

Mr. President : Amendments 2440 and 2441: these arise in connection with the new article proposed. We may leave these over.

There is no amendment moved to article 168. Does any one wish to say anything about the article?

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I do not think there is any particular necessity for retaining article 168 in our Constitution. There is already enough provision in the Constitution to deal with such persons as are not members or do not possess the necessary qualifications but enter the House and sit there as members. We can turn them out of the House, or can prosecute them for trespassing and thereby they would be awarded due punishment. Therefore, it does not appear proper to me, Sir, to have an exclusive article for this purpose. I do not think there is any advantage in providing for an additional article like the present one. My submission is that they should be treated as trespassers and punished accordingly.]

Mr. President : The question is:

“That article 168 stand part of the Constitution.”

The motion was adopted.

Article 168 was added to the Constitution.

Article 169

Mr. President : We take up article 169.

(Amendments Nos. 2442, 2443, amendment to amendment, No. 141, and 2444 were not moved.)

No. 2445.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I beg to move:

“That in clause (4) of article 169, after words ‘a House of the Legislature of a State’ the words ‘or any committee thereof’ be inserted.”

Sir, after my amendment is incorporated in clause (4) of 169 it will read thus:

“The provisions of clause (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature.”

The object of this amendment is that any person, though not a member of the Legislative Assembly, if he is called upon to appear before or act in a committee set up by the Legislature, he shall have in respect of whatever he says or does there the same privileges as have been extended to members of the Legislature. Without such immunity being extended to persons who are invited to appear before or act on a Committee set up by the Legislature it would be very difficult for such persons to act freely, with absolute freedom and without any reservation. A similar amendment of mine in relation to the privileges of such persons when they were to appear before a Committee

*[] Translation of Hindustani Speech.

set up by the Central Parliament has already been accepted by this House and for the same reason I would submit that this amendment also should be accepted.

Mr. President : Nos. 2446 and 2447 are not moved. The amendments and the article are open for discussion.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I shall, by your leave, say a few words with respect to clause (3) of this article. I do not propose to repeat what I said on an earlier occasion when we were discussing the corresponding clause relating to the privileges of members of the Central Parliament. But I should like to invite the attention of Dr. Ambedkar and also of the House to the reaction among the people as well as in the Press to the clause that we adopted on that occasion. I have no doubt in my own mind that Dr. Ambedkar keeps his eyes and ears open, and cares to read some of the important papers daily or at least has them read to him daily. Soon after this clause relating to the privileges of members of Parliament was adopted in this House, most of the Press was critical of the way in which we had dealt with the matter. Even a Conservative Paper such as the *Hindustan Times* remarked that it was highly undesirable for us, drafting a written Constitution for our country, to legislate or to insert something in our constitution by reference to something in the unwritten Constitution of another country. Britain, as the House is aware, has an unwritten Constitution though this particular measure may be written down in some document. I believe that when that clause was adopted, our Constitutional pandits here, our experts, Dr. Ambedkar, Mr. Alladi and others of their way of thinking laid the flattering unaction to their souls that, the House of Commons being the Mother of Parliaments, we were doing the wisest thing in the world by stating something with reference to that body, the House of Commons, about which however most of us here are blissfully ignorant. Many of the Members here who spoke on that occasion remarked that they did not know what the privileges of the Members of the House of Commons were, and some of the papers and some of the comments on this particular aspect of our work was that the Drafting Committee more or less shirked, “scamped”, its work. They could have at least drafted a schedule and incorporated it at the end of the Constitution to show what the privileges of the members of the House of Commons were. That was not done, and simply a clause was inserted that the privileges obtaining there will obtain here as well. Nobody knows what those are, and *a fortiori* nobody knows what privileges we will have. Our Parliament presided over by Mr. Mavalankar has adopted certain rules of business and procedure tentatively, and has also appointment or is shortly going to appoint a Committee of Privileges. I wonder why we could not have very usefully and wisely adopted in our Constitution something to this effect, that whatever privileges we enjoy as members of the Central Parliament will be enjoyed by members of the Legislature in the States. If at all there was a need for reference to any other Constitution, I think it was very unwise on the part of the Drafting Committee to refer to an unwritten Constitution, viz., the Constitution of Great Britain. There is the written Constitution of the U.S.A., and some of us are proud of the fact that we have borrowed very much from the American Constitution. May I ask Dr. Ambedkar whether the Privileges of the Members of the House of Commons in the United Kingdom are in any way superior to or better than the privileges of the members of the House of Representatives of the United States? If they are, I should like to have enlightenment on that point. If they are not, I think the reference to an unwritten constitution is not at all desirable. I am of course against any reference to another constitution. If necessary let us put in a schedule to our constitution, and say here in this article that the privileges and rights are as specified in the Schedule at the

[Shri H. V. Kamath]

end. There is probably a desire to simplify matters, but to simplify matters is not always the proper way. If they wanted to simplify it for the sake of brevity, they should have thought of this alternative—a reference to a written constitution of some country in the world. That would not have been absolutely repugnant to me. But I would any day prefer a definite schedule in the Constitution showing what privileges shall be enjoyed by members of the Legislatures and of Parliament. This particular clause, to my mind, should be recast. We have passed one clause on an earlier occasion, but that is no reason why we should perpetrate the same mistake over and over again. I would, therefore beg of Dr. Ambedkar and his wise team of the Drafting Committee and the House to revise this clause, and if necessary, to go back to the other clause, if they are convinced of the wisdom of this course, and revise that also accordingly and proceed in a saner and a wiser manner.

Mr. Naziruddin Ahmad : Mr. President, Sir, I also desire to offer a few remarks on clause (3) of the present article. It was I who tabled an amendment to article 85, clause (3), and that was amendment No. 1624. There is another amendment which was tabled by me to the present article, namely, No. 2443. Each of these clauses deals with the privileges of members by reference to those of the House of Commons. But I did not move the earlier amendment, nor this amendment, because I found that it would involve the Drafting Committee in tremendous labour. The greatest objection to these clauses is that they attempt to define our privileges to be co-extensive with those of the Members of the House of Commons in the United Kingdom. These clauses have been copied from the Government of India Act, 1935. This clause has been bodily lifted from that Act and there has been no attempt to clarify the situation. As Mr. Kamath pointed out, this shows some amount of indolence on the part of the Drafting Committee. The difficulty is that the privileges of the Members of the House of Commons are nowhere collected in any systematic form. It is therefore, difficult for us, for any Member to be sure of our privileges. And it is also necessary and highly desirable not to postpone the matter any further. My feeling is that honourable Members should suggest the incorporation of a Schedule showing the list of privileges which, as far as they could be found out and decided upon today, may be incorporated in the Schedule, with a slight amendment of this clause, referring to that Schedule. I have a draft ready and I shall submit it for consideration of the House at a suitable stage, if requested. I think it highly desirable that the privileges which we are so anxious to protect, should be clearly known. I think they should be systematised and for the time being incorporated in the Schedule of the Constitution, to be further revised and elaborated by Parliament, if necessary.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, on the last occasion too, I had supported Mr. Kamath and I do not want to repeat a single syllable of what I then said. So far as this clause is concerned, I have one concrete suggestion to make. I would be happy if reference to the House of Commons could be omitted. But if that is not possible, there is a second suggestion that I would like to make. Of course, I have not seen much consideration given to suggestions that I make, but still I hope this particular suggestion of mine will not fall on deaf ears. I would say rather say that this subject of privileges was dealt with by a reference to article 85 that we have already passed. That would not only save an additional reference to the House of Commons, but it will also do away with a variety of privileges which may

come to prevail as a result of this clause. The clause reads like this:

“In other respects the privileges and immunities of member of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law.....”

Instead of leaving it to each State Legislature to define these for itself, I would much rather have the privileges co-extensive to those enjoyed by Parliament, so that so long as the reference to the House of Commons remains, it may exist; but when we define various privileges it should be done only by the Central Parliament and not by each particular State differently, because they are likely to vary. I hope this suggestion of mine will be accepted, by which we will be saved reference in another place to the House of Commons. We will also be basing our Constitution on our own decision, by reference to article 85—so that even if the reference to the House of Commons of the United Kingdom remains there in article 85, the privileges enjoyed by the members of all the legislatures in all the States will be co-terminous and co-extensive and will not vary in any way. I feel this is a very sensible suggestion and I hope it will find favour with the Drafting Committee and the Honourable Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in relation to this article 169, I tabled an amendment which is amendment No. 2444, but I have not thought fit to move it. In regard to this section, apart from the general tendency of our Assembly to shelve inconvenient questions, which I deprecate very much, I find this reference to the privileges and immunities enjoyed by the members of Parliament of the House of Commons is undesirable. Not that I am ashamed of a reference to the House of Commons, but in a matter like this, if we do that, it will be again shelving the very important question which is within the scope of the activities of this Constituent Assembly. After all, if we cannot find a solution of this difficult question, may I know when the solution will be found? If today our jurists and our leaders cannot define the privileges of the members of a Legislature, I do not see at what point of time this would be possible. I know that the Members of this House have been enjoying certain privileges. Even if we cannot define them all, let us define such of them as we know. I know that the Members of this House and the Members of provincial legislatures, in some cases, have been enjoying the right of holding arms without licenses. I know the right of freedom of speech has been enjoyed, which is referred to in article 69. The question about liability to arrest was mooted in the Punjab Assembly at one time, when the question arose as to whether a Member could be arrested while coming to or going from a Session of the Assembly. These similar things are not written down anywhere, so far as the House of Commons is concerned. They are part of the unwritten constitution, and are among the privileges which cannot perhaps be reduced to writing. Be that as it may, I think still that a reference to the House of Commons is humiliating to an extent. Why should we refer to it? Our Parliaments have been in existence for a very long time. There is no reason why we should not attempt to put in writing whatever our privileges are. If they are to be enlarged or restricted subsequently, that could be done, but this reference to the House of Commons to find our immunities and privileges is not justified.

Moreover, I have seen a tendency whenever any inconvenient question crops up, such as for instance the constitution of the Council of State or any such similar body, we want to keep it in abeyance and leave it to the Parliament to decide. When we are framing the Constitution we must take up questions which are of fundamental importance and decide them here and now.

Sir, I think it would be much better if the reference to the House of Commons is deleted. If we are not able to decide the question now we should leave it to our own legislatures. But if that is not possible, Mr. Jaspat Roy

[Pandit Thakur Das Bhargava]

Kapoor's amendment must be accepted. He wants that the privileges and immunities enjoyed by the members of the provincial Legislature may be the same as those enjoyed by the members of the Central Legislature, whenever these privileges come to be defined.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges which we think of fall into two different classes. There are, first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh: We do not want any enumeration of the privileges nor any lecture on how they are exercised. What we want to know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President: He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than to the two privileges, mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters—e.g., to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava: We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar: Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating, these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, That Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh: The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar: As I said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages.....

Mr. President : Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State Legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar: That is only a drafting suggestion. For instance, it can be said that most of the articles we are adopting for the State Legislatures are more or less the same articles which we have adopted for the Parliament at the Centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular case.

Mr. President: I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House:

The question is:

“That in clause (4) of article 169 after the words ‘a House of the Legislature of a State’ the words ‘or any committee thereof’ be inserted.”

The amendment was adopted.

Mr. President: The question is:

“That article 169, as amended, stand part of the Constitution.”

The motion was adopted.

Article 169, as amended, was added to the Constitution.

Article 170

Mr. President: To article 170 there are no substantial amendments except Nos. 2450 and 2451.

(Amendment Nos. 2448 and 2449 were not moved.)

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I beg to move:

“That in article 170, after the words ‘so made’ the words ‘salaries and’ be inserted.”

Sir, this is only to fill in an inadvertent omission in this article. Article 170 relates to salaries and allowances of members of the Assembly and the Legislative Council. This has two parts as the House will see. The first part makes provision for Parliament to determine salaries and allowances etc. and then the next part says that till such provision is made the existing conditions shall continue. But in the actual wording it is only said “allowances at such rates” shall be continued. The House will know that in the provinces members of the legislature are receiving salaries at present. Unless this word “salaries” is added the members of the provincial legislatures would get no salary till provision is made in that regard. The article is in similar terms to article 86 which relates to members of Parliament. Members of the Constituent Assembly are not receiving salaries and hence provision is made only for allowances, whereas in the provincial legislatures the members receive salaries. It is therefore necessary that you must have the word ‘salary’, and I hope the House will accept the amendment.

Mr. President: The other amendment is 2451 in the name of Mr. Z.H. Lari. A similar amendment was discussed and rejected in regard to the Central Parliament. I find that Mr. Lari is also not here and so the amendment is not moved.

The Honourable Dr. B. R. Ambedkar: Sir, I accept Mr. Bharathi’s amendment.