(The amendment was negatived.)

Mr. President : Then No. 7.

Shri T. T. Krishnamachari : Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then Dr. Ambedkar will not be able to accept a portion of it.

The Honourable Dr. B. R. Ambedkar : Mine are independent amendments.

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***Mr. President :** ...I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

[Six amendments were rejected.]

[Following amendments were adopted.]

"That in clause *(1)* of article 15A, after the word 'consult' the words 'and be defended by' be inserted."

"That in clause *(3)* of article 15A for the words "Nothing in this article' the words, brackets and figures 'Nothing in clauses *(1)* and *(2)* of the article' be substituted."

"That after clause *(3)* of article 15A, the following clauses be inserted —

'*(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article the authority making an order shall as soon as may be communicated to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3b) Nothing in clause *(3a)* of this article shall require the authority making any order under sub-clause *(b)* of clause *(3)* of this article to disclose the facts which such authority considers to be against the public interest to disclose.' "

"That at the end of clause *94)* of article 15A, the following be added : —

'and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause *(a)* of the proviso to clause *(3)* of this article.' "

Article 15 A, as amended, was added to the Constitution.

Mr. President : I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

ARTICLE 209A

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

"That after article 209, between Chapters VII and IX of Part VI the following be inserted : —

*CAD, Vol. IX, 16th September 1949, p. 1570.

†*Ibid.,* pp. 1570-1571.

"CHAPTER VIII

SUBORDINATE COURTS

Appointment of District Judges

209A. *(1)* Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the state in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of other than district judges to the Judicial service.

209B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

Control over sub-ordinate Courts

209C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person, the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209D. *(1)* In this chapter—

Interpretation

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service " means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts interior to the post of district judge.

Application of the provisions of this Chapter to certain classes of Magistrates.

209F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.' "

Sir, the object of these provisions is two-fold; first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained

in article 209A, 209B and 209C is with regard to the magistracy, which is dealt with in article 209E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Execution will be accepted by the other provinces so that the provisions of article 209E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the execution. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are marely continuing the same in the present draft.

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***Shri R. K. Sidhva** (C. P. & Berar : General) **:** Sir, could you kindly call me again ? I had been out on some office business when my name was called; but I have to move an amendment which is important.

The Honourable Dr. B. R. Ambedkar : Absence cannot be an execuse.

Mr. President : I am afraid it is too late now.

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†The Honourable Dr. B. R. Ambedkar : With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

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*CAD, Vol. IX, 16th September 1949, p. 1575.

†*Ibid.,* pp. 1578-1579

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgement a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209C to the High Court ? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this : whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.