

Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority of the Lower House. That I think, completely disposes of the first point of comment raised by my honourable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honourable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why should you leave it to Parliament ? How can it be left to Parliament ? I think the answer that I can give to him, at any rate, so far as I am concerned, is quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition, of the Upper House in the Constitution itself. If my honourable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated from all

blame that might be attached to it by reason of not having made any effort to solve this difficulty ; they did try, but they did not succeed. My honourable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

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

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

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

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honourable Dr. B. R. Ambedkar : Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot

see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with the various provincial Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via media* which might be put into law. Therefore, in putting forth this proposal, I think, we are not making any very serious departure from the principles we have already adopted and as my honourable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

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

Shri Brajeshwar Prasad : I beg to second this proposal.

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

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

Honourable Members : Yes.

NEW ARTICLE 163-A

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

“That in amendment No. 12 of List 1 (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted :—

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

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

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

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make

* CAD, Vol. IX, dated 30th July 1949, p. 37.

†*Ibid.*, n. 37.

rules regulating the recruitment and the conditions of service of persons appointed to the secretariat staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.”

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

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***Shri H. V. Kamath :** Mr. President, Sir.....In articles 79-A and 148-A, points of substance were made out by various amendments by my honourable Friend, Prof. Shibban Lai Saksena and myself. But when his turn came, Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honourable Dr. B. R. Ambedkar : I said no reply was called for.

Shri H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the fore-knowledge of the fact that when he says, ‘yes’ he will carry the House with him. It is of course upto him to decide what he will reply to and what he will not. But, the House is entitled to hear his view. If he is too tired, too fatigued, he may ask one of his wise colleagues.....

The Honourable Dr. B. R. Ambedkar : Who is to determine whether the points are points of substance? If the President gave a ruling that the point is one of substance, I should certainly reply. I cannot leave the matter to be determined by Mr. Kamath himself.

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‡**Mr. President :** Does any Member wish to say anything?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything?

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

Mr. President : I will then put the amendments to vote.

[All 8 amendments were negatived. Article 163-A as moved by Dr. Ambedkar was put to vote and adopted. New Article 163-A was added to the Constitution.]

ARTICLE 175

‡**Mr. President :** Shall we take up 172 now?

* CAD, Vol. IX, dated 30th July 1949, p. 38.

†*Ibid.*, p. 40.

‡*Ibid.*, pp. 41-42.

The Honourable Dr. B. R. Ambedkar : We shall keep it back for the moment.

Mr. President : Shall we take up No. 175 ?

The Honourable Dr. B. R. Ambedkar : Yes.

Shri H. V. Kamath : What about 127-A ?

Mr. President : That will come up along with 210.

Let us take up new 175. There are some amendmednts to it.

(Amendments Nos. 16 and 17 were not moved.)

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

“That for the proviso to article 175 the following proviso he substituted :—

‘Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.’”

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion therefore the new proviso deletes the word ‘in his discretion’. Similarly it is felt that this right to return the Bill should not be extended to a money Bill and consequently the words ‘if it is not a money Bill’ are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be made use of in all cases even where the Legislature of a province is bicameral.

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one, and I hope the House will accept it.

* CAD, Vol. IX, 30th July 1949. pp. 41-42.

Mr. President: I have notice of some amendments which are printed in the Supplementary List. Does any Member wish to move any of the amendments? They are in the names of Shri Satish Chandra, Shri B. M. Gupte and Prof. Shibban Lal Saksena.

(The amendments were not moved.)

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***Mr. President:** We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175....

Shri T. T. Krishnamachari (Madras : General) : Sir, may I submit that that article has very little to do with article 172. ...I suggest that article 175 be considered apart from 172.

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

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

Mr. President: Do you have any objection?

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

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

ARTICLE 172

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

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

Restriction of powers of Legislative Council us to Bill other than Money Bills.	‘172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—
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(a) the Bill is rejected by the Council; or

(b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

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

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

* CAD, Vol. IX, 1st August 1949, p. 43.

†*Ibid.*, pp. 43-44.

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree ; the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

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

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

Sir, I move.

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***Pandit Hirday Nath Kunzru :** ...I think considering the changes that have been made by the Drafting Committee itself from time to time there is no principle on which it is proceeding. My honourable Friend Dr. Ambedkar says there is a very good principle.

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

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

* CAD, Vol. IX, date 1st August 1949, p. 52.

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

Pandit Hirday Nath Kunzru : He admits it is a question of expediency and practicality....

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

Now, I come to the general points that have been raised. It seems to me in discussing this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys ? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey,

* CAD, Vol. IX, dated 30th July 1949, pp. 57-59.

both going and coming back ? The third question is, how is the period within which the Council is to act to be reckoned. To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point ? So far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

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

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

legitimate activity of a Second Chamber. In the second case, we felt that when the Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey, was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

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

new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

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

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

Mr. President : The question is :

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

The amendment was adopted.

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

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ARTICLE 176

***Mr. President :** Then we go to article 176.

The Honourable Dr. B. R. Ambedkar : I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President : I do not think there is much in article 176. We can take up now. There is hardly any amendment....

[Now there is no amendment to this article 176. Article 176 was adopted and added to the Constitution.]

ARTICLE 83-A

†Mr. President : Shall we go back now to article 83?

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

“That after article 83 the following new article be inserted :—

Decision on question as to disqualify canons of members.	‘83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President his decision shall be final.
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* CAD, Vol. IX, dated 1st August 1949. p. 62

†*Ibid.*, p. 62.

(2) Before giving any decision on any such question, the President shall obtain opinion of the Election Commission and shall act according to such opinion.”

This article is a replica, so to say, of article 167-A which we passed the other day which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.

[The New Article 83-A was adopted and added to the Constitution]

ARTICLE 127-A

***Mr. President :** I think we had better take up articles 210 and 211. Thereafter we shall come to article 127-A.

Shri T. T. Krishnamachari : Either way it does not matter because if this is accepted then article 210 and 211 get automatically dropped.

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

“That after article 127, the following new article be inserted:—

‘127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State.	to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State.”
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The House will remember, it has now adopted articles whereby the auditing and accounting will become one single institution, so to say, under the authority of the Comptroller and Auditor-General. It is, therefore, necessary that we should make some provision that the reports relating to the audit and accounts of a particular State shall be submitted to the Legislature by the Governor or the Ruler for its consideration and that is what this article provides for.

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

Honourable Members : No.

New article 127-A was added to the Constitution

ARTICLE 197

†Mr. President : Shall we take up article 212 ?

Shri T. T. Krishnamachari : Article 188 may be taken up ; it has got to be deleted.

The Honourable Dr. B. R. Ambedkar : I was suggesting that articles 188 and 278 may be taken together. It would be better if the whole thing is explained.

Mr. President : Then, we shall taken up article 197.

* CAD, Vol. IX, dated 1st August 1949, p. 63.

†*Ibid.*, p. 64.

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

“That for article 197, the following article be substituted:—

‘197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

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

Provided that neither 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.”

This section corresponds to the other article which related to the Supreme Court Judges.

Mr. President : There is an amendment by Pandit Kunzru.

[Amendments 20, 21 and 22 of List I (Second Week) were not moved.]

Mr. President : There is no amendment moved to this. I shall put to vote the article as moved by Dr. Ambedkar today.

The motion was adopted.

Article 197 as amended was added to the Constitution.

ARTICLE 212 to 214

***Mr. President :** Shall we take up article 212 ?

The Honourable Dr. B. R. Ambedkar : Sir, I would like articles 212 to 214 to be held over. I think article 275 may be taken up.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, article 212 to 214 are sought to be held over. I think the House would like to have an explanation as to why they are being held over.

The Honourable Dr. B. R. Ambedkar : The explanation is this : that we are having the prospect of some of the Settlements coming over to India like Chandernagore and other places. We have to make some provision for them, and this might be the appropriate place where provision for them might be made. It has been just suggested that it is felt that it might be more properly incorporated and so on, Consequently, we want some time to consider that question. Perhaps, we might be in a position to take up these articles even today.

Mr. President : Then, we may take up article 188, and in that connection, the other emergency provisions.

The Honourable Dr. B. R. Ambedkar : We might also take up article 275 which is also an emergency provision.

* CAD, Vol. IX, dated 1st August 1949, p. 65.

Mr. President : Let us take up article 275.

Mr. Naziruddin Ahmad : May I rise on a point of order, Sir ?

It is very inconvenient for some members to follow the procedure which is being adopted in the House. We have in the agenda paper today some articles which are set down *seriatim*. It was understood on the last occasion that articles will be taken up in the order laid down in the Order Paper. I do not wish to raise any technical objection ; but the difficulty is that Members have got to come prepared to intelligently take part in the debate. Instead of following a regular procedure even after the recess we had, the House is expected to jump from one article to another backwards and forwards. I submit this is causing some amount of inconvenience and I submit that the House should be asked to proceed in some regular order. Otherwise, there would be no intelligent debate.

Mr. President : I am inclined to agree with Mr. Naziruddin Ahmad that it is inconvenient to Members to jump from article 211 to 275.

The Honourable Dr. B. R. Ambedkar : I am prepared to take up article 212 and go on.

Mr. President : I think that is much better. If anything happens, we can provide for that later on regarding Chandernagore. Let us take up article 212.

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

“That with reference to amendment No. 2713 of the List of Amendments, clause

(2) of article 212 be omitted.”

The reason why this amendment is being moved is because all provisions with regard to the States specified in Part III are being made separately in a separate Schedule. Consequently it is unnecessary to retain clause (2) here.

I also move :

“That in clause (1) and the proviso to clause (1) of article 212. for the words ‘Governor or Ruler’, wherever they occur, the expression ‘Government’ be substituted.”

Mr. President: We have quite a number of amendments to this article of which notice has been given. I shall take them one by one.

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[After discussion on various amendments Article 212 as amended by Dr. Ambedkar’s amendment was adopted and added to the Constitution.]

ARTICLE 213

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

“That with reference to amendment No. 2722 of the List of Amendments, for article 213, the following article be substituted :—

‘213. (1) Notwithstanding anything contained in this Constitution Parliament may by law create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant Governor—
Creation or continuance of local Legislatures or Council of Advisers or Ministers.

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State ; or

(b) a council of advisers or ministers or both with such constitution, powers and functions in each case, as may be specified in the law.

(2) Any law referred to in clause (1) of this article shall not be deemed to be an amendment of this Constitution for the purposes of article 304 thereof notwithstanding that it contains any provision which amends or has the effect of amending the Constitution.”

Sir, the principal change sought to be effected by this amendment is this. In the original Draft the power of creating a body, whether nominated or elected, for purposes of representation and a Council of Advisers or Ministers was a matter which was left to the President. The new Draft gives the power to Parliament and not to the President. That is the only substantial change which has been effected by this new article. Otherwise the provision remains the same.

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†**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, with regard to the amendment moved by my Friend Lala Deshbandhu Gupta, I am quite certain that this is not the place where the amendment properly come in. The amendment also raises a question of principle, namely, that it provides for a weightage in representation to certain areas. Now, the House will remember that at one stage, this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. However, I might say that by reason of article 67 where certain principles of representation are laid down, it might be possible that if some territories of India are unable to obtain even a single representative by reason of the rule, we will have to make some special provision. We cannot allow by reason of a mathematical rule to deprive any territory of representation in the State. In that connection, this matter

* CAD, Vol. IX, dated 1st August 1949, p. 73.

†*Ibid.*, dated 2nd August 1949, pp. 100-01.

may have to be considered, and I can say at this stage that when such areas are brought into existence, and the Drafting Committee is called upon to make some provisions with regard to their representation, then the whole matter might be examined and a fresh article, something after article 67, say article 67-A, might be incorporated. Beyond that, I cannot at this stage, say anything more.

Mr. President : I will put the amendment to vote now.

[Article 213, as amended by Prof. Shibban Lal Saksena's amendment was adopted and added to the Constitution.]

ARTICLE 213-A

***Mr. President :** Then we go to article 213-A.

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

"That after article 213, the following new article be inserted:—

'213 (1) Parliament may by law constitute a High Court for a State for the time being specified in Part II of the First High Courts for states in Scheduled or declare any Court in such State Part II of the First Schedule. to be a High Court for the purposes of this Constitution.

(2) The Provisions of Chapter VII of Part VI of this Constitution shall apply in relation to every High Court referred to in clause (1) of this article as they apply in relation to a High Court referred to in article 191 of this Constitution subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State for the time being specified in Part II of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State for the time being specified in Part I or Part III of the First Schedule to, or from, any State for the time being specified in Part II of that Schedule or any area included within that State."

Sir, it will be remembered that when the House discussed the constitution of States in Part I, it was decided that every State should have a High Court. States in Part II are also States ; consequently the provision which applies to States in Part I, namely, that each State should have an independent High Court, must also apply to States in Part II. Unfortunately, this provision had not been made in the Draft as it stands now. Consequently it has become necessary to introduce this article 213-A in order to provide that even in States included in

* CAD, Vol. IX, dated 2nd August 1949, p. 102.

Part II there shall be a High Court, or if there is a High Court that High Court shall be treated as a High Court. Provision is also made in clause (8) of this article that if there is no High Court and if it is not possible to create a High Court exclusively for any particular area included in States in Part II, it will be open for Parliament to declare that a certain other Court situated in any adjacent area may be treated as a High Court for purposes of that particular area. That is the purpose of this article.

Mr. President: There is no amendment to this article. Does anyone wish to say anything on it ? Then I shall put it to vote.

The question is :

“That new article 213-A stand part of the Constitution.”

The motion was adopted.

Article 213-A. was added to the Constitution.

ARTICLE 214

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***Mr. President :** Then we will take up amendment No. 52 standing in the name of Dr. Ambedkar.

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

“That with reference to amendment No. 2728 of the List of Amendments, for article 214, the following article be substituted :—

‘214. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order, continue unchanged.”

There is nothing new in this article except that the two parts in this are separate while they were lumped together in the original article.

(Article 214, was added to the Constitution)

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ARTICLE 275

†Mr. President : Then we go to article 275. Amendment No. 111. Dr. Ambedkar.

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

“That for article 275, the following article be substituted :—

‘275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

Proclamation of
Emergency.

* CAD, Vol. IX, dated 2nd August 1949, p. 103.

†*Ibid.*, pp. 103-04.

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as 'a Proclamation of Emergency')—

(a) may be revoked by a subsequent Proclamation ;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were "war or domestic violence". The present clause as amended would read as "war or external aggression, or internal disturbance." It was thought that it was much better to use these words rather than the word "domestic violence" because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (c) of clause (2). Originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual

occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

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***Shri T. T. Krishnamachari :** ...Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to put the provision in this Constitution, but at the same time we would be failing in our duty if we do not put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people were in this House and elsewhere will understand that these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution. Sir, I support the amendment moved by the Honourable Dr. Ambedkar.

Shri H. V. Kamath : May I tell my honourable Friend, Mr. T. T. Krishnamachari that the point T made out with reference to article 48 of the Weimer Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President : Dr. Ambedkar may like to speak.

The Honourable Dr. B. R. Ambedkar : I do not know ; so much time has been taken up in the debate. If the Members who have taken part in the debate desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President : I think that Mr. T. T. Krishnamachari has dealt with all the points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava : We do not require any other reply.

Mr. President : I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I cannot certainly prevent you from doing so. Would you take much time to reply ?

The Honourable Dr. B. R. Ambedkar : I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

* CAD, Vol. IX, dated 2nd August 1949, pp. 125-26.

Prof. Shibban Lal Saksena: Let us hear him tomorrow. In any case we want to hear him.

Mr. President : I am only thinking of the time. I do not think any reply is particularly called for. I will put the amendments to vote now.

[All the 4 amendments were negatived and the Article 276 as moved by Dr. Ambedkar was adopted and added to the Constitution.]

ARTICLE 276

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***Mr. Naziruddin Ahmad** (West Bengal : Muslim) : May I point out that 3003 is a drafting amendment ? It merely transposes a few words from one place to another.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : If that is so, I agree.

(Amendments Nos. 3004 and 3005 were not moved.)

Mr. President : No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

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

“That in article 276, the words ‘notwithstanding anything contained in this Constitution’ after the word ‘then’ he deleted and the words ‘notwithstanding anything contained in this Constitution’ be inserted at the beginning of clause (a) of the same article.”

I also move:

“That in clause (b) of article 276, the words ‘notwithstanding that it is one which is not enumerated in the Union List’ be added at the end”.

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President : There is no other amendment.

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†**Shri T. T. Krishnamachari** (Madras : General) : Mr. President, Sir, I am afraid .if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar’s amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The tiling has been clarified, in terms of the language used in the Government of India Act, section 126A. If he will read the section once again, he will find that there is no objection to the inclusion of these words in this article.

* CAD, Vol. IX, date 3rd August 1949, p 129

†*Ibid.*, p. 130.

Mr. President : You do not wish to say anything. Dr. Ambedkar ?
The Honourable Dr. B. R. Ambedkar : No Sir. It is not necessary for me to say anything.

Mr. President : Then I will put the amendments to vote now.

[Dr. Ambedkar's amendment was adopted. Article 276, as amended was added to the Constitution.]

ARTICLES 188, 277-A, 278 AND 278-A

***Mr. President :** Then we come to article 277.

The Honourable Dr. B. R. Ambedkar : I would like to hold article 277 back, for the present.

Mr. President : Shall we then take up article 277-A ? Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar : Sir, I think it would be better if the three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting purposes. But for discussion, I think they might be taken together.

Mr. President : Articles 188, 278 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

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

“That article 188 be deleted.”

Sir, I move:

“That after article 277, the following new article be inserted :—

Duty of the Union to protect state against external aggression and internal disturbance.	‘277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.’
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And then, Sir, I move amendment No. 160 of List II, which reads as follows:

“That for article 278, the following articles be substituted :—

Provisions in case of failure Constitutional machinery in State.	278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—
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(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or

*CAD, Vol. IX, dated 3rd August 1949, pp. 130-35.

Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State ;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in “whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament Proclamation shall unless revoked continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years ;

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said Period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

“278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India ;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State.”

Shri H. V. Kamath (C.P. and Berar : General) : Article 188 also ?

The Honourable Dr. B. R. Ambedkar : I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the Province feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted.

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation, which the Constitution imposes upon the Centre. The invasion must not be an invasion which