted may be taken and the others rejected.

Mr. President : The question is :

"That in amendment No. 1 above for clauses (1) and (2) of the proposed new article 15 A, the following be substituted :—

'15A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights—

(a) the right of Production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross- examination of witnesses Produced against the accused and Production of his defence;

(d) the right of at least one appeal in case of conviction.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 3 above, after clause (d) of the proposed new article 15 A, the following clauses be added :—

(e) right to freedom from torture and unnecessary restraints and from unreasonable search of person and Property;

(f) right to a speedy and public trial unless special law and Public interest demand a trial in camera,' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 above, in clause (1) of the proposed new article 15 A, for the words 'a legal practitioner of his choice' the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

The amendment was negatived.

Mr. President : Then No. 7.

Shri T. T. Krishnamachari : Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then Dr. Ambedkar will not be able to accept a portion of it.

The Honourable Dr. B. R. Ambedkar : Mine are in dependent amendments.

Mr. President : The question is:

"That in amendment No. 1 above, in the proposed new article 15 A, for clause (2), the following be substituted :—

'(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the court of the Magistrate and detained further only by the authority of the Magistrate for reasons recorded.' "

or alternatively

"That in amendment No. 1 above, at the end of clause (2) of the Proposed new article 15 A, the following be added :—

'and for reasons recorded.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 above, after clause (2) of the proposed new article 15 A, the following clauses be added :

'(2a) Every person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing his defence.

(2b) Every person sentenced to imprisonment shall have the right of at least one appeal against his conviction.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15 A, the following be substitute:—

"5 B. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the prevention or detention contravenes any of the following principles,—

(1) Such detention without trial shall only be allowable for alleged participation in dangerous or subversive activities affecting the public peace, security of the State and relation between different classes and communities inhabiting India or membership of any Organisation declared unlawful by the State.

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months.

(3) Such detention shall not exceed the total period of one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules :

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention.' "

The amendment was negatived.

Mr. President : The question is:

"'That in amendment No. 1 above, in the proviso to clause (3) of the proposed new article 15A, for the word 'three' the word 'two' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15A, the following be added 'but in no case more than six months' or 'but in no case more than a year"'

The amendment was negatived.

Mr. President :' The question is :

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, after the word 'circumstances' the words 'and the conditions' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, for the words 'three months' the words 'one month' or 'two months' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), for clause (1) of the proposed new article 15A, the following be substituted:—

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice."'

The amendment was negatived.

Mr. President: The question is:

'That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the words 'as soon as may be' the words 'being not later than fifteen days' be inserted.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), the proviso to clause (3) of the Proposed new article 15A be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in Sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A. after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months be added."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), the following proviso be added to clause (4) of the proposed new article 15A. :-

'Provided that if the earning member of a family is so detained his direct dependents shall be paid maintenance allowance.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, for the words 'as soon as may be' the words 'before the expiration of seven days following his arrest' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, for the words 'as soon as may be' the words within twenty-four hours' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word 'magistrate', wherever it occurs, the words 'of the First Class' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), for clause (2) of the proposed new article 15A, the following be substituted :—

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word 'magistrate' occurring at the end, the words 'who shall afford such person an opportunity of being heard' be added."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed new article 15A, the following new clause be added :—

'(2a) No detained person shall be subjected to physical or mental ill-treatment.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15A, be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15A, after the word 'law' the words 'of the Union' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, the words 'or are qualified to be appointed as' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), at the end of clause (3) of the proposed new article 15A, the following new proviso be added :—

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3), the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the Society.'

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Eighth Week), after clause (4) of the proposed new article 15A, the following new clause be added:—

'(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article shall not be suspended or abrogated or extinguished'."

The amendment was negatived.

I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

Mr. President : The question is:

"That in clause (1) of article 15A, after the word 'consult' the words 'and be defended by' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (3) of article 15A, for the words 'Nothing in this article' the words, brackets and figures 'Nothing in clauses (1) and (2) of the article' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That after clause (3) of article 15A, the following clauses be inserted:—

'(3 a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3 b) Nothing in clause (3a), of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which such authority considers to be against the public interest to disclose'."

The amendment was adopted.

Mr. President : The question is:

"That at the end of clause (4) of article 15A, the following be added :—

'and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article'."

The amendment was adopted.

Mr. President : The question is:

"That proposed Article 15A, as amended, stand part of the Constitution."

The motion was adopted.

Article 15A, as amended, was added to the Constitution.

Mr. President : I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

Article 209A

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

"That after article 209, between Chapters VII and IX of Part VI the following be inserted:—

"Chapter VIII

Subordinate Courts.

Appointment of District Judges.

209-A (1) Appointments of persons to be, and the posting and promotion of district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of other than district judges to the Judicial service.

209 B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

Control over Subordinate Courts.

209 C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209 D. (1) In this Chapter—

Interpretation.

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, Chief Presidency magistrate, additional chief Presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Application of the provisions of this Chapter to certain classes of Magistrates.

209 F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification'."

Sir, the object of these provisions is two-fold : first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained in article 209-A, 209-B and 209-C is with regard to the magistracy, which is dealt with in article 209-E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Executive will be accepted by the other provinces so that the provisions of article 209-E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to claps for the effectuation of the proposals for the separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are merely continuing the same in the present draft.

Prof. Shibban Lal Saksena : I have got an amendment which is an alternative to this. It is number 166 in the consolidated list of amendments.

Mr. President : I will take it up after these amendments. Amendment No. 21 : Mr. Kuldhar Chaliha.

Shri Kuldhar Chaliha : (Assam: General) : Mr. President Sir, I beg to move :

"That in amendment No. 20 above, in clause (2) of the proposed new article 209 A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

Sir, the object of this amendments is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country. We have in our country strange results from the appointment of I.C.S. officers in the beginning of British administration. So also in cases when officers from outside the province were brought in. I am not limiting thereby the enrolment of advocates from any province. They may come an practise. Only I am saying that he should have resided in the province for a period of seven years. The results from the appointment of persons from outside the province were like this. In our part of the country, there is a custom for the New Year day for young men to go and dance and sing and go on a maying and sky-larking for some time, and then stagemanage on the bank of a river or a stream that she has been kidnapped or taken by force. The parents brought criminal complaints that their girls had been kidnapped and the persons were sentenced very heavily by the Judges who did not know the elementary condition of life there. Some time later, the Government had to issue circulars that in such cases, the matter should be allowed to be compromised. Probably, in other provinces also, this would be taken as a very serious offence and the persons would be given four to seven years rigorous imprisonment. In our country for such cases a preliminary enquiry has to be made and a chance has to be given for compromise. In 99 per cent. of the cases, compromises were effected after giving some solatium to the parents. In the same way, as regards marriages, we have a very simple custom of tying the nuptial knot and blessings by the people present in the village completes a marriage. The People who come from Bengal and other provinces or Europeans, who have read the Hindu Law and other things, put into force the strict laws of those countries and the result was the nullification of marriages. This may happen in Orissa or Bihar. People may not know the customs in Ranchi and other places and they may commit mistakes. I have not prevented any man from coming from any other province and practising in the High Court of the province. The only thing I insist is that they should live there for seven years so that they may be acquainted with the customs in the country, to become eligible for appointment as district judges.

The interpretation clause has complicated the matter as it includes not only district judges. but also additional district Judges and assistant sessions Judges. They will have to deal with matters which are absolutely local. Therefore, if an advocate or lawyer has not practised in the High Court of the province where they are going to be appointed as judges, there will be failure of justice. My amendment is a very simple one and there will be no harm done if the Drafting Committee sees its way to accept this amendment.

Pandit Thakur Das Bhargava : Sir, I beg to move:

"That in amendment No. 20 above, in the proposed new article 209 E. after the word 'may' where it occurs for the first time the words 'at any time' be inserted."

Mr. President : You are not moving No. 22.

Pandit Thakur Das Bhargava : I am not moving 22; I am moving 23 and 24.

Sir, I beg to move:

"That in amendment No. 20 above at the end of tile proposed new article 209-E, the following proviso be added:

'Provided that the Governor or the Ruler as the case may be shall.—

(i) in the case of States mentioned in Part I of the first Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction, or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution; and

(ii) in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution, if the Legislature of the State passes a solution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution, by public notification make such directions'."

While reading, I am very sorry, Sir, I have discovered a mistake in para. (i) of amendment No. 24, The word 'ten' should be 'five' years. So far as I remember, I gave 'five' in my original. It may be by a slip of the pen I may have given, the word 'ten'. What I intended was 'five'. I do not know if 'five' or 'ten' was given in the original. I would beg of you to amend it to 'Five'.

Mr. President : Very well.

Pandit Thakur Das Bhargava : Sir, in regard to this amendment, the result would be that so far as article 209E is concerned, it will remain with the sweet will of the Governor whether he makes the direction contemplated in article 209E. I should like to bind the Governor or Ruler of the State that if the legislatures of the States mentioned in Part I of the First Schedule make a recommendation within three years, the Governor shall be bound to-give effect to that recommendation and in case they do not do so, then, the Governor will be bound after the lapse of five years to make the direction contemplated in article 209E. Similarly, in the case of States mentioned in Part III of the First Schedule, after the lapse of seven years, if the legislature does not make a recommendation, then, the ruler will be bound to make the direction after the lapse of ten years. During the first seven years, it rests with the legislature to make a recommendation for this direction to be implemented.

Now Sir, this question of the separation of the judiciary from the executive is a very very old one. It has been the main plank of the resolutions of the Indian National Congress in the days of foreign domination. Now, when we have attained freedom, the people of the country expected that this reform which was over-due, shall be implemented as soon as possible. While we passed some directive principles, we also included a recommendation of this nature. Now when we read article 209E every person is bound to consider that at some time or other the Governor will make this directive. Now 209E is in the nature of a pious wish. Dr. Ambedkar when he introduced this said there is nothing revolutionary about this Chapter. I think he was quite right; but unfortunately there is nothing even evolutionary about it because we wanted that with the advent of Swaraj, the Judiciary will be independent of the Executive control and the people will get Justice; but if it is not to be as soon, as it is possible, I would rather like that the realities of the situation were appraised rightly and the period that I have prescribed was to be the ultimate period during which this reform should have been implemented.

What happens at present is known to all members of this House. At present the Magistrates are under the control of the District Magistrates who are also the Chief Officers of the Police, in the Districts. Therefore, the Magistrates do not work with that independence and impartiality which we should expect if we want even-handed justice to be meted out to the people. The District Magistrate in whom all powers are centered, if he wants to pull up the Magistrates, can call them to his own Court. The promotions of the Magistrates depend upon the recommendation of the People and if the police makes a report against him it will affect his promotion.

Mr. President : Is it necessary to go over those grounds? There is nobody here who says that there should be no separation. The question is only of convenience and time.

Pandit Thakur Das Bhargava : Confining myself to this aspect only, I will only submit that I know that there are certain parts of India in which, as the words imply, the rule of, the law is being established only now and in regard to those cases, I have fixed the limit of ten years. Otherwise in Bombay, Madras and U.P. and certain other parts of the provinces even now this reform can be implemented. Therefore I have given the period of three years in regard to parts mentioned in Part I and ultimately five years, and seven years and ten years to other States mentioned in Part II. My humble submission is if we do not accept even this amendment then it means 209-E will for ever remain a pious wish as it will be a Directive Principle. There is no point in having this prospect dangling before our eyes as will-o-the wisp which is never to be implemented. When we passed the Directive Principles I remember there was a row in the House some people wanted it to be immediately effective and others said that the time is not ripe. Therefore to have a golden mean between the two I am suggesting these stages and this period. I would be very happy if Dr. Ambedkar accepted this amendment of mine.

Mr. President : 117—Member not in the House Pandit Kunzru.

Pandit Hirday Nath Kunzru : Mr. President, I move:

"That in amendment No. 20 of List I (Eighth Week) in clause (1) of the proposed new article 209 A, the words 'and the posting and promotion of' be omitted."

I also move with your permission :

"That in amendment No. 20 of List I (Eighth Week) in the proposed new article 209 C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The object of my amendments is to allow High Courts to be responsible for the transfer and promotion of District judges in the same manner as they will be for the transfer and promotion of Subordinate Judges and other Subordinate Judicial officers. My amendments do not touch the question of appointment. The Governor will appoint District Judges in consultation with the High Court. All that I desire is that District Judges after their appointment by the Governor should be under the control of the High Court. I have for my amendment the authority of no less a person than the Chairman of the Drafting Committee-my honourable Friend Dr. Ambedkar. The language of articles 209 A and 209 C. ....

Shri T. T. Krishnamachari : They are all tentative. Do not throw your words on this here again.

Pandit Hirday Nath Kunzru : I am entitled to quote from or refer to the articles of which my honourable Friend Dr. Ambedkar gave notice in the last session and they are printed on the last but one page of Volume I of the Printed amendments. If I say anything that is incorrect, my honourable Friend Dr. Ambedkar will certainly be able to refute me but I do not see why I should not refer to an amendment given notice of by him that appears to me to be quite sound. Dr. Ambedkar has not told us why he has departed from the phraseology of his earlier amendments. They provided that while the appointment of District Judges should be under the control of the Governor, their promotion and transfer should be under the control of the High Court. Now, in my opinion it is necessary that the High Court should have control over all those officers who are concerned with the judicial administration. District Judges are judicial officers. There is no reason, therefore, why control in respect of their transfer

and promotion should not be made over to the High Court. I think that if High Courts are made responsible for this, the judicial administration will improve. We have found repeatedly in the past, that the absence of control by the High Courts over the posting and the promotion of District judges has weakened their authority and weakened also the judicial administration. The District Judges feeling that the High Court had no control over them, generally looked up to the executive. I do not mean to say that no District Judge paid any regard to the provisions of the law, or that the District Judges as a rule decided cases in accordance with the convenience of the executive. But any lawyer that we might consult would, I think, tell us that demands had been repeatedly made by associations representing various parties that District Judges should be placed under the control of the High Court. They had gone so far as to ask that their appointment too should rest with the High Court. I have not gone so far. My amendment is a conservative one. All that it seeks to achieve is that District judges should be transferred and promoted by the High Court in the same way as subordinate judge would be.

The question of promotion may seem to raise some difficulty. It may be thought that it means only promotion from District Judge to High Court Judge, but it does not mean this. We have already provided for the appointment of judges of the High Court in the section dealing with the power of appointment of the judges of the High Court. The word "promotion" here can only refer to the promotion of District Judges before they are made High Court Judges. Judges are promoted now from one grade to another, and if the grades continue to be as they are at present, the High Court will be able to promote the judges as the Executive Government does now. It does not seem to me, therefore, that the use of the word "promotion" will create any difficulty.

I have already said, Sir, that my amendments do not seek to make High Courts responsible for the appointment of District Judges. I could have done this; I could have put forward an amendment asking that the High Courts should have this power too. In Ceylon, Section 55 of the Constitution provides :

> ". . . that the appointment, transfer, dismissal and disciplinary control of all judicial officers should be vested in the Judicial Service Commission."

The Judicial Service Commission will consist of the Chief Justice, a judge of the High Court and one other person who is or has been a judge of the Supreme Court. But as I have said, my amendment does not seek to introduce in the Constitution the provision that exist in the Ceylon Constitution. It leaves the appointment of District Judges in the hands of the Government and their dismissal is to be regulated in accordance with such rules as may exist. My amendment, therefore, is a very moderate one and does not create any difficulty at all. On the contrary, it will strengthen the judicial administration by enabling the High Court to have control, to a large extent, over all those officers that will be engaged in the performance of judicial duties.

Shri R. K. Sidhwa (C. P. & Berar: General): Sir, could you kindly call me again? I had been out on some office business when my name was called; but I have to move an amendment which is important.

The Honourable Dr. B. R. Ambedkar : Absence cannot be an excuse.

Mr. President : I am afraid it is too late now.

Shri R. K. Sidhwa : It is rather an important amendment, as I want to show. In the event of difference of opinion between the High Court Judges and.....

Mr. President : And in showing that, you will have to speak of course. How will you show that, without speaking?

Shri R. K. Sidhwa : Sir, I will take only two minutes.

Mr. President : Very well. But please do not take more than two minutes.

Shri R. K. Sidhwa : Mr. President, Sir, I am very thankful to you for kindly permitting me to move my amendment. I had gone out on some office work, and not on private business. I beg to move :

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 109 A, the following be added :—

' where there is a difference of opinion regarding an appointment between the Governor or Ruler of the State and the High Court, the opinion of the former shall prevail'."

My amendment is self-explanatory. It has been suggested that opinions are to be gathered from three agencies, government's opinion, comprising of the full Cabinet or the Home Minister, the Governor and the High Courts Judges. If the Governor and the Government agree, and if the High Court Judges do not agree, then my amendment says that the Government's and the Governor's opinion should prevail. Sir, this is only fair, because the High Court Judges should not be given all the power. The opinion of the Government and the Governor should prevail. With these words I commend my amendment for acceptance.

Mr. President : Prof. Shibban Lal Saksena had given notice of a number of amendments to the original article as it is printed in Printed List Vol. I, where Dr. Ambedkar had proposed some new articles as 209 A, 209 B and 209 C. And Prof. Saksena had given notice of amendments to these articles. But now that these articles have not been moved, the question of substitution anything" for them does not arise.

Prof. Shibban Lal Saksena : Sir, you had allowed such amendments in the past.

Mr. President : But you had notice of this substitution motion, as other Members had, and they have given notice to this new article now before the House. You could have given notice of your amendments also. Wherever there was a question which was germane, and where there was not sufficient notice of the amendment proposed, I allowed old amendments to be taken. But in this case the Member had sufficient notice of the amendment which was moved by Dr. Ambedkar.

Prof. Shibban Lal Saksena : So many amendments have been allowed to be moved to amendments which were not moved.

Mr. President : They could be fitted in and so they may have been allowed. But there has been sufficient time in this case and other Members have given notice of amendments to the amendment moved by Dr. Ambedkar. So I do not think I will allow it. But if you want to speak about it, you can.

Prof. Shibban Lal Saksena : Yes, I would like to speak, Sir. What I wanted to be substituted for this article has already been expressed in my amendment No. 106 contained in the old list. So far as the present draft is concerned, Dr. Ambedkar has himself confessed that the Magistracy will not be under the High Court. I am very glad for the frankness with which he admitted in regard to 15 A that he wanted "due process of law" but he has not been able to get what he wanted. Similarly, he has confessed that he wanted the judiciary to be entirely under the High Court, but he has not been able to have it. He is giving us some compromise against his wishes for satisfying the Home Ministry. I realize the difficulty, but as we are making the Constitution for the future generations, we should at least have it on record that we are not in agreement with the views of the Home Ministry, whether it be at the Centre or in the Provinces. Articles 15 and 15 A are a complete denial of liberty of person. They are the darkest Part of the Constitution. Under article 209 E which Dr. Ambedkar has proposed, we are negativing the principle which, has

already been accepted under the Directive Principles, namely, that the judiciary shall be separate from the executive. I feel that although we have put it there, we do not really mean to implement it. In the original article, three years time-limit was put and during the discussion, the Prime Minister said that it would be done earlier than three years. But even the ten years limit proposed by Mr. Bhargava is not being accepted.

I feel therefore that the Drafting Committee has not been able to get the Home Ministries to agree to a separation of the judiciary from the executive. The present provisions are a complete denial of the civil liberties of the person. I had in my amendment suggested that the Supreme Court and the Chief Justice should be the ultimate guardian of the liberties of the subjects and all the High Courts and subordinate judges should be ultimately amenable to their control. But the article as now framed is really a reproduction of all that was contained in the Government of India Act and there is in fact no separation of the judiciary from the executive. If this provision is put in, I fear that there will be no such separation unless there is an amendment of the whole Constitution, because after these provisions in the Constitution I am sure no province will care to go in for separation of the executive and the judiciary. The amendment moved by Mr. Bhargava says that this separation should be done at least in some provinces quickly and in the some after three, five or ten years. Even that has not been accepted. That shows that all provincial Home Ministries do not want such separation. If that is also the view of the independent Central Government of India, I am afraid that liberty of the person will not be guaranteed and we shall still continue to be under the old system of Government which has so far prevailed. We are probably still living in the past. I hope that Dr. Ambedkar will see the wisdom of accepting the amendment of Mr. Bhargava and at least let those provinces which are advanced to have this separation of judiciary from the executive effected much quicker.

Shri Brajeshwar Prasad : Sir, I risk to oppose the amendment moved by my Friend Mr. Sidhva. I am definitely of opinion that where there is a conflict between the High Court and the Government, the opinion of the High Court should prevail.

Secondly, I am opposed to the words "in consultation with the High Court" I definitely hold the view that appointments, postings and promotions must be removed from the purview of the provincial governments. I know of cases where High Court Judges have been removed and transferred because certain members of the Congress who hold high influence in the Governments did not pull on with some judges. The High Courts did enter into controversy with the provincial governments and the High Courts were frustrated. Therefore, I am definitely of the view that this measure is not in conformity with the needs of the situation. The need is that the provincial administration must be purified, must be free from corruption, must be free from nepotism. In article 209 D the words "in accordance with the rules made by him in this behalf after consultation with the State Public Service Commission and with the High Courts" are not clear. My knowledge of English is poor. I cannot see whether the words "after consultation with the State Public Service Commission" govern the word "rules" or the word "appointments", whether the Governor has to frame the rules in consultation with the High Court and the Public Service Commission or the appointments are to be made in consultation with the State Public, Service Commission and the High Court. I am of opinion that rules should be made in consultation with the Public Service Commission and the High Courts and appointments also made in consultation with the Public Service Commission and the High Courts.

Shri R. K. Sidhwa : May I know whether my Friend does not trust his own Government and his own Governor?

Shri Brajeshwar Prasad : I have no faith in provincial autonomy. This is my general proposition which I have clearly expressed on the floor of this House times without number. I need not go into the reasons once again.

Dr. P. S. Deshmukh : (C. P. & Berar: General) : I am glad you realize that.

Shri Brajeshwar Prasad : The realization will also come to you at a later stage. I want that all classes of Magistrates should be outside the purview of the Council of Ministers as regards appointment, posting and promotion. It ought to be laid down in clear and explicit terms that this reform should be implemented within two years from the date of the commencement of this Constitution. This article does not lay down in clear and explicit terms when these reforms will come into operation. I am referring to article 209 E.

There is another restriction attached to this article. The words used have been "subject to such exceptions and modifications as may be specified in the notification." Sir, the plea of administrative difficulties is merely designed to cover the lust for political power and patronage. I do not want that this restriction should find a place in the article. I hold these views because there is a necessity for purifying the provincial administration. It will secure also the liberty of the individual. It will strengthen the foundations of the State and it will generate a feeling of loyalty towards all Governments in-India if the reforms, as I have suggested, are incorporated.

Shri P. S. Nataraja Pillai (Travancore State) : It is only to clear a doubt I stand here, Sir. I would like to ask whether it is intended by this article to exclude Schedule 3 States from the provisions of article 209 A or is it that they are to be included ?

Shri R. K. Sidhwa : My amendment says so!

Shri P. S. Nataraja Pillai : In article 209 A, B and E, the wording used is 'Governor of the State" and the word 'Ruler' is omitted. But in one of the amendments moved by Pandit Thakur Das Bhargava, I think, he suggested that all these articles will apply also to Schedule 3 State. I would like to clear the doubt whether this is intended to apply to Schedule 3 States as well and if so, the necessary changes may be made.

I would like also to support the amendment moved by Mr. Chaliha, as far as the subordinate judiciary is concerned. If I may say so, for my State, the land tenure laws, the special customs prevalent there even in money transactions and the laws in force make it necessary that the recruitment should be limited to lawyers who practise in those High Courts that exercise jurisdiction in that area. If the words as used here are adopted, the lawyers practising in any High Court may be eligible for recruitment to any High Court. Unless you limit the recruiting of lawyers of High Courts of those areas to those District Courts, it will create difficulties. I want that suggestion to be considered.

The Honourable Dr. B. R. Ambedkar : With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself

because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgment a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209 C to the High Court? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this: whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

Mr. President : The question is :

"That in amendment No. 20 above. in clause (2) of the proposed new article 112 A after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 20 above, in the proposed new article 209 E, after the word may' where it occurs for the first time, the words 'at any time' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 20 above, at the end of the Proposed new article 209 E, the following proviso be added :—

'Provided that the Governor or the Ruler as the case may be shall—

(i) in the case of States mentioned in Part I of the First Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction, or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution, and

(ii) in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution. if the Legislature of the State passes a resolution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution. by Public notification make much directions'."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 209 A, the following be added :—

'where there is a difference of opinion regarding an appointment between the Governor or Ruler of the State and the High Court, the opinion of the former shall prevail'."

The amendment was negatived.

Mr. President : There are two amendments by Pandit Kunzru, Nos. 132 and 133. The question is :

"That in amendment No. 20 of List I (,Eighth Week), in clause (1) of the proposed new article 209 A, the words 'and the posting and promotion of' be omitted."

The amendment was negatived.

Mr. President : The question is: "That in amendment No. 20 of List I (Eighth Week), in the proposed new article 209 C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That proposed articles 209 A, 209 B, 209 C, 209 D and 209 E stand part of the Constitution."

The motion was adopted.

Articles 209 A, 209 B, 209 C, 209 D and 209 E were added to the Constitution.

Article 215

Mr. President : It is suggested that we take up Article 215.

Shri Brajeshwar Prasad : Sir, I move:

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted :—

'That for article 215, the following be substituted :—

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2) The Chief Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the President who shall have the Power in his discretion to resume or modify such powers as he himself had conferred.

(3) The President shall have the power to take any part of the Union of India under his immediate authority and management by placing it in Part IV of the First Schedule.

(4) No Act of Parliament shall apply to any territory in Part IV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule or to any specified part thereof, have effect subject to such exceptions or modifications as' be thinks fit.

(5) The President may in his discretion make regulations for the Peace, order and good government of any such territory and any regulations so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament." ' "

Sir, I move without offering any comments.

Shri T. T. Krishnamachari : Sir, I have only one matter to place before you. House and through the House to be transmitted to the appropriate authorities.

This article refers to those areas which will be enumerated in Part IV of Schedule I and which would be directly under the administration of the Central Government. I would like one particular area which is not included in the Draft Constitution under Part IV of Schedule I to be included in that area. The particular area I have in mind is one that was provisionally included in Schedule V under Madras and by virtue of the amendment that the House has now accepted to Schedule V it is left to the President to enumerate what are the areas to be covered by Schedule V. I refer to those islands called Laccadive Islands, including Minicoy and Amindivi which form a cluster of islands on the western side of India in the Arabian Sea. Those islands are supposed to be scheduled areas and the administration is vested in the Government of Madras.

In suggesting that the Centre should take over these islands under its own care I would at once disclaim any idea of casting any reflection on the administration of these islands by the Government of Madras. The fact really is that the islands are far away from the Madras Coast and the provincial Government has hardly got the equipment necessary to look after the administration of an area like this, because they have not got any naval vessels or a private merchantile fleet either. What is being done at the present moment is, I understand, that a sub-collector visits these islands once a year along with a medical officer and that is about all the connection that the Government of Madras has with these islands. I have no desire here to emphasise the strategic value of these islands. They may or may not have such a value. But it seems perfectly obvious that the idea was a relic of the past by which the administration of these islands was vested in a provincial Government which is a somewhat onerous responsibility for this administration and should no longer continue to be so. I do think that whatever value these islands might have for the future of the Union as such, it is a responsibility that must be taken over by the Centre and the administration of these islands must be looked after by the Centre in the same way as they would be looking after the administration of other areas covered by article 215, which find mention in Part IV of Schedule VII.

I hope these remarks of mine will be transmitted to the appropriate quarter by the Secretariat of the Constituent Assembly and when we come to consider Schedule I, Part IV appropriate amendments will be made on the suggestion of the Ministry concerned.

The Honourable Dr. B. R. Ambedkar : I have nothing to say, Sir.

Sardar Hukum Singh : Sir, I have no amendment to move. I have one objection to clause (2) of this article, to which I want to draw the attention of the President of the Drafting Committee. The phraseology looks to me as derogatory to the sovereignty of the Parliament and I would request him, if possible to change the words :

> "The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament."

I take objection to the provision that the President may amend any law made by Parliament, which we say is sovereign. Our purpose will be served if we say that regulation will provide that any Act of Parliament would not be applicable to such territory or it shall be applicable to the territory with any modifications.

I only want to bring this to the notice of the Chairman of the Drafting Committee.

Mr. President : Sardar Hukam Singh has made certain suggestions with regard to paragraph 2. He says that it is derogatory to the authority of Parliament to say that the President will repeal or amend any law made by Parliament and that the words should be so modified as to indicate that the power of Parliament is not in any way subordinated.

The Honourable Dr. B. R. Ambedkar : That is so. It is a kind of adaptation. In regard to the autonomous districts of Assam the Governor of Assam has similar power to adapt the laws made by Parliament when he thinks fit so to do. The whole law made by Parliament cannot be applied to certain peculiarly constituted territories unless they are adapted.

Sardar Hukam Singh : Is that a sufficient answer, Sir ? My suggestion was that it is derogatory to the sovereignty of Parliament to say that the President would repeal an Act passed by Parliament.

Mr. President : The suggestion is about a word and not about the power ?

The Honourable Dr. B. R. Ambedkar : The President is part of Parliament. There is no difficulty at all.

Mr. President : I will now put the amendment of Shri Brajeshwar Prasad to vote.

The question is

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted :—

'That for article 215, the following be substituted':—

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2) The Chief Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the President who shall have the power in his discretion to resume or modify such powers as he himself had conferred.

(3) The President shall have the power to take any part of the Union of India under his immediate authority and management by placing it in Part IV of the First Schedule.

(4) No Act of Parliament shall apply to any territory in Part IV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(5) The President may in his discretion make regulations for the peace, order and good government of any such territory and any regulations so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament." ' "

The amendment was negatived.

Mr. President : The question is:

"That article 215 stand part of the Constitution."

The motion was adopted.

Article 215 was added to the Constitution.

Article 303

Mr. President : Article 303. We can now take up the definition of article 303.

The Honourable Dr. B. R. Ambedkar : Mr. President, I move:

"That sub-clause (c) of clause (1) of article 303 be omitted."

Mr. President : I was just going to enquire whether we should not proceed with this article in the same way as we did with the Lists in Schedule VII and pass item by item.

I shall take the items as they appear in the draft. Amendment No. 3211 in the List of Amendments, Vol. II, may be moved.

Shri H. V. Kamath : It is verbal amendment. I leave it to the Drafting Committee.

(Amendments Nos. 3212 and 3213 were not moved.)

Mr. President : The question is :

"That sub-clause (a) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : As regards (b), I would just like to make one point. We are proposing to drop from the Constitution two Parts which we had originally proposed in which certain communities had been enumerated as Scheduled Castes and certain communities as Scheduled Tribes. We thought that was cumbering the Constitution too much and that this could be left to be done by the President by order. That is our present proposal. It seems to me that, in that event, it will be necessary to transfer the definition clauses of the Scheduled Castes and the Scheduled Tribes to some other part of the Constitution and make provision for them in a specific article itself, saying that the President shall define who are the Scheduled Castes and who are the Scheduled Tribes. Now it seems to me that the question has been raised with regard to articles 296 and 299 which have been held over. It may be that the definition of 'Anglo-Indian' and 'Indian Christian' which is referred to in (b) and (c) may have to be reconsidered along with that proposition. I request you to hold them over for the present.

Shri V. I. Muniswami Pillai (Madras: General) : The whole thing regarding the Scheduled Castes, etc. may be held over.

Mr. President : I take it that the House agrees to hold over the consideration of items (b) and (c).

[Sub-clauses (b) and (c) were held over.]

Mr. President : There are no amendments to item (d).

The question is :

"That sub-clause (d) be adopted."

The motion was adopted.

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

"That sub-clause (e) of clause (1) of article 303 be deleted."

Mr. President : There is no Chief Judge now. There used to be subordinate High Courts which were called Chief Courts and they used to have Chief Judges. The question is:

"That sub-clause (e) of clause (1) of article 303 be deleted."

The amendment was adopted.

Sub-clause (e) of clause (1) was deleted from article 303.

(Amendment No. 3219 was not moved.)

Mr. President : Then (f). There is no amendment to this. The question is :

"That sub-clause (f) of clause (1) stand part of article 303."

The motion was adopted.

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

" That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely:

'(g) 'corresponding Province', 'corresponding Indian State' or 'corresponding State' means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

We have only included Indian States.

Shri H. V. Kamath : Are we still going to retain the distinction between 'State' and 'Indian State' ?

The Honourable Dr. B. R. Ambedkar : The distinction is this. A State now means a constituent part of the Union. An Indian State means a State which is outside the Union but under the paramountcy or control of the Union.

Shri R. K. Sidhwa : Is the Cutch State which is now administered by the Centre an 'Indian State'? So also Bhopal ?

The Honourable Dr. B. R. Ambedkar : An Indian State is defined at a later stage.

Mr. President : There is a definition of an Indian State given later on in amendment No. 140.

Shri T. T. Krishnamachari : There seems to be some confusion in the minds of Members. The terms "corresponding province" and "corresponding Indian State" these are terms pertaining to the period before the commencement of the Constitution. The term "corresponding State" comes into existence after the commencement of the Constitution. The difference between the two is only this. I hope there will now be no confusion on this matter.

Mr. President : The question is :

"That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely :—

'(g) "corresponding Province". "corresponding Indian State", or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

The amendment was adopted.

Mr. President : The question is :

"That sub-clause (g) of clause (1), as amended, stand part of article 303."

The motion was adopted.

Mr. President : Then (h). There is no amendment to this. The question is:

That sub-clause (h) of clause (1) stand part of article 303."

The motion was adopted.

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

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

Such Acts as the Merchant Shipping Act might have to be retained until Parliament otherwise provides.

Shri H. V. Kamath : With regard to this (i), there is evidently a slight lacuna. It speaks of laws and bye-laws. But only 'rule' is mentioned. Why not 'bye-rule' as well ?

The Honourable Shri K. Santhanam : I have got an amendment to this. If it has been considered by the Drafting Committee and found to be unnecessary, I do not want to move it. The point that I want to bring to the notice of the Drafting Committee is that there are areas like Baroda which have been merged with other provinces. Now, in the case of Baroda, what will be the interpretation of the word "existing law" ? Will it mean only the laws which are in existence in the province of Bombay or will they include also the laws passed by the Baroda Government or Legislature before integration, because as things are, according to the present term, it might include the laws passed by the previous Baroda Legislature or Government, even though they may have been superseded by the present Bombay laws. If that point is made clear, I do not want to press my amendment. Otherwise, I would want my amendment to be considered by the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : Whether a law is in force or not would depend upon various considerations. First of all, the merger itself may have provided that certain laws shall not be in operation. It may be that the Bombay Government after that territory has been merged, may retain the laws for that particular territory known as Baroda, or its own legislation might abrogate it. Therefore any existing law means the law that is in force at the date of the commencement of the Constitution.

The Honourable Shri K. Santhanam : I do not press my amendment.

Mr. President : The question is :

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

The amendment was adopted.

Mr. President : The question is :

"That sub-clause (i) of clause (1), as amended, stand part of article 303."

The motion was adopted.

Mr. President: Then (j). There is no amendment to this. The question is :

"That sub-clause (j) of clause (1) stand part of article 303."

The motion was adopted.

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

"That after sub-clause (j) of clause (1) of article 303, the following sub-clause be inserted :—

'(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President'."

The Honourable Shri K. Santhanam : Would Dr. Ambedkar kindly explain what is meant by the latter portion of this sub-clause (jj) ? Will he give an illustration of that ?

Shri T. T. Krishnamachari : If it is so desired the President might exclude certain States from the category of foreign States. Although it might be premature to say so, it may be according to this scheme under which would be subjected any such arrangement that the new commonwealth relationship might entail. The idea is that the Indian Government of this future could exclude such States from the conception of the foreign State, the President will have the authority to do so. The honourable Member might be aware of the peculiar position of Eire *vis-a-vis* Britain and also *vis-a-vis* India. Actually though there is nothing really on the statute book or anything covered by a treaty, we do not treat Eire exactly as a foreign State.

The Honourable Shri K. Santhanam : Sir, the definitions that we are making have got legal significance. Either a State is a foreign State or it is not. If it is not a foreign State, it is governed by the provisions of this Constitution and the laws made under the provisions of this Constitution. The example given by my honourable Friend, Mr. T. T. Krishnamachari does not come in either. We cannot by saying that 'Britain is not a foreign State possibly bring it under this Constitution or the laws thereunder. It is a question of convention apart from legal definitions. Therefore, I do not think we should have the words "but does not include a State notified in this behalf by the President." We have already given power to Parliament to include other territories in the territories of India. It should not be left open to the President by some notification to say that some State which does not come under the territory of India by parliamentary legislation is part of India. Technically, the meaning of saying "by notification of the President" that it is not a foreign State, is that it will be part of the Indian State. Unless you give some definition for a State which is neither foreign nor within India, I think this may lead to all kinds of confusion, if not difficulty. I do not think it is very advisable to have this sub-clause (jj) at all. It is wholly unnecessary and we should not try to bring matters of convention into matters of definition. I do not think we are going to suffer at all by not having this (jj).

The Honourable Dr. B. R. Ambedkar : Sir, the position is this : If one were to stop with the word "India", it means what a Foreign State ordinarily means. Every State is foreign to another State. That is quite clear from the first part of the definition. Therefore, there can be no quarrel with that part of the definition. In fact that definition may not be necessary even, but in view of the fact that we have used the words "Foreign State" in some part of our Constitution and in view of the fact that it may be necessary for certain purposes to declare that a Foreign State, although it is a Foreign State in the terminological sense of the word is not a Foreign State for certain purposes, it is necessary to have this definition and to give the power to the President to declare that for certain purposes a State of that kind will not be a Foreign State. The case of Malaya, I understand, is very much in point. Therefore, it really means that for certain purposes the President may declare that although a State is a Foreign State in the sense that it is outside India, for certain purposes will not be treated as a Foreign State. It is for that purpose that this definition is sought to be introduced.

The Honourable Shri K. Santhanam : This sub-clause does not authorise the President to notify for certain purposes. It gives a definition.

The Honourable Dr. B. R. Ambedkar : That will, of course be remembered duly by the President when he issues the notification.

Mr. President : The question is :

"That after sub-clause (j) of clause (1) of article 303. the following sub-clause be inserted:—

'(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President."

The amendment was adopted.

Many Honourable Members: What about the, programme?

Mr. President : I might inform the House that there are certain provisions of the Constitution which have to be dealt with and as soon as we finish those, we have to deal with one Bill which has already been introduced. When all this work is finished, we shall adjourn and it depends upon the House how long it will take to finish the business. I can mention the articles if you like. Articles Nos. 99, 184, 303, 304, 305, Schedule VIII, Schedule IX, Article 1, New Schedule III A, Schedule IV, new article 264 A. Then there is a motion of which notice has been given by Mr. Munshi regarding the Hindi version of the Draft Constitution, and lastly there is Dr. Ambedkar's Bill. This is what we have to get through in this session.

Pandit Govind Malaviya (United Provinces: General) : May I know, Sir, if it is settled that we are going to have another session of the Assembly in early October ?

Mr. President : We are going to have another session in October.

Pandit Govind Malaviya: When we are going to have another session so soon, could we not put all this off till then'?

Mr. President : I have found that there has been a tendency when approaching the close of this session to shove everything to the next session; till yesterday I thought we would be able to deal with all the transitory provisions, but I was informed that we could not take them and we should shove them off to the next session. Today I am told that we could not dispose of the preamble and we should shove it off. Now you propose that all the rest of the work should be shoved off. It will not be possible because.....

Pandit Govind Malaviya: Sir, I say so for this reason. Originally it was thought that this session would be a short session say, for a fortnight. We have now gone on for seven weeks! If we are going to meet early in October again, probably it will not matter very much if we put off these items till then. But, if you think that we must complete some of this work which you have mentioned, then may I suggest, Sir, that, possibly, we could have both morning and evening sessions today and tomorrow and finish by then whatever work we can, and then we may adjourn.

Many Honourable Members: Yes, Yes.

Mr. President : The difficulty is this that we have got certain holidays to take into consideration. We have to take the convenience of the Legislative Assembly, which is to meet in November, and we have to pass the remaining articles of the Constitution for the Second Reading and then the whole Constitution in the Third Reading, and in between the completion of the Second Reading and the Third Reading, the Drafting Committee will naturally require some time which cannot be less than, say, three weeks or so, for putting things in order and getting them ready for the Members for the Third Reading. Therefore, all this difficulty arises because we have some sort of a time limit on the other side and we have to fit in all these as far as possible. Therefore, I am trying to finish as much of the work as possible in this session so that in the October session we may not have more left than is absolutely necessary. Even as it is, what is left for the October session is this. We have

[Mr. President]

a Chapter with regard to the States, which we have not yet dealt with, that is to say, about the Indian States, merger and all that. So, a new Chapter or amendments to some of the articles which have been proposed in the Draft Constitution will have to be done. That will take, I think, some little time. Then we shall have to deal with transitory provisions which have not been taken up today because I understand there is some difficulty with regard to that. There are two articles relating to minorities, articles 296 and 299 which we have left over. Then there is Schedule I that is regarding the territories. That may not be very difficult. Then, there, is Scheduled II dealing with salaries and emoluments : I do not know—it may evoke some amendments. That would take some time. Schedule III-B is a list of the constituencies for the Council of States. Then, there are two articles which are of a substantial nature, article 283-A relating to protection to services which has been held over and article 280-A relating to financial emergency. Apart from these, there are two more or less formal articles relating to commencement and repeal.

Shri R. K. Sidhwa : These will not take more than a week or ten days.

Mr. President : I am not allotting more than ten days for these. If we start on the 10th we would go up to the 20th. Diwali begins on the 21st. The work we have to do, we must finish before the Diwali session finishes. If we have to sit for ten days, we shall have to begin about the 6th or so.

Shri R. K. Sidhwa : Cannot we sit this afternoon and tomorrow and finish as much as possible ?

Mr. President : I am told that there are some articles of which the draft has not yet been finalised.

Pandit Thakur Das Bhargava : We can have two sittings tomorrow.

Mr. President : Tomorrow we will have two sittings.

Pandit Thakur Das Bhargava : And one sitting on Sunday.

Mr. President : I have no objection. If honourable Members agree, I do not mind. Or we can sit on Monday. Just as you like.

Shri V. T. Krishnamachari : I suggest we sit on Sunday and finish on Sunday.

Mr. President : I have no objection. Is it the wish of the House that we sit on Sunday.

Several Honourable Members : Yes.

Mr. President : We shall sit on Sunday.

Shri R. K. Sidhwa : Is it a condition that all work should be finished on Sunday or we carry over the rest?

Mr. President : That condition cannot be fulfilled by me. That must be fulfilled by you. The House stands adjourned till nine of the clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 17th September 1949.