

**Shri Jaspat Roy Kapoor :** It is no use introducing some provision without carefully scrutinising it.

**The Honourable Dr. B. R. Ambedkar :** It had better be left to the draftsmen as to what is necessary and what is not.

**Shri Jaspat Roy Kapoor :** I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in admitting a mistake if it is a mistake.

**The Honourable Dr. B. R. Ambedkar :** I refuse to accept, it is a mistake.

**Shri Jaspat Roy Kapoor :** I know it is not easy to convince you.

**Mr. Naziruddin Ahmad :** Sir, I submit amendment No. 206 is perfectly unnecessary. Clause (2) of article 303 is absolutely clear. It says :

“Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution.”

This is quite enough. The addition of the words again, “ as it applies for the interpretation of an Act of the Legislature of the Dominion of India” is absolutely unnecessary. It is of course absolute, plain truth that the General Clauses Act really applies to all the Acts of the Dominion of India. In a book on literature this adjective clause relating to the General Clauses Act would be perfectly valid, but in a legislative enactment it is unnecessary. Clause (2) is perfectly clear that the Act applies to this Constitution, the addition of the explanatory matter as it applies for the interpretation of the Dominion Act is absolutely unnecessary. All that we need say is that the General Clauses Act shall apply for the interpretation of the Constitution unless, of course, the context otherwise requires.

**The Honourable Dr. B. R. Ambedkar :** Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

**Mr. President :** The question is :

“That in clause (2) of article 303, the following words be added at the end:—

‘as it applies for the interpretation of an Act of the Legislature of the Dominion of India.’ ”

The amendment was adopted.

**Mr. President :** Then clause (3). There is amendment No. 156.

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

“That in clause (3) of article 303—

- ‘(i) after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted;
- (ii) for the words ‘as the case may be, to an Ordinance made by a Governor’ the words ‘to an Ordinance made by a Governor or Ruler, as the case may be’ be substituted.’ ”

It is purely consequential.

**Mr. President :** The question is:

That in clause (3) of article 303—

- ‘(i) after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted;
- (ii) for the words ‘as the case may be, to an Ordinance made by a Governor’ the words ‘to an Ordinance made by a Governor or Ruler, as the case may be’ be substituted.’ ”

The amendment was adopted.

**Mr. President :** Then I put the whole of this article 303.

The question is:

“That article 303, as amended, stand part of the Constitution.”

The motion was adopted.

Article, 303, as amended was added to the Constitution.

#### Article 304

**Mr. President :** Article 304. Amendment No. 118.

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

‘That for article 304. the following be substituted:—

‘304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill:

Procedure for amendment of the Constitution.

Provided that if such amendment seeks to make any change in—

- (a) any of the Lists in the Seventh Schedule, or
- (b) the representation of States in Parliament, or
- (c) Chapter IV of Part V, Chapter VII of Part VI, and article 213A of this Constitution,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule.’ ”

I will move my other amendment also, No. 207. I move:

“That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304 the following proviso be substituted :—

‘Provided that if such amendment seeks to make any change in—

- (a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or
- (b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.’ ”

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

**Mr. Naziruddin Ahmad :** It is far better to give the arguments in advance to avoid any unnecessary debate.

**The Honourable Dr. B. R. Ambedkar :** If my friend will guarantee to me that he will not take time. I will do it, but I know my friend will have his cake and eat it too.

**Mr. Naziruddin Ahmad :** Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say “I oppose the amendments and reject the arguments”!

**Mr. President :** We shall take up the amendments. No. 119.

**Shri T. T. Krishnamachari :** Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar’s amendment. It is covered by No 207.

**Mr. President :** No. 157, Mr. Santhanam.

**The Honourable Shri K. Santhanam :** I am not moving it, Sir.

**Mr. President :** No. 158, Mr. T. T. Krishnamachari.

**Shri T. T. Krishnamachari :** That is also covered by Dr. Ambedkar’s amendment.

**Dr. P. S. Deshmukh :** Mr. President, Sir, I move:

“That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :—

‘304. This Constitution may be added to; or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however come into force until assented to by the President.’ ”

Sir, I move amendment No. 210.

“That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :—

‘Provided that for a period of three years from the commencement of this Constitution, any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.’ ”

Then there is another amendment, No. 212, Sir I move :

“That with reference to amendment No. 118 of List II (Eighth Week), after article 304, the following new article be inserted:—

‘304-A. Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, they be permissible under this Constitution and any amendment which is or is likely to have such an effect shall be void and ultra vires of any Legislature.’ ”

Sir, it is obvious from the very reading of these amendments that they are alternatives to one another. My first amendment (No. 208) is an amendment to the substantive portion of article 304 as presented to the House by Dr. Ambedkar this afternoon. It's main purport is that the amendment of the Constitution should not be made as difficult as it has been sought to be done by the article proposed by Dr. Ambedkar. The main reason for my suggestion to make it easier for the amendment of the Constitution is that, in spite of the fact that we may have spent more than two and a half years in framing this Constitution, we are conscious and I am sure many members of the Drafting Committee itself are conscious that there are many provisions which are likely to create difficulties when the Constitution actually starts functioning.

Of course there have been complaints from some ignorant quarters, mainly from pressmen and journalists, who are ignorant of what the Constitution should be, that we are spending a lot of money. These are, I think, people who have just come into journalism recently and have not any idea or conception of the framing of a Constitution. I am sure, Sir, no sensible man will pay any attention to this type of journalism, because they have the ink and the pen with them and they are employed by some capitalists here and there to write out in dailies or weeklies whatever comes into their heads. I know they very often write things which are not in the public interest. I am sure, Sir, that we are not daunted by this type of criticism. In my opinion, we have not taken that much time that should have been taken, nor have we allowed many Members who have something to contribute to, the debate to do so. We have not, in fact, been acting up to the tenets and principles on which parliamentary democracies are to be worked and should work. Parliamentary democracy is known to be and shall always be a talking shop, and if this is so, it is intended that even the meanest amongst us may have something positive and beneficial to contribute and it is therefore incumbent upon us to give him a chance to have a say. That is the purpose of Parliament and if there are sometimes some long speeches I do not think that should be something we should complain against. So, my contention is that we have not devoted as much time as we should

have in allowing Members to contribute their best to be framing of this Constitution.

These, are the reasons why this Constitution is bound to be and will prove to be defective in many respects. That being so, that being inherent in the circumstances under which we are working, I think, Sir, every facility should be afforded for amending, the Constitution. If you do not provide the necessary outlets or safety-valves for the air or the storm to pass through, it is likely that the whole ship may be blown up. For that reason, Sir, I have two amendments presented here. One is that it should be possible for the Parliament to amend it without recourse to two-thirds majority. In the clause proposed by Dr. Ambedkar there is a double provision. Not only the majority of the total Members of the House should be in favour of the amendments, but when it is brought before the House and the Bill is passed by the House there should be a two-thirds majority of the Members who are present and vote. That means there is a double check so far as any Bill to be passed for amendment of the Constitution is concerned. Even if you have to change a comma, even if you have to make some consequential changes, let alone changes in the Fundamental Rights, very strenuous efforts will have to be made for bringing about that change.

At least for a period of five years I have therefore suggested in my second amendment that it should be possible for the Parliament not only to pass amendments by a majority of the House, but I have also made two other suggestions : whenever the President certifies that a certain amendment is not one of substance, is not going to vitiate or abrogate the principles of the Constitution, but being one of form obstructs the working and the proper administration or governance of India, if the President certifies that this amendment which is not of substance is necessary, it should be possible to pass that amendment with a simple majority in the House. I have also brought in the Judges of the Supreme Court because on their wisdom is going to depend much of the fate of the Constitution.

Sir, I wish to protect the Constitution wherever we have conferred any rights on our people, whether they are rights of citizenship, Fundamental Rights or they are consequential rights. For that purpose I have suggested amendment No. 212. It provides that it will be *ultra vires* of any Parliament to bring forward a Bill by which an amendment of the Constitution is sought, infringing any of the rights of individuals or groups of individuals conferred by the Constitution. I am sure this will not prevent the bringing in of measures to amend the Constitution with a view to enlarge those rights nor is this necessary. There is apprehension in the minds of the people that the liberty of the people is not safe and that as we get more and more freedom, they are not allowed even that much freedom that the foreigner allowed them. Article 15 A is not quite sufficient for the protection of the liberty of the individuals and therefore this amendment is both necessary and desirable. I hope that the House will agree that this amendment is necessary and have the article suitably amended.

I feel that at any rate for some time to come it would be necessary to amend the Constitution in many particulars. Though we have spent many months making the Constitution, there are still many defects in it. There are contradictory provisions in some places which will be more and more apparent when the provisions are interpreted. Therefore, if we do not make it easy for amendments to be affected the whole administration will suffer. As I said in the beginning, if you do not provide outlets it might lead to, the whole, Constitution being rejected or not being accepted by future Parliaments and their resorting to something much more drastic and radical. if we do not allow them chances to mould the future of this country in their own ways, by simplifying the procedure by amendments, they will have no alternative left but to go the whole

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hog and reject the Constitution as a whole. In such a situation it is the State that will suffer. Therefore it is better to provide outlets so that any dissatisfaction with any Provision in the Constitution may easily be cured. We should not allow complaints and dissatisfaction to grow to such a pitch as will result in dislocating the administration of the State.

**Shri Brajeshwar Prasad :** Sir, I move :

“That in amendment No. 118 of List III (Eighth Week), in the proposed article, 304, the words ‘and by a majority of not less than two-thirds of the members of that House present and voting’ be deleted.”

My next amendment runs thus :

“That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted.”

My third amendment is No. 299. It reads :

“That in amendment No. 207 of List V (Eighth Week), in the proposed proviso to article 304, for the words ‘Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent’ the word ‘electorate’ be substituted.”

Sir, this new amendment No. 207 came into our hands last night at ten o’clock. We find that there is a world of difference between these two amendments. More powers have been taken away from the hands of Parliament and placed in the hands of the State legislatures. The effect will be that vital articles of the Constitution cannot be amended by the Parliament and the consent of 50 per cent. of the Legislatures will be necessary in order to pass an amending Bill.

I, hold the view that in this process of amendments the Legislatures of the States should not be associated. A proviso exists in the Australian Constitution to the effect that if there is a conflict between the two Houses of Parliament or if either House does not pass the amending Bill of the other, then the whole matter has to be referred to the electorate. It would be beneficial if we incorporate that provision of the Australian Constitution in our Constitution. I think that what is possible in Australia will be equally possible in India. If the people of Australia are competent and advanced to adopt this method of amendment, certainly we who are as competent as the Australians, if not more, are entitled to adopt the same method. I do not want to associate the States Legislatures in the process of amending the Constitution.

It is ordinary commonsense that should tell us that if we want to abolish landlordism you cannot seek the consent of the landlord. If you want to wait for that purpose you will never be able to achieve your object and abolish landlordism. Similarly if you want to abolish capitalism you cannot afford to look for the consent of the capitalists. The purpose of amending a Constitution in effect will be to take more powers from the hands of the State Governments and confer them on the Centre. That being so it is beyond my comprehension how any legislature will be agreeable to such a proposition. The provincial Governments constitute vested interests. They have as much vested interest in society as our capitalist friends. Therefore, adopt the simple method provided in the Australian Constitution for amending the Constitution.

Sir, I am in favour of a referendum, because referendum has many advantages. Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a deadlock, when there is a conflict between Parliament and provincial governments. Secondly, I am in favour of referendum because it

cures patent defects in party governments. People think that it is too radical a weapon and that a conservative people like ourselves ought not to use it without proper consideration and thought. It is conservative since it ensures the maintenance of any law or institution which the majority, of the electors effectively wish to, preserve. Therefore it cannot be a radical weapon. Thirdly, Sir, referendum is a clear recognition of the sovereignty of the people. Fourthly, it would be a strong weapon for curbing the absolutism of a party possessed of a parliamentary majority.

In this connection I would like to read what Professor Dicey has observed in his monumental book "Law of the Constitution" which I would like honourable Members of this House to note:

"Trust in elected legislative bodies is, as already noted, dying out under every form of popular government. The party machine is regarded with suspicion, and often with detestation, by public-spirited citizens of the United States. Coalitions, log-rolling and parliamentary intrigue are in England diminishing the moral and political faith in the House of Commons. Some means must, many Englishmen believe, be found for the diminution of evils which are under a large electorate the natural, if not the necessary, outcome of our party system. The obvious corrective is to confer upon the people a veto which may restrict the unbounded power of a parliamentary majority."

It is to obviate this evil that the method of referendum has been advocated by a man like Professor Dicey, who is not a radical or a Socialist or Communist. Professor Dicey is of the opinion that referendum will promote among the electors a kind of intellectual honesty which is being rapidly destroyed. I refer only to the last part of the amendment which seeks to substitute "referendum" for "State Legislatures."

**An Honourable Member :** Has he finished?

**Shri Brajeshwar Prasad :** I am coming to the other parts of the amendment. I do not want that the powers of the Parliament should be fettered. The method we seek to introduce by article 304 is totally detestable, totally repugnant to me. This two-thirds majority provision will act as a brake. No amendment of the Constitution will be possible if this requirement is adhered to.

I feel that even in the interests of the States, this is not necessary. The members of the Upper House of the Parliament will consist entirely of the representatives from the States and it is inconceivable that these people will under any circumstances seek to vest more powers in the Centre and take away the powers of the States. This two-thirds majority provision will act as a brake to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country. I hold the opinion that at least for a period of ten years from the commencement of this Constitution, these safeguards must be removed. Sir, today we are living under abnormal conditions. The effect of Partition has blurred our vision. After the migration of large populations from one part of the country to another, and after witnessing their sufferings, we are not in a position to take an objective view of things. Many other factors also have clouded our vision with the result that we are not able to take a disinterested 'view of things. At least for a period of ten years from the commencement of this Constitution, the method of amending the Constitution must be made easy.

There is another reason why I want this change. I am all for a flexible Constitution and not a rigid Constitution. There is likely to arise a revolutionary situation in Asia in the near future. In order to meet that situation, the Government of India should not be fettered in any way whatsoever. There is another reason why I am in favour of a flexible Constitution, as opposed to a rigid Constitution. I hold the opinion that we are passing through a period of decadence. It is only with the establishment of a new social order that we

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will be in a position to sense the needs of the coming century. For heaven's sake do not make your Constitution rigid.

There is yet another reason why I am in favour of a flexible Constitution. I hope friends will excuse me for my bluntness. The fear of domination of the North and the Hindi-speaking regions over the South and the non-Hindi speaking areas has mutilated this Constitution. We have framed a middle class Constitution. We have done all we could do to prevent the establishment of socialism and a unitary State in this country. The dominant tendencies of the age and the needs of our developing economy have been completely ignored. This Constitution will not survive the test of time unless we make it flexible. Our ancient law-givers were never influenced by extraneous considerations. We have sacrificed wisdom at the altar of expediency and vested interests both political and economic. With your permission, Sir, I would once again quote from Professor Dicey. (*Interruption*). I hope Members will allow me to develop my argument. Perhaps Members are not interested and do not realise the situation.

"The twelve unchangeable Constitutions of France have each lasted on an average for less than ten years, and have frequently perished by violence. Louis Phillippe's monarchy was destroyed within seven years of the time when Tooqueville pointed out that no power existed legally capable of altering the articles of the Charter. In one notorious instance at least—and other examples of the same phenomenon might be produced from the annals of revolutionary France—the immutability of the Constitution was the ground or excuse for its violent subversion....."

**Shri Kala Venkata Rao** (Madras: General): Let him read slowly. We are unable to follow the speech.

**Shri H. J. Khandekar** (C. P. & Berar: General) : He is so hasty; I cannot follow him.

**Shri M. Thirumala Rao** : On a point of information, Sir. A Member who can talk extempore, can he read from a manuscript?

**Shri Brajeshwar Prasad** : I am reading from a book. I am quoting from Dicey.

"The best plea for the *coup d'etat* of 1851, was that while the French people wished for the election of the President the article of the constitution requiring a majority of three-fourth of the legislative assembly in order to alter the law which made the President's re-election impossible, thwarted the will of the sovereign people. Had the Republican Assembly been a sovereign Parliament. Louis Napoleon would have lacked the plea, which seemed to justify, as well as some of the motives which tempted him to commit the crime of the 2nd of December."

I am not reading the whole chapter. I am reading only a paragraph with the permission of the President. (*Interruption*).

I think the Honourable President of the House should not be told how to conduct the business of the House. He is much more competent than anyone here.

"Nor ought the perils in which France was involved by the immutability with which the statesmen of 1848 invested the constitution to be looked upon as exceptional; they arose from a defect which is inherent in every rigid constitution. The endeavour to create laws which cannot be changed is an attempt to hamper the exercise of sovereign power; it therefore tends to bring the letter of the law into conflict with the will of the really supreme power in the State. The majority of the French electors were under the constitution the true sovereign of France; but the rule which prevented the legal re-election of the President in effect brought the law of the land into conflict with the will of the majority of the electors and produced, therefore, as a rigid Constitution has a natural tendency to produce, an opposition between the letter of the law and the wishes of the sovereign. If the inflexibility of French constitutions has provoked revolution, the flexibility of English constitutions has, once at least, saved them from violent overthrow."

**Shri T. T. Krishnamachari :** May I suggest that the honourable Members may read a little more slowly and then we can at least understand what he says.

**Shri Brajeshwar Prasad :** I know fully well, if not the other Members of this House, Mr. T. T. Krishnamachari has read this book and he should not make this objection.

“To a student, who at this distance of time calmly studies the history of the first Reform Bill, it is apparent, that in 1832 the supreme legislative authority of Parliament enable the nation to carry through a political revolution under the guise of a legal reform.”

‘The rigidity, in short of a constitution tends to check gradual innovation; but, just because it impedes change, may, under unfavourable circumstances occasion of provoke revolution.’

**Mr. President :** Mr. Brajeshwar Prasad, you have a number of amendments.

**Shri Brajeshwar Prasad :** I do not like to move any other amendment, Sir.

**Mr. President :** I agree they do not arise now. I think these are all the amendments that we have.

**Shri H. V. Kamath :** On the Printed List, we have several amendments.

**Mr. President :** Why do you go to the Printed List now?

**Shri H. V. Kamath :** Because, Sir, the article as moved by Dr. Ambedkar today minus the proviso is identical with the draft and my amendments are all to that first part of the article. The article as it stands today is identical with the old draft except the proviso, and therefore I thought that my amendments would be in order.

**Mr. President :** Which is the amendment which you wish to move? Let me know the amendments first.

**Shri H. V. Kamath :** Amendments Nos. 3239, 3241. I do not move amendment No. 3246. Then I come to 3248 and 3249 and 3250. They all relate to the first part of the article which is today identical with the old draft. Changes have been made only in the proviso to the article and none in the rest of the article, Sir.

**Mr. President :** You may move them.

**Shri H. V. Kamath :** Mr. President, I move, Sir, amendments Nos. 3239, 3241, 3248, 3249 and 3250 of the Printed List of Amendments, Volume II. I do not propose to move amendment No. 3246 that stands in my name in that list.

Sir, I move:

“That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

‘(1) Any provision of this Constitution may be amended whether by way of variation addition or repeal in the manner provided in this article’.”

Sir, I move :

“That in clause (1) of article 304, for the words ‘An amendment’ the words ‘A proposal for an amendment’ be substituted.”

Sir, I move :

“That in clause (I ) of article 304, for the words ‘it shall be presented to the President for his assent and upon such assent being given to the Bill’, the words ‘it shall upon presentation to the President, be signed by him’ be substituted.”

*or, alternatively,*

“That in clause (1) of article 304. for the words ‘it shall be presented to the President for his assent and upon such assent being given to the Bill, the words ‘it shall upon presentation to the President, receive his assent’ be substituted.”



[Shri H. V. Kamath]

Sir, I move :

“That in clause (1) of article 304, the words ‘to the Bill’ occurring in the 11th line be deleted.”

Sir, I do not know what the 11th line today is but it is the penultimate line of the first paragraph of the article.

Sir, I move :

“That before the proviso to clause (1) of article 304, the following new proviso be inserted :

‘Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.’ ”

If my honourable colleagues turn for a moment to the chequered history of this article during the last two years or more, they will at once realize, the need for flexibility of a Constitution. The very changes that this article and especially the proviso to the article has undergone during the last two years proves to my mind, that the Constituent Assembly has changed its mind from time to time. If we have made several alterations like this within less than a year, then how on earth do you propose or do you dare to bind and fetter the future Parliament by making this more and more rigid than before?

**Mr. President :** Which amendment of yours Mr. Kamath, makes it flexible so far as that portion of that article is concerned ?

**Shri H. V. Kamath :** I have not moved amendment No. 3246 which might have made it more rigid.

**Mr. President :** You have not moved that amendment.

It is therefore I say.....

**Shri H. V. Kamath :** I am speaking generally on the article, and also with reference to the amendments. I will come to them in time.

**Mr. President :** So far as the question of the rigidity of the Constitution is concerned, by not moving your amendment, you accept that part of it.

**Shri H. V. Kamath :** I accept it, but certainly I hope I am at liberty to offer some observations on the article at this time, because the proviso was sprung upon us last night, it has become more complicated and swollen, and it has gathered more and more moss as time went on. The proviso, as it was originally, comprised three items; now the proviso contains clauses (a) to (e) and clauses (a) and (b) comprises so many different articles and Chapters of this Constitution. The original article in the Draft Constitution comprised only the Lists in the Seventh Schedule, the representation of States in Parliament and the powers of the Supreme Court. Today, it has had so much of accretion that one wonders, if we can change our mind so often just because we can change in time, because so much time had been given to us, why not give the future Parliament also the time and scope for changing the Constitution by making it more flexible ?

I was glad to find an amendment in the name of Pandit Jawaharlal Nehru, number 3267. I am sorry that it has not been moved. I hope that it would be moved. If that had been moved, much of the objections of the rigidity of the Constitution might have been out of place. But, that amendment, which to my mind was an important one, considering the transition through which we are passing today, to which my honourable Friends Dr. Deshmukh and Mr. Brajeshwar Prasad also made reference, if it had been moved by Pandit Jawaharlal Nehru or by the Drafting Committee and accepted by the House,

all the trouble that I foresee might have been obviated. That amendment, I suppose, is not going to be moved. Neither has it been incorporated in the draft of the article presented to the House today by Dr. Ambedkar.

Coming to my amendments, the first, No. 3239, is an introductory clause where the process of amendment is defined. What is an amendment? An amendment may mean either a variation, addition or repeal of the Constitution. If the House turns to the several constitutions of the world, the Irish Constitution or the South African Constitution or the Australian Constitution I believe, and several other constitutions, they will find that first of all, the article defines what an amendment is. I hope the House does realise that this article is second in importance only to a few other articles in the Constitution. The article dealing with amendment of the Constitution is one of the fundamental things that must be considered very earnestly by the House.

I perfectly appreciate the contention of several honourable Members that an amendment to the Constitution must not be allowed to be made lightly or easily. But, the argument on which that dictum is based is that the Constituent Assembly of any country is superior in constitutional status to any future Parliament of that country. That is the argument on which this is based, that a Constitution framed by a sovereign Constituent Assembly must not be easily tampered with by a future Parliament which is inferior in status to the Constituent Assembly. But unfortunately, the conditions today in India, the conditions which brought this Assembly into being, have been such that this Assembly cannot be deemed to be superior in constitutional status to a future Parliament. Why ? First of all, this Assembly was elected on a restricted franchise and then indirectly by the provincial assemblies on separate electorates. All these vitiated this Assembly *ab initio*, that is from the very beginning. The future Parliament, according to our Constitution will be elected on adult franchise, by direct election, and certainly to any constitutionally wise, sensible person it should appear obvious that a Parliament elected on adult franchise, on a direct basis, must be superior to an Assembly elected like this, on a restricted franchise, indirectly by the provincial legislatures.

That is why in England, no Parliament binds the future Parliament so far as the amendment of the Constitution is concerned. Parliament can amend the Constitution at any time by the usual process of law making. Considering the circumstances under which our Assembly was born, for a few years at least, say five years, which Pandit Jawaharlal Nehru mentioned in his amendment, which unfortunately has not been moved, I do not see any reason why, for five years, when the transition is not complete and conditions have not settled down, when perhaps a little more foresight and deliberation might point out various flaws in the Constitution, during this period, we should not allow it to remain flexible.

Some of my friends have pointed out that if the Constitution is not flexible, if it does not respond to social change, dangers inhere in such a Constitution. I feel, Sir, that this observation is well founded. If the Constitution holds up, blocks, the future progress of our country, I dare say that the progress which has been thus retarded will be achieved by a violent revolution : revolution will take the place of evolution. When a storm breaks out, it is the flexible little plants, blades of grass that withstand the storm. They do not break because they bend, they are flexible. But the mighty trees that stand rigid break, and they are uprooted in a storm. Therefore, I fear that when a social storm is brewing, if we want to resist that storm, this is not the way to proceed about it. You must make the Constitution flexible, and able to bend to social change. If it does not bend, people will break it. That is an eventuality which, I am sure, none of us here in this House wants to envisage, that is why I say that Pandit Jawaharlal Nehru's amendment should have been incorporated in this article. But as ill-luck would have it, it has not been.

[Shri H. V. Kamath]

I do not know what the future has in store for us, if we refuse to make the Constitution a little more flexible than we are seeking to make it today.

My next amendment 3241 is a verbal one and I leave it to the collective wisdom of the Drafting Committee. Amendment No. 3242 I am not moving because I want to leave it to both the Houses, either House of Parliament, to initiate any proposal to amend the Constitution. Amendment No. 3246 also I am not moving. Amendment 3248 relates to the assent to be given by the President. This is more or less a verbal and formal amendment, and so I am content to leave it to the Drafting Committee to be dealt with at the appropriate stage. 3249 is also verbal and that also I leave to the wisemen of the Drafting Committee. 3250 refers to the period that in my opinion should elapse between the initiation of a proposal to mend the Constitution in Parliament and its final passage in Parliament. I seek to provide through this amendment 3250 that not less than six months should elapse between the initiation of a proposal and its passage through Parliament, because we are not providing for a referendum or plebiscite on an amendment to the Constitution as certain constitutions have done. The Irish Constitution has provided for a referendum before the amendment is finally incorporated in the Constitution but we have not provided for such a thing. Therefore I wish to provide a safeguard against hasty amendment to Constitution. If a period of six months is guaranteed under the Constitution between the initiation and the final passage of the Bill, then it would ensure a proper and adequate discussion in the country by the people at large. The people can voice their opinions and views upon the bill for an amendment initiated in Parliament. Six months at any rate ought to suffice.

**Mr. President :** The net result of your amendment is to make the Constitution more rigid.

**Shri H. V. Kamath :** Which one makes it more rigid, may I know, Sir?

**Mr. President :** 3246.

**Shri H. V. Kamath :** I am not moving it.

**Mr. President :** The net result of all your amendments was to make it rigid. You are speaking about making the amendment easy.

**Shri H. V. Kamath :** May I submit that I did not move it deliberately? Otherwise I would have moved it.

**Mr. President :** Even the ones you have moved and those you are speaking about have the tendency to make it rigid.

**Shri Mahavir Tyagi:** He speaks both ways.

**Shri H. V. Kamath :** If my Friend Mr. Tyagi thinks that I speak both ways, he is welcome to speak in more than two ways. I did not move 3246 deliberately.

**Mr. President :** I was only pointing out the inconsistency between your speech and the amendments you have given notice of.

**Shri H. V. Kamath :** You will excuse my ignorance, Sir, and my inadequate judgment.

**Mr. President :** 3246 you have not moved, but you moved 3250.

**Shri H. V. Kamath :** If I had moved 3246 you could have charged me as making it more rigid.

**Mr. President :** Even 3250 has the effect of delaying the amendment of the Constitution for some time.

**Shri H. V. Kamath :** This is only procedural.

I am now coming to the new proviso that has been embodied in the article moved by Dr. Ambedkar. The proviso has incorporated several Chapters of the Constitution which did not find a place in the earlier draft. Even the draft which reached us on the 15th September did not contain the several chapters which now have been incorporated in the provision. That is to say within two or three days the Drafting Committee has thought fit to make amendments with regard to several Chapters of the Constitution more difficult than it could have been otherwise, if the proviso had stood unchanged. Some of these chapters refer to the High Courts and Supreme Court, I do not quarrel with them—but there are certain chapters or articles dealing with relations between the Union and the States and the Constituent Units. The amendment of the Constitution regarding relations between these has been made very difficult under this new proviso which reached us only last night. That has made it incumbent upon the president not to give assent to the bill unless and until half the State Legislatures by appropriate Resolutions have approved of the amendment passed by Parliament.

Now the difficulty that arises in my mind is this. We cannot always guarantee that the unifying forces in the country—the centripetal forces—will gain ground against the centrifugal or the disruptive forces in our land. Suppose, for instance, there is need for unifying the country by a more unitary type of Constitution for the country as time goes on, and in the light of that necessity Parliament feels that certain amendments to the Constitution are needed which might vary the relations between the Union and the States, it is quite possible that a number of States faced with what they consider an inroad upon their powers, an encroachment upon their rights, many of them may become rather recalcitrant, or even otherwise they might feel that this amendment is not in their separate interest, though it might be in the interest of the country as a whole, though India as a whole may benefit by such amendment—and Parliament passes a Bill, then half the States do not approve it. What happens ? Parliament gets it back. I suggest to Dr. Ambedkar to revise this proviso so that the Amendment Bill, even if not passed by the Legislatures of not less than half of the States, if that goes back to Parliament even after being defeated in the Legislatures of the States, if it goes back to Parliament and after its defeat in the Legislatures of the States it is passed again by the Parliament, then I would request Dr. Ambedkar to change the Proviso, that in that case if it is repassed for the second time, it should prevail, the amendment of the Constitution for the second time by Parliament must prevail as against the disapproval of the States Legislatures. Otherwise, I feel that Parliament's supreme authority will be set at naught, the unifying forces of the country will be set at a disadvantage, and the centrifugal or disruptive forces of the country might gain ascendancy. I therefore, feel that even now, at this stage, it is not too late to make suitable alterations in this article so that in future it may not be said of us, of this Assembly, many years hence people may no say of us that the dead wanted to rule the living and that the Assembly that made this Constitution wanted to hold up the progress of the country. If such a situation arises in future, I fear that progress will come about, not by constitutional means, but by methods other than constitutional, and that it will pave the way for revolution which, I have no doubt, this House wishes to avoid as far as it lies in its power.

**Mr. Naziruddin Ahmad :** Mr. President, Sir, at this fag end of the day and at the fag end of the session I will not tire the House with a long statement. I would only submit that the rigidity which has been given to the Constitution by article 304 is very proper. The citation of the English and other Constitutions are not appropriate, because they have had long experience and they have gone through centuries of apprenticeship and they know exactly what changes

[Mr. Naziruddin Ahmad]

are to be made and what not to be made. In the initial stages of this Constitution we should rather be very strict about changing its terms.

On the amendment brought forward by Dr. Deshmukh—No. 210 I desire to offer a few comments. By this amendment, he wants to introduce a proviso to the effect that if any administrative difficulties arise, then on the report of the Supreme Court, within the period of three years, amendments should be made rather easy. I fully sympathise with his view, and I have reason to believe that many difficulties may arise in the near future. We accepted after a good deal of debate, first of all, the principles of the Constitution. Then the Draft Constitution was prepared with a good deal of expenditure and labour. Then notices of amendments to the Constitution were sent and they have been printed in two big volumes. Then the Drafting Committee has been changing its mind every day and the Draft Constitution, with the sacred principles of the Constitution, and the amendments are all given up and they are obsolete and new articles and new amendments are coming every day. I therefore easily foresee that anomalies, anachronisms and difficulties would be sure to arise from day to day. So far a period of three years, amendments of this nature, amendments to remove difficulties and anomalies should be easy, and the easy procedure indicated by Dr. Deshmukh's amendment should be accepted. The proviso may not be acceptable as it is, but the principle may be accepted and a suitable draft adopted.

We have been leaving so many things to the Drafting Committee that the Third Reading, I am afraid, would be another glorified Second Reading. In fact, questions not merely of drafting, but many substantial matters have been left to them, and some of these anomalies would occur to the Drafting Committee themselves and so they would come with amendments at the Third Reading, and that would, I am sure, lead to the reopening of many things. In these circumstances, I would submit, in view of the quick changes that we have made, from principles to principles, in the course of going back and coming forward, like a shuttlecock, we must have come across some anomalies which have not yet been apparent. I therefore submit that Dr. Deshmukh's suggestions should be considered.

**Acharya Jugal Kishore** (United Provinces : General): Sir, I have an amendment in my name, No. 3261, Printed List Vol. II.

**Mr. President** : I have not called all the amendments which are printed in the Second Volume. But if you wish to move your amendment, you can do so.

**Acharya Jugal Kishore** : Sir, I have amendment No. 3261 of the printed list. But this may not fit in with the amendment proposed by Dr. Ambedkar. But there is another amendment—No. 124 of Shri Brajeshwar Prasad—3rd List, 8th Week, which is an amendment to mine of 3261. I do not know if he has moved that amendment. If he has moved it, I would like to support it. In any case, I would like to make certain observations in connection with this. I would have liked to suggest that discussion over this article be held over. But I know your anxiety to get as many articles as possible finished and so I will not venture to make any such suggestion. Members too are very anxious to get away and the House is thin, and you can easily imagine that they are not taking much interest in what I consider to be a very important article in this Constitution.

**Mr. President** : I find yours is covered by Dr. Ambedkar's amendment.

**Acharya Jugal Kishore** : The arguments that I have to bring forward in support of my amendment are these. This is a very important Constitution.

We have passed practically most of the articles. But we were under the impression in the beginning that Pandit Jawaharlal's amendment would be moved, and that for five years at least, there will be opportunities for amending the Constitution, without the rigidity which Dr Ambedkar's proposal implies. We thought that there would be a certain amount of flexibility in the matter of amending the Constitution during the first few years. Since Pandit Jawaharlal Nehru has not moved that amendment, I would like to suggest to Dr. Ambedkar, and if he is prepared to accept my suggestion, he may agree to the proposal that the Constitution can be amended for the next five years, by a simple majority of the Parliament, and his proposal or amendment will become applicable after the first five years.

My reasons for this suggestion are these. We have passed the Constitution under very difficult political conditions. The Drafting Committee has been under very heavy pressure of work, and they have all been under political pressure and also the conditions prevailing in the country. We have been engaged in other things also. And so we have not been able to apply our minds fully to all the articles of the Constitution. and to their implications. I would therefore suggest that at least for the next five years, after knowing how the Constitution is working, the difficulties that we have to face and the shortcomings of the Constitution, we will be in a better position to amend these articles in a manner which will be easy and thereafter we can have a Constitution which will be a permanent Constitution and which can only be amended by the process suggested by Dr. Ambedkar in his amendment.

It is merely a suggestion and I hope Dr. Ambedkar will agree to accept this suggestion either in the form of an amendment as I have proposed or in the form of any other amendment which may fit in with my proposal. That is the only consideration I want to place before the House and I hope Dr. Ambedkar will see his way to accept it.

**Shri Mahavir Tyagi :** Sir, while considering this article we should not lose sight of the universally recognized maxim on which is based the whole conception of democratic society today—the maxim is that the, earth belongs in usufructs to all the living equally, and the dead have neither the powers nor the rights over it. From this maxim it is construed that a generation is disabled morally to bind its succeeding generations either by inflicting on them a debt or a Constitution which is not alterable. I, therefore, emphasise that a Constitution which is unalterable is practically a violence committed on the coming generations. But I do not see that our draft is absolutely unalterable. I will give credit to the Drafting Committee and also to the House that the Constitution, as we have drafted it, is complete to the smallest details. People criticise it from the point of view of its being too bulky and of its dealing in too many details. We have done a service for the coming generations with a view to facilitate their administration and their smooth running of governments by giving all the possible details we could.

The parliamentary system of Britain has practically been adopted as the basis of this Constitution. And this is for the first time that we are constituting a State on the British Parliamentary system. But then let us realise that the British parliamentary system is successful not only because it is a parliamentary system but because there is a perpetual flexibility in the Constitution which is all unwritten. Therefore they can readily adapt their Constitution to the changing circumstances that may arise along with changes both in time and space. We have adopted that very system, but have not adopted the real basis of that system—the basis that it is ever ready to be changed and ever ready to be adapted to the circumstances that the nation may face from time to time. We have not allowed that flexibility in our Constitution. It is not fair that we should deny facilities to the coming generations to change

[Shri Mahavir Tyagi]

the Constitution. The experiment is new, as some of my Friends have already hinted, the Constitution is not given by the country as a whole.

We have assumed that we are the representatives of the nation. Well, all of us have come through an indirect electorate—through the Legislative Assemblies of Provinces which had been elected when we were not free, when the British were here. Those Assemblies were elected in 1946. And we are making this Constitution in the hope and with the claim that we are the accredited representatives of India. I am afraid technically we are not the representatives of India—*de facto* we might claim to be, but *de jure* we are not.

Again, I am sorry that even as we were, in this Constituent Assembly we have not acted as independent representative—each one of us. It is the majority party of the country which has given the, Constitution. Nobody can deny it. The fact is that although we the Congress Party who are a majority in the Assembly did not act as the party in power or treated others as the Opposition, really speaking it is the Congress Party which has given this Constitution. Others have not even been heard properly. They were in a minority. So the whole of India has not been represented in this Constitution. Let us be fair about that. Let us fairly admit and confess that this is a Constitution given by one party, be it the majority party. At this time when we are sitting as judges let us confess,—whatever be the Constitution good, bad or indifferent,—it will be judged by future generations—it does not have the sanction of the country as a whole and that it is a Constitution given by a majority party in the country.

**An Honourable Member :** Question.

**Shri Mahavir Tyagi :** You might question it, but the fact remains unquestioned. Other parties had little hand in it because we know it for a fact that the amendments emanating from other quarters or from the unattached Members had no value here and were rarely accepted. So it is the Congress Party alone which has given this Constitution.

In future, parties other than the Congress Party might come into power and they might find it difficult to carry on and steer their programmes out of this Constitution which was made by persons who had a different programme. I therefore submit that we must be fair to those parties which might come into power in future, so that they might be able to make convenient changes in the Constitution, although as a member of the Congress Party myself I wish to assure the country through this House that we have always taken care that we did not act really in that prejudicial spirit of a party. But even as the case stands, it is a one party Constitution.

Supposing, after an experience of a year or two the coming generation feels that the system which we have, evolved does not actually work in their interests and the Government thus formed acts destructively against the interests of the country, then they must have an easier method to change the, Constitution to suit their whims or likings. Supposing that after experimenting with the parliamentary system for a generation or more they feel that they should bring in the American system of Presidential supremacy, or establish a Federal State I wonder if it would be possible for them to do so ?

Even this rigidity I like, particularly in the proviso which Dr. Ambedkar has wisely put. There are very important matters which he has taken under this proviso in which he says that a change in the list of the Seventh Schedule etc. will require the, sanction of more than half of the States. They are matters which are highly important; matters like justice, and fundamental rights. Now judiciary is the sole guarantee of the rights of both individuals as well

as State. Therefore, it is but fair that in the matter of bringing about a change in these important matters which guarantee security to both individuals and States, there must be sufficient rigidity. I like this proviso, howsoever strict it be.

But it is in the main body of the article that Dr. Ambedkar is too stiff. There he ought to be rather flexible. He, has been stiff all through; that is his character it seems, and his character is reflected in every article he has produced before us for consideration. He says that a change could be brought about only if an absolute majority of the House voted in its favour and two thirds of the Members present in each House voted in favour. It means that in the Lower House there must be at least 334 Members willing to make a change.

**Shri T. T. Krishnamachari :** I am afraid my honourable Friend is wrong. It only requires 251 Members provided they are two-thirds of the majority of those present and voting.

**Shri Mahavir Tyagi :** Sir, Dr. Ambedkar had rightly remarked yesterday that I was a layman; I really did not appreciate the cunningings of Law or the legal quibbles as you would call it. But then as I understand it you require an absolute majority of the House and two-thirds of the Members present voting in favour of a change. If the whole House is present then you need 334 to vote in favour, because two-thirds must vote in favour, and mathematics cannot be wrong though I might be wrong. Two-thirds of 500 is 334. Even the minority parties will come in their full strength and will make it difficult for the bigger party to implement any change howsoever important it may be, unless their number is double the number of the minority party. Absolute majority of the House I can understand, I am prepared to go so far, but to make it compulsory that even among the Members present two-thirds must vote in favour means that it will be too difficult to effect any change. I submit that some change as proposed by my Friend Dr. Deshmukh or Acharya Jugal Kishore will make it easy and enable the coming Governments to make a change if they so require. That is my point. If you do not do it, the Constitution will become too rigid. If it is not flexible, it will naturally become brittle and will break if it is hit even slightly. Do not let your Constitution become so hard as to acquire brittleness; it will break. I therefore submit, Sir, that we should provide for a convenient change in the Constitution.

**Mr. President :** I desire to remind Members that we propose to finish the items on the Order Paper tonight. If they would just shorten their remarks we could do it, otherwise we would require a session tomorrow which I understand most Members do not want.

**Shri R. K. Sidhwa :** Sir, five Members have spoken against the motion, you should give an opportunity to those who support it.

**Mr. President :** Dr. Ambedkar will take care of it.

**Shri R. K. Sidhwa :** But the Members also should express their views, Sir.

**Mr. President :** If the House wishes to carry on, I have no objection.

**Shri R. K. Sidhwa :** We will finish it tonight.

**Mr. President :** How can we?

**Babu Ramnarayan Singh :** \*[Mr. President: I would not be taking much time of the House. I also desire that the business fixed for today should be completed today. However, I can assure you that the little, time I would take would not in any way dislocate the time table. The fact, on the other hand is, that it is the intention and effort of all of us that all the business be completed today,

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\*[ ..... ] Translation of Hindustani Speech.



[Babu Ramnarayan Singh]

Sir, there is one aspect of the problem under consideration today that obliges me to say a few words of my own. I am afraid that too many restrictions and conditions are being imposed with regard to the amendment of this Constitution by the future generations and all this is being done. I believe, under the apprehension that radical amendments may be made in this Constitution by the future generations acting under rash and irrational impulses. I would, however like to submit, that we should not entertain any such apprehension and that we should not entertain the idea that this Constitution would be radically amendment very early by the people, who will be taking our places in time to come. It is being laid down that the Constitution could be amended in future only by an absolute majority of the total membership of the House and a two-third majority of the members present and voting. Moreover in certain cases it is being provided that the amendment can be effected by a two third majority. But I fail to see the reason behind these provisions.

You may be under the impression that you are doing a nice job of it by introducing these provisions. But I feel that if I had the power to do so I would like to scrap nearly half of the provisions that have been included in this Constitution. It is the basic principle of popular Government, of democracy, that all decisions be taken by a simple majority vote. I concede that this majority should truly reflect popular opinion. But this requirement would be fulfilled if, as Dr. Deshmukh has proposed, the amendment should be effected by the President acting upon the simple majority vote of the people.

My Friend Shri Brajeshwar Prasad has made a very sound suggestion in this connection. He said that if you really desire to secure a popular verdict with regard to a proposed amendment it is no use referring the question to the Provincial Legislature for decision. The right course would be to ascertain the opinion of the people by means of a plebiscite. Such a safeguard can be appreciated. But the kind of restrictions and prohibitions that are being imposed by you on the freedom of action of the generation to come in regard to this matter, are not proper and desirable. I can say that by doing so you are doing something that is unjust to the generation to come. I had intervened in the debate to submit that this injustice should not be done to posterity. with these words Sir, I resume my seat.]

**Shri R. K. Sidhwa :** Mr. President, Sir, I was rather surprised that Member after Member has come here and opposed this amendment on the ground that in order to amend the Constitution there should be flexibility. I am rather surprised at that kind of an attitude. I have never seen any constitution, much less the constitution of a country, which can be played with and amended by a bare majority.

**Shri Brajeshwar Prasad :** May I know who pleaded for a bare majority ?

**Shri R. K. Sidhwa :** Mr. Tyagi stated that up to five years they want a provision that the Constitution may be amended by a bare majority. So did Mr. Jugal Kishore. Are we going to treat this Constitution which we have drawn up after so much of discussion and deliberations in such a light-hearted manner ? It was wrong of any Member to have stated that we have not given enough consideration to this Constitution and therefore something may happen tomorrow. I know this Constitution is not perfect. There may be laws in it, there may be omissions in it. But can any constitution anywhere in the world be perfect? Why, even after five years there may be flaws.

Another honourable Member stated that Members of this Assembly have not been afforded enough opportunity to express their views. It is a most incorrect statement, If anybody is liberal today in allowing the Members to

make their speeches, it is our President. He has given enough latitude to Members to express their points of view. Even germane or not germane, relevant or irrelevant speeches he has allowed and therefore to state that no opportunity is given to express their views is most unfair. Coming, Sir, to my honourable friend, Mr. Tyagi, he says that this Assembly comprises of one party. He should have stated it comprises of one majority party. But it is an admitted fact that this Assembly represents all the interests of this country and great pains have been taken to take in a good number of men who are non-Congressmen. The honourable, Member who is Chairman of the Drafting Committee and who is piloting this Constitution is a non-Congressman. Out of seven Members of the Drafting Committee, six are non-Congressmen. It is therefore an entirely wrong statement for Mr. Tyagi to make.

**Shri Mahavir Tyagi :** Thinking is done by the Congress Party and the Drafting Committee drafts accordingly.

**Shri R. K. Sidhwa :** But your sweeping remarks should be corrected. My point, therefore, is that you cannot cast a slur on the Constituent Assembly by stating that the opinions of Members are very lightly treated.

In fact I want the Constitution to be more rigid, at least this part of it. In fact I know that in certain Constitutions, a three-fourths majority is insisted upon. The Constitution which we have drawn up after so much of trouble is a great Constitution and we should be proud of it. In fact I have my own grievances in that they have not accepted many of my amendments which were reasonable. But in a democratic form of Government, we have to abide by the decision of the majority. I, therefore, strongly support the motion moved by Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none the less the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution, provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.

[The Honourable Dr. B. R. Ambedkar]

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied : one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this: That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to a referendum of the people or the electors. A further condition is this : that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority, must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution ? We propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States is concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chambers or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedules V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions, which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the whole

of the Constitution should be left liable to be amended by Parliament by majority is, in my judgment, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the Constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority..

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

**Mr. President :** Of Members present.

**The Honourable Dr. B. R. Ambedkar :** Yes. Now, we have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgment altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President while no doubt in charge of the affairs of the Centre, nonetheless was the head of the Union, and as such the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-extensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending its executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142, and we therefore thought that that also was a fundamental matter and ought to require the ratification of the States.

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Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested and it was therefore a matter which ought not to be left to be decided merely by a two-thirds majority. The same about the High Courts mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in, the sight of those who think that the Constitution should be liable, should be open to be amended every article of that—by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be, free to take any decision; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos. Sir, I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing.....

**Shri Mahavir Tyagi :** It is not so.

**The Honourable Dr. B. R. Ambedkar :** It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman, submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have no objection to it at all.

If that is not the ground on which the argument rests, then the other Ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modern Constitution can proceed only on two bases : One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial, responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—I was not able to bear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of

the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage, I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

**Mr. Naziruddin Ahmad :** It would have been worse!

**The Honourable Dr. B. R. Ambedkar :** It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Often times they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

**Mr. President :** I shall now put the amendments to vote. I will first take up the amendments moved by Mr. Kamath in the second volume of the printed amendments. The first amendment is 3239.

**Mr. President :** The question is :

“That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

‘ (1) Any provision of this Constitution may be amended, whether by way of variation, addition or repeal, in the manner provided in this article’.”

The amendment was negatived.

**Mr. President :** The question is:

“That in clause (1) of article 304, for the words ‘An amendment. the words ‘A proposal for an amendment’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That in clause (1) of article 304, for the words ‘it shall be presented to the President for his assent and upon such assent being given to the Bill’. the words ‘it shall upon presentation to the President, be signed by him’ be substituted.”

or alternatively

“That in clause (1) of article 304, for the words ‘it shall be presented to the President for his assent and upon such assent being given to the Bill’. the words ‘it shall upon presentation to the President, receive his assent’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is :

“That in clause (1) of article 304, the words ‘to the Bill’ occurring in the 11th line be deleted.”

The amendment was negatived.

**Mr. President :** The question is:

“That before the proviso to clause (1) of article 304, the following new proviso be

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inserted :—

‘Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.’ ”

The amendment was negatived.

**Mr. President :** There was one amendment, *i.e.*, No. 3261 which was really not moved standing in the name of Acharya Jugal Kishore.

**Acharya Jugal Kishore :** I do not want this to be put to vote.

**Mr. President :** These are all the amendments on the Printed List. Then we come to the amendments in the cyclostyled Order Paper. I first take the amendments in the order in which they have been moved. The question is :

“That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304, the following proviso be substituted :—

‘Provided that if such amendment seeks to make any change in—

- (a) article 43, article 44, article 60, article 142 or article 213A of this Constitution. or
- (b) Chapter IV of Part V, Chapter VIII of Part VI, or Chapter I of Part IX of this Constitution, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.’ ”

The amendment was adopted.

**Mr. President :** The question is :

“That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :—

‘304. This Constitution may be added, to or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however, come into force until assented to by the President.’ ”

The amendment was negatived.

**Mr. President :** The question is:

“That in amendment No. 118 of List III (Eighth Week), in the proposed article 304, the words ‘and by a majority of not less than two-thirds of the members of that House present and voting’ be deleted.”

The amendment was negatived.

**Mr. President :** The question is.

“That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :—

‘Provided that for a Period of 3 years from the commencement of this Constitution any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.’ ”

The amendment was negatived

**Mr. President :** The question is:

“That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted.”

The amendment was negatived.

**Dr. P. S. Deshmukh :** I beg to withdraw my other amendment No. 212.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President :** The question is :

“That in amendment No. 207 of List V (Eighth Week), in the proposed Proviso to article 304, for the words ‘Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent’ the word ‘electorate’ be substituted.”

The amendment was negatived.

**Mr. President :** I think these are all the amendments. The question is

“That proposed article 304 as amended, stand part of the Constitution.”

The motion was adopted.

Article 304, as amended, was added to the Constitution.

**Shri Brajeshwar Prasad :** Sir, now the time is seven o’clock.

**Seth Govind Das :** There is so much still to be done that I do not think that we shall be able to finish it. So I propose that either we should sit at nine o’clock tonight and go on till twelve o’clock or we, may sit tomorrow morning.

**The Honourable Dr. B. R. Ambedkar :** We have got only three articles.

**Shri T. T. Krishnamachari :** We have only three articles, two of which are of a formal nature.

**Mr. President :** I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

**The Honourable Dr. B. R. Ambedkar :** We have got two or three article and I am sure they are non-contentious and it would not take even half-an-hour.

**Seth Govind Das :** I do not think we can finish in one hour. There is the question of the name of the country in article 1 to be settled. I do not think we shall be able to finish all these.

**Mr. President :** The majority of the House seems to think that we shall continue. Am I correct?

**Many Honourable Members :** Yes, Sir.

**The Honourable Dr. B. R. Ambedkar :** We can finish the thing.

**Mr. Naziruddin Ahmad :** It cannot be done. There is article 1 and unless the sweets are, arranged by Dr. Ambedkar, the *namkaranam* ceremony cannot be done today.

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#### Article 99

**Mr. President :** Then we shall take articles 99 and 184.