[Mr. President]

There is an amendment with regard to the heading of the Chapter.

Amendment No. 1809 by Mr. Naziruddin Ahmad about the numbering of the chapter. I do not think it is necessary to take it up.

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

"That in the heading to Chapter IV of Part V, for the words 'Federal Judicature' the words 'Union Judiciary' be substituted."

This is merely consequential to the earlier article where India has been described as a Union.

Mr. President : The question is:

"That in the heading to Chapter IV of Part V for the words 'Federal Judicature' the words 'Union Judiciary' be substituted."

The amendment was adopted.

Mr. President : Mr. Gupta's amendment is the same as the previous one.

New Article 102-A

Prof. K. T. Shah : Sir, I move:

"That under Chapter IV of Part V, the following new article be added:—

'102-A. Subject to this constitution the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature."

Sir, this amendment enunciates a very important proposition in constitution making, which I have urged from a variety of angles already, but which I should now like to urge from this angle, in the hope that, at least for securing the independence of the Judiciary, it may commend itself to the House.

Sir, the principle of the separation of powers has been regarded in many countries as the foundation stone of democratic Government. Unfortunately, I have not been able to persuade the House, in regard to this very important principle, on other occasions that I had enunciated it either generally or in regard to the Legislature being independent of the executive, and the executive of the Legislature. In the case, however of the Judiciary, I submit that the proposition is still more important than anywhere else. After all, in this country, the history of the popular movement has been associated ever since its commencement with the demand that the Judiciary at least should be separate from and completely independent of the Executive. One of the characteristics of the preceding Government was that, upto a considerable stage in the scale of judicial organisation, the powers of the judiciary and the executive were combined in one and the same officer. That was the situation to which exception was taken ever since the democratic movement began in this country.

Though it has not even now found acceptance in this constitution in the fulness of form that I would have desired, I am sure that a majority even in this House does not object in principle to this proposition. I have, however, made it a much wider proposition. In this amendment: it is not merely the separation of the Judiciary from the Executive, but also it independence, and I want it to be also separate from the legislature and the executive as well.

The presence of the judicial element in the legislature is, I think of no advantage, no help either to the legislature or to the judges themselves, in as much as the Judges, if members of the Legislature, are liable to be influenced by the debates of the proceedings that may have taken place in the making of the law, and not keep themselves strictly to the letter of the law as it may come before

them in any specific case. It has, however, been accepted as a very sound principle of administration of justice, that Judges do not concern themselves with anything that has happened in the legislature while the law in question was being passed, and whatever arguments were used, whatever points were made while the law was under discussion in that body, must have no weight with the Judges. They must confine themselves only to the final Act of the legislature as it has been worded and they remain the supreme authority for interpreting that law as and when any matter comes up before them involving such law.

That, I think, in itself is a very sound position and ought to be normally emphasised in the Constitution. Hence, that part of my amendment, which relates to the separation and independence of the Judiciary from the legislature.

Much more important, from the point of view of civil liberty and the general democratic character of the governance of the country, is the complete separation of the Judiciary from the Executive in every way that we can possibly guarantee. I think it is of the utmost importance that the Judiciary, which is the main bulwark for civil liberties, should be completely separate from and independent of the Executive, whether by direct or by indirect influence. The possibility of the translation, that has frequently occurred in the past, of high judicial officers being available for promotion or transfer to equally high or even higher executive offices, is, in my opinion, it self a temptation against which Judges should be guarded. By law, I think, Judges should be barred from any such translation from the judicial to executive offices, however eminent, however imposing that office may be, lest, in such translation, they should be even indirectly influenced, and that they should model their judgments, unconsciously perhaps, in the hope of proper appreciation being shown at suitable moments by the powers that be.

I think this cannot be emphasised too much in a country particularly like this, new yet to the forms of democratic Government, new yet to the limits of Party Government and party dispensation of not only the loaves and fishes of office, but also other advantages, that the Judiciary should be completely independent, and in no sense open to influence in any way by the executive. The spectacle used to be frequent in the past,—perhaps this is within the knowledge of many of us here, when superior executive officers did not scruple even to issue instructions, certainly demi-official advice, as to the course of legal proceedings. I trust that is no longer the case now in this country. But lest there may be the slightest unconscious room for influence being exercised by the Executive upon the Judiciary, I suggest the very possibility should be avoided. The Constitution should therefore definitely provide that the Judiciary shall be completely separate from and independent of the Executive or the Legislature. I trust this simple proposition will find no objection and will be accepted by the House.

Shri K. M. Munshi : Mr. President, Sir, I have only a few remarks to offer with regard to the amendment proposed by my Friend Professor Shah. In this amendment as the House will see, two ideas have been mixed up. The first is about the separation of Judicial from the Executive Powers. The other is the independence of the Judiciary. Now if I may remind the House, the doctrine of separation of powers which was originally put forward by Montesquieu in the middle of the eighteenth century was the basis on which the Constitution of the United States of America was framed. But the last 150 years of experience has shown that the doctrine of separation of powers cannot be maintained in a modern State. Today we find the Executive appointing numbers of tribunals of a quasi-judicial character. We find a large number of rules made by the Executive under law regulating conduct of different kinds. In modern

[Shri K. M. Munshi]

State the Executive enjoys certain powers of legislation as well as of deciding disputes. We also find Industrial courts which are taking upon themselves the right to adjudicate upon rights between the parties. On the other hand we find that the Judiciary has sometimes to perform functions which may be Executive in a very narrow sense. Therefore the doctrine of separation of powers is an exploded doctrine. This Constitution has been based on an entirely different principle, adopting the British model. We have invested the Judiciary with as much independence as is possessed by the Privy Council in England and to large extent, by the Supreme Court of America; but any water-tight compartments of powers have been rejected. That is with regard to separation of powers.

As regards the question of the independence of the Judiciary, which my Friend Professor Shah emphasised, ample care has been taken in this Chapter that the judicial system in India under this Constitution should be an integrated system, and that it should be independent of the Executive in so far as it could be in a modern State. The House will see as it proceeds to deal with this Chapter that once a Judge is appointed, his remuneration and allowances etc. remain constant. Further he is not removable except under certain conditions like a two-thirds majority of the two Houses. He is precluded from practicing afterwards and I am sure he is not going to look up to any future prospects from Government after his term of Judge is over. These are considered sufficient guarantees of the independence of the Judiciary throughout those countries which have adopted England as the model. These safe guards are there. Largely however it will depend on how the Judiciary works, what the spirit of the Legislature is and what spirit the Executive works. That is a matter which principally lies with the public opinion in the country as well as with those working the Constitution. But so far as the Judiciary is concerned, it is as independent as in any other country of the world and there should be no fear that by reason of not accepting the first part of Professor Shah's amendment the independence of the Judiciary would in any way be crippled or whittled down.

Shri R. K. Sidhwa : Mr. President, Sir, the Congress is committed for the last over fifty years that the Executive should be separated from the Judiciary. The main reason that this has been advocated every time and this subject came up before the public is that it is bad in principle. The prosecutor and the Judge should not be the same person and that is what is at present existing in this country and there has been miscarriage of justice in past when the Prosecutor and the Judge is the same person who sits on trial over the accused person. I would not go on stating details because it is very well known to the people as to why we have been advocating the separation of these two functions and it is absolutely necessary that these two functions should be separated. But, Sir, I might state that this question came up for discussion in this House in the last Assembly and we discussed it for nearly three hours. If you will kindly see the Directive Principles of State Policy there has been an article passed-article 39-A-which says:

"The State shall take steps to separate the judiciary from the executive in the public services of the State."

Now it is one of the articles which has been passed and adopted as a Directive Principle given to the Governments that may be in Office, and that is of greater force than the amendment which my Friend Professor Shah desires to move. The matter having been already discussed and decided and forming part of one of articles, while I agree in principle about this matter, as it has been discussed threadbare on the floor of this House in the last Session.

I see no reason why we should again put in another clause on this matter and complicate the issue. 'Directive' means in my opinion that it has a greater force than this article. It may be that any Government may not accept that Directive Policy. Well, for that matter, the measure lies in the hands of the Legislature if they do not accept this Directive Policy. I therefore contend that while I accept in principle, as the matter has been discussed threadbare for three hours as far as I remember and forms part of an article, there is no necessity for passing a resolution of this nature.

Dr. P. K. Sen (Bihar: General): Sir, I cordially support the amendment moved by my honourable Friend Prof. Shah. The question as to the combination of judicial and executive functions has been mooted, I do not know, how many times. From the time of Raja Ram Mohan Roy this question about the absolute necessity of separating judicial and executive functions has been before the nation. I was rather taken by surprise—in fact it took my breath away—when my honourable Friend Mr. Munshi said that it was an exploded doctrine that there should be no combination of executive and judicial functions. Of course the question does not arise in connection with the Judges of the Supreme Court or the Judges of the High Courts.

Mr. President : I may point out that here in this Chapter we are concerned only with the Union Judiciary. Here we are not concerned with the subordinate judiciary or any other judiciary. There is no question of combination of functions so far as the Union is concerned, between the Executive and the Judiciary.

Dr. P. K. Sen : But, Sir, the amendment, I think is:

"Subject to this Constitution, the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature."

It does not necessarily come under the Union Judicature. I should submit that what ever the proper place for it, which can be a matter of dispute, the principle itself—and the amendment represents a principle—is one which we must accept. Now is the time for us definitely to say that there should be a separation between the Executive and the Judiciary. I do recognise that coming as it does at this particular place, it seems that it is under Union Judicature, but that is not the case. The amendment simply says this, that under Chapter IV, of Part V, a new article should be added. Let there be a separate heading even. I do not know at which place exactly it should appear. But that is really immaterial. I do hope that this amendment will not be rejected in a hurry, but that the House will really give its considered opinion that it should be regarded as accepted doctrine. It is a very important principle that we have insisted upon for many years past, and therefore it should be embodied in our Constitution. It does not come under Federal Judicature, or under the High Court even; but it is notorious that in the Subordinate Judiciary, there is this combination of functions practically everywhere in India, and it is this which leads to the mischief that we have complained against for many many years. I therefore, beg to support the amendment.

Shri H. V. Kamath : Mr. President, I rise to support the amendment that has been moved by my Friend Prof. Shah, seeking to incorporate a new article, article 102-A, in the Constitution. I was rather surprised to hear Mr. Munshi come forward and plead against the separation of the judicial and executive powers, considering that the House has already passed an article, as Mr. Sidhva rightly pointed out—article 39-A—in the Directive Principles of State Policy which lays down that the State shall take steps to secure the separation of the judiciary from the executive in the public services of the State. The original article, 39-A, as moved before the House, specified a time limit, namely a period

[Shri H. V. Kamath]

of three years from the commencement of this Constitution. Subsequently, however, the time limit was eliminated, and article 39-A was passed without the specification of any period or time limit within which this separation of the two functions was to take place. This deletion of the time limit aroused suspicions in various parts of the country, among judges among lawyers, who thought there was really an attempt to shelve the whole issue for an indefinite period. Soon after this article 39-A was adopted by this House, the Chief Justice of the Patna High Court Mr. Clifford Manmohan Agarwala, while inaugurating the Bihar Judicial Officers' Conference referred to this article—I am reading from the Hindustan Times of the 9th December 1948—and said,

> "Is it not obvious that having discovered that power over those appointed to administer the criminal law helps to lubricate the creaking machinery of administration, the Government is reluctant to part with that power, even though the public they claim to represent demands this long over-due reform and even though they themselves are fully aware that is a necessary step if the administration of criminal law is to command the confidence of the people for whose protection it exists?"

When the amendment incorporating this article 39-A was moved in this House, in November or December last the honourable Pandit Jawaharlal Nehru said that the Government of India were entirely in favour of the separation of the judiciary from the executive.

Mr. President : Mr. Kamath, was that remark of the Chief Justice made in reference to this article?

Shri H. V. Kamath : Yes, regarding the suspicion that was aroused. I was reading from the Hindustan Times of the.....

Mr. President : Does it refer to this particular article?

Shri H. V. Kamath : It refers to the suspicion. Shall I read the whole extract? It says that this article seeking to eliminate a period, or time limit arouses suspicion in the minds of various people, and "this suspicion was voiced eloquently by the Chief Justice of the Patna High Court etc. etc." The late Sarojini Devi "who also spoke at this Conference of Bihar Judicial Officers" I am again reading from the Hindustan Times of the same date.

Mr. President : I am afraid all these references have nothing to do with this particular article.

Shri H. V. Kamath : I only want to refer to article 39-A without the time limit of three years, and this aroused suspicion in the minds of various people. Though we know as the Prime Minister has stated, the Government of India were entirely in favour of the principle of separation, yet, by agreeing to omit this limit of three years, many people suspected or thought that we were not earnest about it. In my judgment, the paramount need for an independent judiciary arises from the fact, firstly, that we are here building a federal Union Constitution where an independent judicial authority is necessary to arbitrate or to settle disputes that might arise between the Centre and the Units; and secondly in my humble judgment, it is essential that the citizen should in a democratic state be in a position to refer complaints against the State to an impartial authority. These two functions which I just referred to, namely, the functions of the judiciary to adjudicate or settle disputes between the Centre and the Units in the first place, and to give justice to the citizen as against the State cannot be fulfilled unless and until the judiciary is separate from the executive and is completely independent of the executive. Therefore, in the context of the free State that we are going to build, the free

democratic State that we are going to build up in our country, an independent judiciary should assume a high priority, before we proceed to confer fundamental rights upon the citizen, or before we allocate various functions and powers between the Centre and the Units. If the judiciary is not there to protect and safeguard these rights that you confer on the citizen, how are we going to preserve the sanctity of our Constitution? Therefore, I say, I was rather not prepared to hear Mr. Munshi say that it is an exploded doctrine and that it has no validity in the present age. On the contrary, Sir, I make bold to say that with the increasing in roads upon personal liberty and democratic freedom that we witness all over the globe today, that need for such separation and for an independent judiciary was at no time higher than it is today. Therefore, Sir, I support the amendment that has been brought before the House by my Friend, Prof. K. T. Shah and appeal to the House to accept this amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): I have a number of objections to the amendment moved by Prof. Shah. In the first place it is not germane to the chapter which deals with the constitution and the functions of the Supreme Court. The general question as to the relation between executive and the judiciary is not the subject of the chapter. As a matter of fact, we have not in the Draft Constitution a general chapter relating to the Judicature, the High Court, the Supreme Court and the Subordinate Courts. If that were so and if we were defining the relation between the executive and the judiciary, possibly it might be different. If there is to be any article of that description it must find a place in some other part of the Constitution.

The second point is that this House has already considered the general question in some form when the fundamental rights were debated by the House. Having regard to the present condition of things, it would be impossible to work the constitution in the first few years, it was felt, if immediately the question of the separation of the executive and the judiciary is to be undertaken. Therefore this amendment goes against the spirit of the resolution which has already been arrived at by the House. That is the second point.

Thirdly, a general clause like this may place the whole administration out of gear. I shall illustrate it in a minute.

From the date the Constitution comes into being there shall be a complete separation of the executive and the judiciary. Today, as a matter of fact in the framework of the administration in the different provinces of India, there is a certain combination of fusion between the executive and judicial functions. How exactly is the administration to work in the meantime if you have a general article of this description, without having specific provisions in regard to the judiciary and upon the way in which the Judiciary is to work in different parts of the Constitution? Leaving that apart, there are other weighty constitutional objections to an article of this description. I may at once mention that I am in wholehearted agreement with the general principle of the separation of the executive from the judiciary functions. But if you put a general article like this or an amendment like this in the Constitution, it is likely to give rise to considerable difficulties. If only we survey the working of administrative institutions in different parts of the world, including America, where this theory of separation is recognised—at least the separation of the executive from the judiciary—you will find a large number of quasi-judicial functions being invested in what may be called executive or administrative bodies. Without that the ordinary administration cannot get on. Those functions may not be completely judicial in the sense in which the functions are to be discharged by a Court of Law. But certainly their work bears upon the rights and obligation between parties.

[Shri Alladi Krishnaswami Ayyar]

I would ask the Members of the House to take any volume of the United States Supreme Court reports and the number of cases which have come up from what may be called the Inter-State Commission and various other quasi-judicial commissions working in different parts of America. No doubt in those cases there is the ultimate recourse of the Supreme Court. Apart from the difficulty to it, it is impossible to work a modern administrative machinery without some kind of judicial functions being vested in administrative bodies. I might mention that even without a clause as to separation an article in the Australian Constitution, investing the Judicial power in Courts, has given rise to difficulties. There the expression used is 'Judicial powers shall be vested in so and so'. The question has arisen in Australia whether income tax tribunals exercising quasi-judicial functions could deal with the question of assessment at all. After considerable difficulty and exploring the history of Courts and tribunals, the Privy Council got over the thing and pointed out that a body which is exercising judicial functions but is not exercising judicial powers may not be strictly a Court.

Therefore, even if we are anxious to put this through, it must be undertaken by the different Legislatures. The Legislatures in undertaking such legislation will have to examine the various functions which have to discharged by administrative, quasi-administrative, quasi-judicial tribunals, and then see how far the ultimate recourse to the Courts or the Superior Courts can be guaranteed, consistent with certain quasi-judicial functions being invested in administrative bodies.

I think a general article like this will land us in considerable difficulty. While I do not want to espouse the cause of the executive or to say that there should not be any separation between the executive and the judiciary it requires a certain exploring of the world field and you must be in a position to go into the entire field of administrative working, have a regard to the way in which the thing is being worked in countries where this theory of separation is recognised, profit by their example in recent times and see that we avoid the pitfalls into which they have fallen. That is the proper way to approach this problem.

I therefore oppose the amendment on these grounds: first that it is not germane to the particular chapter: secondly, that it involves the exploring of the whole field of general administration: thirdly that it is sure to put the whole administration out of gear; fourthly, the words 'wholly independent' and 'wholly separate' will lead of considerable difficulty.

I oppose the amendment of Prof. K. T. Shah.

Dr. P. S. Deshmukh : Sir, I regret I cannot find myself in a line with Prof. K. T. Shah and I cannot support the amendment moved by him. There have been two speeches made on the other side (Shri K. M. Munshi and Shri Alladi Krishnaswami Ayyar) but I regret to have to say that they were not fully audible, and so if I repeat a point here or there I shall be forgiven. As a matter of fact, I want to be as brief as possible.

The amendment that has been proposed wants two things. It wants the separation of the executive from the judiciary and it also wants to provide for the independence of the judiciary. So far as the Supreme Court is concerned it is separate from the Executive and no question of separation therefore arises. The second thing which Prof. Shah wants to achieve is independence. Now how is independence of the Supreme Court to be secured? If we look into the Constitutions of various other countries it is

nowhere provided how the judiciary of any particular country shall be independent. The independence of the judiciary is secured more by a proper selection of the method of the appointment of the judges, by providing that there shall be no interference by the executive in the judicial functions of the judicature, by making the judges not easily removable and so on and not by a direct provision that the Judges of the Supreme Court shall be independent. I would make bold to say, irrespective of what I heard Mr. Munshi and Shri Alladi Krishnaswamy Ayyar say (I do not know if I heard them correctly) that I, for one, take the view absolutely and emphatically that the independence of the judicature is provided for in the Draft Constitution, which is before the House, and beyond this it is not necessary and advisable to go. We cannot make it independent by saying that it shall be independent, just as we cannot create an opposition just by saying that certain Members should form an opposition. In the same way you cannot have an independent judiciary by telling them "You are independent." Actually from my own experience of the judiciary in India for a long time I can safely say that an Indian judge is likely to be more independent than he should be, rather than contrary. If one were to observe the working of the judiciary of India as a whole, the High Court Judges, and the Federal Court Judges, I can safely say that even without providing for this clause by which we propose to tell them that they are independent and they are not amenable to executive influence, they have acted as independently as the country would like them to act. From that point of view I say that the provisions are absolutely adequate, and that we are providing for an adequately independent judicature. I would like to differ respectfully from Mr. Munshi if he thought and says, that it is not possible to provide for an independent judiciary. In my view it is absolutely necessary to provide for an independent judicature but I feel convinced that provisions in this chapter secure this purpose.

I have a small suggestion to make. I have already stated that our Constitution is neither a Union nor a Federation: It is a hotch-potch of both. Dr. Ambedkar is bringing forward an amendment for the alteration of the word "Federal" to the word "Union". I do not think there is much meaning in that. But so long as there is any trace of federation in the constitution, I would beg of Dr. Ambedkar to give this important subject an independent part of itself in the constitution rather than include it in another part and give it only a chapter. The three essential elements of a constitution which is federal in character are the Legislature, the Executive and the Judicature. As far as dignity is concerned the Judicature is no less than the other two and should therefore have for itself a separate part. That suggestion I would like to make to Dr. Ambedkar. It should not be left to Chapter IV but should have a separate part for itself.

Mr. Naziruddin Ahmad : Sir, I wholeheartedly support the principle of the amendment which has been moved. Much has been said as to the propriety of putting it at this place and also as to the exact wording. What I wish to emphasise is the principle behind the separation of the Judiciary from the Executive and the independence of the Judiciary. As to where it should be inserted and what should be the exact wording is a matter which is of secondary consideration. In fact, in discussing and deciding upon this important issue it is very desirable to keep these two matters entirely distinct. If we do not like the principle we should say so plainly but if we do, then the question of its being placed in the proper place or its exact wording can be a matter of adjustment in the House.

It is somewhat surprising to hear in the House after over fifty years of agitation for securing the independence of the Judiciary, that the independence of the Judiciary is no longer a desirable thing. In one form or another, it

[Shri Naziruddin Ahmad]

has been suggested here that this is not the proper time, and that this country is not now suited to this experiment of separating the Judiciary and the Executive, and the independence of the Judiciary is no longer a covered thing. We have been under slavery for centuries and it seems to me that we have not yet been able to get rid of that slave mentality, so that having obtained independence we want to subjugate our judiciary to the wishes and whims of the executive. From the Congress and Muslim League platforms as also in the press and everywhere else the cry was that the Judiciary must be made independent and separate from the Executive.

Mr. Tajamul Husain : What about the Mahasabha platform?

Mr. Naziruddin Ahmad : They also, I believe, supported this principle. There is no one today who does not support the principle, except those who are now in power and who hitherto cried for it the most. Having obtained power they do not want to part with it so as to make the Judiciary independent of, and separate from, the Executive. That is the impression that I get from listening to the debate.

The poisonous effect of joint executive and judiciary functions is notorious. Cases have happened where the Government or the Prime Minister telegraphed to the District Magistrate that a particular case should be decided or dealt with in a particular manner. These matters have come to the notice of the High Court. One such case arose in Calcutta only a few years ago and there were severe strictures made about it. This is also happening today. It is a revealing thing that in these days of independence such things are possible. In fact, the magistracy is controlled indirectly by wire-pulling from the top. I submit that the arguments of one very distinguished Member of the House and a distinguished lawyer, Mr. Munshi, require adequate consideration. Mr. Munshi seems to suggest that the separation and independence of the Judiciary is not practicable at this stage and the argument he has advanced is somewhat unexpected, if I may respectfully say so. He pointed out that we have taken rule-making powers. There are the Industrial Courts and other things where Government has to take decisions. I would however submit that rule-making power has nothing to do with the separation of the Judiciary and Executive. Take as much power as you like. A democratic House will give you power that is needed. You can pass any laws you like. All that the independence of the Judiciary means is that within the rules you make, the power that you give to the Courts, should be allowed to be exercised without Executive interference—that when a magistrate exercises judicial functions he should be above any influence. The worst thing that he can do is to refuse real justice to the people. If there is one thing which will thrill the hearts of people and will make our independence a solid achievement it is the confidence in the Judiciary. The moment you let any person think that he will not have confidence in the Judiciary, the stability of the Government will be undermined. I submit that from this point of view the independence of the Judiciary should be guaranteed. It is not as if this is being asked for too soon. This is a reform for which we have been asking for a long time. What is the argument today against this reform? It is the argument which the British Government had been advancing for over fifty years. We are repeating their argument today. I submit that the principle should be accepted here and now without any qualification and without any mental reservation. I submit that the rule-making power and the need for interference by the State in many matters will not really go to the root of the matter. The Judiciary may yet remain independent of them. The Executive should have the power to make rules. But within the narrow limits of powers given to Court, let them be exercised independently. Sir,

a distinguished Member of the House with rich judicial experience has pointed out that this agitation is as old as the time of Raja Ram Mohan Roy, more than a hundred years ago. In fact this has been the strongest plank in the platform of our nationalist agitation. I mean to say that if the judiciary is not separated from the influence of the Executive there will be intellectual corruption. There will be undermining of the faith of the people in the judiciary.

Shri Alladi Krishnaswami Ayyar, another distinguished lawyer and jurist and a great patriot has given us the view that he accepts the principle, but says that this is not the time for it. The present time does not allow it, he says. I implore the House to consider whether we should be repeating the arguments of the bureaucratic British Government in refusing to accept the reform at once. Sir, I have said enough. I do not wish to prolong the debate. I simply wish that the principle should at once be accepted without any reservation.

Mr. President : It is eight o'clock now. I think we had better close the discussion.

Shri Brajeshwar Prasad (Bihar: General) : May I have one minute of the time of the House to speak on this motion?

Mr. President : I think the House is not willing to hear further speeches now.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any reply is necessary. If I may say so, it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the Directive principles of State Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been practically concluded in article 39-A.

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

The question is:

"That under Chapter IV of part V, the following new article be added:

"102-A, Subject to this constitution the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature.' "

The motion was negatived.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 24th May, 1949.