Shri R. K. Sidhwa : I see the importance of it. I thought that the Ministry would be able to bring in a Bill in the Parliament within three months. If it is humanly not possible, I do not want to press.

Prof. Shibban Lal Saksena (United Provinces General): Mr. President, Sir. I beg to move:

"That in article 373, for the words 'one year' the words 'three months' be substituted."

Sir, this article 373 is intended to give the President power as a sort of substitute for Parliament under article 22 especially clauses (4) and (7). If the new clause of Dr. Ambedkar, i.e., amendments 545 and 546 be taken as the final form in which article 22 will be in the Constitution then after the amendment is made, it will read like this :

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) 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 :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by order made by President under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of order made by president under sub-clauses (a) and (b) of clause (7)."

And clause (7) will read as follows :

"(7) The President may by order prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause(4)".

Thus, Sir, the powers given to Parliament in the final form of article 22 are taken by the President for one year. I think, Sir, that this is something drastic. I can understand that immediately on the 26th of January we may not be ready with the new legislation. But I should certainly think that before the budget session is over, that is by April. we should have the new law passed. I am, therefore, suggesting, not the deletion of the article as my honourable Friend Mr. Sidhva has suggested, but the substitution of three months for one year. It is, of course, obvious that the present session of the Assembly will be over by the 22nd of December and it may not be possible to meet again and pass the law before the 26th of January. But, I think before the budget session ends, the new law should be passed and we should not have to wait for one year to make this law, that is till the next December or January. I personally feel that the use of the words ,one year" shows to some extent the respect that the Drafting Committee pays to the liberties of the subject. This question deals with the taking away of the liberty of the subject and keeping him in detention. We do not want to leave this matter pending for one year. I think the period of three months given in my amendment is quite enough, and I think before the end of three months we should be able to provide in what circumstances the Government can detain a person for a longer period than three months. Clause (7) of article 22 gives the power to Parliament to make law prescribing the circumstances under which and the class or classes in which a person may be detained for a period longer than three months as also the

[Prof. Shibban Lal Saksena]

maximum period for which any person may be detained. This must be decided by the Parliament and should not be left to the Executive itself. The fact of the matter is that this power is given to the Executive and we want to place some restrictions on the Executive. If we leave it to the Executive to frame the rules for a period of one year, there will be no restriction on the power of the Executive and there will be a denial of democracy and freedom. This article shows a great disrespect for the liberty of the subject. I therefore think that three months should be substituted for one year.

Shri B. Das : I am not moving amendment No. 415, Sir.

Mr. President : Amendment 418 : Mr. Kamath.

Pandit Balkrishna Sharma : I have an amendment No. 416, Sir.

Mr. President : That does not arise out of any amendment of the Drafting Committee.

Pandit Balkrishna Sharma : There is one in the subsequent List.

Mr. President : There is amendment No. 503. When we take up amendment No. 503, this will come in as an amendment to that.

Shri H. V. Kamath : Mr. President, I move. Sir, amendments 418 and 419;

"That in clause (5) of article 379, for the words 'after such commencement' the words 'on such commencement' be substituted."

I find from List IV, Sir, circulated last night, the Drafting Committee has thought better and they have accepted this amendment.

"That in clause (5) of article 379, for the words 'as the case may be, the Deputy Speaker' the words the Deputy Speaker, as the case may be' be substituted."

This is more or less formal amendment and if you will please, Sir, a verbal one, and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 387, amendment No. 420.

Shri H. V. Kamath : Sir I move:

"That in article 387, the words 'and different provisions may be made for different States and for different purposes by such order' be deleted."

Sir, this article 387 deals with special provisions as to the determination of population for the purposes of certain elections. My recollection is that in the last session of the Assembly, under the corresponding original article, more power was sought to be given to the President than visualised in the present article minus the italicised portion. There was a full dress debate in this House and the article was later on amended so as to refer only to the determination of the population of India or any part thereof. The other matters were stated to be important enough to be left to regulation by Parliament, and I believe you too intervened in the debate and assured the House, that what was contemplated was merely the determination of the population figures for the country or any part of it. The italicised portion of the new article deals with matters which are in my humble judgment, so important that they should not be left to the discretion or judgment of the President and the Executive. This portion refers to different provisions and for different purposes also. I do not know which are the purposes that are intended here. I think this should not be left to the initiative of the President and the Executive. I move amendment number 420 and commend it to the House for its earnest consideration.

Amendment 421, I leave to the Drafting Committee. Amendment 422 this is also a verbal amendment and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 391: amendment No. 424.

Shri H. V. Kamath : There is an amendment by Shri Thakkar Bapa, No. 423, Sir.

Mr. President : There is no amendment of the Drafting Committee; you proceed with article 391, amendment No. 424.

Shri H. V. Kamath : Sir, I move :

"That in clause (1) of article 391, for the words 'amendment in' wherever they occur, the words 'amendment to' be substituted."

This is also a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Sir I move:

"That in clause (1) of article 391, for the words 'anything in this Constitution', the words 'anything contained in this Constitution' be substituted."

This amendment is also on a par with amendment 424 and I leave it to whatever fate may overtake it at the hands of the Drafting Committee.

Shri R. K. Sidhwa : Mr. President, Sir, I move :

"That at the end of article 391, the following new clause be added:—

'(3) Such an amendment or amendments shall be placed within two months of the passing of Such an order before Parliament for its approval.' "

Sir, this article is a very important one.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and point out to him that the President will merely be putting into the provisions of the Constitution what would be a matter of fact and that would not admit of any approval by Parliament or of even placing before Parliament because on the 26th of January, these changes must become part of the Constitution. Otherwise, these States to which these changes refer will be hanging in the balance.

Shri R. K. Sidhwa : My point is this, I will just read the article as it is:

"if at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires any amendment in the First Schedule and the Fourth Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken and any such order may contain such supplemental, incidental and consequential provisions, as the President may deem necessary."

I refer to the First Schedule. I do not want to give any power to the President for First Schedule, which is a most contentious subject; during the last session we discussed it and postponed it for the consideration of this House. The First Schedule relates to addition or subtraction relating to the States and also the names of the States. If any additional name is to be made, could it be left to the President? Supposing Madras is to be divided, may I know if merely the President will have a power to add Andhra into this list or Maharashtra to be added to it and also to change the names of the States?

Shri T. T. Krishanamachari : Action would have been taken under the Government of India Act already before the promulgation of the Constitution.

Shri R. K. Sidhwa : I feel that the change in the name of States should be in the absolute power of this Assembly. With due respect to you, I feel that this is an important matter on which the House must have a voice. Already we have received a suggestion from U.P. to change the name of the

[Shri R. K. Sidhwa]

State and there is a great deal of opposition from the Members except the U.P. Members. Then again about the new provinces that are to be created, may I know whether our voices are to be stifled down, and that it should be confined to Members of the province concerned? We should have a voice in deciding whether there should be additional provinces or separation of provinces and in the renaming of the provinces. Therefore I have formally moved this amendment. My intention is that the President should not be .empowered. On the contrary it embarrasses the position of President by giving him the power on this vital matter where there is a great deal of opposition in the House and various Members.

I therefore contend that this article should be re-drafted or if the addition is to be made by tomorrow, we might make it. Or we might, by common consent, hold it over and before we disperse, just before the passing of the third reading, we might consider this subject and decide it here but it would be unfair, in my opinion, to take away my righter express my view—on the question of naming of States and also the creation of new States. I therefore submit and request you—this is a personal appeal to you, Sir, that.....

Mr. President : This article contemplates action taken under the provisions of the Government of India Act. If a new province is created tinder the Government of India Act, the President may take note of that fact and act under this article. It has nothing to do with the naming of existing provinces.

Shri R. K. Sidhwa : May I know whether the President will not change the name under this Constitution ?

Mr. President : Not of existing provinces but of course, if a new province is created, it will have a name. If the action has to be taken under the provisions of the Government of India Act, 1935 *i.e.*, a province will have been created by the 26th January, under the Government of India Act, 1935, and when that province is created, the President has simply to take note of that fact and to incorporate it in the Schedule.

Shri R. K. Sidhwa : Parliament will have a voice in it ?

Mr. President : It is the Governor-General who acts under section 290 for creating a new province and the President has to take note of that fact and to mention that particular new province in the Schedule.

Shri R. K. Sidhwa : That would mean under that clause the Governor General, at the instance of Ministers, would act?

Mr. President : Of course it is entirely the Governor-General who will act on the Ministers' advice. The Governor-General is not likely to act without ascertaining the views of the Legislature or of the provinces.

Shri R. K. Sidhwa : May I know whether the Governor-General will have a right to rename the provinces under that Act?

Mr. President : Not to change the names of the existing provinces but to create new provinces. If a new province is created, then the President is expected to take note of that fact and to incorporate that in the Schedule.

Shri R. K. Sidhwa : That means we are precluded from expressing our views.

Mr. President : Otherwise the creation of provinces has to be held over till after the new Constitution comes into force. It comes to that. This new article has been brought in to enable new provinces to be created if conditions are created in which such action becomes possible but that would take away the

right of the Governor-General to act under section 290 before even 26th January. You cannot take away the powers given to him under the Government of India Act before 26th January. That power is there under the Act.

Shri R. K. Sidhwa : Before we disperse on the 26th November could not we know?

Mr. President : it is more than I can say.

Shri M. Thirumala Rao : That is a matter for the Legislative Assembly. We are drafting the Constitution for the future. Mr. Sidhva's amendment is entirely irrelevant because it is a matter for Parliament.

Shri R. K. Sidhwa : I am particular about expressing my view.

Mr. President : What ever the Governor-General can do under the Act of 1935, he can do upto 26th January and you may take any remedy under the Act.

Shri R. K. Sidhwa : There is no remedy.

Mr. President : It can come up as an amendment of the Act.

Shri R. K. Sidhwa : There is no time.

Mr. President : That is why it has been introduced here to meet that particular emergency.

Shri R. K. Sidhwa : I hope you will bear this in mind. This subject was before the House and the right of this House is being taken away by this clause.

Mr. President : There is no right of the House being taken away. It only enable the President to take note of the fact which has taken place in accord with the Government of India Act of 1935.

Shri R. K. Sidhwa : The right is this : In the last session we discussed this First Schedule and the question of creating new provinces. Then the matter was held over.

Mr. President : What was held over—whether the province was to be created or not? Now that is held over.

Shri Mahavir Tyagi : Sir, I hope President means the President of the Constituent Assembly, and not the 'Governmental President'.

Mr. President : There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I propose to explain this matter in my reply. Mr. Sidhva may conclude his remarks.

(Amendment No. 427 to article 392 was not moved.)

Mr. President : Amendment No. 428—Mr. Kamath. But I think it has been accepted?

Shri H. V. Kamath : No, Sir, it is not accepted.

Mr. President, Sir, I move my amendment No. 428. But I find that this proposed clause (3) of article 392 has been re-drafted, and List IV received last night gives us the amended or revised clause. So may I relate my amendment to that, Sir?

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 505 of List II to the proposed clause (3)—(now it will be No.572 of List IV)—for the word 'before' the word until' be substituted,"

or alternatively,

"In amendment No. 572 of List IV, in clause (3) of article 392, for the word 'before' the words 'until immediately before' be substituted."

I find, Sir, the word "before" here is not quite accurate and does not convey the exact sense of this clause. What is meant is that until the new Constitution commences—may be at sun-rise on the 26th January, that this clause means that until that very second, before 6 o'clock or sun-rise on the 26th January, the Governor-General will have these powers and exercise these powers conferred by this article. The word "before" is somewhat vague, especially when used in a Constitution, and I feel it is not quite happy. I therefore suggest that it may he substituted by the word "until". It conveys the sense better than the word "before". "Before" can Mean any time before the commencement; there is no precision about it. I do not like the word "before". But I am open to correction and I am prepared to give place to men of better knowledge of the language, to more competent men, in this matter. But left to myself, I would choose the word "until" Or if the word "before" should be there. I would have "until immediately before" the commencement on the Constitution. But as I said, I would leave it to the wisdom of the House and of the Drafting Committee to deal with this amendment as they like.

Then I come to the next amendment-431.

"That in item 5 of Part A of the First Schedule for the name Koshal Vidarbh' the name 'Madhya Peadesh' be substituted."

Sir, the House will remember that when this Schedule was adopted during the last session, you, Sir, told us that whatever changes might be made or sought to be made in the names of the States in Part A of the First Schedule, they will be considered during this session and the amendments that had been tabled during the last session were referred under your instructions, to the Provincial Governments.

Mr. President : It might cut short discussion if I say that I understand that the C.P. Government have recommended the name Madhya Pradesh. So perhaps. no further discussion is necessary on this amendment.

Shri H. V. Kamath : Sir, there was some controversy in the papers; but if that name has been accepted, I agree there will be no necessity for further discussion. I heard that the Drafting Committee had referred it back to the Provincial Government.

Shri R. K. Sidhwa : Sir, on a point of information, may I know whether the recommendation of the Provincial Government will be automatically accepted?

Mr. President: Nothing is automatically accepted. I am only saying that this is now practically an amendment of the Drafting Committee, and it will be subject to the vote. Mr. Kamath need not now press his amendment.

Pandit Balkrishna Sharma : Sir, in view of what you have said, may I know whether the recommendation sent up by the United Provinces will also automatically become the amendment of the Drafting Committee?

Shri R. K. Sidhwa : Sir, that was exactly the point to which I drew your attention, whether the decision of the Provincial Government will automatically become the decision of the Drafting Committee? I do not think it is so Sir.

Mr. President : Very well, if that is your view, we shall take it in that way.

Shri Mahavir Tyagi : We decided the other day that the names should be accepted when they come from the Provincial Government.

Mr. President : Names have been recieved, but if some Members object, it is open to the House to take any name that it choses, irrespective of what the Provincial Government has sent.

Shri R. K. Sidhwa : Sir, you also said that the Drafting Committee will consider the names received.

Mr. President : Very well. We now go to amendment No. 432.

Shri H. V. Kamath : Regarding my amendment No. 431, I am happy the Provincial Government has also sent up the name "Madhya Pradesh". I think it is a far happier name than "Koshal Vidarbh", and I have no doubt that the House will accept it.

As regards No. 432 I move:

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Gangavarta' be substituted."

Shri Mahavir Tyagi "Gangaputra"?

Shri H. V. Kamath : No, "Gangavarta."

Shri R. K. Sidhwa : May I submit that this may be held over till we know the opinion of the Drafting Committee? You, Sir, said last time that the Drafting Committee will place its proposals.

Mr. President : The proposals are there, and we shall know the opinion of the Drafting Committee before the vote is taken.

Shri H. V. Kamath : Sir, while I do feel that the name Aryavarta will be a dignified Sanskrit name,—perhaps it occurs in the Vedas too,—but at the present day, I am sure nobody will differ from me when I say that the name "Aryavarta is applied more to the whole of India than to a particular part of it, (*hear hear*), and I do not think at this time of day we should name any particular province on a racial basis, and the name Aryavarta has a racial odour about it.

Pandit Balkrishna Sharma : It has nothing, except a cultural odour about it.

Shri H. V. Kamath : Even if it is only cultural odour, I would not subscribe to that name, because the culture of the whole of India is one, whether you call it Aryan, or Indian or Bhartiya, it is all one. To call a particular province by the name "Aryavarta"—this is, the *home* of the Aryans, or whatever else it may mean—it will cast a reflection upon the inhabitants of the rest of India and it will, I feel, be resented by them. We should not name a particular province "Aryavarta" when the whole of India is known as Aryavarta. In one of the Vedas, I believe when the Aryans first came to India and settled down in a particular part of Northern India, they called that part Aryavarta. When they went down South the name was intended to comprise the whole of India, as we know it today. Therefore, I feel that the name Aryavarta is not very appropriate as the name of one province or State of India.

As regards the name "Gangavarta" I have it on very reliable authority—I have not read the Vedas myself but I am told—that one of the Vedas, either the Rig Veda or Sama Veda—refers to the part where the early Aryans had settled down as Gangavarta. Perhaps more often the name 'Aryavarta' is used but this name 'Gangavarta' also appears occasionally; and it has no racial or Cultural bias or odour attached to it. The Ganga is the biggest and most

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sacred river in India, and in the estimation or all Indians it is one of the biggest and holiest rivers in the world. There is an ancient tradition about the Ganga. I would request my honourable Collagues from the U.P. to think deeply over this name and decide whether it would not be wiser and more appropriate to call their province Gangavarta instead of Aryavarta. In our Indian tradition and history. the Ganga has played a very prominent part, and even in our philosophy, our Vedas and Puranas and our scriptures. I for one would feel proud if the U.P. is trained Gangavarta and not Aryavarta, as latter applies to the whole of India.

Prof. Shibban Lal Saksena : Sir, I move:

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Aryavarta' be substituted."

My honourable Friend Mr. Kamath has proposed the name of Gangavarta and opposed Aryavarta, which our province wants to keep for itself. His main reason is that Aryavarta is the name of the whole of India. If he would only turn to article 1 of the Constitution he will find that the whole country is named Bharat and the name Aryavarta has been discarded. So his saying that the name Aryavarta applies to the whole of India is not correct. If our province had appropriated the name of Bharat then his argument would have been of some value but when we call ourselves Aryavarta his argument has no validity.

The whole of India was never called Aryavarta. Only Northern India,. particularly the Punjab, the U.P. and Bihar were called Aryavarta. Mr. Kamath has suggested the name Gangavarta but the Ganga also goes through Bihar and Bengal besides U.P. The same argument will have to apply there. It is not an argument to say that we are trying to a appropriate name which applies to the whole country . . . . . .

Shri B. Das : You force your language on me and you steal our common country's name also for your province.

Prof. Shibban Lal Saksena : The word 'Aryavarta' has been suggested not by myself alone but by our Provincial Congress Committee consisting of 650, members who met and discussed the matter. This was their unanimous verdict that Arvavarta should be the name adopted for the province. Our provincial government have also recommended the name. I do not think this House should deny us the privilege of calling ourselves by a name which is our ancient name. If any province like the Punjab or Bihar is jealous and wants to call itself Aryavarta, that is another matter: but no other province has claimed that name and there is no reason why we should not call ourselves by that name. I hope there will be no objection raised against our province taking the name, which has been decided both by the Congress Committee and the provincial cabinet.

There was one argument advanced that if we call ourselves Aryavarta, it implies that we alone are Aryans and others are not. That is not the meaning of it. Merely because in the whole country one province wants to call itself Aryavarta, my friend says that there is something racial about it. There is no racialism about the word Aryavarta. It is an ancient name of Northern India and our province is the heart of it. I do not think this House should impose on us any name other than what we want. I hope the House will support us.

Shri T. T. Krishnamachari : Sir, this matter might be discussed tomorrow, because there is a possibility of the Drafting Committee being in a position to put in an amendment, which will probably meet with the wishes of a large body of Members of this House.

Mr. President : Yes, we shall discuss the question of names tomorrow.

Shri H. V. Kamath : Sir, I move amendment Nos. 434 to 437.

"That in sub-paragraph (3) of paragraph 9, the words beginning with 'during the period' and ending 'before such commencement' be deleted."

"That sub-para (2) of paragraph 10 be deleted,"

"That in sub-paragraph (4) of paragraph 10, for the words 'for any State' the words 'of any State' be substituted."

"That in sub-paragraph (3) of paragraph 12, for the word 'and' occurring in line 1, a comma be substituted."

Taking the last one it is purely a matter of punctuation and I leave it to the punctuating sense of the Drafting Committee.

Since I understand that a corrigendum has been issued with regard to this, I shall not press it. Coming to amendment Nos. 434 and 435 : these deal with salaries of Judges who might after the commencement of the Constitution be appointed judges of High Courts or of the Supreme Court. There is some distinction made between the appointment of new judges and the appointment of the old incumbents as judges of the Courts concerned. These clauses which I seek to amend by deletion of particular portions thereof, refer to the payment, of the difference between the pay which they used to obtain before they were appointed judges under this Constitution and the salary of judges is laid down in the Schedule to this Constitution. I think that this distinction should not be made between judges who are newly appointed, and those who were formerly judges of the High Courts or the Federal Court but now are appointed to the High Court or the Supreme Court. This refers to a few individuals and we have already fixed the salary of our judges at four figures. On top of that if we seek to give them the difference that obtains between the old and new salaries. I think the Indian people will feet, and rightly so, that we are unduly pampering our judges. If the old incumbents do not wish to serve on the new salaries, I think that the best course would be I am loth to believe that they would refuse to serve; they are patriots as much as we are, and I think they would very willingly agree to serve on the salaries as fixed in this new schedule—but if some, owing to sheer perversity or cussedness refuse to serve in the High Courts or in the Supreme Court—the Government of the new Indian Republic should ask them to quit and make way for judges, whom I think we can find in a, fairly large number among the able members of the Bar in India—men who are willing to serve our country and people on the salaries fixed in this new schedule. Once again I say that it would be wrong on our part to pamper a few individuals who were judges before the commencement of the Constitution and whom we seek to appoint as judges of the High Courts and Supreme Court. The Constitution is meant for the whole people, and not for a few individuals that might be affected by the provisions of the Constitution. I therefore commend my two amendments to the acceptance of the House.

Mr. President : Amendment 438 has already been moved. Amendment 439-Seventh Schedule.

Shri H. V. Kamath : Sir, I move:

"That in entry I of List I of the Seventh Schedule, after the word 'preparation' the words 'and operation' be inserted."

The words in italics comprise the amendment of the Drafting Committee and they have sought to insert the portion relating to preparation for defence. I think, Sir, so far as military science and the art of warfare is concerned, it comprises not merely preparation but operation too, and the point of my amendment is to make this quite comprehensive and not leave any loophole for doubt, of whatever nature it may be. I therefore move that my amendment seeking to insert the word "operation" after "preparation" be accepted. The new

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entry would read thus : Defence of India and every part thereof including preparation and operation for defence. . . .” I hope the Drafting Committee and the House will accept this amendment.

Sit, I also move:

“That in entry 65 of List I of the Seventh Schedule, before the word ‘police’ the words ‘administrative or’ be inserted.”

The new entry which has been inserted here refers to Union agencies and institutions for professional, vocational or technical training, including the training of police officers. After the recruitment to the old I.C.S. was stopped. Our Government inaugurated a new service called the Indian Administrative Service and the members of that service used to be trained in a school, in Dellhi—and I believe they are still trained here in this school, or may be, anywhere else in India. But the fact is that there is a training school not merely for police officers but for administrative officers as well. I do not know why you want to single out police officers alone. Either mention all civil officers : or if you mention the police then the other key service, that is, the administrative service, must find a place, like the old I.C.S., and I.P. the present I.A.S. and the I.P. must be included in this entry. I therefore commend my amendment to the acceptance of the House.

Mr. President : Mr. Sidhva, which is the entry you want transferred.

Shri R. K. Sidhwa : Sir, I move :

“That entry 34 of List III be transferred to List I.”

Entry 34 relates to price control and it is most appropriate that this item should go to List I. Control of most of the items is from the Centre and price should he regulated from the Centre. At times there have been different kinds of prices prevailing and Provincial Governments have fixed prices without consideration, and you very well know the state of prices today. If price control is to be effective, it should be regulated through the Centre in the interests of all, and the provinces should have no voice in it. Take sugar, some provinces have fixed prices which are most incommensurate with the prices that are prevailing in other provinces, bearing in mind the railway freight and other charges. I therefore feel, if it is left to the Centre they will regulate it properly. They will see to the interests of the people and there will be no kind of bickering or bitterness among the people. You need price control, because prices is the factor which has brought about great discontent among the people and the Government of India is being blamed sometimes for no fault of their own. Well the Provincial Governments are responsible. This control item should be exclusively put in List I. I am sure the Provincial Governments will welcome it because it avoids all bickering and discontent, and if left to the Centre there everything will be regulated properly. I commend it to the acceptance of the House.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register.

Mr. Hyder Husain (United Provinces : Muslim).

Shri H. V. Kamath : Mr. President, before we proceed to the second list, may I point out that there is an amendment of mine, No. 156* in the first list, to article 57 of the Constitution, which has escaped your notice?

Mr. President : We shall take it as moved.

Shri H. V. Kamath : I have an amendment No. 138 to article 41. I think the particular word used is patently inaccurate,—"Public assistance" It ought to be "State assistance".

Mr. President : You may leave it to the Drafting Committee to consider. We shall now take up the second list.

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

"That in article 9, after the word and figure 'article 5' the words 'or be deemed to be a citizen Of India by virtue of be inserted."

Actually, this amendment merely amplifies the wording of the article and does not need any comment.

Mr. President : Then we come to article 22.

Shri T. T. Krishnamachari : I will move the latter amendment in list IV. The number is 545. Sir, I beg to move :

"That for clause (4) of article 22, the following clause be substituted

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) 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 :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause lb) of' clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)'."

Mr. President : I move :

"That for clause (7) of article 22, the following clause be substituted:—

'(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub- clause (a) of clause (4) ;

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)'."

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*56. That in article 57, the words "subject to the other provisions of this Constitution,", be deleted.

The House will understand that this is merely a restatement or clauses (4) and (7) of article 22 incorporating therein the amendment originally tabled by the Drafting Committee, No. 443, which sought to provide that Parliament may by law indicate the maximum period or prescribe the maximum period during which any person can be detained. This was a lacuna in clause (4) as it stood when the House passed it on the last occasion. The -House will agree that it is a wholesome amendment in that, as clause 4(a) stood is the House passed it, there is no maximum period prescribed or could possibly be prescribed by Parliament or any authority for the period of' detention of any person whom the Advisory Board considers to be a person who should be detained. Tile original amendment No. 443 was tabled for that purpose, but subsequently it was found that this has to be closely inter- related to clause (7) which is the operative clause under which Parliament might act. Thereafter it was found that it is better., to split up the original clause (7) into three parts and clearly indicate that there will be a maximum period for which any person or any class or classes of persons can be detained by any law providing for such detention. The matter does not involve any controversy and I believe, quite a number of Members of this House who were consulted in this matter were in agreement that this provision was necessary. This is the only provision that would really make any indefinite detention impossible. I hope the House will accept the amendments.

Mr. President : There were several amendments moved yesterday such as Nos. 78, 82 and 83. Does the present amendment No. 546 cover all those points ?

Shri T. T. Krishnamachari : I may mention, Sir, that in drafting this amendment in the present form, we took the advice of those Members who moved the amendments previously referred to. While I am not in a position to commit them, if appears to me that they are satisfied that this amendment wilt cover all possible contingencies they had in mind.

Prof. Shibban Lal Saksena : We will withdraw our amendments.

Mr. President : You withdraw both your amendments ?

Prof. Shibban Lal Saxena : Yes, Sir.

Mr. President : Then there are certain amendments to amendment No. 545 ,of of which notice has been given. Mr. Kamath may move his amendments.

Shri H. V. Kamath : Mr. President, I beg to move amendments Nos. 579, 581 and 583.

"That in amendment No. 545 of List IV, the proviso to sub- clause (a) of the proposed clause (4) of article 22 be deleted."

"That in amendment No. 345 of List IV in sub-clause (a) of the proposed clause (4) of article 22, for the word or occurring at the end the word 'and' be substituted."

"That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22 the words 'without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause-(4)' be deleted."

Taking the first of these amendments first, I need not expatiate at great length thereon. I shall only point out that in clause (7) we have merely provided that Parliament may by law prescribe the maximum period for which any person or any class or classes of persons may be detained under any law providing for such preventive detention. After having said that Parliament alone will regulate this matter, no one dare say that any authority in the State will be able to override the law promulgated by Parliament. Therefore in my judgment this proviso to clause (4) is superfluous and redundant. I have no objection

to ‘it in principle but I think it is unnecessary. We have laid down clearly that Parliament alone is empowered to regulate the maximum period of detention under this article.

Sir, coming now to my next amendment, 581, I may say that this brief monosyllabic amendment seeks to substitute the word ‘or’ by The word ‘and’. In this amendment I wish to make a last attempt towards safeguarding the liberty of the individual. Of course this liberty cannot be safeguarded absolutely, because there is no absolute individual liberty nor is there any absolute safeguard against the violation of such liberty by the executive. I only wish to safeguard it in so far as it does not jeopardise the security of tile State. If the article stands as it is, then it would mean that if Parliament lays down in a class of cases the maximum period of preventive detention, then, even without recourse to the machinery of the Advisory Board, a person can be detained upto the maximum period of two or three years—whatever period Parliament may prescribe. Clause (4) refers to two classes of cases; in one category fall those whose cases have been referred to the Advisory Board and who have to be detained for more than three months; and, in the other are the cases of those who have been detained in accordance with the provisions of any law made by Parliament under clause (7).

Under clause (7) Parliament can legislate with regard to the maximum period of preventive detention. I want, Sir, that in every case of preventive detention. the detenu’s case must be referred to the Advisory Board,—in all ,cases. If the State, if the Government, wants to detain him for a longer period than three months, his’ case must be referred to the Advisory Board, whatever the class of case it may be; but as the clause stands, the word “or” complicates and vitiates the whole situation. Therefore I propose to substitute the words “ or” by the word “and”, so that every person must be detained tinder the law of preventive detention and that person’s case must be referred to the Advisory Board in case of detention for a longer period than three months. These are the conditions which must be satisfied before the person can be detained for a period longer than three months. Therefore I suggest that the word “or” in clause (4) may be replaced by the word “and”. My amendment No, 581 seeks to do that.

By amendment No. 583, I seek to delete the words “without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)”. This flows logically from the amendment which I have just moved, No. 581. This amendment No. 581 visualises the reference of all detention cases, irrespective of their category or class or circumstance, to the Advisory Board in cases of detention prolonged beyond the period of three months, and therefore the distinction sought to be made in clause (7) between the class of cases which should be referred to the Advisory Board and the other class where persons are detained without reference to the Advisory Board, goes. Therefore when all cases have to be referred to the Advisory Board in the event of a longer period than three months, the words which I have sought lo delete in clause (7) are not necessary. I therefore move amendment No. 583.

The only Fundamental Right which this article 22 which we discussed at such great length in the last session confers is the right to detain without trial. I do not know what sort of right it is, but whatever it may be, let us mitigate the harshness and the injustice that might result from the abuse of power. I make this last attempt to safeguard the liberty of the individual, in so far as it is not inconsistent with or does not jeopardise the security of the State. I move my amendment Nos. 579, 581 and 583 and commend them for the acceptance of the House.

Shri Ajit Prasad Jain (United Provinces : General) : Sir, I move:

"That in amendment No. 443 of List II, for the proposed proviso to clause (4) of article 22, the following be substituted:

'Provided that nothing in this clause shati authorise the detention of any person beyond the maximum period prescribed by any law under the authority conferred by Parliament under clause (7)'

I find that the redrafted clause (7 does not authorise the Parliament to make any law providing for preventive detention. On the countrary it authorises Parliament to prescribe the circumstances and the classes of cases in which persons may be detained for a period longer than three months. It will be seen that in the opening part of clause (4), ordinarily it will be open to a State Legislature or the Parliament to pass laws for preventive detention for a period upto three months, but two exceptions have been provided: one is sub-clause (a) where the case goes to an Advisory Board consisting of persons qualified to be appointed is judges of the High Court and two is sub-clause (b) when Parliament prescribes the circumstances or the class of cases where a larger period of detention may be provided. It is apparent that in many cases the law win have to be made by the State Legislature as preventive detention falls in the concurrent list. The amendment which I have given takes into account the fact that the law will have to be made by the Legislature of the State but the authority for making that law which prescribes for detention for longer than three months will be made by Parliament. That point is not clear from the amendment of the Drafting Committee and it is to make that point clear that I have moved this amendment.

Sir, I also move :

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:

'(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause (7).'

or alternatively,

"That with reference to amendment No. 545 of List IV, for sub clause (b) of clause (4) c article 22, the following be substituted:—

'(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).' "

This amendment is connected with amendment No. 580. Here I have given two alternative drafts for the substitution of sub-clause (b) of clause (4). Sub-clause (b) at present says "such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)." Clause (7) does not provide for the detention of any person but only prescribes the circumstances and the class or classes of cases in which a longer period may be prescribed. It is to bring clause (4) and clause (7) into line with each other that I have given notice of this amendment, but in fact I must confess that the new amendments which Mr. Krishnamachari has moved just now were not with me and I have not been able to follow exactly the implications of the amendments moved by him. If the points which I have raised in the two amendment Nos. 580 and 582 are covered by his amendments, then of course there is no force in my moving my amendments. As I was not clear I have taken the opportunity of moving these two amendments.

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

"That in the Explanation to article 58, for the words 'For the purposes of this clause' the words 'For the purposes of this article', be substituted."

"That for clause (3) of article 59, the following clause be substituted :—

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until, provisions in that behalf is so made, such emoluments, allowances and privileges as arc specified in the Second Schedule."

"That in clause (3) of article 65, for the words 'privileges, emoluments and allowances', in the two places where they occur, the words 'emoluments, allowances and Privileges' be substituted."

"That in the Explanation to article 66, for the words 'For the purposes of (his clause' the words 'For the purposes of this article' be substituted."

"That in clause (2) of article 71, for the words 'before the date' the words 'on or before the date' be substituted."

Mr. President : There is an amendment to this, No. 584 by Mr. Naziruddin Ahmad. I am sorry there is an amendment left out by mistake, No. 617 by Mrs. Purnima Banerji.

Shrimati Purnima Banerji (United Provinces : General): Mr. President, Sir, I move :

"That in amendment No. 546 of List IV. the proposed clause (7) of article 22 be deleted."

And the Draft as it stands in Draft Constitution may stand. I mean the original one as circulated by the Drafting Committee and given in the new draft tinder italics—that should remain. Sir, most of us will agree with the new change made in article 22 by amendment No. 545 providing the proviso that the Advisory Board would not be able to detain a person in spite of a revision of his case for more than the period prescribed by law, but however a change is now sought to be made in clause(7). It raises a certain doubt in our minds. None of us at any stage believed that the Advisory Board would at any stage take the place of Parliament; it was only suggested that in the absence of any law if a person were to be detained for more than three months, then the matter would go before a judicial body which would look into the case and allow further detention if need be in the absence of any law prescribing detention for more than three months. The doubt we have in our minds today is that under this new amendment proposed by the Drafting Committee where it says in clause (7) that Parliament may prescribe the cirumstances of detention "without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)" makes us feel that suppose if Parliament has got the power and we do not content that it has not—of laying down a law by which a man can be detained for more than three months, even so, if any person came under the Jurisdiction of that law, would it mean that the case of that person would not go for a judicial review before an Advisory Board? Could the Parliament dispense with the constitution of Advisory Board itself ? Sir I suggest that that should not be and the process of review before an Advisory Board should be kept intact even if it may be perfectly legal for Parliament to enact a general law providing for detention beyond a period of there months. If in the Constitution you have statutorily provided for the detention of a man without trial for a period of three months you have taken away a part of the sting of that measure by providing an Advisory Board which would look into the matter and give a judicial review of the case and decide whether further detention was justifiable or not. If this is not done the man would be dealt with in accordance with the law of the land which Parliament may enact. In the new draft you have specifically said that the Advisory Board need not be consulted. If it means that in the making of the legislation that Board need not be consulted, we are in full agreement and possibly there can be no objection to it. But if it is meant that if a general law provides for the detention of persons for more than three months, and if' after the general law has come into force a man innocently has got under the clutches

[Shrimati Purnima Banerji]

of that law, it seems as the clause now reads in the Constitution that a detenu's case need not go to an Advisory Board it all. Parliament may be empowered not to constitute an Advisory Board at all for even the judicial review of individual cases and that you are going to leave the formation of such a Board to any future law that Parliament may make. I therefore, suggest that the wording of clause (7) of article 22 should remain as it was stated by the Drafting Committee and this particular reference of not consulting the Advisory Board which raises that legitimate doubt in our minds be removed. At no stage we thought that the Advisory Board was to take the place of Parliament or was to be a law giving authoritative body. It was meant to be a judicial committee on which people of the stature of judges of the High Court would be sitting and would be a substitute for the ordinary channels of law denied to a detenu and therefore I would suggest in the drafting of this clause, the provision that such a Committee would be constituted in any case wherever a man is detained. That should be explicitly stated here and should not be left to an ambiguous interpretation. With these words, I move my amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That with reference to amendment No. 448 of List II, clause (2) of article 71 be deleted."

or alternatively,

"That with reference to amendment No. 448 of List III in clause (2) of article 71, for he words 'before the date of the decision' the words 'up to the time when the decision is communicated to him' be substituted."

The official amendment says that if the election of the President or Vice-President is set aside by the Supreme, Court, then according to the amendment, tile President or the Vice-President will function on or before the date of the decision of the Supreme Court. I submit, Sir, that this would lead to absurdities If the decision of the Supreme Court is passed, say, at 12 o'clock on a certain day, then according to the amendment the President or the Vice- President will function for the whole of the day on which the judgment is passed. He will function even after he ceases to have office. Although his election is set aside at 12 o'clock, yet he will be able, according to this clause, to function after 12 o'clock for the remainder of the day. My amendment would try first, to eliminate that article because the normal law would be that as soon as the judgment is passed, the President or the Vice-President loses his job and, therefore, he ceases to function altogether and therefore, a clause of this nature is not at all necessary. Even if it is necessary, it should be, I submit as in my amendment, the second part of amendment No. 584. It is to the effect that as soon as the judgment of the Supreme Court is communicated to him, he ceases to function at once and from that very moment. That is a sensible way of looking at it and the judgment should be effective as soon as it is communicated to him. Unless we are very precise as to the moment when the President or Vice-President ceases to have any office, very glaring constitutional anomalies may follow. In fact the President or the Vice-President may have to perform very important constitutional acts and the legality or propriety of the act will be very much jeopardized or be open to question if we are not very precise as to the moment when he ceased to function because anything done after that will be ultra wires and anything done upto that moment would be intra vires. In this view of the matter. I think, that the precise moment when the judgment is communicated to him should be tile real operative moment from which he ceases to function. That is the reason why I have submitted this amendment.

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

"That in sub-clause (b) of clause (1) of article 72. for the words 'offence under any law' the words 'offence against any law' be substituted."

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That amendment No. 449 of List 11 be deleted."

The amendment is to the effect that the words "offence against any law" be substituted. The question is whether there can be any offence 'against' any law. The text refers to offences under any law. You may offend against certain moral principles, against society, and so forth; but you cannot offend against the Penal Code or any penal enactment. There is an offence tinder a panel law. The original text as it was, was very good. But, in our attempt to improve it. I think matters have become worse. The way at which the Drafting Committee is proceeding to change its mind makes it obligatory on our Part to agree to the Constitution being passed at once. That would have the immediate effect of stopping the activity of the Drafting Committee. Now, the danger to the Constitution is not likely to come from Members like Mr. Kamath and my humble self, because the amendments will all be rejected, but the real danger to the Constitution is likely to come from the Drafting Committee itself. In order to prevent change of mind up to the last moment. I think, the best way would be to stop all amendments and to pass the Constitution as quickly as possible. It is from this point of view that I regard this attempt to alter matters.

Mr. President : Very well. Amendment 586. That also stands on the same footing.

Amendment No. 450 :

"That in the proviso to clause (1) of article 73, after the words 'any State' the words and letters 'specified in Part A or Part B of the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I move :

"That amendment No. 450 of List 11 be deleted."

In fact, Sir, I really oppose the amendment. The original clause (2) of -article 73 dealt with the authority of Parliament to extend to any State, that in States in Parts A, B, C and D. But by the amendment, it is now sought to be restricted to a State specified in Part A or Part B of the First Schedule, I do not know why Parliament will cease to have any authority.....

Mr. President : Because the others are directly under Parliament.

Mr. Naziruddin Ahmad : If that is so, what is the need for specifying if here, I fail to see. In fact, it is difficult to follow the exact implications of this and the result, if any, if this is not passed. At any rate, these difficult constitutional principles are being showered upon the heads of Members with incredible speed and I do not think, I am quite sure, that this amendment is needed. In fact, if we try to introduce last-minute amendments, we do not know what anomalies we would be creating. In order to cure a malady, possibly we are introducing more maladies into the Constitution.

Mr. President : Article 81, Amendment No. 451 by the Drafting Committee. There is no amendment to this.

"That in sub-clause (a) of clause (1) article 1, for the words and figures 'article 331' the words and figures 'articles 82 and 331' be substituted."

Mr. President : Article 100. Amendment No. 452 by the Drafting Committee.

"That for clause (3) of article 100, the. following clauses be substituted:—

'(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time 'during a meeting of a House, there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

There are two or three amendments to this : No 587, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move :

"That in amendment No. 452 of List II, in the proposed clause (3) of article 100, for the words 'Until Parliament by law otherwise provides, the quorum' the words 'The quorum' be substituted."

Sir, the text of the amendment will make it that the quorum which will be fixed by the Constitution may again be interfered with by Parliament. I should submit that quorum is a fundamental principle and it should not be allowed to be altered by Parliament. The result would be that quorum will depend upon the mood of the Parliament for the time being. That has to be fixed on fundamental principles and on considerations of a fundamental nature. Once we lay down the quorum in the Constitution, it should be kept absolutely free from interference or alteration, by Parliament. If it is necessary to make any change, that change should be in the Constitution itself with the necessary safeguards attaching to an amendment of the Constitution itself. It is an important principle and should not be made to fluctuate with the temper of the House for the time being. In the Government of India Act, the quorum was fixed and it was not liable to be changed by Parliament. It has to be fixed in the Constitution.

Mr. President : Amendment No. 588 : Mr. Sidhva. Your amendment is that the quorum should be one-sixth and not one-tenth. That is covered by an amendment which you have already moved. I will take it along with this also.

Shri R. K. Sidhwa : All right, Sir, It runs :

"That in amendment No. 452 of List II in the proposed clause (3) of article 100, for the word 'gone-tenth' the word 'one- sixth' be substituted."

Mr. President : The next amendment is 589, to suspend the meeting for half an hour. Do you need a speech for that ?

Shri R. K. Sidhwa : I do not want to make a speech, Sir. I formally move amendment 589 :

"That in amendment No. 452 of List II, in the proposed clause (4) of article 100, after the words 'suspend the meeting' the words, 'for half an hour' be inserted."

My point is that the article as amended states that the meeting shall stand adjourned.....

Mr. President : Either adjourn the House or suspend the meeting.

Shri R. K. Sidhwa : Up to what time, Sir ? Supposing there is no quorum ....

Mr. President : Until there is a quorum.

Shri R. K. Sidhwa : That means for the whole day and the other Members will have to wait in the House without doing any business. That is the point. I feel this is not correct. After all, fix one hour if half an hour is not sufficient. Some time limit should be fixed.

Mr. President : That would, I think be provided in the Rules of Business. Anyhow, you have moved the amendment.

Shri R. K. Sidhwa : I state, Sir, that a time limit should be there. The quorum is always provided in the Constitution and not in the Rules. We are actually providing for the number of the quorum. Therefore, the time limit should also be there in the Constitution.

Mr. President : Amendment No. 453 by the Drafting Committee. I take that as moved.

"That in article 104, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 454 in article 105. There is no amendment to this. I take that also as moved.

"That in clause(1) of article 105, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted."

Article 114. Amendment No. 455

"That in clause (2) of article 114, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible be substituted."

There is an amendment to this : No. 590 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in amendment No. 455 of List II in clause (2) of article 114, for the words 'whether an amendment is inadmissible' (*proposed to be substituted*) the words 'as to the admissibility of the amendment' be substituted."

It is practically a drafting amendment; but I submit that the draft that I am suggesting would be better in clause (2) of article 114 as it would be amended by the amendment of the Drafting Committee, the text would be that 'the decision of the person presiding as to amendments being inadmissible under this clause shall be final'. I want to make it clear that the decision of the person presiding as to the admissibility of the amendments under this clause shall be final'. In fact the official amendment is that the decision of the person presiding as to whether the amendment is 'inadmissible' is final. I should submit the ruling or the decision of the person presiding as to whether it is 'admissible' or 'inadmissible', both, should be final and therefore it should be expressed rather more generally that the decision 'as to the admissibility of the amendment' shall be final. It will mean that his decision that the amendment is 'admissible' is final, as also his decision that it is 'inadmissible' is also final.

Mr. President : We go to article 124.

Shri T. T. Krishnamachari : If I am permitted to explain the reasons for my amendment to 124, my honourable Friend will probably be satisfied. I move :

"That in clause (1) of article 124, for the words 'seven other Judges' the words 'not more than seven other Judges' be substituted."

As it now stands 124 (1) runs thus—

"There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of seven other Judges."

It means that immediately on the 26th January when the Constitution is promulgated, the number will have to be raised to that figure whether or not there is enough work. So the alteration has been made prescribing the maximum and leaving it to Government of the day to go on increasing the number or approach Parliament if necessary to go beyond the number 7, so that action need not be taken on 26th January when Constitution is promulgated.

Mr. President : Do you wish to move your amendment?

Mr. Naziruddin Ahmad : I beg to move:

"That amendment No. 456 of List II be deleted."

I find this is again a last minute change of mind on the part of the Drafting Committee. In the clause in question we have fixed the number as '7 other Judges' apart from the Chief Justice. The amendment would reduce the number by substituting the words 'not more than 7 other Judges'? In fact under the amendment it would be possible to appoint less than 7 Judges. I do not know on what basis the original article was conceived and passed by the House. If there was not enough work, then that was the time to introduce suitable amendments in the text. The House has not been given any indication as to the exact amount of

[Mr. Naziruddin Ahmad]

work which the Federal Court has or the Supreme Court will have on and from the 26th January next. In fact these changes should be based upon actual figures or actual estimates of work which would be in the hands of the Judges. I believe that the removal of the Jurisdiction of the Privy Council and also giving the Supreme Court the right over criminal matters, general superintendence and various other matters connected with the Constitution, there would be enough work for the Supreme Court on and from the 26th January. So this over-caution in respect of the number of Judges being placed in the discretion of the Government would be wrong. We should proceed on the basis of actual or estimated amount of work which the Court will have on and from 26th January. It is for this reason that I have asked for deletion of this amendment.

Mr. President : Article 133. There is amendment to this by the Drafting Committee—*457 and *457A. There is an amendment by Mr. Naziruddin Ahmad to 457A.

Mr. Naziruddin Ahmad : I move:

"That in amendment No. 457A of List II, in the proposed new clause (3) of article 133, for the words 'notwithstanding anything in this article, no appeal' the words 'No appeal' be substituted."

This House has been made too familiar with the expression 'Notwithstanding anything in this article or this Constitution'.

There are so many 'Notwithstandings' scattered throughout the Constitution that one ought to be extremely doubtful about how to interpret a particular clause. In fact the Drafting of the Constitution has been progressing on a hand- to-mouth basis from day to day. It is for this reason that this familiar device of 'notwithstanding anything' has been freely introduced here. The more satisfactory way would have been to draft it without these clauses so as to make them not at all necessary. I do not know why this 'notwithstanding' has been used in the context. The matter should require clarification.

Mr. President : We go to article 135. There amendment No. *458 by the Drafting Committee. There is no amendment to that. Similarly there is *459 to article 136 by the Drafting Committee. No amendment to that. Then there is article 145—there is an amendment No. *460 by the Drafting Committee. There is no amendment to that, but there were certain amendments which were moved yesterday—308 and 309. I do not know if they are covered.

Shri H. V. Kamath : My amendment No. 550, Sir.

Mr. President, I move, Sir:

"That for amendment No. 460, of List II, the following be substituted:—

"That in sub-clause (c) of clause (1) of article 145, for the words 'rights conferred by Part III' the words 'right guaranteed by article 32(1) of the Constitution' be substituted."

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*That the proviso to clause (1) of article 133 be omitted, and for the colon at the end of the said clause a 'full stop' be substituted.

After clause (2) of article 133, the following clause be added:—

'(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

*458. That in article 135, for the words, "not being a matter referred to in any of the foregoing provisions of this Chapter" the words "to which the provisions of article 133 or article 134 do not apply" be substituted.

*459. That in clause (1) of article 136, for the words" "The Supreme Court" the words "Notwithstanding anything in this Chapter, the Supreme Court" be substituted.

*460. That in sub-clause (c) of clause (1) of article 145, for the words "enforcement of the nights" the words "enforcement of any of the rights" be substituted.

As amended, the article would read:

"145 (c) rules as to the proceedings in the Court for the enforcement of the right guaranteed by article 32 (1) of the Constitution."

If the House will turn to article 32, is adopted by the House, my honourable colleagues will see that clause (1) of article 32 provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Sir, I am happy to see that in List IV of amendments, this article has been suitably amended. The word "rights" which occurs there in clause (4) has been suitably amended, and altered to the word "right" because under clause (1) of this article, there is only one right that is guaranteed, and the rights conferred by the Part is something different the right guaranteed by this article. So "right" is the right word and not "rights", as it stands in clause (4) as it is today.

Once that has been disposed of, I turn to this relevant clause of article 145. I think a reference to clause (1) of article 32 will be adequate so far as the framing of rules as to proceedings in the Court under this article 145 is concerned. The right guaranteed under article 32, clause (1) is with reference to the enforcement of the rights conferred by the Part. Therefore, if recourse is had to this article 32, then it is obvious that what is meant is the enforcement of any of the rights conferred by the Part; and the right to enforce any of the rights conferred by Part III, is guaranteed under this article. Therefore, it will be more appropriate to say that the proceedings with regard to the enforcement of that right are referred to in this sub-clause (c) of article 145, clause (1). I therefore move amendment No. 550 of List IV and commend it to the House for its earnest consideration.

Mr. President : Amendment No. 461 by the Drafting Committee.

"That for clause (3) of article 158, the following clause be substituted:—

'(3) The Government shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule'."

There is no amendment to it.

Amendment No. 462 by the Drafting Committee, to which also there is no amendment.

"That in the proviso to article 162, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 463.

"That for sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:—

'(a) in the State Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.' "

To this there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move formally amendment No. 594.

"That in amendment No. 463 of List 11 for the semi-colon at the end of the proposed sub-clause (a) of clause (1) of article 163, a comma be substituted."

It is a drafting amendment and I leave it to the Draftsmen to consider the matter.

Mr. President : Then we come to article 181, and there are amendment Nos. 464 and 465 to it. These amendments have no amendments.

[Mr. President]

"That in clause (1) of article 181, the words 'of a State' be omitted."

"That in clause (2) of article 181, for the word 'House' the word 'Assembly' be substituted."

Then we come to article 185 and the Drafting Committee's amendment No. 466.

"That in clause (2) of article 181, the words 'of a State' be omitted."

To that amendment there is an amendment of Mr. Naziruddin Ahmad No. 595.

Mr. Naziruddin Ahmad : Sir, I move:

"That amendment No. 466 of List 11 be deleted."

Clause (1) of article 185 as it stands, says: "At any sitting of the Legislative Council of a State etc., etc." The words "of a State" are attempted to be deleted by the Drafting Committee. I submit that this expression "the Legislative Council of a State" has been used in various other contexts, and this amendment is a last-minute amendment. I would draw the attention of the House to article 182, where you have the words "The Legislative Council In fact there are similar expressions in . . . . .

Mr. President : Only a State having such a Council.

Mr. Naziruddin Ahmad : "The Legislative Council of a State" is not improper. I cannot find out a similar passage at a moment's notice. But if it is to be amended like this, there should be a clean sweep of all such expressions throughout the Draft Constitution in a systematic manner.

Mr. President : Article 189 and amendment No. 467 of the Drafting Committee.

"That for clause (3) of article 189, the following clauses be substituted:—

'(3) Until the Legislature of the State by Law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.'

There are three amendments to this, Nos. 596, 597 and 598.

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 467 of List If, in the proposed clause (3) of article 189, for the words 'until the legislature of the State by law otherwise provides, the quorum' the words 'The quorum' be substituted."

I have already explained my reasons for moving this amendment.

Shri R. K. Sidhwa : Sir, I formally move amendments Nos. 597 and 598.

"That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words 'ten members or one tenth' the words' twenty members or one-sixth' be substituted."

"That in amendment No. 467 of List III, in the proposed new clause (4) of article 189, after the words `suspend the meeting the words for half an hour' be inserted."

Mr. President : Article 191—amendments 468 and 469 of the Drafting Committee. There are no amendments to them.

"That in sub-clause (e) of clause (1) of article 191, for the words 'the Legislature of the State' the word 'Parliament' be substituted."

"That in clause (2) of article 191, for the words 'either for India or for any such State' the words either for the Union or for such State' be substituted."

Article 193—amendment No. 470 of Drafting Committee, which also has no amendments.

"That in article 193, for the words 'The Legislature of the State' the words 'Parliament or the Legislature of the State' be substituted."

Article 194—amendment No. 471 of the Drafting Committee.

"That in clause (1) of article 104, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted.'

Shri H. V. Kamath : Sir, I have an amendment to article 194—my amendment No. 554.

Mr. President : All right.

Shri H. V. Kamath : Mr. President, Sir, I move:

"That in amendment No. 471 of List II, in clause (1) of article 194, the proposed words 'the provisions of this Constitution and to' be deleted."

Sir, my amendment seeks to restore the *status quo*, that is to say, leaves the clause as it is. I fail to see why this change is sought to be made in this clause at this late stage. As far as the Legislature is concerned, the freedom of speech of Members of the Legislature is subject to the Rules and Standing Orders of the Legislature itself. Neither Dr. Ambedkar, nor Mr. Krishnamachari has told the House why this right is sought to be restricted by the provisions of this Constitution. What exactly is meant by.

Shri T. T. Krishnamachari : I may point out to my honourable Friend that if he reads article 211 he will find that it is necessary to add these words.

Mr. President : Discussion on the conduct of Judges is ruled out.

Shri H. V. Kamath : I hope it does not refer to provisions of article 19 regarding freedom of speech. If it does, it will mean the end of freedom of speech, no freedom of speech at all, taking away by one hand what is given by the other. Well, I shall not move my amendment, as adequate light has been thrown on the matter by Mr. Krishnamachari now.

Mr. President : Then we come to article 204 and amendment No. 472 of the Drafting Committee :

"That in clause (2) of article 204, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be substituted."

There is an amendment to this, No. 599 of Mr. Naziruddin Ahmad. But it is the same as was already moved and I shall take it as having been moved.

"That in amendment No. 472 of List II, in clause (2) of article 204, for the words 'whether an amendment is inadmissible' (proposed to be substituted) the words 'as to the admissibility of the amendment' be substituted."

Then we come to article 217 and amendment No. 473 of the Drafting Committee.

"That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:

'(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India."

There is no amendment to this.

Now we come to articles 230 and 231 and amendment Nos. 474 and 475 of the Drafting Committee.

"That in article 230, after the words 'any State' the words 'specified in the First Schedule' be inserted."

[Mr. President]

"That in article 232, after the words 'more than one State' the words 'specified in the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I formally move amendment No. 600 :

"That amendment No. 474 of List 11 be deleted."

The original article had reference to "any State" but the amendment has tried to clarify "any State specified in the first schedule". I think that "any State" means a State in the First Schedule. All States are mentioned in the First Schedule in four different classes. If we refer to any State it certainly refers to the First Schedule and it seems to me that the clarification is unnecessary. Sir, I also move:

"That amendment No. 475 of List II be deleted."

The same principle is involved as in the previous amendment.

Mr. President : Amendment No. 476.

"That in article 234 after the word 'Governor' the words 'of the State' be inserted, and after the words 'High Court' the words 'exercising jurisdiction in relation to such State' be inserted."

Mr. Naziruddin Ahmad : Sit, I move:

"That amendment No. 476 of list II be deleted."

There is reference in the original article 234 to the Governor. The expression "Governor" is attempted to be clarified by the adjectival phrase "Governor of the State." "The Governor" certainly means Governor of a State in Part A of the First Schedule. There can be no Governor, except a Governor of such a State. If we say "the Governor" ……

Shri T. T. Krishnamachari : My honourable Friend need not labour the question of the Governor. He might confine himself to the latter part of the amendment. Because of the qualification put on "High Court", the adjectival phrase has been added after "Governor".

Mr. President : It is better for the honourable Member to leave it there.

Mr. Naziruddin Ahmad : I shall then leave it there, Sir.

Shri T. T. Krishnamachari : Sir. I do not propose to move amendment Nos. 478 and 479. Amendment No. 556 will cover both, which I move:

"That for the Explanation to clause (1) of article 288, the following be substituted :

Explanation.—The expression 'law of a State in force' in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in Particular areas.' "

(Shri Ajit Prasad Jain did not move his amendment No. 603.)

[*The following amendment was taken as moved :

*"That in clause (2) of article 289, for the words "any property used or occupied for the purposes thereof, or any income accruing or arising therefrom" the words "any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith" be substituted."]

Mr. President : Amendment 481.

"That for article 294, the following article be substituted:—

As from the commencement of this Constitution,

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State; and

Succession to property, assets, rights, liability and obligations in certain cases.

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights. liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.' "

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 481 of List II in the proposed article 294

(a) comma be inserted after the word 'Constitution' in line 1,

(b) a comma be inserted after the word 'Constitution' in line 23."

These are punctuation amendments that would have to be accepted if the Drafting Committee is in a favourable mood.

[*The following amendments were taken as moved :

*"That in sub-clause (a) of clause (1) of article 295, for the words 'the Commencement of this Constitution' the words 'such commencement' be substituted."

"That in sub-clause (a) of clause (1) of article 295, for the words 'the Government of India' the words 'the Union' be substituted."

"That in article 296, after the words 'His Majesty', in the first place where they occur the words 'or, as the case may be, to the Ruler of an Indian State' be inserted."

"That in the proviso to article 296, after the words 'His Majesty' the word, 'or to the Ruler of an Indian State' be inserted."

"That to article 296, the following Explanation be added:—

"Explanation.—In this article the expressions 'Ruler' and 'Indian State' have the same meanings as in article 363."

"That in the proviso to clause (1) of article 316, for the words 'under an Indian State' the words under the Government of an Indian State' be substituted."

Shri T. T. Krishnamachari : Sir, I move amendment No. 557 and 558 in place of amendment No. 488, 489 and 490 :

"That in clause (c) of article 319, for the words 'as the Chairman of a State Public Service Commission other than a Joint Commission' the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission' be substituted."

"That in clause (d), for the words 'as the Chairman of any other State Public Service Commission' the words 'as the Chairman of that or any other State Public Service Commission' be substituted."

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 557, in clause (c) of article 319 for the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission (proposed to be substituted)' the words 'as the Chairman of a State Public Service Commission or as the Chairman of a Joint Commission' be substituted."

"That in amendment No. 558 in clause (d) of article 319 for the words 'as the Chairman of that or any other State Public Service Commission' the words 'as the Chairman of any other State Public Service Commission' be substituted."

These amendments of the Drafting Committee are to my mind an instance of the amazing fickleness of mind that they have displayed on this subject . . . . . .

Mr. Naziruddin Ahmad : It is no longer amazing: it has been a day to day affair.

Shri H. V. Kamath : Within two days they have changed their mind twice and revised their draft. These two lists represent the fruit of their ceaseless labours. I do not know whether they would again change their mind, if you would be so good as to extend the time for amendments beyond tomorrow. ……