

The question is

“That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A—

(i) the words ‘Notwithstanding anything contained in article 148 of this Constitution be deleted;’

The amendment was negatived.

Mr. President : The question is:

“To clause (1), the following proviso be added:—

‘Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days’ notice of the same has been given’.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A the words ‘or for the creation of such a Council in a State having no such Council’ be deleted.”

The amendment was negatived.

Shri R. K. Sidhwa : Sir, I beg leave to withdraw my amendment.

(The amendment was, by leave of the Assembly, Withdrawn)

Mr. President : The question is :

“That in amendment No. 4 of List I (First Week) of Amendments to Amendments clause (3) of the proposed new article 148-A be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That new article 148-A be adopted.”

The motion was adopted.

New Article 148-A was added to the Constitution.

Article 150

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

That for article 150, the following be substituted :—

“Composition of the Legislative Councils” “150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five percent. of the total number of members in the Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe.”

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not, go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain a principle which has already been abandoned in the composition of the Upper Chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now, I must confess, that the Drafting Committee could not come to any definite conclusion as to the

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composition of the upper chamber. Consequently they decided—you might say that they merely decided to postpone the difficulty—to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing sub-clause (2) of article 150. That, as I said, also creates an anomaly, namely, that the Constitution prescribes that certain provinces shall have a second chamber, as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment there is no method of resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved.]

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

“That in amendment No. 5 of List I (First Week) of Amendments to Amendments, in clause (2) of the proposed article 150, for the words ‘the qualifications to be possessed for being chosen’ the words ‘qualifications and disqualifications for membership of the Council’ be substituted.”

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167, for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to this Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strength of the Council shall not exceed one-fourth or 25 per cent. of the total number of members in the Lower House. It also lays down further in a proviso “Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty.” How these two can be reconciled in particular cases passes my understanding. For instance we have adopted article 148.....

The Honourable Dr. B. R. Ambedkar: I would ask the honourable Member to read article 167, again.

Shri H. V. Kamath : I am talking of the next point.

The Honourable Dr. B. R. Ambedkar : What about the first point. Do you favour it?

Shri H. V. Kamath : I am not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications.....

The Honourable Dr. B. R. Ambedkar : Both for the Assembly and the Council of States.

Shri H. V. Kamath : In this particular article which Dr. Ambedkar has brought forward today he has thought fit to refer to the qualifications only. Why repeat this and not the other ? I am not convinced of the logic of the argument at all. If Dr. Ambedkar agrees that this article lays down only the qualifications why not then refer to the disqualifications as well ? That disposes of the point which I raised earlier.

On the second point I would only say that this provision regarding one-fourth of the members and not less than 40, might create difficulties in particular cases. We have passed today article 148 which provides that in certain provinces and States which have no second chamber they can have a second chamber if the Assembly of that State is desirous of having a council for the State. Assam and Orissa are provinces which have a population of less than ten millions and therefore the lower chamber will consist of less than a hundred members. According to this article which has been brought forward by Dr. Ambedkar the total number of members in the upper house should not be more than one-fourth and not less than 40. I wonder how these two will be reconciled by the wise men of the Drafting Committee. Article 150 as it stood in the original Draft was much better. It merely said that it shall not exceed one-fourth or 25 per cent. of the total number of members in the Assembly of that State without stating what the minimum should be. For as I have already said there are provinces like Assam and Orissa and States like Mysore and others which have acceded to the Union and become a part of India with a total population of less than ten million; The Assembly of those States would contain less than a hundred members. If you want to have a second chamber of not more than 25 per cent. of the lower House and not less than 40 I cannot understand this arithmetic,. It is not the arithmetic which I learnt in school or college; we are devising a new kind of arithmetic—lower or higher mathematics. I hope this difficulty when it arises will be met squarely by the Drafting Committee and a suitable way would be devised for getting out of the difficulty. If it means—I do not know what it means—that irrespective of the strength of the lower House it will not be less than 40, whether it be more or less than one-fourth of the total strength of the lower House, then it will make sense. In that case, I would like to plead that in Orissa, Assam or Mysore which has a lower House of less than one hundred (perhaps eighty or ninety) I do not think that an upper House is called for. The Lower House itself is seventy or eighty and I do not think we should have an Upper House of 40 members. Therefore in my judgment this article is not necessary and article 150 as it stood in the original Draft was a much wiser provision and I move that the original article 150 be considered and the new article rejected by the House.

Mr. President : We had a number of amendments to the original article 150. Does any Member wish to move those amendments which are printed in this additional list ?

Prof. Shibban Lal Saksena : Mr. President , I was surprised to hear the speech of Dr. Ambedkar when he confessed that there was an anomaly in his having to move this amendment. We have provided for second Chambers in the States and yet we are leaving the composition of those Chambers to be divided by the Parliament. I first of all object to the very principle that Parliament should make any part of the Constitution. In fact when we are making the Constitution, we must complete every portion of it. We have laid down that only by two-third majority can it be changed. If the Parliament makes some law it will be changeable always by the majority and there will be no finality to it. I therefore think that leaving anything about the Constitution to Parliament is a very wrong procedure. Then there is no reason why we cannot come to some agreement on this question of the upper Chamber. Once we have accepted this retrograde step. Let us provide in the Constitution provisions for making these chambers really revising chambers where they can review the working of the lower chambers and

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where they may be able to point out what mistakes the Lower House has made: I think that the original article 150 should be amended in part (2) only. I agree with my honourable Friend, Mr. Kamath, that the number of members in the Upper House must not exceed 25 per cent. of the strength of the Lower House. To have 40 members in an Upper House where the number of members in the Lower House is only 60 or 80, is, I think, a very wrong principle. Clause (1) of article 150 says:

“The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent. of the total number of members in the Legislative Assembly of that State.”

I think this should remain and the fixation of the minimum limit at 40 or 50 will be a further retrograde step. For clause (2) of article 150, I want my amendment No. 133 to be substituted, which runs as follows :—

That with reference to amendments Nos. 2268, 2270, 2271, 2272 and 2273 of the List of Amendments, for clauses (2), (3), (4) and (5) of article 150. The following be substituted :—

“(2) Of the total number of members in the Legislative Council of a State—

- (a) 15 per cent. shall be elected by an electoral college comprising all the members of the District Boards in the State;
 - (b) 15 per cent. shall be elected by an electoral college consisting of all the members of the learned professions and specialists in any branch of learning;
 - (c) 10 per cent. shall be elected by an electoral college consisting of all the persons holding the Bachelor's degree of any university in the State or holding a degree recognised by the Government of the State to be equivalent thereto;
 - (d) 5 per cent. shall be elected by an electoral college consisting of all the members of the Senates or the Courts of the various universities in the State;
 - (e) 5 per cent. shall be elected by an electoral college consisting of all the members of the Municipal Boards in the State;
 - (f) 5 per cent. shall be elected by an electoral college consisting of all the members of the trade Unions in the State registered with the Government;
 - (g) 5 per cent. shall be elected by an electoral college consisting of all the members of the various Chambers of Commerce recognised by the Government of the State;
 - (h) 30 per cent. shall be elected by the members of the Legislative Assembly of the State; and
 - (i) the remainder 10 per cent. shall be nominated by the Governor.
- (3) All elections in clause (2) of this article shall be in accordance with the system of proportional representation by means of the single transferable vote.
 - (4) the qualifications of voters and other details necessary for the formation of the electoral colleges for the elections mentioned in clause (2) of this article shall be defined by an Act of Parliament.”

I want to submit to this House that now that we have accepted the principle of second chambers, the only proper function of the Chambers can be to revise what the Lower Chambers have done and to give them expert advice on problems on which they legislate. Therefore, I think Sir, that the Upper Chamber must be composed of the intelligentsia of the provinces. Of course, the representatives of the intelligentsia must also be popularly elected. Therefore, I have provided in my amendment for the election of 15 per cent. of the members by an electoral College comprising of members of the District Boards in the State. Every district Sir, has got a District Board which will now be elected by adult suffrage and in these District Boards we shall have the intelligentsia in the rural parts of our districts, and if they allowed to elect 15 per cent. of the members, they will take more interest in their work and they will also be properly represented in the Legislatures. In fact local

bodies have to play a big part in the future Swaraj Government and I therefore think that all these local bodies should be allowed to have a say in the legislation which will govern the provinces. I therefore think that representation for the District Boards is very important and should be provided. Then Sir, come the learned professions and the specialists in any branches of learning, and for these there is 15 per cent. representation in my amendment, this means the professors, doctors, engineers, lawyers, and other professions containing learned men who can think how a particular measure will affect the interests of the State will be adequately represented in the upper House. These learned men will be able to contribute their expert and learned advice which will be of help in revising the legislation passed by the Lower House. Then, Sir, the graduates of universities are given 10 per cent. I think we all realize that today many of the intellectuals in the country are dissatisfied in that the representatives in the legislatures do not generally come from that class and it is important that we should not lose their co-operation. Therefore, Sir, I think that at least in the Upper Chambers, they should be provided for, so, that they can help us with their learning in revising the Acts passed by the Lower House. Then, Sir, the senates and courts are also given 5 per cent. We do want that universities should make a contribution to our future legislation and. therefore they have been provided for. Then, Sir, the municipal Boards in the States have been given 5 per cent. The Municipalities of the provinces will thus have a voice in the State Legislatures and they can put forth their demands and. their needs. Then, Sir, 5 per cent. is given to Trade Unions. Here, Sir, I will point out that in our Constitution we have not given any special representation to labour. We know in India they cannot have popular representation in this manner because the numbers of Trade Unions are not concentrated in any particular areas in any of the States. We are therefore not giving any representation to the members of Trade Unions in the Lower House. Probably, except in Bombay, Calcutta, and some such big centres, labour will not have any big influence in the elections. I therefore think that labour should have some representation in the Upper Chamber. I have given the same representation to the Chambers of Commerce also, so that nobody may complain that we have been partial and they have not been represented. The Assemblies of the States have been given 30 per cent. representation under my Amendment and the remaining ten, per cent. of the members of the Council will be nominated by the Governor so that people who are, specially fitted to help the Council in revising the legislation passed in a hurry in the lower House and revision may Sometimes, legislation, is, passed, in a hurry in the Lower House and revision may be necessary. If the people in the Upper House-are drawn from all the sections of the State who form the intelligentsia, they will be in a position to discharge their duties satisfactorily. Therefore I suggest that instead of leaving this lacuna of not providing the Constitution of the upper chambers in the Constitution the existence of, which Dr. Ambedkar himself has, admitted, these provisions, may be made in the Constitution regarding the composition of the Upper Houses. I hope this amendment will be acceptable to the House.

Mr. President : Do you wish to move any other amendment standing in your name?

Prof. Shibban Lal Saksena : No, Sir.

Mr. President : I take it that no other amendment is being moved. The amendments and the article are now open to discussion.

Shri Mahavir Tyagi : Sir, I have to make a very small comment on article 150. I have been noticing a tendency which is slightly unfortunate. He have been seen whenever opinions have sharply varied between Members, the tendency

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of the House is to leave things to the responsibility of the Parliament. My feeling is that the Constituent Assembly, by passing this clause as it is now proposed by Dr. Ambedkar, will really shove the responsibility which was really our own.

Now, a Constitution without defining the shape of the Upper House of the States will be extremely incomplete. If we cannot finally decide the issue as to how the Upper Houses in the States will be composed, and from what elements, from what groups, and from which classes of people members would be drawn and by what method. I am afraid, we shall be failing in the task allotted to us. There are so many other important things which we have postponed. The tendency has been to postpone decision on all such points which require wisdom or consideration. Whatever is controversial has finally to be decided by this august House; otherwise, the Constituent Assembly would have no meaning. A Constituent Assembly means that on matters controversial it takes final decisions for good, and that ends all controversy. The more controversial a matter is, the more we are warranted to come to a decision. Constituent Assembly cannot sit every year. I am afraid that by shoving this responsibility on Parliament we are shirking our responsibility and also neglecting our duty. As it is, the article says : “The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe.” Parliament could prescribe for everything. Every controversial point could be safely entrusted by the nation to its Parliament. After all, Parliament will also be a quite responsible elected body. But still they have left it to the Constituent Assembly to do the job. We have gone into very minor and frivolous details, about pay and allowances, houses and many other sundry details, which no other Constitution provides for—indeed ours is a unique Constitution which has all the details as if we were enacting some penal code or a civil code. On this basic point of the Constitution, however, namely, the manner in which the Upper House in the States shall be constituted, we are shrinking a decision. This would I am afraid, give an impression that the Constituent Assembly had a vacant mind. After all, having prescribed for the existence of the Upper House, is it not for us to explain the genesis of it? We should have given to the nation an idea, an argument, as to why we sanctioned the constitution of an Upper House in the States. We should have stated that the members of the Upper House will come from such and such classes and we should have thereby given an idea that the Constituent Assembly was of the view when they passed the Act that such and such classes of people should be represented in these Houses so that full benefit could be had from their representation in the Upper House. In the absence of these details I do not know why an Upper House has been suggested at all. I could understand the original Draft; it was on the lines of the Irish Constitution. It had some meaning. Some, classes were given there from the panels of which the Upper house would be elected. We could say that we created the Upper House in various States just to bring in such persons as would otherwise not enter the arena of political fight. For, sometimes political parties and factions degenerate themselves to such a pass that gentlemen mostly learned, those who are men of opinion, do not like to enter into the dirty pool of politics. If we had, chosen to Prescribe details about the composition of the Upper Houses, we could say that they were meant to rope in such elements of the Society as the real intelligentsia men of opinion, who would otherwise not contest the elections. We should have a way of bringing them in and taking advantage of their learning, their experience and their opinion. I can understand the creation of an Upper House to bring in such

elements, and have the benefit of their advice, while the future States make their legislation. But, we have failed to give any hint to the future generation, as to what our motive is in creating the Upper House in the various States. I would therefore request Dr. Ambedkar to kindly throw, some light as to why he has left it ambiguous and why he has shirked this. Dr. Ambedkar is the bravest among us; he faces, all controversies; he is a man of controversy, and a successful man too. Why should he shirk this small matter? I want him to come out with what he has really at the back of his mind in shirking this responsibility, and why the whole composition of the Upper House has been left to the various States.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Sir, I desire to oppose the proviso, to clause (1) of the proposed article 150. This is a most anomalous proviso and almost contradicts the body of clause (1). It is a strange survival of a most anomalous situation arising out of the history of development of this article. This article as it stood in the original Draft Constitution was good, but the Drafting Committee wanted to make it better and then for six months they kept on the agenda an amendment which was to say the least the height of mathematical absurdity. Even up to yesterday the amendment as it stood was highly absurd. It was on sometime during yesterday that the Drafting Committee or some vigilant draftsman was suddenly awakened from a deep slumber of six months and then found there was a serious anomaly and then there was a last minute attempt to repair the mistake and the present article is the result which is, even now, shorn of its mathematical absurdity, highly anomalous. In the draft amendment as it stood yesterday clause (1) was like this :

“The total number of members in the Legislative Council of a State having such Council shall in no case be more than 25 per cent. of the total number of the members of the Assembly of that State or less than 40.”

This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honourable Dr. B. R. Ambedkar: Sir, I rise on a point of order. My Friend is criticising a draft which is not before the House.

Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state of affairs in today's amendment arose.

The Honourable Dr. B. R. Ambedkar : It is not before the Members.

Mr. Naziruddin Ahmad : The draft provided that the number of members of the Legislative Council shall never be more than 25 per cent. and never less than 40. The anomaly was this that in article 149 which we have already passed, in proviso to clause (3) we have provided that the number of members in the Legislative Assembly of a State shall never be more than 500 and never less than 60. Take the minimum 60. If the minimum number in a State is 60, the 25 per cent. rule would mean that not more than 15 members shall be the number of members of the Council but then the later portion of clause (1) of the amendment in question was that it should be never more than 25 per cent., i.e., it would never be more than 45 and never less than 40. The maximum was 15 but the minimum was to be 40. In fact up to yesterday the clause stood like this that the minimum far exceeded the maximum.

Mr. President : Is it any use considering a clause which existed yesterday and which does not exist today?

Mr. Naziruddin Ahmad: Sir, I am coming to my point at once. There has been a last minute attempt to repair the blunder and I ask the House to kindly consider how the matter stands. In clause (1) as it stands today, normally, the number of members of the Council shall not be more than 25 per cent. Confining our attention to an Assembly of 60, according to present clause the number should not exceed 25 per cent. *viz.*, 15. Then the proviso says that it shall never be less than 40. The minimum in the proviso is about three times the maximum in the body of the clause. I ask the House to consider the anomaly. Though the mathematical absurdity has been attempted to be repaired, still the practical absurdity remains. What happens is that in a State where the Legislative Assembly consists of 60 members, by virtue of this proviso the number of members of the Council shall be at least 40. The strength of the Lower House is 60 but that of the Upper House would be 40. So there would be an utter disproportion between the number of members of the Legislative Assembly and that of the Council. In fact the great purpose of clause (1) of the present article 150 is to reduce the number of the members of the Council. The great point in reducing the number was that an Upper House must be a small House to be an effective revising House but in comparing, the case of a State having a membership of 60 in the Assembly, the minimum number of members in the Council would be too large. It will be 60 in the Assembly and 40 in the Council. I ask the House to consider the effect of this disproportion in a joint sitting. If there is a joint sitting of the two Houses the Upper House could easily turn down the opinion of the Assembly. I therefore submit that either the minimum number in the proviso should be reduced or it should bear some kind of proportion to the number of members of the Legislative Assembly. As at present it is a survival of an illogical past. 40 is rather too much in many cases and only when the Lower House consists of 160 members the 25 per cent. and the minimum 40 will agree, but if it is less than 160 then the minimum stated in the proviso would be too large. That is why I was trying to trace the history of this anomaly. I submit either the minimum number should be reduced or abolished altogether.

Shri V. I. Muniswamy Pillay (Madras: General) : Mr. President, while I generally agree with the amendment that has been brought before this sovereign body by the Expert Committee, I would like to draw the attention of the makers of this amendment in regard to certain representation of the minorities. The original draft that was presented to us contained abundant provision for such of the communities that may not find a place through the general election and moreover the Governor himself has been given the power of nomination. With the adult franchise and the reservation that have been accepted by this House, a certain proportion of the Scheduled Castes will naturally come to the Assembly and, providing the system of proportional representation by means of the single transferable vote; it was possible for the Scheduled Castes to get a certain percentage of representation in the Council of States. But in this amendment, I may point out, the power of choice and also the fixation of qualifications entirely go to the Parliament the composition of which of course we know and as far as the Scheduled Caste representation in the Council is concerned it is nebulous. So I would like to know from the members of the Expert Committee or rather I would wish to have an assurance from that body that the interests of the Scheduled Castes will not suffer by the acceptance of this amendment, because my only fear is that the reservation that has been fundamentally approved by this House as far as Scheduled Castes are concerned must be given a chance, that these classes should be given a chance to serve in the Councils of the States. I am sure the Honourable Dr. Ambedkar will make this point clear and also assure me that the representation of the Scheduled Castes in the future Councils of the States will be well protected.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, Sir, I find it difficult to congratulate the Drafting Committee or its Chairman on its latest performance with regard to the provision of second chambers. The House is aware that on this specific subject, different provinces were called upon to take a decision as to whether they were going to have second chambers in their respective provinces. Each province met separately. The Members of the Constituent Assembly hailing from each province met separately and came to certain decisions. I think six out of nine provinces came to the decision that there should be a second House,—Bengal, Bihar, United Provinces, Madras, Bombay and East Punjab. That was then decided. But the whole trouble arose over the composition of the second chambers which were proposed to be installed in these Provinces. Sir, it is a very sorry tale that on this matter no decision had been reached in spite of attempts being made more than once, here and elsewhere. On slight points of difference the whole thing was jettisoned. And today what do we find? The Drafting Committee with all its ingenuity has found a way out of this impasse, and that is, they are asking or rather they are authorising the Parliament of the country to settle the composition of these, Chambers. Am I correct, Dr. Ambedkar?

(The Honourable Dr. Ambedkar indicated assent.) Sir, I fail to understand this position. The Drafting Committee say they have chosen the line of least resistance. Yes, they have. But do not forget that you are providing the Constitution of the country, and I have, yet to know a constitution in which the composition of the Council or a Chamber of the Legislature does not find a place. Our Draft Constitution is becoming a bulky volume and containing all manner of provisions, provisions regarding the Secretarial, the Auditor-General, the salaries of High Court Judges and things which should not normally find a place in the Constitution, in my humble opinion. All manner of extraneous matters have been put into this Constitution, but in the matter of composition of legislature which is the back-bone of any constitution—in fact the Government of the country has got to function through the legislature—even when certain provinces have decided that they are going to have second chambers, cannot find it possible to provide a solution. That is really amazing. If we cannot make any provision for it now, what is your prospect of doing it within the next three months in the Parliament? For, before the Constitution comes into effect, you have to decide one way or the other, whether you are going to give any composition to these Councils or not. If the House was minded not to have second chambers, it should have boldly and fairly faced that Situation, and said, “No Second Chambers”. One could at least understand that position. When the majority of the provinces of India had decided on second chambers why should you find it so difficult to decide on the composition, and in desperation abandon the idea of making a provision for its composition, in the Constitution? This I cannot understand. I do not at all feel happy over this article. You are only going to postpone the evil day. That is all the advantage you are going to have for the present. But mind you, before the Constitution comes into effect, you have got to take a decision on this; but certainly this Constituent Assembly would have been the best authority to decide on the composition of the Legislature and not Parliament. I therefore, say that this has not been a happy performance. The Drafting Committee should have found a way out as it is not only a question of anomaly, but it has created a lacuna; in any case, it is an unjustifiable and undignified performance.

Prof. N. G. Ranga (Madras: General): Mr. President, Sir, I am sorry to say that I cannot agree with the stand taken by my Friend Mr. L. K. Maitra. I think on the whole, the Drafting Committee has made a wise suggestion, that we should not here and now go into all these details, as to who should be represented within this quota of 25 per cent. in the Upper Chamber and to what extent and so on. I may say that I am not in favour of second chambers, at all. But now that the House has decided to have second chambers, and also,

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in favour of giving special representation to certain classes of people or groups of people or categories of people in our society in these second chambers, it is much better to leave these details, and the detailed settlement of this question, to Parliament where we have quite a leisurely procedure, so that it would be possible for the Members to make their suggestions and get due considerations of their suggestions by Parliament.

Secondly, Sir, it is very easy for people to say that such and such groups of intellectuals or urban classes should be represented in the Upper Chamber and it is also equally easy for them to quote a number of precedents from various other countries. But it is very necessary to see that no one class of people comes to be given too much weightage in the second chamber. Already it is a notorious fact that all over the world second chambers have acted more as a reactionary influence and have prevented the passage of progressive legislation in due time. Therefore, we cannot be too careful to see that the second chambers are not loaded, specially with those people who are interested in the *status quo* or who are interested in preventing any kind of progressive legislation of progressive administration being developed and established. Therefore we were in favour of the Statement on page 4 of List III where certain categories of our society have been enumerated.

I think in another place and on another occasion we had a more or less detailed discussion of this particular matter and a number of us had agreed on this proposition that (a) literature, arts, science, medicine, (b) agriculture, fisheries, cooperative cottage industries and allied subjects, (c) engineering, architecture and building (d) social services and journalism, all these should be given this kind of special representation in the upper chamber. But on second thoughts we came to the conclusion that it is better to leave it to be decided by Parliament at a later stage. My honourable Friend, Pandit Maitra, is rather apprehensive that if we leave it to Parliament it might delay the coming into existence of these second chambers. I do not think there need be any such delay at all. Between now and the general elections that are to come next, and also even after the formation of the lower chambers in all the provinces there is plenty of time within which it may be possible for Parliament, to take up this matter seriously and settle all these details, although they are, not such details, as could be disposed of in this House in such a summary fashion as can be done at this sitting. That is why I appeal to my honourable Friend, Pandit Maitra, not to be very particular about his own objections and to be generous enough to agree with us in accepting Dr. Ambedkar's amendment.

Shri T. T. Krishnamachari : Sir, I am afraid the debate over. This particular article on the amendment moved by Dr. Ambedkar has taken the form of a criticism against the Drafting Committee for not having provided a ready-made solution for this problem of representation in, the upper House of the provinces but leaving it to Parliament to decide, this issue. I feel here that there is no need for the Drafting Committee to apologise for not having placed a complete solution other than the one that is contained in the amended article that is placed before the House. In fact it may be that in a case I like this second thoughts are the best, and the Drafting Committee, after having taken into account the opinion of the Members of this House as indicated by the innumerable amendments that have been tabled to the original article 150, thought that they should review the position that they had taken up in the original draft. In fact one of the basic plans in the scheme envisaged in the original draft was the question of selection of candidates for the upper House by means of panels, a system which was borrowed from the Irish example. But we were led to understand subsequently both from the first-hand experience our Constitutional Adviser who visited Ireland and also from the literature that was made available. To us that the Irish system of electing panels and select members therefrom to represent the country in the Upper House has not passed as successful as it

was originally thought it would. Sir, I would ask members of this House to go through the various amendments to article 150 that are given in the various lists of amendments. Is there any indication, therein of any unanimity of opinion in the manner in which the members of this House want candidates to be chosen or they want the electorate to be created? I think the very baffling nature of the various suggestions made and the fact that no particular suggestion made by any one member has any particular merit as against any other suggestion made by any other member of this House has made us think whether without further and deep investigation it would be worth while asking this House to accept a proposition which has been cursorily decided on and which might in effect defeat the purpose of the creation of an Upper House for the various States enumerated in the previous article.

Pandit Lakshmi Kanta Maitra : But how can you solve the question of the Council of States?

Shri T. T. Krishnamachari : I have the greatest respect for the judgement of my honourable Friend Pandit Maitra with whom I have had the pleasure and privilege of working in the legislature for a number of years. But, I must say that in this instance he has allowed his temper to outrun his usual discretion. Let me here explain that the Upper House of Parliament has to be elected on the basis of representation of States, the Lower House has to be elected on the basis of adult suffrage. The Lower Houses of the provincial legislatures are to be elected on the basis of adult suffrage. This decision does not want any investigation and any great thought; except a decision on the principle all that it wants further is how to delimit the constituencies.

Pandit Lakshmi Kanta Maitra : You could have done that if you had applied your mind; you did not do that.

Shri T. T. Krishnamachari : We had, applied our mind to the end that we only wanted to provide representation for the States; it is the type of representation which is provided for the Upper House in all federal constitutions.

Pandit Lakshmi Kanta Maitra : Your practice has been that whenever there has been any difficulty you pass it on to the future Parliament; you offer no solution.

Shri T. T. Krishnamachari : I do not plead guilty to that charge because I think the honourable Member has not taken into account the difficulties of the Drafting Committee, particularly when the inquiry into the date available was insufficient or that data before us was inadequate to make up our minds. Let me take my honourable Friend who objects to this method of deciding this issue to what happened before the 1935 Act was passed. There was a Franchise Committee, I believe it was the Lothian Committee, and subsequently there was the Hammond Committee, both of which, visited the whole country. They went to every province and in the latter case co-opted members, there; it made detailed inquiries only because even for the Lower House the franchise had to be, decided and for the Upper House also it had to be decided likewise. In the particular instance before us owing to various circumstances for which neither the leaders who guided us nor the Drafting Committee were responsible, we had to depend on our own limited resources to frame proposals for an electorate for the Upper House of the States. And this is a very important matter. I think the generally accepted idea is to have an Upper House which will act only as a revising body, help the Lower House to make up its mind in difficult matters, which will provide that limited amount of delay which is necessary for people to make up their minds or to revise any matter where they have made up their minds already. If the intention is to have a proper type of Legislative council it could only be, created after proper inquiry into facts; and I can say without any sense of guilty or an attempt at an apology that the Drafting Committee or those concerned in the framing of this constitution have not had

[Shri T. T. Krishnamachari]

before them the full data that is necessary for providing a suitable electorate for an upper House and to meet the different circumstances existing in the various provinces. It may be that in the United Provinces some representation for the local bodies, the universities and perhaps the Chambers of Commerce would be thought necessary, whereas similar conditions perhaps do not exist in a province like Madras where the position of the local bodies is undergoing a change and we do not know in what shape or form they will ultimately remain. It may also be that if we provide particular constituencies for electing members to the Upper House the strength of those constituencies will not be the same a few years hence. So it is very necessary that we should not bind down the mechanism for ever by making a provision in the Constitution but must provide for the changes that might be necessary from time to time in the matter of either the electorate for the Upper House or in the matter of qualifications of candidates to be made without the elaborate process of an amendment of the Constitution but rather leave it to Parliament to vary the terms, if and when it is found necessary, by a Parliamentary Act. It has been asked, if that be done, how can the elections for these Upper Houses be held? I think it is a perfectly easy thing to visualise that there will be a time-lag between the promulgation of this Constitution and the elections taking place. The time-lag may be a few months or a year. Within that period the Parliament, which will be this House or its successor will certainly be seized of the fact of providing a proper type of constituency for the Upper Houses, the qualifications of the electors and those to be elected and all that is envisaged in the amendment of Dr. Ambedkar. And an Act of Parliament will certainly satisfy my honourable Friend Pandit Maitra far more than any gerrymandered device that we might place before him at the present moment. That is why we are not placing entire scheme before him today.

I think there is therefore no need for apology. Parliament will in due course ask provincial Governments to submit their own proposals. Prior to the Draft Bill coming up before Parliament the government of the day will perhaps appoint a committee to scrutinise the suggestion of the Provinces. I think the draftsman who has to draft the Bill will have the resources and the initiative to vary if necessary the terms and conditions of representation provided for each of the provinces that want an Upper House. All this can be done at leisure and after an exhaustive enquiry with more care and attention that we can give to it now. The proposal put up by Dr. Ambedkar is the only proper, reasonable and just proposal that can be placed before the House now without making this House commit itself to do something which will not be proper or which has been decided in haste in a haphazard manner.

And what is the amendment of Mr. Shibban Lal Saksena about the claims of which he urged the House to consider? Five per cent. for this group of persons, five per cent. for something else and so on. It looks as though he is trying to make up the total of one hundred per cent. by bits here bits there and bits somewhere else. Even granting that the scheme suggested by him is adequate so far as United Provinces is concerned, it seems to me that it is completely inadequate and out of place with regard to provinces about which I gave some knowledge. Therefore, without any apology I ask this House to accept the amendment moved by Dr. Ambedkar, which I think is the only proper course to adopt in the circumstances.

The question of having an Upper House or not does not come into the picture at this stage. We are already committed to that proposition. We have provided solutions against difficulties arising from the acceptance of this proposition, namely that the various Legislatures of provinces can do away with the Upper House if they choose, and the resolution of conflicts between the two Houses and so on. Having provided Parliament with the power of accepting a

resolution of the Lower House in a state to create an Upper House where it did not exist I think it is only fair that we should give Parliament entire power in regard to varying the composition, and determining the composition of the House in the initial stage. Sir, I support the amendment.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, Sir, I do confess that dealing with these articles regarding the Upper House, not knowing as to what is going to be the composition of the Upper House does put us in some difficulty. We passed article 148 as many of the provinces did agree to the creation of an Upper House mainly depending on the kind and nature of the House and we did it on the assumption that it would be something of the kind based upon the Irish model, a model which was supplied to us by the secretariat of the Constituent Assembly. We were always of the opinion that an Upper House could perform the very good and useful function of being a revising body, and that, while its views may count but not its votes, it should not be a House of vested interests. It was felt that those who could not enter into the rough and tumble of active politics could by their good offices advise the Lower House. Such people could get an opportunity to revise, or amend legislations of the Lower House and would thus be performing a useful function. But, now by these articles, when we leave the entire composition to the future Parliament and yet vote for an Upper House we are actually groping in the dark. I do not agree with my Friend Mr. Brajeshwar Prasad that it is because we are afraid of adult franchise which we consider a leap in the dark that we want to provide for Upper Houses. It was our experience in the Legislative Assemblies that it was useful to have associated in our governmental activities and in our legislative activities such useful people as were doing useful work for the country, people doing social service, service among Harijans or backward classes, some representatives of labour who were not organised or were not to be found in such large numbers as to form a constituency by themselves or members of a co-operative association, men of letters or some such people whose advice would count, who would not be actuated by any motive to withhold any legislation which is good for the nation but whose voice may have a good effect upon us—it was for such an Upper House we voted and not for an Upper House whose nature and composition we do not know. For the moment we know that the present Upper Houses in the various Legislatures are Houses of vested interest as it is people having a certain amount of property qualification and people with large bank balances who are elected to the Upper Houses. Now, when we have left the entire qualifications to the future Parliament, we do find some difficulty when this Constitution-making body is yet required to vote these articles. I do not know if Dr. Ambedkar can give an assurance,—for what his assurance will count—that it will not be a House of vested interests or of people with large properties who would stay any legislation which is necessary in the interests of the country. With these words, I hope that our views expressed in this House will be taken into account in the future Parliament and that an Upper House which will be only of a revising nature, which would be neither pernicious nor useless would be brought into being and that the possession of large properties by persons will not be considered a qualification entitling them to membership of the Upper Houses.

Shri Brajeshwar Prasad : Mr. President, Sir, I am thoroughly opposed to the article moved by Dr. Ambedkar. Professor Ranga characterised this proposal of Dr. Ambedkar as a very wise one. It would have been far better to entrust the entire task of making the future Constitution of India to the future Parliament of India. That would have been the wisest thing on earth. I hope everybody will realise that this is the proper place as it has been convened to frame, a Constitution for India. To ask a Legislature to frame the constitution of an important organ of the State is a mistake.

[Shri Brajeshwar Prasad]

I am coming to the proposal embodied in amendment No. 89. It says:

“The total number of members of the Legislative Council of a State having such a Council shall not exceed twenty-five per cent. of the total number of members in the Assembly of that State.”

I do not see any reason why the number of members of the Legislative Council should be reduced. I feel that the total number of members should be equal to that of the number in the Lower House. If the future Parliament is going to be entrusted with the task of allocation of seats, the manner of choosing persons and, the qualifications to be possessed, why not also entrust it to Parliament to determine the total number of members as well? Why fetter the discretion of Parliament in this matter? Personally I am of opinion that the membership should be equal to that of the Lower House, that the Legislative Council should not be a nominated body, nominated by the President or the Governor in his discretion. I do not want this matter to be left in the hands of provincial Ministers I agree with my sister, Shrimati Purnima Banerji, when she says that it should not be a House consisting of vested interests. I do not want that the members should come from the capitalist classes or the landlords or the satellites or the, Ministers. I feel that it should be a body consisting of the wise men of the province. The dominant theme of Indian history has been that we have been ruled by wise men. Our law-givers were not legislators, Parliamentarians or democrats. They were wise men. Under the present circumstances it is difficult to find men of the type that have been envisaged in Plato's Republic. But we, can approximate to that idea. We can lay it down clearly in the Constitution that only those persons who are graduates can become members of this Council and, the number of members shall be determined by the President or the Governor in his discretion. They shall be nominated for life. It shall not be a body which would undergo radical changes in composition after every three or five years. I feel, Sir, that having due regard to the political facts of our life, knowing fully well the dangers that confront the State and the elements of instability that are growing up in this country, we have done well in chalking out a line of defence in the measure that we have adopted, namely, that the Governor shall be a nominated person by the President. I feel, Sir, that the Legislative Council should be also a nominated body. This should be a second line of defence. I feel, Sir, that the consideration of this article should be postponed for some time, and before we adjourn, a proper constitution for the Upper Chamber should be determined and decided in this House.

Dr. P. S. Deshmukh : A number of honourable Members of this House have already advanced the plea that it is not proper that such an important item, as the constitution of the second chambers in the States, should be left to Parliament. I also rise to support this point of view. Since our Constitution is a written Constitution, it should be complete in itself and it should not be necessary to have recourse to partial legislation from time to time which will be a sort of supplement to the Constitution that we are passing. I am also apprehensive of the facts that more and more recourse is being had to this device. Wherever we find there is no unanimity or where certain complications arise, we try to throw the burden on Parliament, and this Parliament has then to pass legislation on the particular item which we do not want to tackle here. I feel, Sir, that it would be neither in the interests of the dignity nor respect which this Constitution should have and evoke in the minds of the people, to leave such important matters for future legislation.

So far as this item is concerned, it is bound, after all, to come before this very set of honourable Members sitting as legislators, because unless the constitution of the second chambers is complete I do not think the Constitution can come into force or be really put into practice. That being so, we are

merely playing for time in order to consider and finally approve of an arrangement by which these second chambers would be constituted. There is only going to be a difference of a few months if we make a provision of this kind for Parliament to decide about membership, composition the qualifications of the various Members etc. I think, Sir, this should not be permitted. I feel I must express my dissatisfaction with the way in which we are trying to really undermine the dignity and the position of the Constitution we have been sitting here to frame. As a matter of fact, Mr. T. T. Krishnamachari gave away his whole case when he said that he was not sure as to how the second chambers should be composed : and if that is the state of mind of the members of the Drafting Committee, the more honest method would have been to scrap the second chambers altogether. If the members of the Drafting Committee themselves do not know which interests should be represented in these Houses, and if in spite of two and a half years of deliberation they have not yet made up their minds as to which are the interests which require protection, which are the representatives which are likely to stabilize our Governments in the future Constitution, then it is time that the whole idea of second chambers was given up.

I therefore submit that this is not a very satisfactory state of affairs—that we should talk of having second chambers and yet not know what they should be composed of. On the other hand, we hope somewhat vaguely that after a lapse of two months we shall come across some brain-waves by which we should know what should be done with regard to qualifications for members sitting in second chambers. I do not think this is in keeping with the dignity of the House nor of the Constitution that we are framing.

The Honourable Dr. B. R. Ambedkar: Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand 'that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority, of the Lower House. That I think, completely disposes of the first point of comment raised by my honourable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honourable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why

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should you leave it to Parliament? How can it be left to Parliament? I think the answer that I can give to him, at any rate, so far as I am concerned, is, quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition of the Upper House in the Constitution itself. If my honourable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated, from all blame that might be attached to it by reason of not having made any effort to solve this difficulty; they did try, but they did not succeed. My honourable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath : Is Dr. Ambedkar sure that Parliament will be presented with less multiplicity?

The Honourable Dr. B. R. Ambedkar : If my honourable Friend will give me time, I will reply to that part also.

My honourable Friend Pandit Maitra, said : How is it conceivable that a part of the Constitution of so important an institution as the Upper Chambers could be left to be decided by Parliament and not be provided in the Constitution ? I think my honourable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Centre. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Centre, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honourable Dr. B. R. Ambedkar : Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot see any objection at all. Secondly, I feel personally that having regard to the conflicting viewpoints that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with the various provincial

Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via, media* which might be put into law. Therefore, in putting forth this proposal I think we are not making any very serious departure from the principles we have already adopted and as my honourable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

Mr. President : I confess to a sense of disappointment at the Drafting Committee not being able to find a solution for this question. (Some honourable Members : Hear, hear). It is an important matter in the Constitution that the composition of the Chambers of the legislature should be laid down definitely and I should have thought that it would be possible to come to some conclusions which would be acceptable to the House as a whole, but unfortunately that has not happened. I do not blame the Drafting Committee for it. As Dr. Ambedkar has pointed out, there has been such a jumble of amendments suggested so many view-points put forward, that they find it impossible to reconcile all these and they take the line of least resistance of putting it off till the Legislative Assembly meets and decides the question. If it is at all possible, I would at this late stage suggest that the question might be referred back to the Drafting Committee. (Many honourable Members : Hear, hear). The Drafting Committee could make another attempt to solve this question and bring before this House a resolution of this problem; but it is, of course for the House to decide. I leave it to the House to decide.

Pandit Govind Malaviya (United Provinces: General) : I move, Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal,

The Honourable Dr. B. R. Ambedkar : I have no objection. We can have another go at it.

Mr. President : Then I take it that Members are agreed that this article should be held over.

Honourable Members: Yes.

New Article 163-A

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

“That in amendment No. 12 of List I (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted:—

‘163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff :

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both House of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules, regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.’ ”

This article is merely a counterpart of article 79-A which we considered this morning.

Shri Brajeshwar Prasad : I am not in a position to move any of the amendments standing in my name.