to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

[No amendment was accepted Article 146 was added to the constitution.]

ARTICLE 147

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****The Honourable Dr. B. R. Ambedkar :*** Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

Shri H. V. Kamath : May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated..... (Interruption).

The Honourable Dr. B. R. Ambedkar : As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry. That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may

* CAD, Vol. VIII, 2nd June 1949, pp. 545-547.

overrule the Ministry. Therefore, the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

Shri H. V. Kamath : Won't he be able to delay or obstruct…….?

The Honourable Dr. B. R. Ambedkar : My friend will not interrupt while I am going on At the end, he may ask any question and if 1 am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary : no good at all. He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has, namely to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information ? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions ? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the -Governor the power to call for any

information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet ? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform, what I say, not functions because he has none, but the duties which every good Governor ought to discharge. (*Cheers.*)

Shri H. V. Kamath : May I ask Dr. Ambedkar some questions ?

Mr. President: What is the use of asking question now ? You had your chance.

Shri H. V. Kamath : Dr. Ambedkar said that I could put questions at the end of his speech.

Mr. President : I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

Mr. President : The question is :

"That article 147 stand part of the Constitution."

The motion was adopted.

Article 147 was added to the Constitution.

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ARTICLE 151

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***Mr. President :** 2308.—Dr. Ambedkar.

The Honourable Dr. H. R. Ambedkar : Sir I move :

"Thai in clause (2) of article 151, for the words 'third year' the words 'second year' he substituted."

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†The Honourable Dr. B. R. Ambedkar : The article has been passed that the Second Chamber shall be there. This article deals only with how the Members will re-elect themselves.

Prof. Shibban Lal Saksena : We have to decide whether a particular Council should live for nine years or six years, and that will depend upon the composition of the Council. The composition will determine the period al the end of which one-third of the members should retire.

Mr. President : That does not depend on the composition of the Council. Whatever may be the life of the House, the composition will be according lo the decision we may take on article 150.

Prof. Shibban Lal Saksena : Well Sir, I bow to your ruling....

Then it has been said that one-third of the Council will retire every third year. I am glad Dr. Ambedkar has now proposed that the period will now be two years instead of three. That will make the life of the Council only six years which is almost equal to the life of the Assembly. It also ensures greater freshness to the Council. I therefore, support the amendment of Dr. Ambedkar.

Mr. President : Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I accept Mr. Gupte's amendment.

Mr. President : Now I shall put Mr. Gupte's amendment which has been accepted by Dr. Ambedkar, to vole. It becomes the original amendment.

The question is :

"That with reference to amendment No. 2304 of the List of Amendment, after clause (1) of article 151, the following proviso be inserted :

'Provided that the said period may. while a Proclamation of Emergency is in operation, he extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.' "

The amendment was adopted.

Mr. President : Mr. Brajeshwar Prasad's amendment.

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

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*CAD, Vol. VIII, 2nd June 1948, p. 548

† *Ibid.*, pp. 549-50.

Mr. President: Then I put Dr. Ambedkar's amendment, No. 2308.

[Already mentioned.]

The amendment was adopted.

Article 151, as amended, was added to the Constitution.

ARTICLE 152

***Mr. President:** Then we come to article 152. To this article, there is the amendment of Dr. Ambedkar.

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

"That for article 152, the following be substituted :-—

152. *Qualification for membership of the State Legislature.*—A person shall not he qualified lo be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India;

(b) is. in the case of a seat in a Legislative Assembly, not less than twenty-live years of age and, in the case of a seat in the Legislative Council, not less than thirty-five years of age, and

(c) possesses such other qualifications as may lie prescribed in that a behalf by or under any law made by the Legislature of the State'."

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† **The Honourable Dr. B. R. Ambedkar:** Sir, I accept the amendment moved by Shrimati Purnima Banerji. With regard to the fear that she expressed about clause (c) that this clause might enable the prescription of property qualifications by Parliament for candidates, I certainly can say that such is not the intention underlying sub-clause (c). What is behind this clause is the provision of such disqualifications as bankruptcy, unsoundness of mind, residence in a particular constituency and things of that sort. Certainly there is no intention that the property qualification should be included as a necessary condition for candidates.

Then, with regard to the amendment of Professor K. T. Shah about literacy. I think that is a matter which might as well be left to the Legislatures. If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.

Sir, there is only one point about which 1 should like to make a specific reference. Sub-clause (c) is in a certain manner related to articles 290 and 291 which deal with electoral matters. We have not passed those articles.

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to

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*CAD, Vol. VIII, 2nd June 1948, p. 550.

† *Ibid.,* pp. 553-54.

reserve for the Drafting Committee the right to reconsider the last part of sub-clause (c). Subject to that, I think the article, as amended, may be passed.

[Article 152 as amended was added to the Constitution]

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ARTICLE 153

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

"That clause (3) of article 153 be omitted."

This clause is apparently inconsistent, with the scheme for a Constitutional Governor.

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†Shri Gopal Narain : (United Provinces : General) : Mr. President, Sir, before speaking on this article, I wish to lodge a complaint and seek redress from you. I am one of those" who have attended all the meetings of this Assembly and sit from beginning to the end, but my patience has been exhausted now, I find that there are a few Honourable members of this House who have monopolised all the debates, who must speak on every article, on every amendment and every amendment to amendment. I know, Sir, that you have your own limitations and you cannot stop them under the rules, though I see from your face that you also feel sometimes bored, but you cannot stop them. I suggest to you, Sir, that some time-limit may be imposed upone some Members. They should not be allowed to speak for more than two or three minutes. So far as this article is concerned, it has already taken fifteen minutes, though there is nothing new in it, and it only provides discretionary powers to the Governor. Still a member comes and oppose it. I seek redress from you, but if you cannot do this, then you must allow us at least to sleep in our seats or do something else than sit in this House. Sir, I support this article.

Mr. President: I am afraid I am helpless in this matter. I leave it to the good sense of the Members.

Shri Brajeshwar Prasad : (Rose to speak).

Mr. President : Do you wish to speak after tins ? (*Laughter*)

The Honourable Dr. B. R. Ambedkar : I do not think I need reply. This matter has been debated quite often.

[Except Dr. Ambedkar's amendment, none else was accepted. Article 153 was added to the Constitution.]

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*****CAD, Vol. VIII, 2nd June 1948, p. 555.

† *Ibid.,* p. 557.

ARTICLE 153-A

***Mr. President :** Does any one wish to say anything about this amendment ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment.

[The amendment of Prof K. T. Shah was negatived and Article 154 was added to the Constitution.]

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ARTICLE 160

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†**Mr. President:** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Article 160 was adopted and added to the Constitution.

NEW ARTICLE 163-A

‡**Mr. President:** There is the new article 163-A which has to be moved. That is amendment No. 39 List I.

The Honourable Dr. B. R. Ambedkar : Sir, it has to be held over.

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ARTICLE 165

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Shri T. T. Krishnamachari : The Chair has on previous occasions permitted Dr. Ambedkar to move such amendments, and I think the same practice may be continued and it may be moved formally.

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

"That in article 165 for the words 'a declaration' the words 'an affirmation or oath' be substituted."

The motion was adopted.

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ARTICLE 166

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

"That after clause (1) of article 166. the following new clause be inserted :—

'(la) No peson shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of .such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States'."

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

*CAD, Vol. VIII, 2nd June 1948, p. 558.

† *Ibid.,* p. 564.

‡ *Ibid.,* p. 566.

Ibid., p. 567.

Mr. President : There is the amendment of Mr. Naziruddin Ahmad, No. 2403, hut that is covered by the one now moved. No. 2404.

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

"Thai clause (2) of article 166 be deleted."

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***Mr. President:** I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. Kamath : Will not Dr. Ambedkar answer the point raised by me ?

The Honourable Dr. B. R. Ambedkar : I do not consider it necessary.

[All amendments by Dr. Ambedkar mentioned hereinbefore were accepted. Article 166, was added to the Constitution.]

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ARTICLE 167

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

"That for sub-clause (*d*) of clause (1) of article 167, the following be substituted :—

'(*d*) if he has ceased to he a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State'."

Shri Mahavir Tyagi : What will be our position in regard to England, now that we are in the Commonwealth ? Will our allegiance to the King be also a disqualification ?

Mr. President: That is a matter of interpretation of the Constitution.

The Honourable Dr. B. R. Ambedkar : That will be dealt with by the Nationality Act.

(Amendments Nos. 2420 to 2423 were not moved.)

Shri H. V. Kamath : I think my amendment No. 2424 is a purely verbal amendment and I leave it to the Drafting Committee.

Mr. President : I think it is of a substantial nature.

Shri H. V. Kamath : If that be so, I will move it.

I move :

"That in sub-clause (*d*) of clause (I) of article 167, after the semi-colon at the end, the word 'or' be added."

...Whether the word 'and' is deleted, or in its place 'or' is substituted, more or less comes to the samething, according to my untrained mind. Thai is why I said I leave it to the wise men of the drafting Committee, because I am a mere novice in these matters. I

*CAD, Vol. VIII, 2nd June 1948, p. 568.

†*Ibid*., pp. 570-71.

thought 'or' would be more appropriate, because if any one of these disqualifications arises—if a person disqualified for any of these reasons—then the article will apply.

Mr. President : Dr. Ambedkar might consider it.

Shri H. V. Kamath : As I said, I leave the decision to the wise men of the drafting committee.

The Honourable Dr. B. R. Ambedkar : I think it is perfectly all right, Sir.

Mr. President : Won't they read cumulatively ?

Honourable Dr. B. R. Ambedkar : No, Sir, they won't read cumulatively.

Mr. President : If 'or' is added it will put it beyond all doubt.

The Honourable Dr. B. R. Ambedkar : I do not think it necessary.

(Amendments Nos. 2425, 2426 and 2427 were not moved.)

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***The Honourable Dr. B. R. Ambedkar :** I rise only for the sake of my Friend. Mr. Tyagi, as he has asked me one or two pointed questions. As he himself says that he is an illiterate, I can very well understand his difficulty in understanding the word 'adherence'. I would therefore explain to him what the word 'adherence' means. When one country is invaded by another country, what happens is this that the local people either out of fear or out of martial law sometimes give obedience to the laws made by the military governor who acts in the name of the invading country. Such a conduct is often excused while the invasion countinues and the military occupation continues. It often happens that when there is no real necessity to obey the invader or the military governor, either because there has been a relaxation of control or because the hostility has ceased, certain people still continue to render obedience to the military governor or the invader. Their conduct under law is referred to as 'adherence'. It is distinct from acknowledging. It is to protect this kind of case that the word 'adherence' has been used.

Mr. Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country,

*CAD, Vol. VIII, 2nd June 1948, pp. 573-74.

and if my friend, Mr. Tyagi has got Volume II of the printed List of amendments, he will see what the proposed amendment is. The proposed amendment gives power to the President to declare what are not foreign countries, and that declaration would govern whether a particular country is or is not a foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to be rather worried that when a country is declared not to be a foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would *ipso facto* acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under commmonwealth relationship would be this; In all the dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean is this, that the citizens of the dominions residing in India would not be treated as aliens, they would have some rights which aliens would not have, but they would certainly not be entitled, in my judgment, to get the full rights of citizenship which we would be giving to the people of our country. I hope my friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

Shri Mahavir Tyagi : I heartily thank you for the interesting speech that you have made.

[The amendments moved by Dr. Ambedkar and that of Shri T. T. Krishnamachari were carried. Article 167, was accordingly added to the Constitution]

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ARTICLE 169

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

*CAD, Vol. VIII, 3rd June 1949, pp. 582-84.

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

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

Mr. President : He is dealing with the matter.

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

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

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

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

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

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

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as Honourable Members will know, the 1935 Act conferred no

privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

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

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

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

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

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

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

"That in clause (4) of article 169 alter the words 'a House of the Legislature of a State' the words 'or any committee thereof' be inserted."

The amendment was adopted.

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

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*Dots indicate interruption

ARTICLE 170

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

"That in article 170, after the winds 'so made' the words 'salaries and' he inserted."

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†Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B. R. Ambedkar : What does it matter

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ARTICLE 109

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

"That in article 109 for the words 'if in so far as' the words 'if and in so far as' be substituted."

(Amendments Nos. 1896 and 1897 were not moved.)

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#The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to say anything. I accept Mr. T. T. Krishnamachari's amendment

(The amendment was as under):—

"That for the proviso to article 109, the following he substituted :—

'Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treAty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute."

[The amendment was adopted along with that of Dr. Ambedkar as shown earlier.]

Article 109, as amended, was added to the Constitution.

ARTICLE 110

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@ **Mr. President:** Does No. 111 cover cases of criminal nature also ?

Mr. Naziruddin Ahmad : No.

The Honourable Dr. B. R. Ambedkar : We are making provision for that by a separate article.

Mr. Naziruddin Ahmad : I am very grateful to you Sir, for pointing out that article 111 does not make any provision for criminal case……

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*CAD, Vol. VIII, 3rd June 1948, p. 584.

†*Ibid.,* p. 588.

‡*Ibid.,* p. 588.

#*Ibid.,* p. 590.

@*Ibid.,* pp. 593-94.

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

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, hut also, the words on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court,' be substituted."

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :—

"Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground."

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†The Honourable Dr. B. R. Ambedkar : Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmed in his amendments Nos. 1904 and 1907. All that is before us is amendment No. 1904. According to that amendment what my friend Mr. Naziruddin Ahmed wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words as to the interpretation of this Constitution should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase 'as to' the interpretation of this Constitution'. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad : I believe I am right.

The Honourable Dr. B. R. Ambedkar : No question of certificate arises.

Mr. Naziruddin Ahmad : You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar : I think my honourable Friend Mr. Naziruddin Ahmad has probably n(H grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad : That is your stock argument.

The Honourable Dr. B. R. Ambedkar : We have in this Draft Constitution made separate provision for appeal in cases where

*CAD, Vol. VIII, 3rd June 1948, p. 595.

†*Ibid.,* pp. 612-14.

questions of constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where Constitutional law are not involved are provided for in article 111. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmed. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of Constitutional law, the minimum number "of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made thereunder. Now that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will be decided by a number of judges not less than five, while oilier cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words 'as to the interpretation of this Constitution' does not in any way debar appeals other than those in which Constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But in as much as a great deal of debate has taken place, I would like to say a few words. Members will find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of Constitutional law. Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

Again, there is article 112 where the jurisdiction of the Privy Council

has been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words 'decree or final order in any case or matter whether civil or criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112. I have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision.....*

Pandit Lakshmi Kanta Maitra : Practising criminal law.

The Honourable Dr. B. R. Ambedkar : I am sorry, 'practising criminal law', that just as article 111 confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done ? Should we do it by a specific clause in the Constitution itself that in the following matter there shall be right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court ? I am of the opinion for the moment—I do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although, if I may say so, it is not an empty mind—that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work—I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can made, I would much rather support the abolition of the death sentence, itself. (*Hear, hear.*) That, I think, is the proper course to follow, so that it will end this controversy. After

*Dots indicate interruption.

all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that, having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

***Pandit Lakshmi Kanta Maitra :** All the criminal courts also.

The Honourable Dr. B. R. Ambedkar : I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend Mr. Naziruddin Ahmed.

* * * * *

[Following amendments were adopted.]

(1) "That in clause (1) of article 110. for the word 'Stale' the words 'the territory of India' be substituted."

(2) "That in clause (3) of article 110. for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also,' the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

[Article 110, as amended, was added to the Constitution.]

ARTICLE 111

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

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, utter the words 'twenty thousand rupees', the words 'or such other sum as may be specified hi this behalf by Parliament by law,' be inserted."

* * * * *

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

"That to clause (1) of article 111 the following proviso be added :—

"Provided that no appeal shall lie to the Supreme Court from the judgment, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.'"

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‡The Honourable Dr. B. R. Ambedkar (Bombay ; General)**:** Sir, I move :

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which

*CAD, Vol. VIII, 2nd June 1949, p. 615.

†*Ibid.,* 3rd Tune 1949, p. 617.

‡*Ibid.,* 6th June 1949, p. 620.

has been wrongly decided', the words 'a substantial question of law as to the interpretation of the Constitution has been wrongly decided' be substituted."

* * * * *

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

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments : one is the amendment moved by my Friend Prof. Shibban Lai Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments, I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore, remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Sections 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this : that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very

*CAD, Vol. VIII, 6th June 1949, p. 631.

†*Ibid*., pp. 631-32.

beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the Provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therfore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High court have history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently, in my judgment, it would require a very powerful argument in support of a plea that we should now, white enacting a provision for the constitution of the Supreme Court, disturb a position which has stood the test of lime for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of dimunition or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech, namely, Prof. Shibban Lai Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this : that (he Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go to the Privy Council, the last part of clause (I) of article 111, which is (c), ought to remain as it is and Parliament

should not have power to dabble with it because it really is a matter not so much of law as a mailer of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is reallly a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

[In all 4 amendments were adopted, one was rejected. Article 111, as amended, was added to the Constitution]

ARTICLE 112

***The Honourable Dr. B. R. Ambedkar :** I do not think there is anything for me to say.

Mr. President : The question is :

"That in article 112, the words 'except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted."

The amendment was adopted.

Article 112, as amended, was added to the Constitution.

NEW ARTICLE 112-A

†Mr. President: There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

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

"That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :—

Review of judgments or order passed by the Supreme Court.

'112-A Subject to the provisions of any law made by Parliament or any rule made under article 121 of this Constitution the Supreme Court shall have power to review any judgment pronounced or order passed by it.'"

Sir, the draft Constitution, as it stands now,.....‡

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President: That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928 ? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President: I have already said that I have taken it as a fresh article.

The Honourable Dr. B. R. Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras : General) **:** Sir, I am afraid that the drafting of this is not quite as happy as it should be For one tiling, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that

*CAD, Vol. VIII, 6th June 1949, p. 640.

†*Ibid.,* pp. 640-41.

‡Dots indicate interruption.

power shall be limited by rules made by the Supreme Court. I think it is bad law. Parliament has no right to interfere even with its ordinary power of review.

Mr. President : This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgment. In these two respects, the tiling is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar : I think my friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article, he will see that it reads thus :

> "Subject to the provisions of any law made by Parliament, the Supreme Court may from tune to time with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc."

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court and is to be exercised with the approval of President. Another tiling which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

[Article 112-A was adopted and added to the Constitution.]

ARTICLE 113

Mr. President : No. 113.

Shri T. T. Krishnamachari : The house has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar : That is so.

[Article 113 was deleted from the Constitution.]

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ARTICLE 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

"Does anyone wish to speak ?

***The Honourable Dr. B. R. Ambedkar :** My attention has been drawn by my friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

[Article 114 was added to the Constitution.]

ARTICLE 121

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

"That for clause (3) of article 121, the following be substituted :-

'(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 110 of this Constitution save in accordance with an opinion also delivered in open court.'"

Sir, I shall move also amendment No. 1966 :

"That for clause (4) of article 121, the following be substituted :—

'(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case hut nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.'

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‡**The Honourable Dr. B. R. Ambedkar :** Mr. President, I regret very much that I cannot accept the amendment moved by my Honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule-making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. Thai may be a simple rule made by the Supreme Court. But, undoubtedly, it would involve a burden on public revenues. There

*CAD, Vol. VIII, 6th June 1949, p. 542.

† *Ibid., p.* 645.

‡*Ibid.,* pp. 649-50.