(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commisssioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

Mr. President: I have notice of a number of amendments, some in substitution of the articles 289,290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved ? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is a great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my Honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that the Honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental rights. But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day in pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental rights and put it in a separate part containing articles 289,290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1).

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or live members of the Election Commission who would continue in office throughout without any break, or to permit the President to have an *ad hoc*

body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the drafting committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner so that the skeleton machinery would always be available. Elections no doubt will generally take place at the end of five years; but there is this question namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralise the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds

which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commissioner shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matters relating to elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat* We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judges of the Supreme Court. We, of course, do not propose to give the same status to the Other members of the Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election commission, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election

Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other times it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission, no doubt administratively, it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original articles of the draft Constitution.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General): Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena, there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other Constitution which is better than the one we have provided for in the proviso to clause (4).

*CAD, Vol. VIII, 16th June 1949, pp. 928-30.

With regard to the other Commissioners the provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.,* that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My provision—I must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this House a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also he realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therfore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this

question because as I said it is going to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happpen. Therefore in order to meet the criticism of my Honourable Friend Prof. Saksena, supported by the criticism of my Honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is :

"That the words 'to be appointed by the President' at the end of clause (1) be deleted."

"In clause (2) in line 4, for the word 'appoint' substitute the word 'fix' after which insert the following :—

"The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

"The rest of the clause from the words 'when any other Election Commissioner is so appointed' etc., should be numbered clause (2a).

Shri M. Ananthasayanam Ayyangar (Madras : General)**:** Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other members to offer there views.

Mr. President: In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras : General)**:** I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras : General) **:** I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultation with the Drafting Committee.

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***Mr. President:** Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is :

"That in the beginning of clause (4) the following words should be inserted :—

'subject to the provisions of any law made in this behalf by Parliament'."

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President: I do not think any further discussion is necessary; let these be moved.

The Honourable Dr. B. R. Ambedkar: You cannot deal with a Constitution on technical points. Too many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President: If these are considered to be substantial amendments they will be held over. As there sems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

NEW ARTICLE 289-A

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

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted : —

No person to be inelligible for inclusion in, or to claim to be excluded from the electoral roll on grounds of religion, race, caste or sec.	289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion, race, caste, sex or any of them."

*CAD, Vol. VIII, 16th June 1949, p. 930.

†*Ibid.,* pp. 930-31.

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms State and that is the reason why I have brought forward this amendament.

Mr. President: Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed ?

The Honourable Dr. B. R. Ambedkar : No, Sir, not like mat. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B, I move :

"That for amendment No. 3087 of the List of Amendments, the following be substituted :—

"That after article 289-A, the following new article be inserted :—

Elections to the House of the People and to the Legislative Assemblies of states to be on the basis of adult suffrage.

289-B. The elections to the House of the People and to the Legislative assembly of every State shall be on the basis of adult suffrage, that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.'"

[Amendment was adopted. Article 289-B was added to the Constitution.]

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ARTICLE 290

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

"That for article 290, the following article be substituted :—

Power of Parliament to make provisions with respect to elections to Legislatures.

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make Provisions with respect to ail matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

*CAD, Vol. VIII, 16th June 1949, p. 932.

Sir, with your permission I would also like to move the other amendment which amends this. I move :

"That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

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***Mr. President:** I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

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

[Abovementioned amendments of Dr. Ambedkar were adopted. Article 290, as amended was added to the Constitution.]

ARTICLE 291

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

"That for article 291, the following article be substituted :—

Power of Legislature of a State to make provisions with respect to election to such Legislature.	291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due Constitution of such House or Houses."

Sir, with you permission I move also amendment No. 211 of List VI Fifth week.

The amendment runs thus :

"That with reference to amendment No. 128 of List I (Fifth Week) in the new article 291., after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

* * * * *

‡**The Honourable Dr. B. R. Ambedkar :** I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which

*CAD, Vol. VIII, 16th June 1949, p. 933.

†*Ibid.,* p. 934.

‡*Ibid.,* p. 935.

Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

Shri A. Thanu Pillai (Travancore State)**:** When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does ?

The Honourable Dr. B. R. Ambedkar : Primarily it shall be the duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290, In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall not be excluded from making any .provision which Parliament has failed to make with regard to any matter included in 290.

Shri A. Thannu Pillai: May I know from Dr. Ambedkar whether it would not be better for either the central Legislature or the Local Legislature to be charged with full responsibility in this matter so that elections may go on according to the time schedule ?

The Honourable Dr. B. R. Ambedkar : I do not-agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

[Amendments of Dr. Ambedkar were adopted. Article 291 as amended was added to the Constitution.]

ARTICLE 291—A

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

"That after article 291, the following new article be inserted :—

Bar to jurisdiction of courts in electoral matters.

Bar to jurisdiction of courts in electoral matters.

291 -A. Notwithstanding anything contained in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either I louse of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition

*CAD, Vol. VIII, 16th June 1949, p. 936.

presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;

(c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceedings relating to or in connection with any such election at any stage of such election."

Sir, I also move :

"That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted."

[Article 291-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]

* * * * *

ARTICLE 297

***Shri H. V. Kamath :** Mr. President, Sir, I move :

"That in clause (2) of article 297, for the words 'if such members are found qualified for appointment on merit as compared with the members of other communities', the words 'provided that such appointment is made on ground only of merit as compared with the members of other communities' be substituted."

I think, Sir, that this is an amendment more or less of a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

The Honourable Dr. B. R. Ambedkar : I do not see that it is of a drafting nature. However we shall consider it later on.

[Article 297 was added to the Constitution]

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ARTICLE 300

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

"That with reference to amendment No. 3186 of the List of Amendments clause (1) of article 300 after the word and figure 'Part I' the words and figure 'Part III' be inserted."

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

The Honourable Dr. B. R. Ambedkar : No. Sir.

[Dr. Ambedkar's above amendment was adopted. Article 300, as amended, was added to the Constitution.]

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ARTICLE 301

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

"That in clause (3) of article 301 for the word 'Parliament' the words 'each House of Parliament' be substituted."

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*CAD, Vol. VIII, 16th June 1949, p. 937

†*Ibid.,* p. 942.

‡*Ibid., p.* 943.

#*Ibid.,* p. 945.

[Article 301, as amended by Dr. Ambedkar's amendment was added to the Constitution]

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***Mr. President:** You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor: My submission were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a meeting.

The Honourable Dr. B. R. Ambedkar: The wording is "at a joint meeting" and not "silting".

Shri Jaspat Roy Kapoor: It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently....

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ARTICLE 289

†**Mr. President:** I will first put the amendment which Dr. Ambedkar has moved last.

The question is :

"That in amendment No. 99 of List I in the proposed article 289—

(i) in clause (1) the words 'to be appointed by the President' occurring at the end be deleted.

(ii) for clause (2), the following clauses be substituted :—

'(2) The election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, us the President may from time to time fix and die appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

'(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.'

(iii) in clause (4), before the words "The conditions of service' the words 'subject to the provisions of any law made by Parliament' be inserted."

The amendment was adopted.

[Six amendments by other members were negatived.]

[Article 289, as amended was added to the Constitution]

[The Assembly was adjourned until a date in July 1949 to be fixed by the President.]

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*CAD, Vol. VIII, 16th June 1949, p. 952.

†*Ibid.,* p. 958.

SECTION SIX

Clausewise Discussion

30th July 1949 to 16th September 1949

NEW ARTICLE 79-A

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

> That in amendment No. 1 of List I (First Week) of Amendments to Amendments,' for the proposal new article 79-A, the following be substituted :—
>
> Secretariat of Parliament "79-A. (I) Each House of Parliament shall have a separate Secretarial Staff:
>
> Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.
>
> (2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.
>
> (3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision, ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President, the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far,

* CAD, Vol. IX, 30th July 1949, pp. 2-3.

therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, if was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative Department being apppointed to act as the secretary of the Legislative Assembly, with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made *pro tempore* by the President in consultation with the Speaker of the House of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

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***The Honourable Dr. B. R. Ambedkar :** Sir, nothing that has been said, in my judgment, calls for a reply.

*CAD, Vol. IX, 30th July 1949, p. 9.

[All the 8 amendments were negatived. The motion of Dr. Ambedkar as shown above was adopted.]

New article 79-A was added to the constitution.

ARTICLE 104

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

That for article 104, the following article he substituted :—

Salaries etc of Judges

"104. There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word "privileges" has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

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†**Shri R. K. Sidhva :** .....Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because thai complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

‡**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-president, Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Pandit Kunzru, and I tliink there are two valid objections which could be presented to the House for rejecting his amendment. In the

* CAD, Vol. IX, dated 30th July 1949, p. 10

†*Ibid.,* p. 12.

‡*Ibid.,* pp. 12-13.

first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accured to him and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter. I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view, his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled in pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court judge if he is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The amendment, therefore, is premature. If the House accepts the proposition for which my honourable Friend, Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhwa: The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar : We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

[The amendment of Pandit Kunzru was negatived and the motion moved by Dr. Ambedkar as shown before was accepted. Article 104, as amended was added to the Constitution.]

NEW ARTICLE 148-A

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

That after article 148, the following new article be inserted :—

Abolition or creation of Legislative Councils to States

"148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

As honourable members will see, this new article 148A provides for two contingencies : (i) for the abolition of the Second Chamber in those province which will have a Second Chamber at the commencement of the Constitution and (ii) for the creation of a Legislative Council in a province which at the commencement of the Constitution has decided not to have a Legislative Council but may subsequently decide to have one.

The provision of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of

* CAD, Vol. IX, dated 30th July 1949, pp. 13-14.

the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

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***The Honourable Dr. B. R. Ambedkar :** I do not think any reply is called for.

Mr. President : I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

[3 Amendments were negatived, one was withdrawn and the motion of Dr. Ambedkar as mentioned above was adopted New article 148A was added to the Constitution.]

ARTICLE 150

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

That for article 150. the following be substituted :—

Composition of the Legislative Councils.

"150 (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed

twenty-five per cent of the total number of members in the Assembly of the State : Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

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

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

* CAD, Vol. IX, dated 30th July 1949, p. 20

†*Ibid.,* pp. 21-22.

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

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

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

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

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

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

There is one other point about the article and that is this. The new amendment lays down that the strengthf of the Council shall not exceed one-fourth or 25 per cent of the total number of members in the lower

House. It also lays down further in a proviso, "Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance, we have adopted article 148……

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

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

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

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

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

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***Mr. Naziruddin Ahmad** (West Bengal : Muslim) **:** ...This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

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

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

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

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†**The Honourable Dr. B. R. Ambedkar :** Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe, if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my

* CAD, Vol. IX, dated 30th July 1949, p. 27.

†*Ibid.,* pp. 35-37.