

## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 1st August 1949*

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

### DRAFT CONSTITUTION—(Contd.)

#### Article 175—(Contd.)

**Mr. President :** We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175. The question was raised by Shri Satish Chandra that he had an amendment to article 172 and that unless it became clear what the shape of article 172 would be, he did not know whether to move or not to move the amendment, of which he had given notice, to article 175. I would like to know if he would press that point.

**Shri T. T. Krishnamachari** (Madras: General) : Sir, may I submit that that article has very little to do with article 172. Article 172 seeks to resolve a conflict between the two Houses, whereas article 175 deals with the Governor's assent to Bills passed by the legislatures and when he can send a Bill back to the legislature for reconsideration. Anyway, the shape of the amendment to article 175 completely clears the position of all ambiguities. Therefore, I suggest that article 175 be considered apart from 172.

**Mr. President :** Would it not be better if we were to dispose of 172 first?

**Shri T. T. Krishnamachari :** That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

**Mr. President :** Do you have any objection?

**The Honourable Dr. B. R. Ambedkar** (Bombay: General) : I have no objection, Sir, I am entirely in your hands.

**Mr. President :** Then we shall dispose of 172 first and then go to 175.

#### Article 172

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

“That for article 172, the following article be substituted :—

Restriction of powers of Legislative Council as to Bills other than Money Bills.	‘172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—
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- (a) the Bill is rejected by the Council; or
- (b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or

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- (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.”

The House will remember that when we discussed the question of the resolution of the differences between, the Council of States and the House of the People, we discussed the different methods by which such differences would be resolved, and we came to the conclusion that having regard to the Federal character of the Central Legislature it was proper that the differences between the two Houses should be resolved by a joint session of both the Houses called by the President for that purpose. It was at that time suggested that instead of adopting the procedure of a joint session we should adopt the procedure contained in the Parliament Act of 1911 under which the decision of the House of Commons with regard to any particular Bill, other than a Money Bill, prevails in the final analysis when the House of Lords has failed to agree, or refused to agree, to the amendment suggested by the House of Commons after a certain period has elapsed. On a consideration of this matter, it was felt that the procedure laid down in the Parliament Act for the resolution of the differences between the two Houses of the Legislature was more appropriate for the resolution of differences between the two Houses set up in the Provinces. Consequently we have made a departure from the original article and introduced this new article embodying in it the proposal that the decision of the more popular House representing the people as a whole ought to prevail in case of a difference of opinion which the two Houses have not been able to reconcile by mutual agreement.

Sir, I move.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I move:

“That with reference to amendment No. 9 of List I (Second Week) of Amendment to Amendments, in sub-clause (b) of clause (1) of the proposed article 172, for the words ‘two months’ the words ‘three months’ be substituted.”

I would like to explain why this has been necessary. The amendment moved by Dr. Ambedkar to article 172 is a variation of the amendment in List I, No. 10. If honourable Members will scrutinise No. 10 they will find that in sub-clause (b) of clause (1) and sub-clause (b) of clause (2), the period that is allowed to lapse after the Bill had returned to the Legislative Assembly is mentioned as three months and one month respectively, but it is to commence from the date of reception of the Bill in the Upper House, and clause (3) of article 172 in amendment No. 10 prescribes how these three months are to be calculated and it also says that if there is any prorogation of the Upper House, the period of prorogation will not be counted to make up these three months. In actual fact, this particular amendment, as Dr. Ambedkar mentioned, closely follows the wording of the Parliament Act of 1911. But there is this difference between what happens in the British Parliament and what is likely to be in our case that while it is proper to stipulate that the total time taken including the time of prorogation shall be a particular period in case of the British Parliament we cannot do the same thing in regard to the Upper House, for this reason that while the British Parliament sits practically day to day for the bulk of the year, the Upper Houses in our provincial legislatures will sit only for a few days at a time and the aggregate period of their sessions may not even come to two months in the whole year. So it was represented to us by a very prominent Premier of one of the major provinces

that this would, in effect, mean that the delay would be inordinate. It may extend to over a year or more, because at no time will the Upper House sit for a period of three months continuously even in one year. The amendment moved by Dr. Ambedkar was a result of these representations and clause (3) in No. 10 has been left out. But at the same time another variation has been made that the time to be calculated is to be from the date of the laying of the Bill before the Upper House, so that the reception date does not come into operation; and it was then felt that two months would be adequate. But on further reflection, since we have cut out clause (3), that is, that we shall not be taking into account the period of the prorogation of the House in the total time that might elapse, we felt that two months was inadequate and three months would be more reasonable. After all, the over-all time that is to be taken for a Bill to be returned to the Lower House will be three months from the date on which it is laid before the Upper House which in my view and in the view of my colleagues in the Drafting Committee is reasonable. That is why I have moved this amendment. It merely extends the period by one month and does not materially alter the scope of the amendment moved by Dr. Ambedkar. I commend the amendment to the House.

[Amendments Nos. 11 and 12 of List I (Second Week) were not moved.]

**Mr. President** : Now the article and the amendments are open for discussion. I know that the latter is Provided by (c), but still, it is better to make it clear article as it stood originally and they do not arise now.

**The Honourable Shri K. Santhanam** (Madras : General) : I just want to draw Dr. Ambedkar's attention to one or two minor mistakes in drafting. In clause (b) it should be:

“more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it in the same form in which it was passed in the Assembly,”

because a thing may be passed either in the same form or with amendments. I know that the latter is provided by (c), but still, it is better to make it clear that (b) also refers to such case.

Secondly, in clause (c) it says : “the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree”—now this is a later process, because when the Council passes a Bill, it does not know whether the Assembly will agree or not. Whenever the Council passes an amendment, it is in the hope that the Assembly will accept it. When the latter does not accept, the resulting position is covered. Therefore, (c) must read “the Bill is passed by the Council with amendments” and the other words should be omitted.

**Shri Brajeshwar Prasad** (Bihar: General): Mr. President, Sir, I am opposed to article 172 as moved by Dr. Ambedkar. The provision for a joint sitting in the old draft was a very salutary one. I see no reason why it should be deleted at this stage. We must be clear in our minds whether we want an Upper Chamber or not. If we want an Upper Chamber, it must be vested with certain powers. It has got a part to play. With the inauguration of the new Constitution on the basis of adult franchise, it is risky to vest all powers in the hands of the Lower House. I have no belief in the sovereignty of the Lower House. I believe that power must be vested in the hands of those who are literate; not only literate but wise too. I believe that power must be vested in the hands of those who are not only wise but who have got a sense of justice. I have no faith that the Lower House, constituted on the basis of adult franchise, will be able to do justice to anybody. People in India are not only illiterate, but narrow-minded, steeped in fanaticism and superstition. Therefore, I support the old provision of the

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article which lays down that there shall be a joint session. Personally, having due regard to the facts of our political life, I was in favour of vesting the Upper Chamber with co-equal powers, but as a compromise I thought that the best solution was the provision for a joint session. But now, at this hour, at the fag end of the session, a new article has been placed before us. I thoroughly oppose the article.

Secondly, the Upper House must be vested with the power of delaying legislation. That is a well-established principle. The provision in the old article prescribed a period of six months. Now it has been reduced to a period of one month, two months or three months—I do not know which is going to be accepted by the House. Personally, I am in favour of one year being given. This period will provide an opportunity for close introspection, so that the Bill passed in the heat of the moment, under the stress of some dominant prejudices, may be reviewed and passions may wear off and with the lapse of time people may be in a position to take a sober view of things. This mad craze for democracy and parliamentarism and vesting of all powers in the Lower House will lead to disaster. Sir, I feel that all those people who were killed in the Mahabharata war have been reborn as Congressmen. They have not only divided the country but they are now going to jeopardise the interests of even that portion of the country which is entrusted to their care. In the name of parliamentarism and democracy everything will go to the dogs.

**Prof. Shibban Lal Saksena** (United Provinces: General): Sir, this is a very important article and I congratulate the Drafting Committee on the revised amendment which they have framed. I was not prepared for the opposition of my Friend Shri Brajeshwar Prasad who doubts the responsibility of the Lower Chamber which is based on adult suffrage, and he feels that a real power should go to the Upper House. I do not remember whether he opposed the provision about adult suffrage when it was passed. But I myself think that if there is one thing in this Constitution which is of paramount importance, it is the provision about adult franchise under which every single adult in the country will be able to exercise his vote and decide the fate of the country. That is a thing for which we have been fighting from the very beginning and I am surprised that any one should come forward and say that the Lower House is an irresponsible body which cannot be trusted. This article has been very well drafted, I think, and it follows the practice in England. Everywhere the Upper Chamber is intended to be a revising chamber when-ever there is any point of doubt or things have been done hastily; the Lower Chamber can consider the suggestion of the Upper Chamber and rectify a mistake. It is never intended that all power should vest in the Upper Chamber. I therefore support the amendment moved by Dr. Ambedkar as a very salutary one. But I will point out one thing. Article 172 does not provide for the calling of the Council and it is possible that the Council may not be called for two months. Some one should have the duty laid upon him to call the Council so that the matter may be decided in two months. I think on mature consideration my Friend Shri Brajeshwar Prasad will withdraw his objection and shed his fears about the Lower Chamber.

**Mr. Tajamul Husain** (Bihar: Muslim): Sir, the amendment moved by Dr. Ambedkar amounts to this that if a Bill is passed by the Lower House in a State and goes up to the Upper House and the latter reject it or amend it or do nothing for two months, the Lower House may again pass it, with or without amendments. It goes again to the Upper House; if the Council again

reject it or amend it or do nothing for two months, the Bill will automatically become law and will go to the Governor for his consent. My honourable Friend Shri Brajeshwar Prasad objects to this. I think the most important chamber in a State will be the Lower House as it will represent all the people. Similar procedure and practice are prevailing in England; of course it does not apply to Money Bills. The most important point to consider is, what is an Upper House ? It consists of nominated people who represent certain limited interests, while the Lower House represents the people. If this power were not given to the Lower House as contemplated, it would amount to a veto exercised by a few people only over the rest of the people of the State. Democracy means the will of the people which is only represented in the Lower House. Sir, I support the amendment of Dr. Ambedkar.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim) : Sir, I rise to oppose the amendment moved by Dr. Ambedkar. I do not blame him personally for the amendment but he has to conform to outside opinion. I submit that this amendment will frustrate the very object of having a Second Chamber. The avowed object of a Second Chamber is revision and delay. This is often very necessary in a popular House consisting of a large number of members. Especially when the House has no experience, it ought to have the benefit of Bills getting a second thought and consideration at the hands of the Upper House. The function of the Upper House is to give Bills a sober second thought. After proper consideration it suggests amendments which are often acceptable to the Lower House. I have had some experience of the working of the Upper House. I have found there is initially some understandable impatience on the part of the Lower House about the Second Chamber. They think that the Upper House is an interloper and that its object is to frustrate the object of the Lower House. It is not so. Speaking from my experience in Bengal, I think that a Second Chamber has proved to be necessary and its utility has been appreciated by a critical Lower House in the long run. Sir, if the Upper House is to function, it must be given sufficient opportunities to discharge its duties. Sub-clause (b) of clause (1) provides that if a Bill passed by the Lower House is not passed by the Upper House within two months from the date it is laid before the Council, then it comes back to the Lower House for further consideration. I submit that if we put down a strict and rigid limit of two months, then it may be that the Upper House in many cases will not be able to exercise its functions at all. I will cite an example. I, or instance, a Bill is passed by the Lower House and is laid before the Upper House towards the end of a session, and then there is a long adjournment; the House does not meet for two months. In these circumstances, the Upper House will not be able to get a chance to consider the matter, and the Upper House with its membership and staff will remain idle without having anything, to do. If the Upper House is to function, it should get sufficient time so as to enable it to give Bills due consideration and thought. I submit therefore that the two months' limit, rigid as it is, will frustrate the very object of the Second Chamber and it may be that the expense, trouble and bother will come to nothing.

Then again in clause (2) of the amendment, it is provided that if the Upper House fails to pass a Bill within two months, the result would be that the Lower House will again consider it and pass it with or without any amendment and then it is placed again before the Upper House. It is provided in this clause that if a Bill comes, up before the Upper House and if it is not passed within one month of its being laid before the Council, then the Bill as it was passed by the Lower House will be deemed to have been passed by both, Houses. I submit, Sir, that in the example I have cited. On the first occasion the Upper House has no chance to consider the Bill and on the second occasion the Upper House will not be able to give it sufficient thought; it cannot

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discharge its functions within one month and may not in a similar contingency have any opportunity to consider it at all. First of all; the Bill may be complicated; the Bill may be difficult; it may be controversial. It may be necessary to send it to a Select Committee or to send it for circulation. In fact, we cannot foresee the varieties of situations that may arise. Let us suppose that the Lower House and the Upper House both function honestly as I have no doubt they will. The Upper House may decide that the Bill should be considered by a Select Committee or it must be examined by experts. On the second occasion, we put a limit of one month. I submit that these rigid limits would frustrate the very object of the Second Chamber. I therefore submit that the article as it originally was in the Draft Constitution was good. Somehow or other, the Drafting Committee, burdened as it is with heavy work, has got despaired and is ready to accept any compromise or suggestion whatsoever. I submit these are important matters, and require careful consideration. Artificial limits of two months and one month are too rigid and would prove impracticable in actual working. The matter should be left to mutual goodwill. I submit this is a fundamental objection, would frustrate the object of the Upper House and would reduce the Upper House to nullity and insignificance. With these few words, I oppose the amendment.

**Sardar Hukam Singh** (East Punjab: Sikh): Mr. President, Sir, I had an amendment in the List that could not be moved on account of a technical objection. My submission is that the article as it is finally proposed is not very clear. The procedure laid down would be so difficult that ordinary legislation might be delayed extraordinarily. I want one or two things to be made clear. So far as sub-clause (b) is concerned, it lays down that more than two months should not elapse before a Bill is passed by the Upper House, from the date on which the Bill was laid before it. Again sub-clause (c) of clause (1) says "the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree". This is very ambiguous. When a Bill has been passed, by the Council with amendments, then we send it back to the Legislative Assembly. It shows that, whether the Assembly does or does not agree, that will require a second sitting and second passage by the Assembly. Then again under clause (2)(c) if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, then it shall have to be considered, by the Assembly for the third time, because otherwise it cannot be known whether the Assembly does or does not agree to any amendments proposed by the Legislative Council. So, consideration thrice by the Legislative Assembly and twice by the Legislative Council would delay legislation that might be required to be passed with some speed. The object of the Council is to check hasty legislation but there should be some reasonable limit and the legislation might not be delayed or defeated at all. This would give unnecessary powers to the Council. My honourable Friend Mr. Brajeshwar Prasad does not believe in this democracy and has said.....

**Shri Brajeshwar Prasad** : I entirely believe in democracy, but I do not believe in Parliamentaryism. There is a world of distinction between the two.

**Sardar Hukam Singh** : I said "in this democracy" as laid down here in this provision. Perhaps he missed this word "this". He says that extraordinary powers should not be given to the Lower House. If we are going to try this venture, I beg to submit that we should do it wholeheartedly and with no reservations and therefore ample powers should be given to the representatives of the people so that when they consider necessary they may pass any legislation in the interests of the people. If only unnecessary haste is to be checked. Then there are sufficient checks provided, for once the Legislative Council rejects it or returns it with certain amendments the Legislative Assembly has

to re-consider it. Then again, even when both Houses have passed it, it has to come to the Governor for assent and under the proviso the Governor can send it back for reconsideration with suggestions and with amendments. My proposal was that after the Legislative Assembly has passed the Bill for the second time, there is no need to send it again to the Council. The procedure would be cumbersome and expensive and would delay legislation and I consider it unnecessary. Then, after sub-clause (c) it is laid down "that the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council. I fail to understand whether "Legislative' Council" is competent to make these amendments, to suggest them or agree to them. It is certainly an advisory body; it can make suggestions and send that back with those amendments and I do not know whether these three different words convey different meanings or they are put down simply to put force in the same thin. I request the Honourable Dr. Ambedkar to make this clear also.

With these words, Sir, I oppose this draft as it stands now.

**Dr. P. S. Deshmukh** (C.P. & Berar: General) : Mr. President, Sir, it is becoming more and more clear that the provision of the Second Chamber in the States is proceeding more and more because of the distrust of adult franchise and nobody has made it clearer than Mr. Brajeshwar Prasad who thinks that the country is likely to go to dogs if there is no provision for the Second Chamber with more powers. My justification for intervention at this stage is only this, that the provision that we are now considering discloses that the only function that the Second Chamber is going to perform is merely to delay legislation. Mr. Brajeshwar Prasad is quite correct when he said that we have not left any effective powers in its hands to that extent, but the question arises whether, for the sake of merely delaying legislation all this paraphernalia of a Second Chamber with all the difficulties it has met with and the difficulties also about giving proper representation and not finding sufficient and proper interests which should be represented on this Second Chamber, it is worthwhile to have the Second Chamber at all. The delay also has been minimised by the provisions that are now embodied in article 172. The delay would be at the most of about six months. The Second Chamber has no power of initiating Money Bills and the only function, therefore, that it is going to perform is to delay a Bill that is passed by the Legislative Assembly and with which it does not agree. I think, Sir, that the expenditure of money as well as energy that this will involve is not at all commensurate with the insignificance of the functions that are being allotted to it. Since, we have not even decided about the composition, about the nature of representation as well as even the membership, even at this late stage, I would like to appeal, if it is possible, that the Second Chambers in all the States may be dropped altogether.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, I beg to support this amendment for the reason that we have noticed that there has been a large body of opinion against a Second Chamber in the provinces. They do not want Second Chambers at all and therefore, it has been left to the provinces themselves to have Second Chambers or not. Even as regards those who may start a Second Chamber, it is open to them after a period to resolve that there will be no Second Chamber. It is also open to any province which did not start with a Second Chamber to have a Second Chamber. When there is so much divided opinion in regard to this matter and the Second Chamber is intended only for delaying and to avoid certain mistakes, is it desirable that the Second Chamber should come within the ambit of legislation ? If it is an advisory body, there is every chance of all the provinces also having a Second Chamber, so that whatever mistakes or incongruities might have crept in the

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Lower House might be corrected by the Upper House. On the other hand the Upper House will have a dominant voice and in a case where there are sharp difference of opinion the Upper House in a State will consist of not more than 25 per cent of the number of members in the Lower House, and it is the Upper House that will decide as to which way it ought to go. A joint sitting means that it will be decided by a few persons in the Upper House and we have not as yet decided what the composition of the Upper House ought to be. I am sure the composition, whether it is incorporated in the Constitution or is brought about by an Act of Legislature, will include certain representatives who are nominated by the President or the Governor and there will be representatives for Art, Education etc. Then it may so happen that these very nominated members will ultimately decide the fate of any particular social or other piece of legislation. Therefore, even from the start a number of provinces and States might set their faces against having a Second Chamber if we clothe the Second Chamber with enormous power. The only way in which it can be avoided is to leave this matter to the provinces to decide after a period of time. And whatever has been decided by the Lower Chamber ought to become law. This article has been copied from the practice in the House of Commons. We do not know what the composition is with respect to the U.S.A. or with respect to the various provinces in Australia. We have got only the models of both the Federal Constitution of Australia and the Federal Constitution in the U.S.A.

A joint sitting is provided for in Australia. So far as the Centre is concerned, it is a different affair. We have provided for a joint sitting, in the case of the Centre, to resolve the difficulties arising out of difference of opinion between the Lower House and the Upper House, on the lines of the Australian Constitution. So far as the provinces are concerned, we have not got the Constitution of those States. Thinking independently of any of these Constitutions, I agree with this amendment that we ought not to impose an obligation to create a new right in the Council, which is an unwanted Council. Almost every province is against having a separate Council. In these circumstances, let us not impose a Council with enormous powers, a Council sitting on the fence and deciding one way or the other, making the considered opinion of the lower House a nullity. Honourable Members will also consider another aspect. The lower House to which the Ministry is responsible, is fully in charge of Money Bills; so far as Money Bills are concerned, the Upper House is not concerned except for discussing here and there. With respect to other Bills; it may be a matter of substance, and it may mean a vote of no-confidence so far as the Ministry is concerned, and the Ministry may have to go out of office. It will create a number of complications. In these circumstances, the only proper method is to see that, after a period of one or two sessions, if the Lower House persists in having its Bill pushed through and the Upper House does not consent, the Bill as passed by the Lower House automatically becomes law. That would avoid all conflicts with the Lower House and also encourage all States to have an Upper House and take their advice.

I support this amendment and I request honourable Members not to press their amendments to this amendment asking for a joint sitting.

**Pandit Hirday Nath Kunzru** (United Provinces: General) : Mr. President, I could not hear my honourable Friend Dr. Ambedkar clearly. I cannot therefore say whether he explained the need for the latest amendment proposed by him to article 172.

It is quite open to the House to decide whether there should be a Second Chamber or not. The other day, there were differences of opinion amongst



honourable Members whether the Constitution of the Legislative Councils should be laid down in the Constitution or should be left to be provided for by Parliament. I think, Sir, that however the Legislative Councils may be constituted, they are likely to be creatures of the Government and the Lower House. They will seldom be in a position to express any independent opinion. As a rule, I think they will, reflect the opinion of the majority in the Lower House. It seems to me that in these circumstances, 'there is not much use in having an Upper Chamber. But, if the House desires that there should be an Upper Chamber, then, I suggest that its powers should not be curtailed to such an extent as to make it unable even to consider carefully the measures that might be sent up to it by the Lower House.

The Draft Constitution proposed that :

"If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council, more than six months elapse from the date of the reception of the Bill by the Council without the Bill being passed by both Houses, the Governor may, unless the Bill has lapsed by reason of a dissolution of the Legislative Assembly, summon the Houses to meet in a joint sitting for the purposes of deliberating and voting on the Bill :"

It was made clear that this did not apply to Money Bills. Further, clause (2) of the article that I have read out provided that :

"In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days."

There are two points in article 172 as included in the Draft Constitution that are open to objection. One was that the mere refusal of a Legislative Council to consider a measure passed by the Lower House should make the Governor think of convening a joint session of both Houses in order to decide whether the measure in question has the approval of the legislature or not. Another point that was open to objection was that if the period of six months was to be reckoned in the manner laid down in the above-mentioned clause, it might be a year or more before the fate of a Bill passed by the Lower House could be definitely known. The Drafting Committee proposed two or three days ago an amendment to this that reduced the period from six months to three months, but otherwise made no important change in the provisions of article 172 as included in the Draft Constitution. The latest amendment of the Drafting Committee reduces the period to two months, and also alters the provision relating to the manner in which the period of two months should be reckoned. My honourable Friend Mr. T. T. Krishnamachari, who is a member of the Drafting Committee has now proposed that the period allowed to a legislative Council to consider a Bill should be not two months, but three months. It is obvious from this that the opinions of the Drafting Committee on this subject are not fixed.

The opinions even of the ablest members of the Committee are fluctuating. The House is therefore entitled to know clearly why changes are being suggested from time to time on which the Drafting Committee itself has so long been unable to make up its mind.

Sir, I do not regret the omission of the provision relating to the manner in which the period that I have referred to repeatedly should be reckoned, but if there is to be a Second Chamber, we should consider what should be the reasonable period allowed to it to consider measures that it receives from the Lower House. Is the period of six months laid down in the Draft Constitution excessive or have the present Legislative Councils in the provinces shown any tendency to hold up unreasonably the consideration measures in order to delay passage or to make their consideration impossible ? So far as I remember, there have been no such instances. In the United Provinces to which I

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belong, very contentious measures have been considered by the Upper House but so far as I am aware no complaint has been made that it has used its position to defer unreasonably the consideration of important measures in order to prevent the representatives of the people from passing laws that are in the best interests of the people. I doubt whether more contentious measures can be introduced in any legislature than have been introduced in the United Provinces Legislature and if in practice it has not been found that the present procedure has been abused, then the responsibility for showing that a change in the period suggested in the Draft is necessary lies on the Drafting Committee. I think considering the changes that have been made by the Drafting Committee itself from time to time there is no principle, on which it is proceeding. My honourable Friend Dr. Ambedkar says there is a very good principle.

**The Honourable Dr. B. R. Ambedkar :** I say there is no principle.

**Pandit Hirday Nath Kunzru :** I am glad my honourable Friend admits, that there is no principle underlying the amendment that he has suggested to the House.

**The Honourable Dr. B. R. Ambedkar :** It is a matter of expediency and practicality.

**Pandit Hirday Nath Kunzru :** He admits it is a question of expediency and practicality. , I ask the House to consider whether in case there is a Second Chamber, it should not be allowed more than two or three months in order to consider a measure, however important and however lengthy it may be. If this provision is passed, then if the Upper House receives a Bill containing three hundred clauses it will be its duty to pass it within three months.

**Prof. Shibban Lal Saksena :** It is only on the second occasion.

**Pandit Hirday Nath Kunzru :** My honourable Friend should read the amendment more carefully.

**Shri M. Ananthasayanam Ayyangar :** While the proceedings of the Lower House are going on, the Upper House is sleeping!

**Pandit Hirday Nath Kunzru :** My honourable Friend himself seems to be in a sleepy condition. The Upper House will not be sleeping while the Lower House is leisurely considering what measures should be sent up to the, Upper House. It will probably not be sitting. After notice of the passage of a Bill has been received by the Upper House, I take it that three weeks at least will pass before the House meets. It will therefore have not more than two months for the consideration of a measure. Considering the question in all its aspects, considering the reason for the existence of an Upper Chamber, I suggest that if it pleases the House to vote in favour of its establishment it should be given adequate time to consider measures passed by the Lower House carefully. If even this measure of grace is not extended to the Upper House, there be absolutely no reason for its existence. I personally, as I have said, considering the circumstances in which we are proceeding, do not think that Upper Chambers are needed or, if established, will be able to serve any useful will be able to exercise their independent judgment in any matter; but if the, House chooses to allow Second Chambers to be established, then I suggest that the period allowed to them for the careful consideration of measures should not be reduced to such an extent as to make them look ridiculous.

**Shri V. I. Muniswamy Pillay (Madras: General) :** Mr. President, Sir, by adopting the second portion of the amendment of my honourable Friend Dr. Ambedkar, I it confirms my view that the existence or bringing into existence

of Second Chambers in the provinces will be superfluous. This amendment has been brought to see that hasty legislation in the assemblies are carefully watched by the Upper House and then they give their verdict; and there is also the view that joint deliberation of both Houses is taken away from this amendment. So it goes to show that the interests of certain classes and also of communities and interests are at stake if we accept the second portion of the amendment. After passing a certain enactment in the Legislative Assembly the public opinion may be against such an enactment. The only protection and safeguard will be in the hands of the Council. Now if a Bill is rejected by the Council for the second time, that shows that there is some defect, and some interest is not protected. So it becomes necessary that Council must have a voice in the passing of the Bills. It is in our knowledge that after the attainment of independence in this country many of the provinces have brought forward in the assemblies many Bills and they have the consent of the Councils concerned. Now when the final Constitution is passed, it will be more, so that many Bills of interest and safeguards for communities and other interests will come before the provincial Assemblies. If measures are to be summarily rejected because of this amendment, I feel that the interests of many communities and interests will greatly suffer. So I feel that something must be done, to see that even if the Second Chamber rejects a measure the interests of communities that I have referred to are safeguarded. I hope the expert committee will see to it that these interests are not jeopardised.

**Prof. N. G. Ranga** (Madras : General) : Mr. President, 'Sir, I have come here to support the amendment moved by the Drafting Committee, and that too for very good reasons. I am not able to agree with my Friend Pandit Kunzru when he says. "Either you should have no Second Chamber at all, or if you must have one, you should make it very powerful." As I said the other day, I am not in favour of Second Chambers at all. I wish the House had been in favour of having only single chambers in the provinces. But it so happens that the House has decided in favour of having Second Chambers in certain provinces. , Now, if we are to have Second Chambers at all, then the question is, what sort of chambers are they to be? Are they to be empowered to such an extent as to be able effectively not only to delay but to frustrate the legislative effort and achievements of the Lower Chamber? Now, I am sure the House is unanimous on this point that the Upper Chamber can only be expected to play the part of a counselling chamber, as a moderating chamber, as a delaying chamber, and nothing more. Now, that itself is bad enough, according to us. But even if we agree to this concession, surely it will be wrong to give so much power to the Upper Chamber as to make the legislative effort of the Lower Chamber more or less nugatory and useless. Why do you want six months ? If you are to have any time, why should you not be satisfied with three months ? My honourable Friend Pandit Kunzru, says that in three months it would not be possible for the Upper Chamber to give serious consideration and attention to the issues involved, and to the various clauses of any given Bill. Very well. What is the real position ? The Lower Chamber has already given serious consideration to the particular measure and passed it on to the Second Chamber. It has passed it section by section, every bit of it, after careful consideration. The principle involved has been accepted by the Lower Chamber. And it is the Lower Chamber which is really responsible to the people as a whole, and so it must be expected to be the final authority so far as the principle is concerned. It is only with regard to the detailed manner in which the principle is to be embodied in legislative form that the Upper Chamber can be expected to come in. Under these circumstances why should it be necessary to give the Upper Chamber more than three months ? Surely even as a practical proposition one ought to be willing to agree to give not more than three months. And we should realise that even to give three months to delay is sometimes very dangerous indeed. We are passing through,

[Prof. N. G. Ranga]

times when-and in times to come it is likely to be much more so—it will be necessary to pass legislation expeditiously in order to stave off more dangerous social upheavals, and in order to prevent people from unnecessarily agitating themselves at the instigation of certain interested people, people who are interested in upsetting the social order and social Organisation in any country. Therefore, Sir, I plead with the House to give support to the Drafting Committee in its suggestion that the period should not be more than three months.

Then there is the other suggestion made by several friends, including my Friend, Mr. Muniswamy Pillay, that there should be joint sessions of the two chambers, or joint sittings. But why should there be joint sittings ? They say joint sitting is necessary because it is likely to display greater wisdom.

**Shri V. I. Muniswamy Pillay** : I did not want it.

**Prof. N. G. Ranga** : A joint sitting would be ridiculous for this reason that one-third or one-fourth of the second chamber is likely to be nominated.

**Pandit Lakshmi Kanta Maitra** (West Bengal: General) : How do you know it ? We have not yet decided that matter.

**Prof. N. G. Ranga** : We have already said so; we are going to decide it that way. I suppose we are going to decide that an element of nomination should be introduced, and in that case, you will be giving, these people too much power to sit in judgment and delay legislation that may be passed by the Lower Chamber. Secondly, two-third; or three-fourths of this Upper Chamber is to be elected by the Lower Chamber itself. Therefore the position will be, that the Lower Chamber will be prevented from doing its work as expeditiously as it should, by the very people it has elected.

**Pandit Lakshmi Kanta Maitra**: But why do you presume that the Upper Chamber will always be holding, up the business of the Lower House ?

**Prof. N. G. Ranga**: My Friend seems to have forgotten the very reasons for which second chambers are sought to be created by our friends in this House. Most of the people who spoke in favour of the.....

**Pandit Lakshmi Kanta Maitra**: Forget that it will be the second chamber of old days, of the Government of India Act, 1935.

**Prof. N.G. Ranga** : My Friends who have spoken here and elsewhere were keen that the second chamber should be a moderating chamber, that it should be a delaying chamber. That is one thing. The next thing is, even if we take it that second chambers of the future are likely to be differently constituted from second chambers of the past, we should remember that second chambers all over the world have been delaying factors. They have been centres of reaction' What is more even in this country it is intended that these second chambers should be citadels of reaction, of orthodoxy and Sanatanism. I am opposed to this orthodoxy, to this reaction or to this Sanatanism; and I do not want these second chambers at all. But as a compromise, I am prepared to have the period put down as three months and not one day longer than that.

**Shri Syamanandan Sahaya** (Bihar: General) : Mr. President, Sir, I have read and re-read the amendment moved by Dr. Ambedkar, but have, failed to find out what purpose or whose purpose his amendment is going to serve. We have just heard him say that in this amendment there is no question of principle involved, but that it is a question of expediency and of practical work. I do

not see what is the expediency about it. We are at present framing the Constitution; it is a sacred task, and therefore there is no use making provisions for having more than one chamber, if ultimately on account of the powers that we give Second Chamber, we find that it can or will serve no useful purpose because, to that extent, its mere existence without any useful activity would mean so much drain on public revenues. Sir, the whole case, as far as I have been able to make out, of the supporters of the amendment is based on an apprehension, and that apprehension is that these Upper Chambers will really be delaying chambers. Perhaps there might have been some room for this apprehension in days gone by, but considering the constitution of the Upper Chamber that has been laid down in this Draft that we are considering, I see no cause for any apprehension nor for the feeling that the Upper Chambers will have nothing more to do than to delay all legislation. As a matter of fact, from the experience that we had in our own province. I can say without any fear of contradiction that the Upper Chamber has served a very useful purpose. I do not think I will be wrong if I stated that almost all the amendments adopted by the Legislative Council in Bihar were ultimately accepted by the Legislative Assembly in Bihar. That shows that the Upper Chamber has its usefulness and it can become useful if it strives to that end.

If we refer to page 67 of this Draft, we will find that the constitution of the Upper Chamber has been laid down, and if we go through it we should have no difficulty in agreeing to the proposition that the Upper Chambers will really not be composed of such people as will have reactionary tendencies. It will be seen that out of the number of members, one-half shall be chosen from panels of candidates constituted under clause (3) of the article.

**Mr. President** : May I point out that that article has not yet been accepted ?

**Shri Syamanandan Sahaya** : Quite true, Sir, but we have to proceed today on the assumption that this is the proposal of Dr. Ambedkar—the House may turn it down. Today we are considering the amendment moved by Dr. Ambedkar, therefore I am proceeding on the assumption that if his proposal about the constitution of the Upper Chamber will be accepted, his present amendment will become wholly unnecessary. That is what I am trying to show.

Well, Sir, if we look at the constitution of the Upper Chamber, you will find that the panels are composed of persons having special knowledge or practical experience in—

- (a) literature art and science;
- (b) agriculture, fisheries and allied subjects;
- (c) engineering and architecture;
- (d) public administration and social services.

There is no room for any Zamindar to come in. The second group, that is one-third the number, shall be elected by the members of the Legislative Assembly itself, and the remainder shall be nominated by the Governor.

**Mr. President** : The honourable Member has no reason to think that a Zamindar is the only person who can be a reactionary.

**Shri Syamanandan Sahaya** : Well, Sir, somehow or other that is the impression that has gone round, but I too say that it is wrong.

So, looking at the constitution of the Upper Chamber as it is in the Draft—subject to, any amendments that the House may like to make—we find that there is no cause for any apprehension from a body constituted in the manner I have just explained. But apart from any other thing, I certainly like the

[Shri Syamanandan Sahaya]

declaration, for instance,, from Prof. Ranga who says he does not believe in a Second Chamber. That is perfectly clear but I cannot understand our agreeing to a Second Chamber but giving it practically no powers whatsoever. According to the amendment, in three months' time or two months' time a Bill is either to be passed or not passed by the Second Chamber. What is the use of having a Second Chamber like this ? The constitution of the Legislative Assembly, in number, shall be very much bigger than that of the Legislative Council; so even with a joint sitting there is no apprehension of the Lower House's views not prevailing; but actually it gives an opportunity to people with experience of administration and other things to give to the Legislative Assembly their advice and explain to the House their viewpoint of the matter. Administration in democracy is administration by persuasion and reasoning. That is all that the original draft laid down when it said that there shall be a joint sitting. I therefore feel that the wording in the Draft Constitution which has been placed before us is definitely better than the amendment which has been proposed and I would, therefore, suggest to the House that the amendment should be rejected.

**Mr. President** : Shrimati Renuka Ray.

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

**Mr. President** : I have already called a Member. After she speaks, we shall consider the motion for closure.

**Shrimati Renuka Ray** (West Bengal: General) : Mr. President, Sir, I rise to support this amendment which I think is an extremely wholesome one. I was one of those who believed that a Second Chamber was not a necessity and that in fact in many of the smaller Provinces it will be a very expensive luxury. All the same, it has been incorporated in the Constitution with the avowed object that the Second Chamber was necessary as a revising Chamber. It was pointed out that inadvertently or otherwise it may be possible for the Lower House to pass legislation which it would find difficult to rectify. Later and the Second Chamber might serve the purpose of revision. This was the object put forward for which a Second Chamber was acceptable to the majority. But now we find that there are some who would like to have it in the form of a chamber,-with dilatory functions. For if we are going to allow six months, if joint sessions are going to be allowed it would mean that the Second Chamber would not only be just for the sake of revising a Bill which has some defects, and which the Legislative Assembly itself would like to revise, but it would also be tantamount to acting as a dilatory chamber, which would be extremely retrograde. Because we have agreed to having Second Chambers in some of the Provinces, it does not mean that we should give it more powers and have a chamber with dilatory functions imposed in the Constitution. I myself am of the opinion that the purpose for which a revising chamber has been sought to be put in was also not necessary because the President or Governor has the power always to send back a piece of legislation to the Assembly and any mistakes could be rectified through this procedure. However if the majority felt otherwise and put the Second Chamber in the Constitution, there is no reason whatsoever to give it more power and thus hold up legislation, which may be very pressing and necessary. The dilatory powers would be injurious for the country and a very retrograde provision in the Constitution. I do feel that it seems to be the object of some of those who have spoken to bring in the type of Second Chamber that we had in the Past. We talk of the composition being quite different; even if it is quite different, it is quite true that people, even if they were scientists or

doctors, who go through the process of political life into Upper Chambers—or Lower Chambers for the matters of that—have to enter the arena of politics and Party Politics. Somebody said that Second Chamber would be for men like Rabindranath Tagore. But the best scientists and men of literature are not likely to enter Party Politics and come into the Second Chamber at any price. If their opinion has to be sought, it has to be sought from outside the Legislature in any case. Therefore, I would appeal that, although this House has agreed to a Second Chamber, it will not in any case agree to extending its powers, but accept this amendment which will give it only the functions of a revising nature.

**Mr. President** : Closure has been move. The question is :

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar** : Mr. President, Sir, as I listened to, the debate, I find that there are some very specific questions which have been raised by the various speakers who have taken part in the debate. The first point was raised by my Friend Mr. Santhanam and I would like to dispose of that before I turn to the other points. Mr. Santhanam said that a provision ought to be made in clause (1) of the article to provide for a case where the Upper House has not passed the Bill in the form in which it was passed by the Assembly. I think that on further consideration, he will find that his suggestion is actually embodied in sub-clause (c), although that clause has been differently worded. We have as a matter of fact provided for three cases on the occurrence of which the lower House will take jurisdiction to act on its own authority. The three cases are: firstly, when the Bill is considered but rejected completely; secondly, when the Upper House is either sitting tight and taking no action or has taken action but has delayed beyond the time which is permitted to it for consideration of the Bill; and thirdly, when they do not agree to pass the Bill in the same form in which it has been passed by the Assembly, which practically means what my Friend Mr. Santhanam is suggesting. I therefore do not think there is any necessity to revise this part of the article. I might say incidentally that in devising the three categories or conditions on the occurrence of which the Lower House would I have the power to act on its own authority, the words have more or less been taken closely from article 57 of the Australian Constitution.

Now, I come to the general points that have been raised. It seems to me in discussing this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys ? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey, both going and coming back ? The third question is, how is the period within which the Council is to act to be reckoned ? To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point ? So far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

[The Honourable Dr. B. R. Ambedkar]

Now, with regard to the time to be permitted, to the Upper House during these journeys to consider the Bill, the proposal of the Drafting Committee is two months. Now it may be three months, in the first case, as I am accepting the amendment moved by my Friend, Mr. T. T. Krishnamachari, and in the second case it would be one month.

My Friend Pandit Kunzru said that the Drafting Committee had no fixed mind, that it was changing from moment to moment, that it was fickle, and he referred to the original Draft set out in the Draft Constitution laying down six months. Here again, I should like to point out to him that the period to be allowed to each House is not a matter of principle at all. It is a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact, it felt that even three months was too long a period. But it is quite conceivable that a Bill. Like the Zamindari Bill, which has a large number of clauses, may emerge from the Lower House and may be sent to the Upper House for consideration. But for such exceptional cases, I think my Friend will agree that other measures would not be of the same magnitude or the same substance. Consequently, we thought that three months was a reasonable period to allow to the Upper House in the case when the Bill goes on its first journey, because after all what is the Upper House going to do? The Upper House in acting upon a Bill which has been sent to it by the Lower Chamber is not going to re-draft the whole thing; it is not going to alter every clause. It is only certain clauses which it may feel of public importance that it would like to deal with, and I should have thought that for a limited legislative activity of that sort, three months in the first instance was a large enough period to allow to the Upper House, and would not certainly curtail the legitimate activity of a Second Chamber. In the second case, we felt that when the, Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

Now, I come to the last question, namely, what is to be the starting point of calculating the three months or the one month. I think Mr. Kunzru will forgive me. For saying that he has failed to appreciate the importance of the changes made by the Drafting Committee. If this provision had not been there in Draft article 172 as it stands, I have no doubt—and the Drafting Committee had no doubt—that the powers of the Upper Chamber would have been completely negatived and nullified. Let me explain that; but before I do, so, let me state the possibilities of determining what I call the starting point of limitation. First of all, it would have been possible to say that the Bill must be passed by the Upper House within a stated period from the passing of the Bill by the Lower House. Secondly, it would have been possible to say that the Upper House should pass the Bill in the stated period from the time of the reception of the Bill by that House. Now Supposing we had adopted either of these two possibilities, the consequences would have been very disastrous to the Upper House. Once you remember that the summoning of the Upper House is entirely in the hands of the executive—which may summon when it likes and not summon when it does not like—it would have been quite possible for a dishonest executive to take advantage of this clause by not calling the Upper House in session at all. Or supposing we had taken the reception as the starting point, they could have also cheated the Upper House by not putting the Bill on the agenda and not thereby giving the Upper House an opportunity to consider it. We thought that this sort of procedure was wrong; it would result



in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

**Pandit Hirday Nath Kunzru :** Does this childish explanation satisfy the honourable Member himself ?

**The Honourable Dr. B. R. Ambedkar :** If my honourable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied. But he did not raise any point to which I have not given an explanation.

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

“That in sub-clause (b) of clause (1) of the proposed article 172, for the words ‘two months’ the words ‘three months’ be substituted.”

The amendment was adopted.

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

“That proposed article 172, as amended, stand part of the Constitution.”

The motion was adopted.

Article 172, as proposed and amended, was added to the Constitution.

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#### **Article 175—(Contd.)**

**Shri Brajeshwar Prasad :** Sir, I am not whole-heartedly in favour of article 175. Under this article the Governor has no power to veto a Bill in his own discretion or initiative but can do so only if he is so advised by his Ministry. I am not in favour of this provision. Then, he cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President. There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain article of this Constitution, and also if the Governor is advised by his Ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the legislature, whether passed once or twice by it. Secondly, I am in favour of the President having power to reserve a Bill for his consideration, on his own initiative and authority. He should have power to issue an order to the Governor directing that a Bill passed by the legislature should be reserved for his consideration, or that a Bill should be disallowed whether the Governor reserves it or not. I know that this proposition will not be in consonance with what is supposed to be the democratic tendencies of the age. People think they are. Living in a democratic age. But I feel that we are living in a totalitarian age. I want power to be vested in the hands of the Governor