

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 16th June 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register:—

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| (1) Sheikh Mohd. Abdullah. | } | [Kashmir] |
| (2) Mirza Mohd. Afzal Beg. | | |
| (3) Maulana Mohd. Syeed Masoodi. | | |
| (4) Shri Moti Ram Bagda. | | |

Mr. President : I am sure the House will join me in extending a cordial welcome to Sheikh Mohd. Abdullah and the three other Members, who have joined the Assembly today and are going to take their seats for the first time. This brings to the Assembly now the full complement of representatives from all States that have acceded to India.

Shri H. V. Kamath (C. P. & Berar: General) : Bhopal and Hyderabad?

Mr. President : Their presence, I am sure is going to be of great help in framing the Constitution which is intended to cover the whole country and which, I am sure, will receive full support from all its constituent members. They have been somewhat late in coming, but it is not their fault, nor do I think it is our fault. Circumstances have been such that they have been delayed, but I am sure they have come in time to make very useful contributions to our Constitution.

DRAFT CONSTITUTION—*Contd.*

Article 289

Mr. President : We shall now proceed with the discussion of article 289. Mr. Pataskar.

Shri H. V. Pataskar (Bombay: General) : Sir, I am now going to look at this question from a constitutional point of view. So far as I am aware there is no other Constitution where such elaborate provisions with respect to the elections and its details are made. Even the Canadian Election Act on the basis of which the present amendment and the subsequent amendments which are to follow are drafted, is an Act of the Canadian Legislature, and that too, as I said yesterday, as far as I can find out from the records available to me, applicable only to the Dominion Parliament in Canada. In spite of all efforts, I could not get a copy of it either in the Legislative Library or this library. All the same, from the documents available, I am convinced. My point is whether really it is necessary or desirable that all these elaborate details about the method of election, about the Election Commission, etc., are necessary to be included in the Constitution. While, as we could find, there is some justification probably from what must have come to the notice of the Drafting

[Shri H. V. Pataskar]

Committee and in view of the work which is now proceeding for the preparation for the elections, that they want some provision of this kind to be made, the best remedy would be not to include them in the Constitution here, but to get an Act passed by the legislative section of the Constituent Assembly. I am told it is likely to meet in September next and it would not have mattered if an Act on the lines of the Canadian Election Act was passed by the Central Legislature. It is not desirable that it should be provided for in the Constitution which is for all time to come. We do not know what conditions may prevail after ten or twenty years. From what is happening in some parts of the country, it is not desirable that our constitution should be burdened with all these details. I would therefore still appeal—probably it may be without much effect—that all these things and the subsequent provisions which are to follow could have more appropriately found a place in the Act to be passed by the Central Legislature. We have our own legislature even now and that could have been used.

Sir, I do not think it is desirable in matters of such consequence we should try to depart from time to time from what we decided earlier, unless there were some very cogent reasons as to why that decision should be reversed after a few months' time. As I said, so far as I can see, article 289 (2) is quite enough for the purpose. Even under article 289 (2) we can appoint not merely some officials of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as independent as we are trying to make them in the case of the Central Commission. Even under the Government of India Act, 1935, which certainly did not contemplate so much of a Federal Government as a type of Government which was to some extent more unitary than otherwise, provision for election was contained in section 291. It says: "In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them.....the conduct of elections under this Act and the methods of voting thereat etc." Even then, practically it was left to the provincial Governments. I do not see any reason why we should make provision for all these things in the Constitution itself and as far as I have been able to ascertain, no other constitution contains a provision of this nature.

I have therefore to make one or two concrete suggestions. We may keep article 289 as it is. We may supplement it by an Act of the Central Legislature for making provision with respect to all other matters which are now tried to put in this Constitution, as to what should be the status of these Regional and other Commissioners when they are appointed, whether they should be independent men of the position of High Court Judges, how they should be removed and all these things. I agree that they should be free from influence of the executive. All that we can easily entrust at least to the present Central Legislature.

Finally, I have to make an appeal that it is not yet too late in the day when we should really seriously consider whether article 289 (2) is not enough. As I have already stated, the amendment takes away to my mind not only the last vestige of provincial autonomy, but actually displays a distrust of our people of the provinces, down from the Governor nominated by the President to the smallest local authority. I do not think there is any justification for an attitude of this type. Therefore, I suggest that we should not try to incorporate all these things in the Constitution itself.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I consider this article in the Constitution as one of the important articles as far as

elections are concerned. I do not think that there are two opinions either in this House or outside the House that elections should be fair, pure, honest and impartial. If that is the view, I am sure it could be achieved only by an impartial agency as has been contemplated in this article. We want the elections to above-board. Any machinery that is to be set up should be quite independent, free from any influence from any agency, executive or anybody. Therefore, Sir, I whole-heartedly welcome the article that has been proposed by my honourable Friend Dr. Ambedkar.

Sir, I do feel that even this article does not go as far as is necessary in the matter of perfection of elections is concerned. I will show you presently that there is some defect in this article also. With all that, I feel that every effort has been made in this article to achieve the object which we all are anxious to achieve.

It has been stated, why do you encroach upon the rights of the provinces by entrusting this work to a Special Commission? Now, Sir, I fail to understand how the question of encroaching upon the right of the provinces arises at all. This Commission will not run the elections for the provincial legislatures only, but it will run the elections for the Central Legislature also. If, it encroaches on the rights of the provinces, it encroaches on the rights of the centre also, and therefore it is unfair to say that it encroaches upon the rights of the provinces.

Under this article, a machinery has been set up for the election purposes. While it has been made independent of the executive for purposes of administration, clause (5) says that the staff required for election work may be borrowed from provinces. Herein lies the defect, which I said makes the scheme imperfect. If you want to make the scheme perfect, you should not borrow any staff from the provinces. Though during the period of election, the staff would be under the control of the Commission. It will be only for a temporary period. They will be permanent people responsible to the executive and if the executive wants to play mischief, it can issue secret instructions to that staff to act according to their behests. The staff may feel that their permanent duty lay with the executive, that the work with the Commission was for a short period and they would thus carry out the fiat or behest of the permanent officials. Therefore, Sir, I would have preferred all the staff to be also recruited from outside but I considered myself as to what will be the effect of it. It will require an army of men. Those persons who have seen the elections being run and those who are interested in it know that to run the elections of the whole country they will have to recruit a number of men, a large army of men. It will be very expensive; therefore, although to that extent it is imperfect, I accept it for the reason that it is nearer to perfection. If we have to recruit a new staff it will be prohibitive as far as expenditure is concerned and it will be a new untrained staff and probably it will not be administratively as effective as we would expect it to be. Another provision is as regards the permanency of the Commission. It has been suggested why you incur so much expenditure in providing for a permanent Commission. I have some experience of election of the Karachi Municipal Corporation both as the Mayor and Chairman of the Standing Committee. There is a provision in Karachi Municipal Act that there shall be a permanent election staff and in accordance with that since ten years we have introduced this permanently and the elections have been fair and perfect although compared with Karachi the number of voters there being negligible but the impersonation and the false votes have been completely removed by that method which we have introduced. I am positive that with the permanent Commission that we are going to establish, we are going to remove all these

[Shri R. K. Sidhwa]

defects and it is incorrect to state that this Commission will not have any work after the general election is over. We shall have now about 4,000 members in all the provinces and there will be bye-elections. Surely every month there will be two or three elections—some will die, some will be promoted to high offices—some will go here and there. In this Constituent Assembly during the short period we have had a number of bye-elections although we had nothing to do with them, but in the places from which they have come there have been a number of elections. Therefore, apart from the necessity and fairness, this Commission will have ample work. Apart from that if the Commission is permanent, what will it do? Periodically it will examine the electoral rolls and from the statistics of those provinces those who are dead they will remove those names and will bring the electoral rolls up to date as far as possible. An electoral roll is to provide pure election and I know at present as the electoral rolls are prepared, 50 per cent. of them are defective. Some are dead and their names are intentionally put in by a particular party who wants to run the election and wants to put in names of their own choice; I have heard people living in the cities trying to influence by mixing up with the executive. I can tell you that from my own personal experience and I feel that if we were to have a perfect electoral roll—and electoral roll is the principal thing in an election—I am sure we must have an independent Commission and if we establish a Permanent Commission we shall certainly have a permanent roll and a very good electoral roll. I have no doubt in my mind about that and therefore though you say that it will be an expensive thing and it is not a necessity, I strongly say from my experience that this Commission is very necessary under the circumstances that I have mentioned.

Now coming to the tribunal, it will be necessary for the election petitions or those who have to make any application for the election, to have a Tribunal. I have also certain experience of tribunals. Tribunals have been appointed by the Governors in the past and they have appointed tribunals, at the instance of the Executive, of the favourites and they have never acted impartially. I therefore suggest that the tribunal should consist of judges of superior courts to whom the election petitions of the election should go. I am opposed to such cases being entrusted to any kind of tribunals. It will mar the very purpose and the very object for which we are striving—to have our elections pure and fair—it will frustrate that very object, if in the tribunal that will be appointed, some kind of mischief is made. In England also—I might state—the Constitutional law of the British Commonwealth provides for entrusting this work to superior courts. I therefore suggest that although nothing could be provided in this Constitution, I do not desire that the Constitution should be burdened with all this—but in the Act that will be made—the Election Act—wherein many things are required to be put in, *e.g.*, the secret ballot boxes etc.—I suggest to Dr. Ambedkar to bear that in mind that when the Parliament Act is made it must be made clear that the tribunal's appointment should not be left to the President or anybody—I do not want hereafter any kind of trickery that was played in the past should be played hereafter. With all that, I feel that the permanent superior judiciary alone can fairly and impartially adjudicate in such disputes and they will command the confidence of the public. Those who will be appointed from public men or some lawyers may be best lawyers but they will be temporary men and would be liable to influence. If the tribunal does not consist of responsible permanent men I am sure these tribunals will be of no effect. My Friend Mr. Pataskar desired that why burden the Constitution with scheme, the rules may be made; but I can surely and safely tell him that if we have not such an article in

our Constitution our very purpose of making our elections pure will be frustrated; it is, therefore, necessary that it should be provided here. I do not want this to go into the Election Act. I really wish even some of the other provisions *e.g.* the secret ballot-box could also be provided in the Constitution which is very essential for an election. The whole thing depends upon the election for the future constituencies and if we do not make this provision in the Constitution and leave it to Parliament to be made, it will be running a great risk. Under these circumstances I whole-heartedly welcome this article and strongly support it.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, I have heard with great attention the arguments advanced by Dr. Ambedkar who is the Constitutional manoeuvrer and whose industry and diligence is a wonder to all of us. Yet, his arguments have not brought that conviction which ordinarily they bring. His main objection is—he first argued that he wanted it to be inserted in the Fundamental Rights but as it was said that he wanted a separate provision for this, so this article has been added in order to safeguard the interest of the electorate—he thought that a body outside the Executive should be there to conduct the elections; but what is that body outside the Executive? It is the President who will select the Chief Election Commissioner and he is a party-man whatever it may be and will have the same prejudices and same bias towards his own party-man as anyone else and therefore that argument does not hold very good. Secondly, he says and he admits that it is a radical change and I do not see any reason why this radical change is brought forward. Has he been able to give us examples of corruption and nepotism in case of election tribunals in the provinces? No instance has been given of abuse of power by the election tribunals appointed by the Governors in the provinces. In spite of that he wants a radical change. Of course radical illness requires a radical remedy, but Dr. Ambedkar has not been able to give one single instance of corruption or abuse of powers by these election tribunals. On the contrary we know that, as a result of the findings of an election tribunal in Sind, Pir Ilahi Bux was removed by his own party men, which shows that our people have the capacity to be impartial. I see no reason why this radical change should be necessary.

Then it is said that there are minorities in the provinces who require protection. But should we keep them in haughty isolation and not pave the way for harmonious relations with the general population? By doing this you will be creating big problems for these provinces. It is said that they are racially and linguistically different. But will you perpetuate these differences or should you try to remove them? I submit that no justification has been offered for this radical change. Dr. Ambedkar has brought this forward on the analogy of the Canadian Act of 1920. But there they have a small population as against our 340 millions, and one Election Commission would hardly do for this country. In spite of there being Regional Commissioners this Election Commission would not be able to realise the feelings of the people of different parts of the country. They would not know what a man in Madras would do and what a man in Assam would do. I submit that this thing should not be taken out of the provinces. If you suspect the provinces and take greater powers for the Centre it will only lead to undesirable results. If you cannot trust men like Messrs. Pant, Kher and Shukla and the men working under them you will hardly make a success of democracy. You are doing something which will have a disintegrating effect and will accentuate differences instead of solving them. If you take too much power for the Centre the provinces will try to break away from you. How can a man in Madras understand the feelings and sentiments of a man in Assam or Bengal? You seem to think that all the best qualities are possessed by people here in the Centre. But the provinces charge you with taking too much power and reducing them to a municipal body without any initiative left in them. You

[Shri Kuladhar Chaliha]

think you possess better qualities than the men in the provinces, but I know there are people there who are much better than you are. If you cannot trust the honesty of your own individuals you can never make a success of democracy. You are always suspicious and think that the province will be unjust to the minorities. But if they are kept aloof and always under the protection of the President or the central executive, they will never be able to develop their own virtues, and you will only be encouraging disturbances and rebellions. It has been suggested that the Scheduled class people are suspicious about the impartiality of the provinces. But they are our own people and they can be just as fair and impartial as men in the Centre. Why should you think that you have developed the virtue of impartiality which no one else possesses? Sir, I fail to see why this provision should be sought to be embodied in the Constitution.

Sir, the Governor is appointed by the Centre and he will form election tribunals, as has been done in the past. In spite of Mr. Sidhva's assertion I must say that no case of partiality has been proved against any of these tribunals. In a case in which I was interested I know that even when the Congress was in the bad books of Government, the tribunal decided in favour of the Congress, although the candidate was opposed by Rai Bahadurs and other big men. That shows that they can be impartial. Why should you condemn your own men as partial, unjust and incapable of being honest? If we cannot trust our own people we are not worthy of our independence, Sir, an injustice is sought to be done to the provinces and they are needlessly suspected, and I therefore oppose this proposal.

Pandit Hirday Nath Kunzru (United Provinces: General) : Sir, my honourable Friend Dr. Ambedkar moved a new article yesterday in place of article 289 as contained in the Draft Constitution. The article deals with a very important matter and departs radically from the corresponding article in the Draft Constitution. Nevertheless he contented himself with moving this amendment without explaining in the smallest measure the reasons why the new Draft had been proposed. When I pointed out that it was not fair to the House that an article dealing with a very important matter should be placed before the House without a full explanation of its provisions he felt the need for defending himself. But finding that he was in a very difficult position he became reckless and said I had asked for an explanation only because I had not read the amendment. It was obvious that this irresponsible statement of his did not satisfy the House and he was therefore compelled to explain the differences between the new Draft and the old Draft.

Sir, several points arise in connection with this question. The most important question is one of principle. Is it right that in a matter of this kind the provincial Governments which are being given full responsible Government should be deprived of all power? I shall not dilate on this subject because it has been dealt with very ably and fully by our honourable Friend Mr. Pataskar. Dr. Ambedkar defended the new procedure which makes the Central Government responsible for superintendence, control and guidance in all matters relating to the preparation of the electoral rolls and the conduct of the elections on the ground that complaints had been received from some provinces that members belonging to racial, linguistic, or cultural minorities were being excluded, under ministerial instructions from the lists of voters. I do not know to what extent the complaints received by him or by the Government of India have been investigated and found to be correct. Supposing that they have been found to be correct, one has to ask oneself why this elaborate Constitution is being framed. If we cannot expect common honesty from persons occupying the highest positions in the discharge of their duties, the foundation for responsible government is wanting, and the outlook for the future is

indeed gloomy. I do not know of any federal Constitution in which the Centre is charged with the duty of getting the electoral rolls prepared and the elections held fairly and without prejudice to any minority—there may be some constitution in which such a provision exists, but I am not aware of it. In all probability ours will be the only federal or quasi-federal constitution in which the Provinces will be excluded from all share in the preparation of the electoral rolls and other ancillary matters except in so far as their help is needed by the Election Commissioners appointed by the President.

Even granting however, Sir, that there is need for taking the control of elections out of the hands of the provincial Governments we have to see whether the new Draft contains the necessary safeguards. It may be right to curtail the political power of the Provinces; but is there no danger, if the article is left as it is, that the political prejudices of the Central Government may prevail where otherwise the political prejudices of the provincial Governments might have prevailed? Everything in the new Draft is left to the President; the appointment of the Election Commission will be made by the President; he will appoint the Chief Election Commissioner and decide how many Election Commissioners should be appointed; he will decide the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners that might have to be appointed. Again, while it is provided that the Chief Election Commissioner should not be removed except in the same manner as a Judge of the Supreme Court, the removal of the other Election Commissioners is left in the hands of the President. He can remove any Commissioner he likes in consultation with the Chief Election Commissioner. Clause (4) of the article which deals with this matter is so important that I think it is desirable that I should read it out to the House. It says :

“The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment;

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.”

I find, Sir, that I made a mistake when I said that the other Election Commissioners and the Regional Commissioners could be removed in consultation with the Chief Election Commissioner. They can be removed only on the recommendation of the Chief Election Commissioner. Here two things are noticeable: the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy positions as responsible as those of judges of the Supreme Court should depend on the opinion of one man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartiality can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioner will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man the President

[Pandit Hirday Nath Kunzru]

will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (*Interruption*) . Somebody asked me why it should be so. As full responsible Government will prevail at the Centre, the President cannot be expected to act in any matter at his discretion. He can only act on the advice of the Ministry and, when, in matters of patronage, he receives the recommendations of the Prime Minister, he cannot, if he wants to act as a constitutional Head of the Republic, refuse to accept them. I think, Sir, therefore, that the Draft placed before us by Dr. Ambedkar has to be modified in several respects, so that the Election Commission may in reality, consist of impartial persons and the Election Commissioners may be able to discharge their responsible duties fearlessly.

My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner. I feel, Sir, that the opinion that I have placed before the House, was at one time or other the opinion of Dr. Ambedkar too. We have in the List of Amendments, amendment No. 103 which has not been moved by Dr. Ambedkar, but has been given notice of by him. Honourable Members who have read this amendment will have noticed that clause (2) provides that a 'member of the Commission shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court, and the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment'. It will be clear therefore that the suggestion that I have made is in accord with the better judgment of Dr. Ambedkar which, unfortunately, has not been allowed to prevail.

I know, Sir, that Dr. Ambedkar told us yesterday that it might be unnecessary to have permanent Election Commissioners and that all that might be required might be to appoint Election Commissioners when there is work enough for them to do. In such case obviously the procedure relating to the removal of judges of the Supreme Court cannot be applied in the case of Election Commissioners. This is true, but then there is no reason why the whole matter should be left in the hands of the President, and why the conditions and tenure of service of the Election Commissioners should be determined by rule by him. These, too, should be determined by law made by Parliament.

Again, Sir, we have to consider the position of Regional Commissioners who may have to be appointed in the provinces in order to help the Election Commission in carrying out its duties honestly and efficiently. It is obvious that so long as these officers are holding their offices they will be carrying out highly responsible duties. It will depend on them primarily whether the preparation of the electoral rolls and all matters connected with the conduct of the elections gives satisfaction to the public or not. Now, in the Draft which was not placed by him before the House Dr. Ambedkar provided with regard to the Regional Commissioners and the Returning Officers, etc., that no such authority or officer would be removed except by order of the President. As I have already pointed out a change has been made now and their removal has been made to depend on the recommendation of the Chief Election Commissioner. This has been done presumably because the Election Commissioners would be permanent officers and if there is only one permanent officer, the law cannot obviously require that the removal of the Regional Commissioners and the Returning Officers should depend on the decision of the Commissioners, as a whole. But for this very reason, Sir, the matter ought not to be left to the sweet will of the President, in reality the Prime Minister of the day, but should be determined by law.

My honourable Friend, Professor Shibban Lal Saksena, moved a number of amendments yesterday, Sir, with regard to the new Draft placed before the House by Dr. Ambedkar. It may not be practicable to accept some of them, but I think that he has done a public service by drawing the attention of the House to the glaring defects in the Draft that we are considering. I think it is the duty of my honourable friend, Dr. Ambedkar, to consider the matter carefully and to provide such safeguards as will give general satisfaction by ensuring that our electoral machinery will be free not merely from provincial political influences but also from Central political influences. We are going in for democracy based on adult franchise. It is necessary therefore that every possible step should be taken to ensure the fair working of the electoral machinery. If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source; nay, people, instead of learning from elections how they should exercise their vote, how by a judicious use of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.

Mr. President : I think that Members understand that we will have to finish the agenda today. Otherwise we may have to sit tomorrow.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I have come here to support this article. At the beginning when I came to this Assembly for the first time, I thought that the Provinces should be made strong and the Centre to that extent must yield. But after a considerable amount of experience and on prolonged consideration of what is happening in the Provinces and in the States, I am now of the opinion that for many years to come the Centre must take charge of all important matters affecting the general well-being of the country and encroach on the Provincial field. Election is a most important item in a democratic set up and it is very necessary that it should be controlled and supervised by a very competent, independent and impartial body. The way in which some of the Provinces are proceeding shows that the Provinces are rent by party factions and it will always be the desire of the party, or the faction in power for the time being, to appoint election tribunals and officers of their own choice with a view to control or manipulate the elections. The result will be that election tribunals and officers will not be free from corruption and partiality. It is for this reason that I welcome the move by the Centre to control elections, so that thereby the impartiality and efficiency of the election machine could be ensured. We have had the experience of West Bengal and other Provinces. West Bengal is rent by party factions. Even in the Congress ranks in Calcutta and in the districts there are several groups and factions accusing one another of habitual corruption and the like. They are fighting against one another in a most unseemly fashion to the detriment of the general well-being of the country. This is also happening in some of the States. We have the unseemly quarrel in the Greater Rajasthan State and also in some other States. If we do not want the Provinces and the States to descend into chaos and disorder, the first thing that we should do is to control the elections, not to interfere with the policies and activities of the different parties, but just to ensure impartiality and efficiency in the conduct of elections. The most important duty of the Commission would be to appoint Election officers upon whose efficiency, integrity and independence much will depend, and I believe that the Central control of these elections will be welcome in serious quarters. The secrecy of the ballot box, as has been pointed out by one of the speakers and as is well known, is a very important matter in an election as fostering freedom of the vote, and this secrecy must be thoroughly and effectively guarded. We hear allegations and counter allegations that in the recent South-Calcutta election, the secrecy of the ballot

[Mr. Naziruddin Ahmad]

box and the integrity of the ballot papers were violated. I do not know what truth there may be in these allegations, but they have a bad odour in themselves. I believe that if these matters are controlled by the Centre, these tendencies to make allegations and counter-allegations of this type would be removed. The officers who are to be appointed to conduct these elections should be above all suspicion and should be selected just to avoid provincial cliques and parties. Sir, I do not wish to take up further time of the House. I accord my humble and whole-hearted support to this article.

Shri K. M. Munshi (Bombay: General) : Mr. President, Sir, I rise to support the amendment No. 99 moved by my honourable Friend, Dr. Ambedkar. This amendment has been subjected to two files, one by my honourable Friend, Pandit Kunzru, on the ground that the amendment does not go far enough, that it does not make the Election Commission sufficiently independent, that the Central Government could influence it in a manner prejudicial to fair elections. That is one ground. The other ground, of which the exponents have been my honourable Friends, Mr. Pataskar and Kuladhar Chaliha from Assam, put forward, is that this is a trespass on provincial autonomy, to put it shortly. I will deal with these two points separately.

Sir, the amendment which has finally emerged from the Drafting Committee makes it clear that neither the Central Government nor the provincial Governments will have anything to do with the election. The Chief Election Commissioner, as the House will find, is practically independent. No doubt he is appointed by the President, that is, the Central Government. There can be no other authority, no higher authority in India than the President for appointing this Tribunal. You cannot omit this important thing.

The next argument against the amendment is that this amendment departs from the old amendment No. 103 which was to be moved on behalf of the Drafting Committee, under which the Commissioners other than the Chief Election Commissioners were not removable except in the manner in which a High Court Judge can be removed. Perfectly right. But the change has been made for a very good reason. Between two elections, normally there would be a period of five years. We cannot have an Election Commission sitting all the time during those five years doing nothing. The Chief Election Commissioner will continue to be a whole-time officer performing the duties of his office and looking after the work from day to day, but when major elections take place in the country, either Provincial or Central, the Commission must be enlarged to cope with the work. More members therefore have to be added to the Commission. They are no doubt to be appointed by the President, but as the House will find, they are to be appointed from time to time. Once they are appointed for a particular period they are not removable at the will of the President. Therefore, to that extent their independence is ensured. So there is no reason to believe that these temporary Election Commissioners will not have the necessary measure of independence. Any way the Chief Election Commissioner an independent officer, will be the Chairman and being a permanent officer will have naturally directing and supervising power over the whole Commission. Therefore, it is not correct to say that independence of the Commission is taken away to any extent.

We must remember one thing, that after all an election department is not like a judiciary, a quasi-independent organ of Government. It is the duty and the function of the Government of the day to hold the elections. The huge electorates which we are putting up now, the voting list which will run into several crores—all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest

of them. Now all this army cannot be set up as a machinery independent of Government. It can only be provided by the Central Government, by the Provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that the election matters could be left to an entirely independent organ of the Government. A machinery, so independent, cannot be allowed to sit as a kind of Super-Government to decide which Government shall come into power. There will be great political danger if the Election Tribunal becomes such a political power in the country. Not only it should preserve its independence, but it must retain impartiality. Therefore, the Election Commission must remain to a large extent an ally of the Government; not only that, but it must, a considerable extent, be subsidiary to Government except in regard to the discharge of the functions allotted to it by law.

Some reference has been made that the powers of the Parliament have not been preserved. I may point out that amendment no. 123 which is also going to be moved by Dr. Ambedkar gives to the Parliament power to make provisions with respect to elections to legislatures, subject, of course to the Provisions of this Constitution. Similarly Sir, you find amendment No. 128 which gives to a State Legislature the power to make provisions with respect to elections to such Legislatures. Therefore, the Parliament as well as the State Legislatures are free to make all provisions with regard to elections, subject, of course, to this particular amendment, namely, the superintendence, direction and control of the Election Tribunal. Today, for instance, the elections are controlled by officers appointed either by the Centre or the Provinces as the case may be. What is now intended is that they should not be subjected to the day-to-day influence of the Government nor should they be completely independent of Government, and therefore a sort of compromise has been made between the two positions; but I agree with my honourable Friend, Pandit Kunzru that for the sake of clarity, at any rate, to allay and doubts clause (2) requires a little amendment. At the beginning of clause (2) the following words may be added; "subject to the provisions of law made in this behalf by Parliament." Similarly in clause (4) also where the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners are prescribed, it will be proper to have words to this effect: "subject to the provisions made by Parliament in that behalf." That, of course, would follow from amendment No. 123, but we do not want any doubt to be on this point, and therefore, it would be better if these words are added to give Parliamentary control over the terms of service and the tenure.

Shri H. V. Kamath : How will you insert those words in the amendment?

Shri K. M. Munshi : I have no doubt in my mind that Dr. Ambedkar will accept my suggestion and move these amendments.

The question was raised with regard to the qualification of the Regional Commissioners. The same could easily be provided by parliamentary legislation either under article 123 or under the new phrase which I submit should be added to clauses (2) and (4) . So in this way the Parliament's power over these details would be secured. This amendment, therefore, maintains impartiality and independence of the Election Commission so far as it is necessary in the circumstances and also supremacy of the Parliament over the details.

Now I come to the other part of criticism. And, that is the argument that this provision whittles down or takes away what is called provincial autonomy. This argument has the knack of appearing again and again in respect of almost every article, and I think it is high time that those honourable Members of the House who put it forward reconcile themselves to the position that the House has taken the line more suited to the country rather than the doctrinaire views of theoretical writers on federalism. Dr. Ambedkar in the opening speech has made

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it clear that the idea of an Election Commission was accepted as far back as January or February 1947, when even the question of the partition of the country had not become a settled fact. The Fundamental Rights Committee put forward this suggestion. It was unanimously accepted by the Advisory Committee and again it was accepted unanimously by the House. Therefore, it must be treated as the opinion of the House, and the country as a whole that matters of election must be taken out of the purview of the Centre and the provinces with a view to meet the realities of the situation. That being so, the only other question is as to how this should be done.

With regard to the precedent, reference has already been made to section 19 of the Dominion Elections Act of Canada. This Act lays down that for the whole of Canada, a Chief Electoral Officer, not a Commission as we have envisaged, will superintend, control and direct all elections. His tenure of office is exactly the same as we have adopted here for the Chief Election Commissioner.

Another argument put forward in the course of this debate was that this is undemocratic. I fail to understand how democracy is affected by this provision. Let us analyse the position. This Constituent Assembly, if it lays down a Constitution for the country, is nothing else but an instrument of the sovereign people of India, not the different people of the provinces meeting together in a confederation for the purpose of evolving Constitution. Let us not forget this main fact. It is open to the House to look at the conditions in the country, to look at the realities of the situation and to give some power to the Centre, to give other power to the provinces, to transfer power from one to the other. That does not take away from either the representative character of the Constituent Assembly or the democratic power of the sovereign Indian people. The House cannot be tied down by any theoretical considerations in this matter. In the debate on article 226 also, I found the same kind of argument advanced. But we must realise once for all that it is the Constituent Assembly as the instrument of the sovereign people of India which is one unit that is going to decide what are going to be the functions of the Centre and the provisions in view of the actual condition that exist in this country. Now, Sir, if that is so, the sovereign people, and the Constituent Assembly as their agent, is bound to maintain the purity of elections in a practical manner. That can only be done by the establishment of the machinery envisaged in this amendment. To say that it is undemocratic is entirely baseless. If there is going to be democracy, the sovereign people of India must be in a position to elect their own representatives in a manner which is above suspicion, above partiality. Corrupt practices do not necessarily apply to the candidates. Therefore, it is necessary that we should not consider this question from the point of view of any theoretical provincial autonomy, a point which is being trotted out again and again in this House.

My Honourable Friend, Mr. Kuladhar Chaliha coming from Assam said that this affects the power of the provincial Governments. He further put forward the point of view that in point of efficiency and integrity the Centre is no better than the provinces. He said if I heard aright that the provinces were better in this respect than the Centre. If that be so, I wish the sooner we wound up our democratic business the better. My friend coming from Assam ought to know that complaints after complaints have been received from Assam that ingenious devices are found to shut out people who have settled in Assam from the electoral rolls. The complaints may be wrong; I am not here judging them. But the complaints are there.....

Shri Kuladhar Chaliha: I question that.

Shri K. M. Munshi : The complaints are known to every department that is concerned with them. The fact that such complaints come is the reason why

provincial Governments cannot be trusted, in the condition in which we are, to be as impartial in the elections as they should be.

Shri Kuladhar Chaliha : I seriously protest against this remark.

Mr. President : There is no need to introduce heat in the discussion. We are only discussing a purely constitutional question.

Shri K. M. Munshi : I am not introducing heat. My honourable Friend said that the provinces are such superior to the Centre or this Constituent Assembly. I reminded him that coming as a leader from Assam, it was a surprising remark. It may come from some other province; that is a different matter.

As my honourable Friend, Mr. Sidhva said, in the past several Election Tribunals were appointed by Governments of the provinces. They were not Congress Governments; they were appointed by other Governments. They were appointed to secure a particular object. As honourable Members know, one leading Member of this House, who was the head of the Congress organisation of his province, was victimised in the past regime and debarred from being a Member of the legislatures. It is very easy for a Premier to manipulate an Election Tribunal and thus remove a strong rival for five or seven years from the scene. It is therefore necessary that these matters should be placed beyond the reach of temporary passions in the provinces.

Sir, one thing more. We must realise—and this is the general answer that I propose to give to my honourable Friends, Mr. Pataskar and Mr. Chaliha—we can only consider the problems before us from the conditions as they exist today. We cannot forget the fact that some ten or eleven of the Indian States which are not accustomed even to the little measure of democratic life which is enjoyed by the provinces are coming into the Union on equal terms. We cannot ignore the fact that there are corners in India where provincial autonomy requires to be placed on a better footing. In these conditions, it is but natural, apart from world conditions, that the Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is water-tight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is a small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the Provinces, is illusory. Charles Merriam one of the leading political thinkers in America to his book called “*The Need for Constitutional Reform*”, with reference to the States of U.S.A., says, “Most States do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged.” In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members who are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but only subject to national

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power. When national danger comes, we must realise that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no *a priori* theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial to secure maximum national efficiency. From that point of view I submit the amendment moved by my Friend Dr. Ambedkar is a good one, a very good one and a very wholesome one for the whole country.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Mr. President : There is a closure motion. I would like to take the sense of the House.

The question is :

“That the question may now be put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other constitution which is better than the one we have provided for in the proviso to clause (4).

With regard to the other Commissioners the Provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.*, that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my Friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My Provision—I must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this house a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the

Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also be realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therefore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this question because as I said it is going, to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happen. Therefore in order to meet the criticism of my honourable Friend Professor Saksena, supported by the criticism of my honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is:

“That the words ‘to be appointed by the President’ at the end of clause (1) be deleted.”

“In clause (2) in line 4, for the word ‘appoint’ substitute the word ‘fix’ after which insert the following:—

“The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the Provisions of any law made in this behalf by Parliament, be made by the President.”

“The rest of the clause from the words ‘when any other Election Commissioner is so appointed’ etc., should be numbered clause (2a).”

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other Members to offer their views.

Mr. President : In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras: General): I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras: General): I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultation with the Drafting Committee.

Shri T. T. Krishnamachari : The amendments merely say that the President's powers are subject to parliamentary legislation. They do not detract from the contents of the article and we need not be too finicky about the procedure at this stage.

Pandit Hirday Nath Kunzru : Even if there is to be further discussion, I think we should know how Dr. Ambedkar proposes to meet the difficulties that have been pointed out. He should therefore be allowed to put forward his suggestions.

Mr. President : That is why I allowed him to move these amendments. After they are moved we shall decide whether to discuss them now or at a later date.

Shri K. M. Munshi : The amendments only say that acts, done should be subject to the laws of Parliament. That is already covered by amendment 123.

Mr. President : Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is:

"That in the beginning of clause (4) the following words should be inserted:—

'subject to the provisions of any law made in this behalf by Parliament'."

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President : I do not think any further discussion is necessary; let these be moved.

The Honourable Dr. B. R. Ambedkar : You cannot deal with a constitution on technical points. To many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President : If these are considered to be substantial amendments they will be held over. As there seems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

New Article 289-A

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

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted:—

289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion race, caste, sex or any of them."

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it. That is the reason why I have brought forward this amendment.

Mr. President : Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed?

Mr. President : The question is:

“That in clause (3) of article 301, the words ‘together with a memorandum explaining the action taken thereon’ be deleted and the following words be added at the end:—

‘for such further action as may be necessary.’”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 301, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 301, as amended, stand part of the Constitution.”

The motion was adopted.

Article 301, as amended, was added to the Constitution.

Mr. President : This brings us to the end of these articles which we have set down for consideration today. One article which we passed over, article 289, remains to be considered. There were certain amendments and certain Members said that they were taken by surprise and that they would like to have time to consider it. If the House so desires, we might have an afternoon session, so that we may not have to sit tomorrow.

An Honourable Member : We are prepared to discuss it now.

Mr. President : At 6 o’clock.

Shri K. M. Munshi : The sittings should not be fixed for tomorrows as many Members, I know, have booked their accommodation.

Mr. President : It is therefore why I am suggesting six o’clock.

The Honourable Shri Satyanarayan Sinha : Either we can hold it over or you have a meeting in the evening and finish it.

Mr. President : I think some Members feel that they would like to have time to consider the amendments and therefore it is much better to give them time, and if you all agree, I would like to have an afternoon session in the evening, say at six o’clock.

Honourable Members : 6 p.m.

Mr. President : So the House stands adjourned till six o’clock this evening.

The Assembly then adjourned till Six of the Clock in the afternoon.

The Constituent Assembly re-assembled at Six of the Clock in the afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 289—(Contd.)

Mr. President : We shall take up the amendment moved by Dr. Ambedkar in the morning. I think that is the only amendment now to the original article which was moved by Dr. Ambedkar.

I have just received notice of amendments from two Members, Shri Mahavir Tyagi and Mr. Jaspat Roy Kapoor. I do not know how these amendments come in at this stage. They cannot be amendments to amendments; they can only be amendments to amendments to amendment. I am not inclined to allow any amendments to amendments to amendments.

Shri Jaspat Roy Kapoor (United Provinces: General) : May I then be permitted, Sir, to put forth my view-point as contained in this amendment, of course during general discussion?

Mr. President : The article and the amendment will be open to discussion. Any Member may say whatever he likes. It is for him to vote according to what he says or otherwise.

Shri Mahavir Tyagi : May I submit, Sir, if at any stage some serious discrepancy is found and it is pointed out, I hope it must be taken notice of.

Mr. President : I do not think your amendment comes under that. In your case, the amendment of which you have given notice does not deal with the matter which has just been discovered.

Shri Mahavir Tyagi : I could not follow, Sir.

Mr. President : Your amendment is this: that in clause (1) of the proposed article 289, the words "and Vice-President" be deleted. That is to say, you want to keep the election of the Vice-President out of the purview of the Election Commission.

Shri Mahavir Tyagi : Yes, Sir.

Mr. President : It is not a case in which something has been discovered as a result of discussion which creates difficulty and this amendment becomes necessary. This should have been foreseen and if you wanted to give notice of an amendment, you should have given it before. I cannot allow this now.

Shri H. V. Kamath : May I request, Sir.....

Mr. President : I have given a ruling on Mr. Tyagi's amendment. I am now dealing with the other amendment.

Shri H. V. Kamath : For the future at least, may I know Sir, what is the position with regard to amendment to amendments to amendments?

Mr. President : I am not going to make any promise about the future. I will deal with every case as it comes up.

Shri H. V. Kamath : I want to know what is the rule, Sir.

Mr. President : The Member may rest assured, I will follow the rules.

Shri H. V. Kamath : I am not questioning that. As the rules are silent on the point, I want to know what the position is with regard to amendments to amendments to amendments.

Mr. President : As I have said, I shall decide each case as it comes up.

As regards the amendment of Mr. Jaspat Roy Kapoor, he may speak on it. The article and the amendment are open to discussion.

Shri R. K. Sidhva (C.P. & Berar: General): May I know, Sir, whether the discussion will be only on the amendment or on the article also?

Mr. President : The whole thing.

Shri Jaspat Roy Kapoor : Mr. President, Sir, if I rise to speak on amendment No. 99 relating to article 289, it is not because I am fond of speaking too often. While coming to the rostrum, Sir, it was suggested to me by my honourable

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Friend Dr. Ambedkar that the galleries today were empty and that I need not be very particular about speaking on this article. I may assure my honourable Friend Dr. Ambedkar that I never speak to the galleries or with the object of finding any prominent place in the Press. I speak only when I feel it is absolutely necessary to speak and on this occasion, Sir, such is my feeling and hence I have come before you to address on article 289.

I must confess, Sir, that on the last day of this session, article 289 has proved to be rather an inconvenient one. It has been debated at length yesterday and today and I find that the more it is being debated the more defective it appears to be and I find that the more we scrutinise it the more defects of it come to light. On a closer scrutiny of this article I find that it is necessary to recast it altogether. A few amendments here and there, a few alterations or changes here and there in this article would not do: it needs being recast altogether. I do not suggest that it needs being recast in order to meet the view-point of those who question the propriety of the Centre being invested with the authority to conduct all elections. I take it that everyone of us, or at least the overwhelming majority of us, is inclined to the view, is definitely of the view that elections must be run under the control, direction and supervision of an authority appointed by the Central Government, the President I mean of course, subject to any law which may be enacted by the Parliament. But, Sir, I think it is necessary to recast this in order to make the procedure laid down in this article 289 as a really effective and workable one so that there may be no conflict between the authority which is to be appointed by the President—I mean the Election Commission—and the other bodies in the Centre or in the provinces. As it is, however, I think that article 289 if allowed to remain in its present form would lead to conflict between the Election Commission and the presiding officers of the various legislatures. Let us see how it stands.

“The superintendence direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature etc. by the President.”

Now these are the various functions that are going to be entrusted to this Election Commission. Superintendence, direction and control of what things, firstly, of the preparation of the electoral rolls for all elections to Parliament to State Legislatures and for all elections to the offices of President and the Vice-President. The electoral rolls for these elections are to be under the supervision, direction and control of this Election Commission. Secondly, its function is the conduct of all these elections. These are the two functions that are going to be entrusted to the Election Commission. Now let us see how the election of the President is going to be, how the election of the Vice-President is going to be, how the election of members of the Council of States is going to be and lastly how the election of members to the Legislative Councils of the States is going to be. Under article 43 which we have already passed the President will be elected by the elected members of both Houses of Parliament and by the elected members of the Legislative Assemblies of the various States. Now the question is what will be the electoral roll of all these members? Is it the intention of Dr. Ambedkar that the question as to who are to be the electors who will form these electoral colleges is to be decided by this Commission? Now the electors will be members who will have been already duly elected to the House of the People, Council of States and the various Legislative Assemblies. They will be already duly elected members. So the question of preparing an electoral roll of these members simply does not arise at all. It should not be open—I think it will be readily admitted—to the Election Commission to decide as to which of those particular members are unqualified. A person once having been duly elected can of course become disqualified from remaining as a member; and so far as the Legislative Assembly of the various States are concerned, we have only the other day enacted article 167-A which lays down

that if any such question arises, it will be decided by the Governor and the order or decision of the Governor shall be final. Now that decision and order of the Governor being final what function remains for the Election Commission to perform in the matter of determining the question as to which particular members are entitled or not entitled to participate in the election of the President? So far as the preparation of electoral roll is concerned, the Election Commission has no function to perform. The second is the stage of conducting the election itself. Now the question arises that the members of the House of the People will be called upon to elect by President and also members of the Council of States, and so also elected members of the Legislative Assemblies of the various States. These persons will cast their votes as members of the various Legislatures and as such they must perform that function of casting their votes under the supervision, direction and control of the presiding officers of the respective legislatures. Is it the intention to divest the presiding officers of these various legislatures of their ordinary and inherent right of conducting these elections? I suppose not. So that so far as the election of the President is concerned, both in the matter of the preparation of the electoral roll as also in the matter of the conduct of election, the Election Commission shall have absolutely no function to perform or it has, obviously it will come in conflict with the presiding officers of these various legislative bodies. Now let us come to the question of the election of the Vice-President. There the matter is more complicated still. The election of a Vice-President it was pointed out to us—the credit of which must go to my honourable Friend Mr. Tyagi—it was pointed out by him outside the House that under article 55 we have it “That the Vice-President shall be elected by members of both Houses of Parliament assembled at a joint *meeting* in accordance with the system etc.” Here also we find that the question as to who shall vote for the election of Vice-President is already definitely determined by article 55, and the Election Commission will have nothing to do about this. The manner of conducting the election is also laid down in article 55. All the members will sit together in a joint *meeting* which will be presided over, as has been provided, by the Speaker of the House of the People. Where does the Election Commission come in as regards the election of Vice-President? Thirdly comes the question of election of members of the Council of States. Under article 67 they are to be elected by the elected members of the legislative assemblies of the various States. There too the members who will participate in the election are well-known; there is no question of preparation of electoral roll there. Then as to the conduct of elections and casting of votes, that will be done, as in the past, under the direction and control of the Speakers of the various legislatures; and interference by the Election Commission will lead to conflict with the Speakers. The same objection will apply in the case of elections of these members to the legislative Councils of the States who are to be elected by the members of the legislative assemblies in the various States. Therefore, while the underlying intention of article 289 is a laudable one and while we must provide for elections to be conducted under the supervision and control of a central authority appointed by the Central Government, we must so frame the article as to obviate any chances of conflict between the Election Commissions and the presiding officers of the various States, by taking away those things which may give rise to such conflicts. We should also take note of article 55 in which we have provided for the election of Vice-President. Therefore I submit that it is necessary to recast this article so as to make it applicable to direct elections only to House of People and legislative assemblies. Today we can commit ourselves definitely to the principle that all elections shall be conducted under the supervision, direction and control of a central authority, subject of course to such variations as appear obviously necessary in the light of article 55 and in the light of what I have already submitted. That is what I have to submit and the amendment of which I had given notice was only in regard to these points that I have raised. If the difficulties and

[Shri Jaspat Roy Kapoor]

apprehensions that I have raised are in any way removable by some interpretation of article 289 that Dr. Ambedkar may give, that is another thing.

Mr. President : I may point out that no explanation need be given. You are assuming that in all these elections members will give votes while sitting in Parliament. But they will not be sitting in Parliament; they will vote as voters of that particular constituency.

Shri Mahavir Tyagi : What will happen as regards disputes, and the filing of nomination papers before the Speaker?

Mr. President : It will be for the Election Commission to decide who the returning officer for this election will be. The whole argument is based on the assumption that when members of the legislatures who are entitled to vote for the election of the President sit, they sit in a session of the Assembly. They are not going to do that. They will be members of an electoral college and they will vote in that capacity.

Shri Mahavir Tyagi : In the case of the election of Vice-President, the names are to be proposed in the House by honourable Members, then it will be seconded and nomination papers are to be filed, etc.

Mr. President : You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor : My submissions were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a meeting.

The Honourable Dr. B. R. Ambedkar : The wording is “at a joint meeting” and not “sitting”.

Shri Jaspat Roy Kapoor : It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently, for in articles 80(3) and 164(3) the word ‘meeting’ has obviously been used in the sense of a sitting of the legislature and not in the sense of merely a congregation of the members. The same word cannot be interpreted differently in different article unless definitely specified therein. There is all I have to submit.

Sardar Hukam Singh (East Punjab: Sikh): Sir, article 289 as has been lately amended is surely a very important provision for the safeguarding of—as the Mover said, cultural, racial or linguistic minorities. It is conceived with the very laudable idea that it will give protection to them against any provincial prejudices or whims of officials. But there is one thing that I am afraid of. Whereas sufficient protection has been given against injustice to racial, cultural or linguistic minorities so far as provincial prejudices are concerned, it has been assumed that the Centre will not be liable to corruption at any time. We are perhaps obsessed with the feeling that our present leaders, who are noble and responsible people and are at the helm of affairs now, will continue for ever or that their successors will be as responsible as they are. My fear is that in future that may not be so and with a little prejudice or unsympathetic attitude at that time the minorities may be in great danger. I am certainly against centralisation of powers and I feel that in this Constitution we are reducing the provincial Governments to the position of District Boards by centralising all power here. But I am not opposing the present amendment because we have been assured that it is to safeguard the interest of these minorities. I rather wel-

come it. But I want to make one observation about that and that is that this Commission will have very important functions to perform and one of them would be delimitation of constituencies. Of course this business would be the soul of all elections. If delimitation of constituencies is made with full sympathy to the minorities it might restore their confidence and they might never feel sorry for what they have done—I mean this voluntary giving up of all safeguards of reservation of seats. So far as the majority is concerned it has nothing to fear. So far as the Scheduled Castes are concerned they are quite safe because they have got that reservation of seats. So far as the Anglo-Indians are concerned they will be nominated if they are not adequately represented. But for other minorities such as Muslims and Sikhs I feel that if they are not properly represented they might lose confidence in that majority. This Commission shall have a very responsible task to perform in that respect when it is carving out those constituencies. If the Commission, as our object is, feels that responsibility and does its job with full responsibility then I am sure the minorities shall have nothing to fear. But with a little apathy and some ill-adjustment in the delimitation this Commission can certainly work much havoc and those minorities may not even get what they ordinarily would have got according to their population. So my object in making this observation is that in the beginning at least the Government should take care that this Commission is so constituted that every interest is represented on that Commission, and this the Government can do very easily. By this they would restore all confidence in the minorities. This would go a long way in achieving the object which we have in view, namely, that we should have one nation, all people welded together. If the Government were simply to give an assurance that it would give sympathetic consideration to this request of mine, that for the beginning at least this Commission shall be representing all interests, my object would be achieved and the minorities also would not feel apprehensive of their future fate. With these remarks I welcome this article as now proposed in this House.

Shrimati Annie Mascarene (Travancore State): Mr. President, Sir, after hearing Dr. Ambedkar's explanation two days back I thought I would abide by this article. But after listening to Mr. Munshi's speech this morning I am provoked to speak again on the subject and resume my old position. Sir, I am a believer in the right of the people of the province to elect their representatives independent of any control, supervision and direction of any power on earth. I believe that to be democracy. If the Centre is to think that expediency demands that they should supervise and control the election, as one sitting in the Provincial Legislature I can see in the Centre as many delinquencies as they see in us. From this article it looks as if the Centre is assuming to be the custodian of justice. Well, justice is not in the custody of anybody but of those who are lovers of truth. Mr. Munshi this morning spoke that article 289 is calculated to defend the rights of the people in the provinces in view of expediency and reality. May I remind him of the expediency and reality of nations in days long gone by—of the Parliament of Rome, of the Long Parliament of England? Cromwell thought that it was expedient to run the administration by a unicameral legislature. The Napoleonic heroes thought that it was expedient to run the administration by a unicameral legislature. But time has proved the effect of those expediencies. What is reality and expediency today is not reality and expediency tomorrow. We are here laying down principles—rudimentary principles—of democracy, not for the coming election but for days to come, for generations, for the nation. Therefore principles of ethics are more suitable to be considered now than principles of expediency. I am a believer in politics as nothing but ethics writ large. I am not a believer in politics as a computative principle of addition, subtraction and multiplication. If this section is to be accepted we are to believe that thereafter the provincial election will be under the perpetual tutelage

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of the Centre. That means, Sir, that the integrity of the provincial people is questioned. I wish to turn the tables on the Centre itself. Sir, should we, at this psychological moment when the people of India are demanding their rudimentary right of electing their representatives without being interfered with by any authority on earth, impose any restriction? If democratic principles are to be accepted, this article should be deleted from the Constitution.

Then I come to the latest amendment, giving the legality of Parliament to a section which was hitherto blooming as autocratic. Well, Sir, Whatever may be the amendment added on to it, it cannot lose its old shade or colour and it stands there as the ancient Roman tutelage under the patriarchal system. If the provincial or the States people are to be guided, let them be guided by experience. If we have erred, we will err only for a time or a period. They say that this is a deviation from the democratic principle. Well, I ask where is the necessity to deviate from the experience of nations and ages? Have you any *prima facie* case to show that we have erred in our democratic principles? In that case I am willing to accept this clause. But, as it is, we have not tried the experiment. We are only in the making of it. If in the experimental stage we fail, well, there is provision in the Constitution to amend it when time and circumstances demand. But let us not sully the fair name of the nation by believing in the first instance that the provincial people will not be guided by principles of truth and justice and will not keep up the democratic principles of fairness by electing by fair means. Centralisation of power is good enough for stable administration, but centralisation of power should be a development at later stages and not from the very inception of democracy. At the very inception of democracy, centralisation would look more autocratic than democratic. We are living in an age when democratic experiments are being tried by many a nation. Dr. Ambedkar quoted from the Canadian Act of 1920. How is it that he did not travel down to the United States from Canada? Why would he not look at the Australian Commonwealth? If Canada has adopted a measure, is it necessary that India, with twenty-five times the population of Canada and half the size of Europe, should adopt those very principles in her Constitution and take it as a salutary example for experiment in democracy? If democracy could succeed in the United States, if it can succeed in England, why should it not succeed in India without this clause? Well, Sir, I hope this House will give consideration to this article and be guided by principles of democracy rather than by principles of expediency.

Shri H. V. Kamath : Mr. President, article 289 of our Draft Constitution dealing as it does with elections and electoral matters has naturally evoked intense interest in this House and I am sure it has evoked or is bound to evoke equally keen interest outside the House as well. If we compare article 289 as it was originally drafted by the Drafting Committee and the article as it has come before the House today, we cannot fail to notice some salient differences, the main difference being that the superintendence, direction and control of all elections to State legislatures have been radically modified in the draft article as it was moved by Dr. Ambedkar yesterday and amended by him today. The footnote to this article on page 138 of the Draft Constitution reads thus:

“The Committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State.”

This was apparently the Drafting Committee's original view. But later on the view underwent some transformation and, in so far as the Election Commission for a State is concerned, the Governor has disappeared from the picture. I fail to see why the Governor, now that he is going to be nominated by the

President, should not have any voice in the matter of the Election Commission to superintend, direct and control the elections to the State legislature. If honourable Members will turn to article 193(1) they will find that even where appointments of High Court Judges in a State are concerned, the Governor of that particular State has been invested with some authority in the matter. That relevant clause reads as follows:

“Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State...”

I cannot understand why the Governor of the State should have no voice whatsoever in the appointment of the Regional Election Commissioner or the Election Commissioners of that State. The article as it has been modified by Dr. Ambedkar confers power on the Governor of the State in so far as supplies are concerned, such as staff, furniture and I do not know what else. As far as these are concerned, the Ruler of the State or the Governor of the State shall, when requested, by the Election Commissioner, make available to the Election Commissioners or the Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. In my humble judgment there is no valid reason whatsoever why the Governor should be deprived of the right of even exercising his voice or giving the benefit of his opinion in so far as the appointment of Election Commissioners for the State is concerned. The executive head of the Union is the President and the executive head of the State is the Governor. May I ask the House why, if we seek to invest the President who is the constitutional head of the Union with such vast powers in the appointment of Election Commissioners for the whole of India, we should not give the Governor the right to give his opinion, his judgment in the appointment of Election Commissioners for his State? I fail to see any reason whatsoever for not giving the Governors any powers except in so far as providing the staff is concerned, how many clerks, how many superintendents and how many assistants are required for the Election Commissioners. A sort of *Bada Babu* the Governor has become so far as the Election Commission is concerned. You are making him nothing more. I submit that this is utterly derogatory to the dignity of the Governor of a State. I cannot understand why the Governor is being asked to supply the staff when he has no voice in the appointment of the Election Commissioners. I strongly object to this denudation of the Governor's authority, so far as the office of the Election Commission is concerned. Again, I personally feel that clause (5) is absolutely unnecessary. We are burdening the Constitution with redundant details, with purposeless and meaningless details. Certainly every office will have to have necessary staff. But why put it down in the Constitution? The President of the Indian Union and the Governors of the States will certainly require staff for their offices, but we have not mentioned that in the Constitution. Why mention then that the Election Commissioners at the Centre of the Regional Commissioners in the provinces shall be provided with necessary staff. What I ask is this. Is it conducive to the dignity of our Constitution if we burden it with such unnecessary details, such minutiae?

Next I pass on to the amendment which has been moved by Dr. Ambedkar today after listening to the debate in the House yesterday and today. I feel that the amendment which has been placed before the House today is a sort of half-hearted concession to the viewpoints that have been put forward in this House. We are dealing with elections and electoral matters. Parliament is the supreme elected body in the Indian Union and so Parliament must have greater voice in the matter of superintendence, direction and control of elections. With a view to serving this purpose, my Friend Prof. Shibban Lal Saksena moved certain amendments yesterday. The amendment that has been moved by Dr. Ambedkar

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today meets of those amendments, some of those viewpoints half way. I personally think—I may be wrong in the assertion—but I believe that Dr. Ambedkar individually is inclined to go the whole hog. I shall not venture to make a statement on that point, and I have to take the amendment as it has been placed before the House. Clause (4) of the article moved by Dr. Ambedkar yesterday says that the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. Today the amendment placed before the House says, “subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.” There are two things, the Parliament’s law and the President’s rule. Why, may I ask, in fairness to this House and the future Parliament of the Indian Union, should we not say that the conditions of service and tenure of office shall be such as Parliament may by law determine? Why also say “as the President may by rule determine”? The President in the executive head of the Union, while Parliament is the supreme elected body. Why then leave it to the President to frame rules in this regard?

The next point is, why the Chief Election Commissioner’s conditions of service and tenure of office are made so very secure he is almost irremovable—except on a vote of two-thirds majority of both the House of Parliament. Why has he been made almost irremovable, while his colleagues at Election Commissioners are, according to this article, removable at the sweet will and pleasure of the Chief Election Commissioner? Is this the way that this House is going to treat the colleagues of the Chief Election Commissioner? Even a clerk in a District office or in the Secretariat has got far better conditions of service and security of tenure that what is envisaged for the Election Commissioner in this article. I feel, Sir, that with the article left as it is, most of the time of the Election Commissioners will be utilised in doing what I may call *khushamat*, to keep the Chief Election Commissioner in good humour, because it will be only natural, human nature being what it is, lest the Chief Election Commissioner should give a bad chit. So this is what we are trying to provide by means of this article. I personally know that a superior officer often gives a bad chit, not because his subordinate is bad at his work but because he is of independent views, if of strong mind or does not humour his boss. This sort of thing should not be encouraged, but I am afraid that is what this article might do.

Pandit Lakshmi Kanta Maitra (West Bengal: General): How can Members be sacked by the Election Commissioner, I cannot understand.

Shri H. V. Kamath : Not members but Election Commissioners. You are not listening properly. I think your honourable Friend is in a hurry to go home.

Pandit Lakshmi Kanta Maitra : I am listening to you, but I am getting more and more confused as you proceed.

Shri H. V. Kamath: The second proviso to clause (4) to this article moved yesterday by Dr. Ambedkar is to the effect that “provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.” Is it clear now? I want the Election Commissioners to be placed on a par with the Chief Election Commissioner. We have adopted the article with regard to the removal of Supreme Court Judges and High Court Judges, placing them on a par with one another. There is no distinction between the Chief Justice and his colleagues. I ask, therefore, Sir, why this distinction between the Chief Election Commissioner and the Election Commissioners?

Pandit Lakshmi Kanta Maitra : That has been provided in the case of the Chief Commissioner. They would be done on the recommendation of the Chief Commissioner.

Shri H. V. Kamath : Perhaps the language of the article is not clear. If of course, the article means that the Chief Commissioner and his colleagues the Election Commissioners and the Regional Commissioners, all these can be removed only in a like manner and on like grounds as a Judge of the Supreme Court, then it is all right. The removal, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners have been made so tenuous that with these conditions before them, men of real merit, men of ability and competence may not like to serve on the Election Commission (Interruption). There is the President to pull me up if necessary. I hope there is only one President in the House. I will bow to his ruling and to none other's. The President's command I will obey.

Then, Sir, there are one or two more points which I would like to stress before the House. I feel that so far as the Regional Commissioners are concerned, that is, the Commissioners for a particular State are concerned, I have already stated that the Governor of the State should be consulted by the President before he appoints Election Commissioners for that State. As it is, we are watering down provincial autonomy to a considerable extent in this Constitution, but certainly there is no harm if in appointing the Election Commissioners for the particular State the Governor of the State is consulted. After all the Governor is not going to be elected now. He is going to be nominated by the President; he is the President's nominee and more or less a creature of the President. The President will have full confidence in the Governor of the State; he is not going to be an elected Governor at all but a nominated Governor. If the President cannot trust even his own nominee. I do not know whom else he can trust. So, I suppose some sort of a suitable alteration will be made in this regard providing for consultation with the Governor by the President, especially in view of the fact that even as regards the appointment of a High Court Judge in a State, we have provided that the President shall consult the Governor of the State. I fail to see why the Governor should not be invested with a similar power in regard to the appointment of Regional Commissioner.

Next, so far as the removal of Regional Commissioners is concerned, it should not be left so very delightfully easy as it is now in this article. I feel that there must be more secure conditions of tenure and of service. If Parliament can have no voice—Parliament at the Centre and the Legislature in the State can have no voice—in the removal of Regional Commissioners I at least feel that they should be removed only by the whole Election Commission and not simply by the Chief Election Commissioner and the entire commission will consist of the Chief Election Commissioner and his colleagues. The one-man show must cease. It is all a one-man show at present. Now, of course we are going to adopt an amendment to the effect that “subject to any law made by Parliament”, but so far as the removal is concerned, according to the article it is a one-man show, the removal of the Election Commissioners or Regional Commissioners. This should not be. The removal must be made more difficult; otherwise, I warn the House that no men of proved merit, ability or competence will come to serve on the Election Commission when the conditions of service are so very insecure.

Then, Sir, there is one point made by my honourable Friend, Prof. Shibban Lal Saksena and that the Regional Commissioners must be appointed by the President not merely in consultation with, but in concurrence with the Election Commission. I think that is a safe rule to adopt, that the President

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should not have the only word, but he must be guided by the opinion of the Chief Commissioner with whom he must concur in the matter of appointment of his colleagues. After all when the President has appointed the Chief Commissioner, I see no reason why the President cannot get suitable men about whom both are in agreement. Certainly India is a vast country, and she can produce men for every place and for every office that the future may have in store; and I am sure for this job of Election Commissioner there will certainly be men available about whom the President and the Election Commission can agree, and both in agreement with each other can appoint the Regional Commissioners. These are the lacunae and pitfalls in the article and the amendments that have been moved by the Honourable Dr. Ambedkar before the House. I have serious misgivings about the working of this article. I have doubts about the way in which it will work, unless it is further amended suitably. Unless it is so amended, I am sure the Election Commission at the Centre and in the States will not function as well as we all want it should, and it is, I dare say, the unanimous desire of the whole House that with elections looming on the horizon, the first general elections should be conducted in an able, impartial, efficient manner. There can be no two opinions on that point. I, however, fear that that object may not be achieved by this article. That is a possibility which I for one do not like to envisage. I desire that a suitable method should be devised to have more competent, more impartial and more efficient Election Commissions in the States as well as at the Centre to conduct elections. What I fear is that this article moved by Dr. Ambedkar may not serve that purpose. I hope that Dr. Ambedkar and his wise men of the Drafting Committee will take into consideration this matter, if not now, at a later stage perhaps, and try to make further suitable amendments in this article. The House, I am sure, will consider this matter more carefully because it is not a matter to be lightly treated, for members to laugh at and smile. They might live to weep another day. If we are in a hurry to go home, I wish that this article may be held over. It is not a laughable matter at all and if Members are tempted to laugh, I wish them joy of it. Sir, I trust that the article will be suitably modified in the light of my observations.

Some Honourable Members : The question be now put.

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

“That the question be now put.”

The motion was adopted.

Mr. President : I will first put the amendment which Ambedkar has moved last.

The question is:

“That in amendment No. 99 of List I in the proposed article 289—

- (i) in clause (1) the words ‘to be appointed by the President’ occurring at the end be deleted.
- (ii) for the clause (2), the following clauses be substituted:—
 - ‘(2) The Election Commission shall consist to the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.’
 - ‘(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.’
- (iii) in clause (4), before the words ‘The conditions of service’ the words ‘subject to the provisions of any law made by Parliament’ be inserted.”

The amendment was adopted.

Mr. President : I will put Prof. Shibban Lal Saksena's amendment. I think there will be a little change because of the new arrangement.

Mr. President : The question is:

"That at the end of clause (1) the following words be added:—

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament'."

The amendment was negatived.

Mr. President : The question is:

"That after the word 'appoint' in clause (2) the following be inserted:

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament.'"

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) for the words 'after consultation with', the words 'in concurrence with' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (4) for the words 'President may by rule determine', the words 'Parliament may by law determine' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (1) to clause (4) for the words 'Chief Election Commissioner' the words 'Election Commissioners' be substituted, in both places."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (2) to clause (4), the words 'any other Election Commissioner or' be omitted."

The amendment was negatived.

Mr. President : The question is:

"That for article 289, the following article be substituted:—

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with election of Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

Superintendence, direction and control of elections to be vested in an Election Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.

(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

[Mr. President]

(4) Subject to the provisions of any law made by Parliament the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

The amendment was adopted.

Mr. President : The question is:

"That article 289, as amended stand part of the Constitution."

The motion was adopted.

Article 289, as amended, was added to the Constitution.

ADJOURNMENT OF THE HOUSE

The Honourable Shri Satyanarayan Sinha : Mr. President, Sir, in the rules of procedure of this House, rule 19, there is a proviso that the House cannot be adjourned for more than three days by the President unless the House authorises him to do so. Therefore I move this formal motion:

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

No date is specified; the President will fix the date.

An Honourable Member : Why put down the month?

The Honourable Shri Satyanarayan Sinha : The month is fixed; the President shall fix the date.

The Honourable Shri Ghanshyam Singh Gupta : (C.P. & Berar: General): That means that the President shall have no choice in regard to the month.

The Honourable Shri Satyanarayan Sinha : The motion is simply that the House to adjourn until such date in July 1949 as the President may fix. He cannot alter the month; he can fix a date.

Mr. President : Before I put this motion to the House, I desire to explain the situation and the programme as I envisage it. My own idea is that we should be able to finish the second reading by the 15th of August. Thereafter, we shall have to adjourn for some time to enable the Drafting Committee to prepare the Constitution in its final form for the third reading. That might take some weeks. Therefore, we shall have to meet some time in September. That should also be subject to this that we are able to pass the third reading by the second of October. That is my wish. If the House generally agrees to this tentative programme, I shall fix the dates in consultation with the Drafting Committee and perhaps with the members of Government who are principally concerned in this.

Shri Mahavir Tyagi : Could you also give an idea as to how long you may require us to sit in the month of July?

Mr. President : I could give you an idea. The Assembly cannot meet before the 15th of July, because, as I said the other day, this adjournment has been necessitated by the fact that there are certain provisions which have to be considered in consultation with the Provincial Ministers and the