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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 1st June 1949

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

DRAFT CONSTITUTION—*Contd.*

Article 137

Mr. President : We begin with article 137 today. There is an amendment to this of which notice has been given by Mr. Brajeshwar Prasad, but that is a negative one.

(Amendment No. 2111 was not moved.)

Shri T. T. Krishnamachari (Madras: General) : This article cannot be moved in view of the decision that has been made earlier.

Shri Brajeshwar Prasad (Bihar: General) : It must be put to the vote of the House.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): It may be put to the vote.

Mr. President : None of the other amendments is going to be moved, I take it. Now, the question is:

"That article 137 stand part of the Constitution."

The motion was negatived.

Article 137 was deleted from the Constitution.

Article 138

Shri T. T. Krishnamachari : Sir, may I suggest that the alternative might be formulated, because the original article has no place in view of the change that has already been made?

Shri Brajeshwar Prasad : Sir, I move:

"That for article 138, the following be substituted :—

'The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.' "

I move this amendment without making any comments. It does not need any.

(Amendment Nos. 2132, 2134 and No. 169 of List III were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

"That in article 138, for the word 'Chapter' the word 'Constitution' be substituted."

[Mr. Mohd. Tahir]

I think, Sir, that the word "Constitution" is more appropriate and comprehensive. If my friends accept it, it may be used instead of the word "Chapter".

Mr. President : The question is:

"That for article 138, the following be substituted :—

'The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.' "

The amendment was adopted.

Mr. President : The question is:

"That in article 138, for the word 'Chapter' the word 'Constitution' be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That article 138, stand part of the Constitution."

The motion was adopted.

Article 138, as amended, was added to the Constitution.

Articles 139 and 140

Mr. President : These will have to be dropped as being inconsistent with the decision already taken, but I am told that it is necessary to formally put them to the vote.

The question is:

"That article 139 stand part of the Constitution."

The motion was negatived.

Article 139 was deleted from the Constitution.

Mr. President : The question is:

"That article 140 stand part of the Constitution."

The motion was negatived.

Article 140 was deleted from the Constitution.

Article 141

Mr. President : As regards this article, there are one or two amendments. There is amendment No. 2148 and to that there is an amendment No. 170 in List III by Pandit Thakur Das Bhargava.

(Amendment Nos. 2148, No. 170 in List III, and Nos. 2149 to 2152 were not moved.)

Mr. President : The question is:

"That article 141 stand part of the Constitution."

The motion was adopted.

Article 141 was added to the Constitution.

Article 142

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2153 and in substitution of same, I move Amendment No. 184 (Third week—List IV):

"That for article 142, the following be substituted :—

'142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.' "

Sir, this will simplify the wording of the article as it stands and also eliminate clause (b) which raises complications, as it refers to certain aspects of this Draft Constitution about which we have not made any decision for the time being, because it refers to States in Part III of the First Schedule and a decision will have to be taken later when the position of States in Part III of this Schedule is precisely defined. Therefore, Sir, this amendment is necessary and I hope the House will accept it.

(Amendment No. 2154 was not moved.)

Mr. President : The question is:

"That for article 142, the following be substituted :—

'142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.' "

The amendment was adopted.

Mr. President : The question is:

"That article 142, as amended, stand part of the Constitution."

The motion was adopted.

Article 142, as amended, was added to the Constitution."

Article 143

(Amendment Nos. 2155 and 2156 were not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, I move:

"That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion' be deleted."

If this amendment were accepted by the House, this clause of article 143 would read thus :—

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise *vis-a-vis* his ministers, than has been given to the President in relation to his ministers. If we turn to article 61 (1), we find it reads as follows :—

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that

[Shri H. V. Kamath]

even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to vest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

Prof. K. T. Shah (Bihar: General) : Mr. President, I beg to move:

"That in clause (1) of article 143, after the word 'head' a comma be placed and the words 'who shall be responsible to the Governor and shall' be inserted and the word 'to' be deleted."

So, that the amended article would read:

> "(1) There shall be a Council of Ministers with the Chief Minister at the head, who shall be responsible to the Governor and shall aid and advise the Governor in the exercise of his functions .....etc."

Sir, this is a logical consequence of the general principle of this Draft Constitution, namely, that the Government is to be upon the collective responsibility of the entire Cabinet to the legislature. At the same time, in the Cabinet the Prime Minister or the Chief Minister or by whatever title he is described would be the Principal Adviser and I would like to fix the responsibility definitely by the Constitution on the Chief Minister, the individual Ministers not being in the same position. Whatever may be the procedure or convention within the Cabinet itself, however the decisions of the Cabinet may be taken, so far as the Governor is concerned, I take it that the responsibility would be of the Chief Minister who will advise also about the appointment of his colleagues or their removal if it should be necessary. It is but in the fitness of things that he should be made directly responsible for any advice tendered to the Constitutional head of the State, namely, the Governor. As it is, in my opinion, a clear corallary from the principles we have so far accepted, I hope there would be no objection to this amendment.

(Amendments Nos. 2159 to 2163 were not moved.)

Mr. President : There is no other amendment. The article and the amendments are open to discussion.

Shri T. T. Krishnamachari : Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of the article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appro-

priate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. If it is to be given in article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception of article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point I would like to draw the attention of the House to and I think the article and better be passed as it is.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Mr. T. T. Krishnamachari has clarified the position with regard to this exception which has been added to clause (1) of article 143. If the Governor is, in fact, going to have a discretionary power, then it is necessary that this clause which Mr. Kamath seeks to omit must remain.

Sir, besides this, I do not know if the Drafting Committee has deliberately omitted or they are going to provide it at a later stage, and I would like to ask Dr. Ambedkar whether it is not necessary to provide for the Governor to preside at the meetings of the Council of Ministers. I do not find any provision here to this effect. Since this article 143 is a mere reproduction of section 50 of the Government of India Act, 1935, where this provision does exist that the Governor in his discretion may preside at the meetings of the Council of Ministers, I think this power is very necessary. Otherwise, the Ministers may exclude the Governor from any meetings whatever and this power unless specifically provided for, would not be available to the Governor. I would like to draw the attention of the members of the Drafting Committee to this and to see if it is possible either to accept an amendment to article 143 by leaving it over or by making this provision in some other part. I think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

Shri Brajeshwar Prasad : Mr. President, Sir, the article provides—

"That there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

Sir, I am not a constitutional lawyer but I feel that by the Provisions of this article the Governor is not bound to act according to the advice tendered to him by his Council of Ministers. It only means that the Ministers have the right so tender advice to Governor. The Governor is quite free to accept or to reject the advice so tendered. In another sphere of administration the Governor can act in the exercise of his functions in his discretion. In this

[Shri Brajeshwar Prasad]

sphere the Minister has not got the power to tender any advice. Of course it is left open to the Governor to seek the advice of the Ministers even in this sphere.

I feel that we have not taken into account the present facts of the situation. We have tried to copy and imitate the constitutions of the different countries of the world. The necessity of the hour requires that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgment. I feel that the Governor should be vested with the power of special responsibilities which the Governor under the British regime were vested in this country. I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on in the various provinces. Unless the Governor is vested with large powers it will be difficult to effect any improvement in the Provincial administration. Such a procedure may be undemocratic but such a procedure will be perfectly right in the interest of the country. I cannot allow democracy to jeopardize the vital interests of the country. I feel there is no creative energy left in the middle class intelligentsia of this country. They seem to have become bereft of initiative and enterprise. The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands. I feel that we are on the threshold of a revolution in this country. There will be revolution, bloodshed and anarchy in this country. I feel that at this juncture it is necessary that all powers should remain centralised in the hands of the Government of India. In certain provinces the machinery of law and order seems to have completely broken down. Dacoities, arson, loot, murder and inflationary conditions are rampant. I am opposed to this article, because I am convinced that federalism cannot succeed in a country which is passing through a transitory period. The national economy of America is fully developed. It can afford to have a federal form of Government. In a country where there is no room for expansion and for economic development, there is no necessity for a centralised economy. In India when our agriculture, industry, minerals etc. are in an incipient stage of development, it is necessary that power must be vested in the hands of the Government of India. Federalism was in vogue in the 19th century when the means of communications were undeveloped. The technical knowledge and resources at the disposal of Governments in ancient times were of a very meagre character. Today the situation has completely changed. Means of communications have developed rapidly. Technical knowledge and the necessary personal at the disposal of the Government of India are of such a wide character that it can undertake to perform all the functions which a modern Government is expected to perform. There is another reason why I am opposed to this article. In this country there is no scope for federalism. All governments have become more or less unitary in character. If we are to escape political debacles, economic strangulation and military defeats on all fronts, then our leaders and statesmen must learn to think in unorthodox terms: otherwise there is no future for this country.

Pandit Hirday Nath Kunzru : (United Provinces: General): Mr. President, I should like to ask Dr. Ambedkar whether it is necessary to retain after the words "that the Governor will be aided and advised by his Ministers", the words "except in regard to certain matters in respect of which he is to exercise his discretion". Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done? The functions of the Ministers legally will be only to aid and advice the Governor. The article in which these words occur does not lay down

that the Governor shall be guided by the advice of his Ministers but it is expected that in accordance with the Constitutional practice prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

My Friend Mr. T. T. Krishnamachari said that as article 188 of the Constitution empowered the Governor to disregard the advice of his Ministers and to take the administration of the province into his own hands, it was necessary that these words should be retained, *i.e.* the, discretionary power of the Governor should be retained. If however, he assured us, section 188 was deleted later, the wording of article 143 could be reconsidered. I fully understand this position and appreciate it, but I should like the words that have been objected to by my Friend Mr. Kamath to be deleted. I do not personally think that any harm will be done if they are not retained and we can then consider not merely article 188 but also article 175 on their merits; but in spite of the assurance of Mr. Krishnamachari the retention of the words objected to does psychologically create the impression that the House is being asked by the Drafting Committee to commit itself in a way to a principle that it might be found undesirable to accept later on. I shall say nothing with regard to the merits of article 188. I have already briefly expressed my own views regarding it and shall have an opportunity of discussing it fully later when that article is considered by the House. But why should we, to begin with, use a phraseology that it an unpleasant reminder of the old order and that makes us feel that though it may be possible later to reverse any decision that the House may come to know, it may for all practical purposes be regarded as an accomplished fact? I think Sir, for these reasons that it will be better to accept the amendment of my honourable Friend Mr. Kamath, and then to discuss article 175 and 188 on their merits.

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr. Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great Britain and the British Dominions, that the Governor or the Governor-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Minister the duty of informing the Governor of the decisions come to by the Council Ministers in regard to administrative matter and the legislative programme of the government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to say that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I heard very carefully the speech of my honourable Friend, Mr. Krishnamachari, and his arguments for the retention of the words which Mr. Kamath wants to omit. If the Governor were an elected Governor, I could have understood that he should have these discretionary powers. But now we are having nominated Governors who will function during the pleasure of the

[Prof. Shibban Lal Saksena]

President, and I do not think such persons should be given powers which are contemplated in section 188.

Then, if article 188 is yet to be discussed—and it may well be rejected—then it is not proper to give these powers in this article beforehand. If article 188 is passed, then we may reconsider this article and add this clause if it is necessary. We must not anticipate that we shall pass article 188, after all that has been said in the House about the powers of the Governor.

These words are a reminder of the humiliating past. I am afraid that if these words are retained, some Governor may try to imitate the Governors of the past and quote them as precedents, that this is how the Governor on such and such an occasion acted in his discretion. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; and no less a person than the honourable Pandit Govind Ballabh Pant had given notice of the amendment which Mr. Kamath has moved. I think the wisdom of Pandit Pant should be sufficient guarantee that this amendment be accepted. It is just possible that article 188 may not be passed by this House. If there is an emergency, the Premier of the province himself will come forward to request the Governor that an emergency should be declared, and the aid of the Centre should be obtained to meet the emergency. Why should the Governor declare an emergency over the head of the Premier of the Province? We should see that the Premier and the Governor of a Province are not at logger heads on such an occasion. A situation should not be allowed to arise when the Premier says that he must carry on the Government, and yet the Governor declares an emergency over his head and inspite of his protestations. This will make the Premier absolutely impotent. I think a mischievous Governor may even try to create such a situation if he so decides, or if the President wants him to do so in a province when a party opposite to that in power at the Centre is in power. I think article 188, even if it is be retained should be so modified that the emergency should be declared by the Governor on the advice of the Premier of the province. I suggest to Dr. Ambedkar that these words should not find a place in this article, and as a consequential amendment, sub-section (ii) of this article should also be deleted.

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to differ from my honourable radical Friends Mr. Kamath and Prof. Shibban Lal Saksena, and I think the more powers are given to the provinces, the stiffer must be the guardianship and control of the Central in the exercise of those powers. That is my view. We have now given up the old idea of creating autonomous States and are now keeping a reserve of powers in the Centre, and we are going to have nominated Governors. Those Governors are not to be there for nothing. After all, we have to see that the policy of the Centre is carried out. We have to keep the State linked together and the Governor is the Agent or rather he is the agency which will press for and guard the Central policy. In fact, our previous conception has now been changed altogether. The whole body politic of a country is affected and influenced by the policy of the Centre. Take for instance subjects like Defence involving questions of peace or war, of relationship with foreign countries; of our commercial relations, exports and imports. All these are subjects which affect the whole body politic, and the provinces cannot remain unaffected, they cannot be left free of the policy of the Centre. The policy which is evoked in the Centre should be followed by all the States, and if the Governors were to be in the hands of the provincial Ministries then there will be various policies in various provinces and the policy of each province shall be as unstable as the ministry. For there would be ministries of various

types having different party labels and different programmes to follow. Their policies must differ from one another; it will therefore be all the more necessary that there must be coordination of programmes and policies between the State and the Central Government. The Governor being the agency of the Centre is the only guarantee to integrate the various Provinces or States. The Central Government also expresses itself through the provincial States; along with their own administration, they have also to function on behalf of the Central Government. A Governor shall act as the agency of the Centre and will see that the Central policy is sincerely carried out. Therefore the Governor's discretionary powers should not be interfered with. Democratic trends are like a wild beast. Say what you will, democracy goes by the whims and fancies of parties and the masses. There must be some such machinery which will keep this wild beast under control. I do not deprecate democracy. Democracy must have its way. But do not let it degenerate into chaos. Moreover the State governments may not be quite consistent in their own policies. Governments may change after months or years; with them will change their policies. The Governors may change too, but the policy and instructions given by the Centre to the Governors will remain practically unchanged. The more the powers given to the States the more vigilant must be the control. The Governor must remain as the guardian of the Central policy on the one side, and the Constitution on the other. His powers therefore should not be interfered with.

Shri B. M. Gupte (Bombay: General): Sir, I think the explanation given by my honourable Friend Mr. T. T. Krishnamachari should be accepted by the House and the words concerning discretion of the Governor should be allowed to stand till we dispose of articles 175 and 188.

With regard to the suggestion made by the honourable Dr. Deshmukh about the power being given to the Governor to preside over the meetings of the cabinet I have to oppose it. He enquired whether the Drafting Committee intended to make that provision later on. I do not know the intentions of the Drafting Committee for the future but as far as the Draft before us is concerned I think the Drafting Committee has definitely rejected it.

I would invite the attention of the honourable House to article 147 under which the Governor shall be entitled only to information. If we allow him to preside over the meetings of the Cabinet we would be departing from the position we want to give him, namely that of a constitutional head. If he presides over the meeting of the Cabinet he shall have an effective voice in shaping the decisions of the Cabinet in the entire field of administration, even in fields which are not reserved for his discretionary power. If certain powers have to be given to him, our endeavour should be to restrict them as far as possible, so that the Governor's position as a constitutional head may be maintained. Therefore, Sir, I oppose the proposal of Dr. Deshmukh.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143 namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So long as there are article in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

[Shri Alladi Krishnaswami Ayyar]

The only other question is whether first to make a provision in article 143 that the Governor shall act on ministerial responsibility and then to go on providing "Notwithstanding anything contained in article 143.....he can do this" or "Notwithstanding anything contained in article 143 he can act in his discretion." I should think it is a much better method of drafting to provide in article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If off course the House comes to the conclusion that in no case shall the Governor act in his discretion, that he shall in every case act only on ministerial responsibility, then there will be a consequential change in this article. That is, after those articles are considered and passed it will be quite open to the House to delete the latter part of article 143 as being consequential on the decision come to by the House on the later articles. But, as it is, this is perfectly, in order and I do not think any change is warranted in the language of article 143. It will be cumbrous to say at the opening of each article "Notwithstanding anything contained in article 143 the Governor can act on his own responsibility".

Shri H. V. Kamath : Sir, on a point of clarification, Sir, may I know why it is that though emergency powers have been conferred on the President by the Constitution no less than on Governors, perhaps more so, discretionary powers as such have not been vested in the President but only in Governors?

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to oppose the amendment of Mr. Kamath. Under article 143 the Governor shall be aided in the exercise of his functions by a Council of Ministers. It is clear so far. I gave notice of an amendment which appears on the order paper as 142-A which I have not moved. In that amendment I have suggested that the Governor will be bound to accept the advice of his ministers on all matters except those which are under this Constitution required to be exercised by him in his discretion. My submission is that it is wrong to say that the Governor shall be a dummy or an automaton. As a matter of fact according to me the Governor shall exercise very wide powers and very significant powers too. If we look at article 144 it says:

> "The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

So he has the power to appoint his ministers. But when the ministers are not in existence who shall advise him in the discharge of his functions? When he dismisses his ministry then also he will exercise his functions under his own discretion.

Then again, when the Governor calls upon the leader of a party for the choice of ministers, after a previous ministry has been dissolved, in that case there will be no ministry in existence; and who will be there to advise him? Therefore he will be exercising his functions in his discretion. It is wrong to assume that the Governor will not be charged with any functions which he will exercise in his discretion. Articles 175 and 188 are the other articles which give him certain functions which he has to exercise in his discretion.

Under article 144 (4) there is a mention of the Instrument of Instructions which is given in the Fourth Schedule. The last paragraph of it runs thus:

> "The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the state, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religions beliefs and sentiments."

My submission is that according to me the Governor shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitution. He will be a man above party and he will look at the Ministry and government from a detached standpoint. He will be able to influence the ministers and members of the legislature in such a manner that the administration will run smoothly. In fact to say that a person like him is merely a dummy, an automaton or a dignitary without powers is perfectly wrong. It is quite right that so far as our conception of a constitutional governor goes he will have to accept the advice of his ministers in many matters but there are many other matters in which the advice will neither be available nor will he be bound to accept that advice.

Under article 147 the Governor has power for calling for information and part (c) says: This will be the duty of the Chief Minister.

"If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

This is specifically a matter which is of great importance. The Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which one minister might have decided. When he calls for information he will be acting in the exercise of his discretion. He may call for any kind of information. With this power he will be able to control and restrain the ministry from doing irresponsible acts. In my opinion taking the Governor as he is conceived to be under the Constitution he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143.

Shri H. V. Pataskar (Bombay: General): Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised, whether the Governor is to be merely a figure-head, whether he is to be a constitutional head only or whether he is to have discretionary powers. To my mind the question should be looked at from and entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the powers and functions of a Governor. It only says:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor? In my view article 188 is probably necessary and I do not mean to suggest for a moment that the Governor's powers to act in an emergency which powers are given under article 188, should not be there. My point is this, whether if this Provision, *viz*., "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion", is not there, is it going to affect the powers that are going to be given to him to act in his discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer. Mr. Alladi Krishnaswami Ayyer, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say "Notwithstanding anything contained in article 143." In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision in article 188 by saying "notwithstanding anything contained in article 143", it looks so obnoxious to keep these words here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the

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Governor and his functions, by telling them that they shall not give any aid or advice in so far as he, the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtesy and politeness. Therefore I think the question should be considered in that way. The question is not whether we are going to give discretionary powers to the Governors or not. The question is not whether he is to be merely a figure-head or otherwise. These are questions to be debated at their proper time and place. When we are considering article 143 which defines the functions of the Chief Minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite, nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, the position is that under article 41 the executive powers of the Union are vested in the President and these may be exercised by him in accordance with the Constitution and the law. Now, the President of the Union is responsible for the maintenance of law and order and for good Government. The Cabinet of the State is responsible to the people through the majority in the Legislature. Now, what is the link between the President and the State? The link is the Governor. Therefore through the Governor alone the President can discharge his functions for the good Government of the country. In abnormal circumstances it is the Governor who can have recourse to the emergency powers under article 188. Therefore the power to act in his discretion under article 143 *ipso facto* follows and article 188 is necessary and cannot be done away with. Therefore certain emergency powers such as under article 188 are necessary for the Governor to discharge his function of maintaining law and order and to carry on the orderly government of the State.

I wish to say one word more with regard to Professor Shah's amendment that the Minister shall be responsible to the Governor. The Minister has a majority in the legislature and as such, through the majority, he is responsible to the people. If he is responsible to the Governor, as distinguished from his responsibility to the Legislature and through the legislature to the people of the State, then he can be overthrown by the majority in the legislature and he cannot maintain his position. He cannot hold the office. Therefore it is an impossible proposition that a Minister could ever be responsible to the Governor as distinguished from his responsibility to the people through the majority in the legislature. He should therefore be responsible to the Legislature and the people and not to the President. That is the only way in which under the scheme in the Draft Constitution the government of the country can be carried on.

Shri Rohini Kumar Chaudhari : (Assam: General): I rise to speak more in quest of clarification and enlightenment than out of any ambition to make a valuable contribution to this debate.

Sir, one point which largely influenced this House in accepting the article which provided for having nominated Governors was that the Honourable Dr. Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the honourable Dr. Ambedkar now, whether any person who

has the right to act in his discretion can be said to be a mere symbol. I am told that this provision for nominated governorship was made on the model of the British Constitution. I would like to ask Dr. Ambedkar if His Majesty the king of England acts in his discretion in any matter. I am told—I may perhaps be wrong—that His Majesty has no discretion even in the matter of the selection of his bride. That is always done for him by the Prime Minister of England.

Sir, I know to my cost and to the cost of my Province what 'acting by the Governor in the exercise of his discretion' means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers—Mr. Allah Bux. Sir, if in spite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget.

We have always thought that it is better to be governed by the will of the people than to be governed by the will of a single person who nominates the Governor who could act in his discretion. If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork. Furthermore, as the article says, whenever the Governor thinks that he is acting in his discretion nowhere can he be questioned. There may be a dispute between the Ministers and the Governor about the competence of the former to advise the Governor; the Governor's voice would prevail and the voice of the Ministers would count for nothing. Should we in this age countenance such a state of affairs? Should we take more then a minute to dismiss the idea of having a Governor acting in the exercise of his discretion? It may be said that this matter may be considered hereafter. But I feel that when once we agree to this provision, it would not take long for us to realise that we have made a mistake. Why should that be so? Is there any room for doubt in this matter? Is there any room for thinking that anyone in this country, not to speak of the members of the legislature, will ever countenance the idea of giving the power to the Governor nominated by a single person to act in the exercise of his discretion? I would submit, Sir, if my premise is correct, we should not waste a single moment in discarding the provisions which empower the Governor to act in his discretion.

I also find in the last clause of this article that the question as to what advice was given by a Minister should not be enquired into in any court. I only want to make myself clear on this point. There are two functions to be discharged by a Governor. In one case he has to act on the advice of the Ministers and in the other case he has to act in the exercise of his discretion. Will the Ministry be competent to advise the Governor in matters where he can exercise his discretion? If I remember a right, in 1937 when there was a controversy over this matter whether Ministers would be competent to advise the Governor in matters where the Governor could use his discretion, it was understood that Ministers would be competent to advise the Governor in the exercise of his discretion also and if the Governor did not accept their advice, the Ministers were at liberty to say what advice they gave. I do not know that is the intention at present. There may be cases where the Ministers are competent to give advice to the Governor but the Governor does not accept their advice and does something which is unpopular. A Governor who is nominated by the Centre can afford to be unpopular in the province where he is acting as Governor. He may be nervous about public opinion if he serves in his own province but he may not care about the public opinion in a province where he is only acting. Suppose a Governor, instead of acting on the advice of his

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Ministers, acts in a different way. If the Ministers are criticised for anything the Governor does on his own, and the Ministers want to prosecute a party for such criticism, would not the Ministers have the right to say that they advised the Governor to act in a certain way but that the Governor acted in a different way? Why should we not allow the Ministers the liberty to prosecute a paper, a scurrilous paper, a misinformed paper, which indulged in such criticism of the Ministers ? Why should not the Ministers be allowed to say before a court what advice they gave to the Governor ? I would say, Sir—and I may be excused for saying so—that the best that can be said in favour of this article is that it is a close imitation of a similar provision in the Government of India Act, 1935, which many Members of this House said, when it was published, that they would not touch even with a pair of tongs.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the constitution of Canada and the constitution of Australia. I do not think anybody in this house would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

"*Section* 55.—Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to provisions of this Act, either assent thereto in the Queen's name, or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar when the British North America Act was passed?

The Honourable Dr. B. R. Ambedkar : That does not matter at all. The date of the Act does not matter.

Shri H. V. Kamath : Nearly a century ago.

The Honourable Dr. B. R. Ambedkar : This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision. They have not done so. Therefore in reply to Pandit Kunzru I can

very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

Shri Lokanath Misra (Orissa : General): On a point of order, Sir, are we going to have the status of Canada or Australia? Or are, we going to have a Republican Constitution?

The Honourable Dr. B. R. Ambedkar : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgment, necessary. The only question that arises is.....

Pandit Hirday Nath Kunzru : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar : I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned—article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all

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the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H. V. Kamath : Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article?

The Honourable Dr. B. R. Ambedkar : Of course there is because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H. V. Kamath : Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this?

The Honourable Dr. B. R. Ambedkar : I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding westing of the discretionary powers in the Governor.

Shri H. V. Kamath : Why not hold it over?

The Honourable Dr. B. R. Ambedkar : We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

Shri H. V. Kamath : Why go backwards and forwards?

Mr. President : The question is:

"That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 143, after the word 'head' a comma be placed and the words 'who shall be responsible to the Governor and shall' be inserted and the word 'to' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That article 143 stand part of the Constitution."

The motion was adopted.

Article 143 was added to the Constitution.

Article 144

(Amendments Nos. 2164 and 173 to amendment No. 2164 were not moved.)

Mr. President : Amendment No. 2165 stands in the name of Dr. Ambedkar. There are amendments to that also, but that amendment has to be moved before the amendments to the amendment can be moved.

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

"That for clause (1) of article 144, the following be substituted:—

'144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council shall be collectively responsible to the Legislative Assembly of the State.' "

Shri T. T. Krishnamachari : May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (1a) of article 144 by the addition of the words "Of ministers" to the words "The Council" ?

The Honourable Dr. B. R. Ambedkar : That is all right. It will bring it into line with article 62. I move that amendment.

Shri Mahavir Tyagi : May I know what is the method for the appointment of that particular Minister for Bihar and other places? Whether the minister will be appointed by the Governor on the advice of the Chief Minister—that is clear certainly, because you say, "Provided" and this means that whatever we have said before will not apply in the case of these ministers.

The Honourable Dr. B. R. Ambedkar : What it says is among the ministers appointed under clause(1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

Mr. President : There are three amendments to this, amendments Nos. 134, 135 and 174.

Shri Jaspat Roy Kapoor (United Provinces: General): I do not propose to move any one of these two amendments. But, I hope that the Drafting Committee will be pleased to take the suggestions contained in these two amendments into consideration while giving final touches to the Draft Constitution.

(Amendment No. 174 was not moved.)

(Amendments Nos. 2166 to 2169 were not moved.)

Mr. President : Amendment No. 2170.

Shri H. V. Kamath : Sir, I have been forestalled by Dr. Ambedkar. I am not moving the amendment.

(Amendments Nos. 2171, 2172 and 2173 were not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

"That in clause (1) of article 144 for the word 'appointed' the word 'chosen' be substituted, and the following words be inserted after the words 'his pleasure':—

'and till such time as the Council of Ministers maintains the confidence of the members of the Legislative Assembly.' "

Sir, I have moved this amendment because the stability of the Ministry mainly depends on the confidence of the members only and not in the pleasure of the Governor. In certain cases, it may happen that there may be some sort of a tug of war as between the pleasure of the Governor and the confidence of the members of the Legislative Assembly. It may happen that the members of the Legislative Assembly may not have confidence in the Ministers, but at the same time, through long association with the Governor, the ministers may enjoy the pleasure of the Governor quite all right. I want that the hand of the Governor should be made stronger so that if he finds that over and above the

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question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Ministry should be dissolved. In many cases I have seen, for instance in the local bodies, although the members have no confidence in the Chairman of the District Board and pass a vote of no-confidence, the Chairman still continues in office because nowhere in the Constitution is it provided that if a no-confidence motion is passed, the Chairman has to resign his office. As time, passes on, the Chairman tries to win over and convert many of the members who voted against him with the result that the members who have no confidence in the Chairman have got to turn themselves to the side of the Chairman. In this way, it is also possible in the case of the Ministers. Therefore, I submit that if the Governor finds that the Ministers do not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the Ministry dissolved.

Sir, with these few words, I move.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. President, Sir, before I move the amendment that stands in my name, I want to point out that the word 'long' has been omitted at the beginning between the words 'so' and 'as'. Perhaps, it is due to a printing mistake or something else: but the word 'long' should be there.

I beg to move:

"That in clause (1) of article 144, for the words 'during his pleasure', the words 'so long as they enjoy the confidence of the Legislative Assembly of the State' be substituted".

Sir, the meaning of my amendment is very obvious and I do not think I have to say many words in support of the proposition. There are no two opinions on the question whether the Council of Ministers should be responsible to the legislature or not. The amendment moved by the Honourable Dr. Ambedkar also envisages such a responsibility. It is contained in the new clause (1a) of the amendment moved by the Honourable Dr. Ambedkar. There are also other amendments which indicate that this responsibility of the Ministers to the legislature is an accepted fact. The question is when there is a variance between the pleasure of the Governor and the pleasure of the House, which is to prevail, whether it is the view of the Governor or the view of the legislature, that is the view of the majority of the legislature.

As I have already stated, it is an accepted fact that the Ministers must be responsible to the legislature and therefore my amendment proposes that it should be made clear and beyond doubt in this article with the addition of the words that I have proposed. Sir, it may be said that conventions might grow which will enforce such a procedure as is being proposed in my amendment. Conventions are resorted to at a time when we are not clear about any matter or any position and when we want to learn things by experience. But, this responsibility of the Ministers to the representatives of the people has now been accepted as a result of the experience that the world has had, beyond all doubt. Therefore, we need not in this matter wait for conventions to grow. Moreover, it is particularly necessary that the provision suggested by my amendment should be made in this article in view of the fact that the Constituent Assembly has decided that the Governor should be not an elected one, but an appointed one. Perhaps, the article as it stands in the Draft Constitution was drafted by the Drafting Committee when the same Committee envisaged the possibility of the Governor being elected in some form or other. But that position has now changed. The Governor is a nominee of the President. Therefore, I think it is particularly necessary that it should be made clear that the Council of Ministers should hold office only so long as they enjoy the confidence of the Legislative

Assembly. This is a very democratic and acceptable procedure and there need be no hesitation about this and we do not want to learn anything by experience. Therefore I think the House will see my meaning which is very obvious and accept the motion.

(The amendments Nos. 2176 to 2178 were not moved.)

Mr. President : There is an amendment which I left over by mistake and that is 109 of the printed list of amendments to amendments, of which notice was given by Mr. Gupte.

(The amendment was not moved.)

(Amendments Nos. 2179 to 2184 were not moved.)

Mr. President : No. 2185.

Mr. Mohd. Tahir : Sir, I beg to move:

"That for clause (3) of article 144, the following be substituted:—

'(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State as the case may be.' "

The draft provides that—

"A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of Imperialism and fortunately those days have gone. This was then provided because if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the backdoor as has been provided in the Constitution and in 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore, I do not find any reason why a man who till then was not elected by the people of the States and which menas that, that than was nor liked by the peoples of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister. I have greater respect to the voice of the people of the State, and in order to maintain that I will submit that this provision should not remain in the Constitution and the Ministers should be from among those members of the Assembly who have been elected by the people of the States as they are the true representatives of the States sent by the people of the States. I hope that this amendment will receive due consideration by the honourable Members and will be accepted by the House.

Mr. President : There is an amendment No. 176 to this.

(The amendment was not moved.)

Prof K. T. Shah : I do not want to move either 2186 or 2189 as the principle of these two has been rejected by the House.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in clause (3) of article 144, for the words 'Legislature of the State' the words 'Legislative Assembly of the State' be substituted'."

[Prof. Shibban Lal Saksena]

Sir, it is not a verbal amendment. I do not know whether it is by an oversight of Dr. Ambedkar that the word "Legislature" is used in the section, but I think it has been deliberately used. It means that any member who is not elected and is unable to get himself elected by adult suffrage can also become a Minister. The article says:—

"A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

That means that if a person is not a member of the Lower House but is made a Minister, and supposing that the man fails to get elected to the Lower House on the basis of adult suffrage in six months, then under this article we are providing that he can still continue to remain a Minister if he is nominated to the Upper House by the Governor. I think it is undemocratic that our Ministers should be persons who cannot even win an election by adult suffrage. I have therefore suggested that we should say 'Legislative Assembly' instead of 'Legislature' in this article. In the Assembly nobody is nominated and all Ministers shall therefore have to win an election by adult suffrage within six months of their appointment in order to continue to be ministers. Otherwise persons who are not representatives of the people but are favourites of the Premier may be nominated to the Upper House in the provincial Legislatures and they can continue to remain Ministers under this clause (3) of the article. I desire that only members who are able to get the confidence of the electorates in an election by adult suffrage should hold the post of a Minister. Anybody who is not able to get elected by direct adult suffrage and is not a member of the Lower House should no be a member of the Council of Ministers.

Mr. President : Is not the effect of your amendment to exclude a member of the Upper House even if he is an elected member?

Prof. Shibban Lal Saksena : That is the effect, Sir. I want that only members of the Lower House should be there which means that those who are elected by adult suffrage to the Lower House should alone be able to be Ministers. Unless a member can get the confidence of the electorate in an election to the Lower House by adult franchise, he should not be made a Minister. That is the essence of democracy, which means the Government of the people by the people. So I submit, Sir, that in this article, in place of the words "Legislature of the State", the words "Legislative Assembly of the State" should be substituted. I hope the Drafting Committee will accept this suggestion.

(Amendments Nos. 2188 to 2191 were not moved.)

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

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted."

Sir, this is nothing but a verbal amendment.

Mr. President : Amendment No. 2193.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

I have moved this amendment , Sir, because if the clause is allowed to stand as it is then it will amount to a clear negation of the Instrument of Instructions

that has been provided for in the Fourth Schedule. In that Schedule some instructions have been given to the Governor and he is to act according to those instructions. But if the present clause is allowed to remain as it is, then it will mean that inspite of the fact that the Fourth Schedule provides these Instrument sof Instructions, the Governor might act otherwise. Thus it amounts to a clear negation of those instructions. Therefore, I think it will be better if the words I have indicated are deleted from this clause.

(Amendments Nos. 2194 to 2197 were not moved.)

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

"That clause (6) of article 144 be omitted."

Shri Brajeshwar Prasad : Why?

The Honourable Dr. B. R. Ambedkar : Because we do not want to give more discretionary powers then has been defined in certain articles. We are trying to meet you.

Mr. President : There is an amendment to this, by Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move, Sir, amendment No. 177, Third Week, List III. I move:

"That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, the following new clause be inserted:—

'(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government, or in any way aided, protected or subsidised by Government; and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.' "

Sir, the object of my amendment is to ensure a high standard not merely of efficiency but also of purity in the administration of our country. I am sure we are all agreed that the Ministers of a State or of India as a whole, should promote such efficiency and purity in our administration. There is no disputing the view that every Minister in our country should be above suspicion. Unfortunately, Sir, this expectation has not always been fulfilled. Many of our leaders, including you Sir, have recently pointed out that there has been a certain deterioration in the standards of public life in this land. It is a very disquieting and very disconcerting trend which we have to counteract by every means at our disposal, and this, may I humbly submit, is one of those means by which we can try to promote and uphold a very high standard of purity in our public life and in our administration.

May I Sir, with your leave, reinforce my arguments by mentioning one or two instances which have occurred of late, in some parts of our country? In one of the States which has since merged in the adjoining province, it was openly alleged by an important journal of Bombay that a person who had been convicted of black-marketing, had been included in the Cabinet of that State. This statement went uncontradicted and unchallenged. Recently there has been a very sad instance, a very unfortunate instance of a Minister of one of the integrated States being arrested in the Constitution House on an alleged charge of corruption.

Mr. President : I think that is a matter which is still *sub-judice.*

Shri H. V. Kamath : That is why I said on an alleged charge of corruption.

[Shri H. V. Kamath]

I therefore seek by means of my amendment to ensure that as far as lies in human power, we shall be able to maintain purity in our administration and in public life.

May I, Sir, by your leave out to the House what Dr. Ambedkar himself remarked about this matter on a previous occasion? Dr. Ambedkar was all in favour of a similar amendment moved in connection with the Council of Ministers at the Centre. But he wanted it to be more effective, and I have, by expanding my former amendment and submitting a new one, tried to accommodate, Dr. Ambedkar as far as I can.

Dr. Ambedkar on that occasion observed that:

> "If at all it is necessary (i.e. a provision of this type is necessary) it should be with regard to the Prime Minister and other Ministers of the State and not the President, because it is they who are in complete control of the administration."

Expanding his argument further—clarifying his position further—he observed:

> "I think all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency, but also of purity." Continuing, he said :
>
> "If you want to make this provision effective, there must be three provision to it."

This is what he went on to say:

> "One is a declaration at the outset (i.e. when he enters upon his office):
>
> Secondly, a declaration at the time of quitting his office:
>
> Thirdly, responsibility for explaining how the assets have come to be so abnormal: and
>
> Fourthly, declaring that to be an offence followed up by a penalty or a fine."

The second of the provisions that he mentioned at that time I have included in the amendment which I have brought forward today. I have included a new clause to the effect that every Minister shall make a similar declaration when he quits his office: and I find that Prof. Shah has gone a step further in an amendment he has suggested and in which he has tried to include the third provision which Dr. Ambedkar suggested to make this clause completely effective.

I have left the matter of dealing with such a declaration by the Minister to the Legislature. It is likely that he may have certain shares, or titles, or interests, but the Legislature may hold that the matter is innocuous; and he may continue to enjoy those rights and privileges. I have not stated here what exactly should be the course to be pursued in such a case, as Prof. Shah has sought to do in his amendment. I have left it to the Legislature to deal with it as it likes, and I hope, Sir, that by accepting this amendment, we would be guaranteeing, as far as lies in human power, the purity of our administrations and of Government in so far as those in control of both these are concerned.

Prof. K. T. Shah : Sir, I move:

"That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (7) of article 144—

(a) in the first para,—

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted,

(ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;

(iii) in line 6, after the words 'controlled by' the words 'Central or State' be inserted;

(iv) for the words 'and the Legislative may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate', the following be substituted—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and, on vacation of office of such Governor or Minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned': and

(b) in the second para,—

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and

(ii) at the end the following be added:—

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as the Legislature may deem necessary to demand'."

My amended amendment which I shall, with your permission, read to the House is as follows:

"Every Governor or Minister, including the Chief Minister should, before he enters upon his office, make a full declaration to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade, or industry, either private or directly owned or controlled by the Central or State Government or in any way aided, protected, or subsidised by the Central or State Government, and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India, which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and on vacation of office of such Governor or Minister, all money so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned:

Every Governor or Minister, including the Chief Minister shall make a similar declaration at the time of quitting his office, and in the event of there being any material change in his holding, right, title, interest, share or property, he shall give such explanation as the Legislature may deem necessary to demand."

Shri B. Das (Orissa: General): Would gambling in share bazars come into it?

Prof. K. T. Shah : Well, gambling is a business for many people and also a trade!

As Mr. Kamath has tried to explain the genesis of this motion, may I be permitted to amplify a little bit all the same by pointing out that on a previous occasion, in connection with the President and the Prime Minister of the Union of India, I had tried to bring forward an amendment of this nature, and that amendment was rejected. At the time of rejecting that motion, however, the Chairman of the Drafting Committee was pleased to make certain observations which suggested the unworkability or futility of the amendment as it then stood, and indicated certain conditions or improvements whereby it could be made more workable. Mr. Kamath seems to have taken him at his word. I find myself now in that happy position of having to bring out these points also in a more substantial manner, perfectly in accordance with the apostolic observations of Dr. Ambedkar. The point simply is this. We are all interested in maintaining and promoting the efficiency as well as the purity of our administration. The Minister should be above any suspicion, and as such it is suggested here that if they have any chance of being tempted, if they have any concern, any interest in any business, trade or profession which is likely to be, or which is being owned or controlled, aided or subsidised in any way by the Central or Provincial, Government, then all that portion must be fully declared to the State Legislature. I have changed the word "disclosure"

[Prof. K. T. Shah]

to "declaration" because the word 'disclosure' might suggest some sort of previous concealment which is now to be unconcealed, and a 'declaration' is a simple statement of the holdings that the party concerned may have which are presented to the House.

Sir, it is a wholesome convention that even the Director of a Joint Stock company when he accepts office as a Director has to make a declaration, a disclosure, of his interest in any other company or concern wherein his company might be interested. We have a convention also in such a body like the Bombay Municipal Corporation wherein even a member has to make a declaration if any matter in which he is interested comes up for disposal before the body. If such conventions, if such precedents, are to be found in the ordinary law or practice of public bodies I put it to the House, Sir, that it is of still higher importance that provincial Ministers should be similarly required to make a declaration of their holdings, in any trade or profession, in any company or enterprise, before they become Ministers.

Sir, a story is known—very well known—of a former Prime Minister of the United Kingdom, Mr. Baldwin, who before he accepted his post as Prime Minister dissociated himself completely with Baldwins Limited, which was a great iron and steel, firm, and when he retired he actually had to declare that he was not worth perhaps as many hundreds as he was worth thousands when he took office. This is a part of sacrifice inherent in the public service of a country like England and the ideal or example set by people of the kind will, I hope, be followed in this country as well. We are trying by this amendment to insert a provision in the Constitution to see to it that no opportunity is left for anybody holding such high office in the State as that of Governor, Minister or Prime Minister, to use or abuse his authority, power or position for any purpose of personal aggrandizement. I have, therefore, suggested that not only should there be such a declaration, but that having so declared, the interest, share or title may be either disposed of in the public market in which case there would be nothing more to be said about it, or if that is not done, the property, right, or share may be held in trust by say, the Reserve Bank of India which may receive all the interest, dividend, profit or rent that may be accruing from such property and credit it to be the party concerned, so that when the party concerned leaves office the same may be returned to him This is a requirement which would in no way hurt the individual economically, at the same time safeguarding the purity and excellence of their conduct while in office.

I am aware, Sir, that if people want to abuse and take undue advantage of their position as Minister or Governor, they will always be able to do so. If there is one way of observing a law, there may be hundred ways of evading the law. But at the same time, so far as in us may lie, and so far as we can openly guard against such mischances, I think an amendment of this kind is necessary, particularly in view of the very common and universal complaint of growing corruption and demoralisation that seems to have invaded all branches of public service and it is with that purpose in mind that I am placing this amendment and I trust this House will not reject it.

(Amendments Nos. 2200, 2201 and 2202 were not moved.)

Mr. President : There is one amendment of which I have just received notice from Mr. Jaipal Singh. It is late, but in view of the fact that it raises an important question which has been left out by sheer oversight, I allow him to move it.

Shri Jaipal Singh (Bihar: General): Sir, I move:

"That in article 144, clause (1), after the words 'States of' word 'Bombay' be inserted."

Sir, I am very grateful to you for permitting this very late amendment of mine. The province of Assam has already been amply provided for by the directives given in the Schedule, but Bombay has been left out. At the time when the Tribal' Sub-Committee met, the question of the merger of States had not been finalised. By the merger of a number of States Bombay province gets an additional population of 44 lakhs and out of this a good number will be tribals and backward classes. I suggest that Bombay be included in the article so that in that province also there may be a Minister who may, in addition to his other duties, pay particular attention to the tribals and other backward classes.

My honourable Friend Mr. Sidhva wanted to know about Assam. I would refer him to page 185 of the Draft Constitution and therein he will find that Assam has been amply provided for, I need not say much about my amendment. The omission is due to oversight and I do hope that Dr. Ambedkar will accept my amendment.

Dr. P. S. Deshmukh : Mr. President, Sir, there are a large number of amendments that have been moved. Some of them are more or less of a consequential nature to which a mere reply that the proposal which they want to embody in the Constitution specifically would be covered by other provisions in the Constitution or by the way in which the Ministries have functioned so far would probably be sufficient. I would here just like to speak on one or two points.

I would like, first of all, to say that it would be better if this proviso is transposed either as an independent article or is embodied here in article 104 as an independent sub-clause. I refer to the proviso to para (1) of article 144 in regard to the States of Bihar, Central Provinces and Berar and Orissa and to the proposed addition suggested by Mr. Jaipal Singh in his amendment. I think this is a substantive provision which should stand independently and not as a proviso. I am glad to find that there is actually an amendment suggested by Mr. Gupte for the addition of an independent clause. I am in favour of it.

Then I may say a word about the proposal to include Bombay. I have my fullest sympathies with Mr. Jaipal Singh. For the reasons stated by him briefly, I think it would be proper to include Bombay in the list of States which have been mentioned in this article.

Then there is the amendment of Mr. Kamath which seeks to be amended by the one moved by Professor K. T. Shah. There can be no two opinions about our being very punctilious and about our making every effort to see that our public men are as scrupulous as possible. It is with this end in view that the amendment seeks to provide for a declaration of business interests of the Ministers. But the question is whether we should provide for this in the Constitution or whether there are not other means to achieve the desired end. My Friend Mr. Kamath has suggested that there should be declarations of financial and business interests of the Ministers. Professor Shah who usually goes into details in such matters wants to provide further that when certain interests are found to exist they should be dealt with in a particular way. In spite of all these exhaustive amendments, I do not think the chances of misbehaviour by public men and public officers have been completely eliminated. Besides business interests there may be a thousand other things which it is equally desirable to discourage or put a stop to extraordinary indulgence in, for instance receiving addresses from the public or in celebrating one's own birthdays or the marriages of one's sons or daughters of other relatives. All these things and a whole host of others will have to be included if we want to see that our Ministers do not derive any benefit other then their legitimate remuneration.

[Dr. P. S. Deshmukh]

To make out a complete list of these things and to provide for enquiries and adjudications is I think too much of a task to provide for in the Constitution. I have not a shadow of doubt in my mind that we must do everything possible to raise the moral status of our nation. I am not prepared to say that at the present moment it is very high. But the question is whether this is the right place or method to do it. I am sure the consciousness of our independence, of our nationhood, and of the responsibility that has devolved on our shoulders is increasing in India, and I for one hope that even in the absence of a provision of this kind the moral standards in our country will rise higher. At the present moment however the situation is disgraceful. There is no shadow of a doubt about it. Very few people, cultured people, highly educated people place any value on speaking the truth and there is a craze for deriving vicarious advantages and benefits in different ways. To enumerate all these occasions when men might be unscrupulous enough to transgress the moral code in the Constitution would be an impossible task for the draftsmen. I would therefore prefer to leave this matter entirely outside the Constitution and if necessary include them in the Instructions that may be issued by the President to the Governors to see that from day to day the Ministers and the Premiers who get so much power and authority under the scheme of provincial autonomy do not misbehave and to watch and communicate and such misbehaviour to the President. If those Instructions are followed, much good that we desire will be accomplished. That would be much better then contaminating the whole Constitution by frank admission that our public men are not capable of looking after their own morality and do not care for any moral principles.

I next want to refer to my sub-province of Berar. We have mentioned Central Provinces and Berar as a State which will have an additional Minister to look after the interests of Tribals and the Scheduled Classes. It is stated that that Minister could be given other work also. This reminds me of section 52 of the Government of India Act. There was a special responsibility placed on the Governor, so far as Berar was concerned, and this was "to see that a reasonable share of the revenues of the Province was expanded in or for the benefit of Berar." I do not wish to take the time of the House by referring to the Constitutional position of Berar. But, so far as exploitation from the financial point of view is concerned, I may say that it has been a long-standing complaint of Berar that the larger revenues that it contributed are swallowed up by the other and poorer areas of the Province and that Berar does not get the benefit that is due to it. Of course it is too late in the day to ask for any direction or for the placing of any special responsibility for Berar on the Governor, I would, however, like the administrators to bear in mind that the needs of Berar still require attention and consideration.

One more point and that is with respect to the 25 lakhs of rupees paid as lease money to the Nizam. I think we can now conclude that the Nizam's nominal sovereignty has, at long last, been completely abolished and terminated and that hereafter there is no connection between the Nizam of Hyderabad with Berar. Therefore the question of paying this sum of Rs. 25 lakhs to the Nizam will not I expect arise hereafter.

Mr. President : We are not concerned with the contribution which is paid by Berar or the separate finances of Berar. We are here concerned only with the question of having Ministers to look after the welfare of the backward tribes in certain provinces.

Dr. P. S. Deshmukh : I only want to say one word more, Sir. I referred to this subject since the old provision of special responsibility is going finally to be abolished. Since the payment of Rs. 25 lakhs is not going to be made to the Nizam, this money should be utilised for the benefit of the territory of

Berar for educational and medical purposes. I have already made a representation to the Home Minister in this matter and I hope that since we are not going to repeat the provision existing in 1935 Act, this request of mine to utilise this sum of Rs. 25 lakhs for the people of Berar will be accepted.

Pandit Thakur Das Bhargava : Mr. President, Sir, the article under discussion, article 144, is a very important article and so I venture to take some time of the House in regard to some of the provisions in this article.

In the first place, clause (1) of article 144 is too wide. It says—

"The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

We just discussed article 143 in which the question was whether the Governor must be invested with any discretion at all. Here his discretion is too wide. Now, the Governor, if he so chooses, can appoint his Ministers and the Premier may be called upon to form a Ministry from any party which is not the biggest party in the House. There is no bar against this. I would have liked a provision that the Governor shall only call for the leader of the biggest party in the Assembly to form the Ministry. Moreover, Sir, the words "during his pleasure" have been interpreted in different ways. A convention is to grow that the Governor is only entitled to dismiss a Ministry if the Ministry fails to retain the confidence of the Legislative Assembly. In regard to this, two amendments have been moved and I am sorry I cannot support any of them because the words used are "retains the confidence of the Legislative Assembly". My humble submission is that unless the Ministry fails to command the confidence of the majority of members of the Legislative Assembly, the Ministry should not be dismissed. Now, it is true that the sole judge of this is the Governor himself and therefore he will have very great power in this regard. If the provision had been made that as long as the Ministry retains the confidence of the majority of the members of the Lower House, the matter would have been put beyond doubt and the Governor would not be within his rights if he dismisses a Ministry which is still in the enjoyment of the confidence of the House.

An amendment was moved by Mr. Saksena in regard to clause (3). He wanted that only members of the Lower House should be chosen as Ministers. In regard to this, my submission is that since in the Upper House we are having many members who will be elected by a large body of people, like Municipalities, District Boards, village panchayats, etc, there is no reason why we should restrict Ministership to the members of the Lower House only. My submission is that all those members who have been elected, whether they belong to the Upper House or the Lower House, should be eligible for Ministership.

In regard to the proviso, I would submit a word. I am very much against this backdoor reservation of ministership. So far as the question of the Scheduled Castes, the backward classes and the tribal people is concerned, we have got very specific provisions in this Constitution which aim at the amelioration of the condition of these classes and it will be the statutory duty of those in power to see that the interests of these classes are not ignored and there in no need for reservation of a separate minister. The backward classes has been divided under this Constitution into two classes, the Scheduled Castes for whom reservation have been made and backward classes for whom no reservation has been made. If we turn to article 301, we will find that backward classes have been protected under that article, where it has been made the duty of the President to see that the conditions of the backward classes including the Scheduled Castes are bettered and to have an investigation made into the conditions of these classes by a Commission and then after the Commission has reported, action has again to be taken so that they may be brought

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up to the normal level. In regard to the tribal people, there is a specific provision in article 300 which says—

> "The President may at any time and shall, on the expiration of ten years after the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes in the States, etc."

If you just see article 299, you like be pleased to see that special officers are to be appointed both by the President himself and by each State to study how these safeguards work, how these provisions work. Therefore, it is the bounden duty of the President and of the Union Legislature to whom the report of the Commission is to be presented to see that the condition of the backward classes is improved. I do not see why there should be overlapping of functions by different functionaries and why there should be reservation for them in the Ministries. So far as the report of the Minorities Advisory Committee is concerned, they have not recommended that for the backward classes and the Depressed Classes there should be a separate Minister. In regard to welfare there is no reason why Scheduled Castes should be differentiated or mentioned separately when there is equal responsibility on Government for both. My submission is that this distinction should be eliminated. As a matter of fact, in regard to article 301 there is no distinction. My point is that if the Scheduled Classes or the backward classes require any special protection, they require special protection in the whole of India, not only in C. P., Orissa and Bihar. I have to submit, Sir, that the Constitution has already protected them. Untouchability has been made an offence. In the Fundamental Rights there are so many provisions by virtue of which they have got equal access to all public places. In view of that, I am opposed to this kind of reservation. I am very much opposed to this provision because it stands for all times and may prove the thin end of the wedge for demanding such reservation in all the provinces. Moreover this provision is not only for the first ten years but for all times. This will be a blot on our Constitution and I therefore submit that this House should throw out this proviso.

The next point was made by Mr. Kamath and subsequently supported by Professor Shah in regard to the property of the Ministers. They said that the Ministers should be asked to disclose what they have at the time they are appointed as Ministers and also when they hand over the administration, that they should be made to disclose what they have amassed, what they have gathered during the time they were Ministers. This is an inquisition. I do not think that in regard to our Ministers we should resort to this kind of inquisition. We have already rejected such proposed provision for other dignitaries.

Shri A. V. Thakkar (Saurashtra): Mr. President, Sir, though no notice has been given of an amendment by Mr. Jaipal Singh, he has spoken and perhaps he has been allowed by you Sir, to put it as an amendment. I do not know what is the actual state of things. However, since three members of this House have spoken upon it, I wish to express my opinion on the subject. Separate Ministers are recommended in the three provinces of Bihar, Orissa and C. P. to take care and to protect the interests of the tribals, scheduled castes and all other backward classes. It was on the recommendation of the Tribal Sub-Committee of the Minorities Committee that I as the Chairman along with the other members suggested that such a provision may be made in the Draft Constitution to take care of the backward people residing in these three provinces only. It was for this reason that these three provinces were considered at the time when we made recommendations, that they were backward in the matter of giving special treatment to these people or protecting them. Things have moved much since then. All these three provinces of

Bihar, C.P. and Orissa have now very well organised departments for giving protection and do all kinds of welfare work for them. We did not include at that time the forward provinces like Bombay, Madras etc., because they were already moving in that matter for the last twenty or even thirty years and, therefore, they were not included. Somebody may say it is a stigma to these three provinces that they are being specially mentioned. However, I do not think that any addition should be made at this moment without any further consideration or without consulting the Bombay Ministry, which has been proposed in this amendment of Mr. Jaipal Singh. However, I leave it, Sir, at that.

Shri H. V. Pataskar : Sir, so far as the consideration of this article 144 is concerned, I only object to the manner in which it has been worded and I would make the following suggestion, if that will be acceptable to those who are responsible for this draft: "The Governor's ministers shall be appointed by him and shall hold office during his pleasure." This is preceded by article 143 and in that article a provision has been made that "there shall be a Council of Ministers". Naturally, therefore, we must mention as to who is to appoint this Council of Ministers. I think the better form would have been merely to mention that "the Council of Ministers shall be appointed by the Governor." At the same time to make a further provision that " they shall hold office during his pleasure," is undesirable. My opinion is it is not necessary and is derogatory to the position which we are going to give to the Prime Minister of the State and the Council of Ministers. Probably this provision is a remnant of the old idea that the Ministers hold office during the king's pleasure. Things have changed since then and it is not necessary that we should incorporate the same language, namely, "they shall hold office during his pleasure". I admit that if the Governor is the appointing authority, naturally he should have the power in certain circumstances for which provision may be made in this section that the Council of Ministers may be dissolved or some new ministers shall be appointed, but, Sir, when we are making a provision with regard to the appointment of a Council of Ministers in the year of grace, 1949. We need not say that "they shall hold office during the pleasure of the Governor." That "Governor" we have decided will be nominated by the President and I do not think it will be proper to say that the minister shall hold office during his pleasure. It may be asked, "What would happen if the ministers have to be changed"? The ministers should be changed only if they cease to command the confidence of majority of the members in the House and for that provision could be made in the Instrument of Instructions, but so far as article 144 reads now, I do not think it is proper that we should lay down that in the case of a Governor of the type which we have already decided upon the Council of Ministers shall be appointed by him and they shall hold office during his pleasure. This phraseology may have been taken out from some other constitutional books and as I said it is probably due to the fact that formerly as the powers of the ministers developed, they may have held office during the pleasure of the Crown, but now there is going to be no Crown and the wording of the article is not happy and proper and, therefore, I would appeal that this part of article 144 be taken out of the Constitution.

Shri Krishna Chandra Sharma : Sir, I do not think there is any necessity for the provision regarding Scheduled class and tribal people in this article. In article 37 we have already provided for the promotion of the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes, and again in article 301 the President is to appoint a Commission to look to the amelioration of the backward classes and the tribal people. In view of these two provisions in the Draft Constitution, a special mention of a portfolio with regard to the tribal areas and Scheduled classes is unnecessary. The whole matter should be left to the State Ministry; they will consider what is necessary and what is wanted with regard to their

[Shri Krishna Chandra Sharma]

amelioration and to incorporate details like this is going too far and I do not think this special provision will do anything not envisaged in the two articles. It does no good to a depressed class man to be told that because he is a depressed class man, therefore, such and such facilities are provided for him; it does create an inferiority complex in the man. It is not always the giving of facilities here and there that helps so much to raise a man up. It is more a matter of psychological make-up. If a man thinks "I am as good as A, B, C, or D", then he raises himself up; their moment you say "You are an inferior being and therefore, such and such a facility is granted to you and we raise you as against the interests of any other member", he goes down. He does not raise himself. Therefore, it is in my opinion, in the interests of the Scheduled Classes, in the interests of Tribal Classes not to be told again and again that because they are inferior people, because they are weaker people, therefore, such and such facilities are provided for them. It does not do them any good to make a fetish of the thing. It looks such a nasty thing to be told that A has to be given a scholarship because he belongs to the Scheduled Class, that B, a better boy, a more deserving boy from economic considerations, from his talents and personal capacity, is to be denied those facilities because he belongs to the Brahmin Class or the Kshatriya Class or some other class which is different from the Scheduled Classes. How can a State say that a boy simply because he belongs to a certain community or certain class is to be provided with better facilities, though they have better conditions in life than a boy who belongs to another class, simply because he belongs to a different community? Such a thing would be impossible from the point of view of justice and fair-play, and Sir, it would not be in the interests of the community as a whole. Therefore, looking into the two articles. I just cited and the general scheme in the Draft Constitution, I think that this special provision regarding portfolio for backward classes should be dropped.

Shri R. K. Sidhwa (C.P. and Berar: General): Mr. President, Sir, I wish to draw the attention of the House to one point as regards clause (3) or article 144. The clause says: "A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State, shall at the expiration of that period cease to be a Minister". I feel that this is merely a repetition or imitation of a clause which exists in the present Government of India Act of 1935. I do not think it is necessary now, because, under the new Constitution, the number of members in the provincial legislatures will be ranging from 300 to 600 and I do not think we will be wanting in people to fill even special posts. I am opposed to an outsider who is not a member of the Legislature, however highly qualified he may be, being called upon to hold the very responsible office of a Minister even for six months. From the experience we have gained, we find that in some cases where Ministers have been so appointed, eventually it has led to corruption. After the period of six months, somebody has to vacate a seat and it has so happened in one or two provinces that to make room for this Minister, that gentleman had to be provided with some job for which he was not qualified. Therefore, when we are going to have large Houses in which there will be members with vast experience, and experts in many respects, I feel that it is not proper, and it is not a very good principle to imitate what is existing in the Government of India Act, 1935, and say that if the Chief Minister feels that so and so who is not a member is required for expert advice, he should be taken as a Minister. Sometimes, the Chief Minister would like to favour somebody. In the name of the special qualifications that he may possess, he will be asked to become a Minister, and at the end of six months, he will have to be made a member of the legislature, because he cannot hold that office after six months. As I stated, Sir, some other member who will be asked to vacate will have to be offered something and this will lead to corrupt public life.

As regards the amendment of Mr. Jaipal Singh in which he wants to add Bombay also, I have to say that it is wrong in principle. A committee was appointed by the Advisory Committee of this House, and they went into the whole question. They went to all the provinces. They recommended that only these provinces should have a Minister for tribal welfare and any other work. It is most improper at this juncture to come and say that Bombay also should be included. As far as Scheduled Castes are concerned, there are large numbers in Madras. When a Committee had gone into the whole question, it will be wrong in principle that a member should come up and throw before the House a surprise amendment that another province should also be included. From that point of view, I oppose Mr. Jaipal Singh's amendment.

Shri Rohini Kumar Chaudhuri : Mr. President Sir, in most of my speeches in this House, I had made several appeals to the Honourable Dr. Ambedkar to oblige me by clarifying certain questions which I had raised. My former attempts in this direction have failed; but I have faith in the example of King Bruce and I hope that this attempt of mine to get clarification from that quarter will receive proper attention.

Shri T. T. Krishnamachari : May we have the pleasure of hearing the honourable Member properly by requesting him to come to the rostrum and address the House?

Shri Rohini Kumar Chaudhuri : (after coming to he Rostrum) I am very much gratified to learn that at least there is one Member in this House who is anxious to hear what I have to say. I cannot be sufficiently grateful to him. All that I can do in return is to give my fullest attention to what that honourable Member will speak in this House.

I wanted some clarification. I want to know why particularly these provinces have been selected for reservation of Tribal members in the Cabinet. If there are important minorities in these provinces, necessarily, under the provisions of the Constitution, they will find a place in the Cabinet. If there are no important minorities in these provinces, why are these particular provinces selected for the purpose of giving representation to the backward classes and Scheduled Castes in the Cabinet?

Mr. President : There is no question of representation of Scheduled Castes and backward tribes in the Ministry. A Minister has to be appointed to look after them; not that he should belong to that Tribe or backward community.

Shri Rohini Kumar Chaudhuri : Sorry, I have not followed the point.

Mr. President : There is no question in this proviso of a man from the Tribal people or from the backward classes being appointed a Minister, or reservation of a seat in the Ministry for any of these classes. The only point is that a Minister should be appointed who will look after their interests.

Shri Rohini Kumar Chaudhuri : I am much obliged to you, Sir, If this clause then means that any member, whether he belongs to the Scheduled Castes to Tribal classes or not, may be selected and appointed in charge of tribal welfare, that is to say, this clause only wants that a portfolio should be created for the purpose of looking after tribal affairs, I think this is not necessary. The general understanding of the tribal people is that by virtue of this proviso, the Tribal people or the Scheduled Castes will secure representation in the Cabinet. If it means that this proviso does not necessarily mean that a member of the Tribal people or the Scheduled Castes will be placed in charge of looking after the welfare of the Tribal people, then, I think this clause is a disappointment to them. If that is the interpretation that is to be put on this proviso, that any member Caste Hindu or even a Muslim or even a Christian

[Shri Rohini Kumar Chaudhuri]

can be placed in charge of the portfolio of looking tribal welfare, and that this does not necessarily mean that a tribal person should be taken in, I would only say that that object will not go half its way.

My point is this. If there is an important minority, automatically that important minority of Scheduled Castes will find representative in the Cabinet. If you do not think that there is any important minority or if you think that the Tribal people form an insignificant minority, then I do not understand why a particular portfolio should be created for the purpose. For instance, do you mean to say that the Minister in charge of Education, who does not belong to the tribal community, does not properly look after the education of the Tribal people, because he has not been placed in charge of tribal welfare? He may not be placed particularly in charge of tribal welfare; nevertheless, he will look after the education of the Tribal people. Any Education Minister would do that. Any Minister in charge of Public Works will look after the proper communications in the tribal areas. What is the use of having a particular portfolio for tribal welfare? You have to look after the law and order of the Tribal people; you have to look after the education of the Tribal people; you have to look after the local-self-government of the Tribal people. What can one Minister do? All the Ministers in the Cabinet will be expected to look after the interests of the Tribal people in every respect. If you have a non-tribal or a Scheduled Caste member in charge of tribal welfare, what does it mean? Is it the intention that he will poke his noise in every thing and say, "you have not made sufficient arrangements for education in my area or you have not given sufficient roads for me or you have not properly looked after the health of the Tribal people?" Is that the object of creating a Minister? For that purpose this not necessary to create a Minister specially because generally every Minister to whatever community he may belong, has to look after the interests of the Tribals so far as his Department is concerned.

Shri R. K. Sidhva : Just like the Labour Minister looks after the interests of labour, similarly a Tribal Minister can do.

Shri Rohini Kumar Chaudhuri : The interests of labour lie in a particular way but the interests of Tribal people are in every matter. Do you mean to say that this Tribal Minister will be there to look after the interest of tribal affairs only? It is considered the responsibility of all. Therefore I want clarification; as it is we have two Tribal Ministers in the Assam Cabinet now and there have been Tribal Minister since 1937 and there never was a Ministry without a Tribal Minister. This can very easily be left to the Chief Minister who will select his Ministers and he will certainly look after the interests of the Tribal people by selecting a Tribal Minister. Otherwise if you have a Minister only for tribal welfare, there will be frequent interruption in the work and there will be confusion and there will be rivalry and there will be unnecessary interference in the work of the other Ministries.

Shri Jaspat Roy Kapoor : Sir, may I have permission to move amendment No. 134 which stands in my name and with respect to which I said that I did not want to move I find it is a necessary amendment and I have consulted a large number of Members who feel that it should be moved.

Mr. President : The amendment is to this effect:—

"That in amendment No. 2165 of the List of Amendments, the proviso to the proposed clause (1) of article 144 be deleted, and the substance of it be included in the Instrument of Instructions set out in the Fourth Schedule."

Dr. P. S. Deshmukh : It should not be permitted to be moved at this late stage.

Mr. President : It seems there is some objection to this amendment being moved at this late stage and so in that view I would not like to permit it.

Shri Jaspat Roy Kapoor : If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the House to reject it.

Mr. President : Would that not open up discussion again?

Dr. P. S. Deshmukh : Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

Mr. President : Yes, that is a way out.

The Honourable Dr. B. R. Ambedkar : I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

Pandit Thakur Das Bhargava : May I propose that this article be held over?

The Honourable Dr. B. R. Ambedkar : Why, after having debated so long?

Mr. President : The question is whether is should stand here or it should be transferred to the Instrument of Instructions, That seems to be the effect of the amendment which is sought to be proposed. If there is any considerable body of Members who are opposed to the amendment being moved at this stage, I would not allow it but if it is only the technical objection, then I should be inclined to give the House a change to consider this amendment also. I would like to know if there are many Members who are opposed to it.

Dr. P. S. Deshmukh : So far as the transposition is concerned there will be ample opportunity for that. At this stage it does not arise because this is an independent amendment proposed by Mr. Gupta to be embodied as a separate clause.

Mr. President : If this amendment of Dr. Ambedkar is carried and the proviso is retained, what will be the position of Mr. Gupta's new article?

Dr. P. S. Deshmukh : If Dr. Ambedkar is prepared to say that the proviso may not be put now, the purpose of my friend's amendment would be served. Otherwise it will be a negation.....

Mr. President : It is not a negation. He wants the thing to be transferred from the body of the Act to the Schedule and the Instrument of Instructions. So it is not a negation; it is only a question of transposing the thing from one place to the other.

Shri Jaspat Roy Kapoor : May I submit, Sir, as a matter of general policy I think while dealing with the Constitution we should not take our stand too much on technicalities?

Mr. President : I appreciate that.

Shri T. T. Krishnamachari : Any transposition of this proviso will deprive it of the legal status which it would otherwise possess because the Governor is not bound to carry out the instructions that are given under the Instrument of Instructions and nobody can call him into question in any Court or before any other authority for not following it. I believe the basis for this proviso is a certain measure of agreement in the sub-Committee concerned and if we are going to make a change at this stage it might upset the scheme of the Constitution as envisaged to this sub-Committee.

Mr. President : I think there is some objection to it and so I cannot allow it to be moved at this stage. Dr, Ambedkar may reply to the general debate.

Shri Jaspat Roy Kapoor : May I now move that the final decision on this clause be held over till tomorrow?

Mr. President : After all this discussion I do not think that will improve matters. Even if it is held over till tomorrow, your amendment will not be moved tomorrow.

Shri Jaspat Roy Kapoor : In view of the long discussion we have had on the article it appears that a little further constitution is necessary. This long discussion suggests that there are different points of view and it is possible.....

Mr. President : That position will not be changed by tomorrow morning. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, in the course of this debate on the various amendments moved I have noticed that there are only four points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated in that fashion or in those terms in any of the Constitution which lay down a parliamentary system of government. 'During pleasure' is always understood to men that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence or the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words "Lower House" I am afraid, cannot be accepted because under the provisions of the Constitution, it is open to the Prime Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from the Upper House. Consequently the provision that the Minister shall be appointed for six months, although he is not elected must be so extensive as to cover both cases, and for that reason I am unable to accept his amendment .

The third amendment which has been considerable debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. I that connection, what I would like to say is this, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

Shri H. V. Kamath : My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

Mr. President : You have already said all that.

The Honourable Dr. B. R. Ambedkar : The fourth point is the one which has been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced

in the Draft Constitution is to be found in the recommendation of the sub-committee on tribal people appointed by Minorities Committee of the Constituent Assembly. In the report made by the Committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular Committee. It is said, there, that in the Provinces of Bihar, Central Provinces & Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the Report of the Tribal Committee which was headed "Statutory Recommendation". It was the intention of this Committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

With regard to the suggestion of my Friend Mr. Jaipal Singh, that Bombay should be included on account of the fact that as a result of the mergers that have taken place into the Bombay Presidency, the number of Tribal people has increased I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necessary to consult the Ministry of Bombay, and unfortunately my Friend The Honourable Mr. Kher who was present in the Constituent Assembly during the last few days is not here now, and I am therefore not able to accept this amendment.

Shri H. V. Kamath : With reference to my amendment, may I know if Dr. Ambedkar had resiled from the view that he expressed previously—if he has recanted?

Mr. President : I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail, Nos. 2174 and 2175 which relate to this article 144, clause (1).

If Dr. Ambedkar's amendment No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

Mr. President : The question is:

"That for clause (1) of article 144, the following be substituted:—

'144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor;

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council of Ministers, shall be collectively responsible to the Legislative Assembly of the State.' "

The amendment was adopted.

Mr. President : As I have said, the two amendments No. 2174 and No. 2175 do not arise.

Then there is No. 2185 by Mr. Tahir.

The question is:

"That for clause (3) of article 144, the following be substituted:—

'(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be.' "

The amendment was negatived.

Mr. President : Then there is Prof. Saksena's amendment No. 2187.

The question is:

"That in clause (3) of article 144, for the words 'Legislature of the State' the words 'Legislative Assembly of the State' be substituted."

The amendment was negatived.

Mr. President : There is then Dr. Ambedkar's amendment No. 2192.

The question is:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted.

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

The amendment was negatived.

Mr. President : Then we come to the amendment moved by Mr. Kamath to which another amendment was moved by Prof. Shah. I shall put Prof. Shah's amendment first.

Shri T. T. Krishnamachari : There is amendment No. 2198 moved by Dr. Ambedkar.

Mr. President : I will put that last. I will put Prof. Shah's amendment No. 185 to vote now.

The question is:

"That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (1) of article 144—

(a) in the first para,—

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted;

(ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;

(iii) in line 6, after the words 'controlled by' the words 'Central or State' be inserted;

(iv) for the words 'and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate' the following be substituted:—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or minister concerned, and, on vacation of office of such Governor or minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned'; and

(b) in the second para,—

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and

(ii) at the end and following be added:

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as legislature may deem necessary to demand.' "

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, of following new clause be inserted:—

'(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government or in any way aided, Protected or Subsidised by Government, and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.' "

The amendment was negatived.

Mr. President : The question is:

"That clause (6) of article 144 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 144, as amended, stand part of the Constitution.

The amendment was adopted.

Article 144, as amended, was added to the Constitution.

New Article 144-A

Mr. President : Notice of an amendment has been received from Shri B. M. Gupte that a new article 144-A be put after article 144. It reads:

"That after article 144, the following new article be added:

'144-A. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.' "

I think this is already included in the article accepted. Therefore this cannot be moved.

Article 145

Dr. P. K. Sen : (Bihar: General): I do not wish to move the amendment No. 2205 but I would like to make a few observations.

Mr. President : When we come to the discussion of the article, you can do that. (Amendment Nos. 2204 and 2206 were not moved.)

(Amendment Nos. 136 and 178 of Lists III and IV were not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That after Clause (2) of article 145, the following new clause be added:

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.' "

I want to enable the Advocate-General to have the right of audience in all Courts in the State for which he is the Advocate-General, without any special authority, and also when he appears for the State in other States, and also in the Federal Court when he appears in that capacity. My reason is based on

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the analogy of article 63, clause (3). Article 63 of the Draft Constitution relates to a similar provision giving the Attorney-General of India, right of audience in all courts in India. Clause (3) of that article runs thus:

> "(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in the territory of India."

While there is this provision for the Attorney-General, empowering him to appear in all Courts in the territory of India by virtue of his office, there is no corresponding provision empowering or authorising the Advocate-General to appear in Courts of the State to which he is attached and also in courts in other States where the State to which he is attached is a party, and also in the Supreme Court where the State is a party. I submit that it is a necessary provision: otherwise there would be practical difficulties. If we do not insert here a clause similar to clause (3) of article 63, it would be necessary in every case for the State to authorise the Advocate-General in every case where he is required to appear. Without this statutory provision he will have to obtain authority for appearance in every case, and there may be difficulties about enrollment. A lawyer from Bihar may be appointed the Advocate-General of West Bengal. While that lawyer is enrolled in the High Court at Patna, he may not be enrolled in the High Court at Calcutta. There will be this difficulty that although he is the Advocate-General of West Bengal, he will not be entitled to appear in any Court subordinate to the Calcutta High Court because of the enrollment difficulties and it may be that the State for which he is the Advocate-General is a party in a suit or proceeding in another State; there also he should be empowered to appear on behalf of the State to which he belongs without any written authority and also without the difficulty of enrolment.

We have similar provisions in the Code of Criminal Procedure as to the Public Prosecutor. In section 493 or that Code, the Public Prosecutor is authorised automatically to appear without any authority in all cases in the district for which he is the Public Prosecutor. There are similar provisions with regard to the Government Pleader or the Crown Lawyer appearing for the Crown in civil cases.

So, I submit that this is a necessary Provision, otherwise the difficulties which I have suggested, and other ancillary difficulties will arise. It is similar to other provisions with regard to all lawyers appearing for the State and there is no reason why this should not be accepted in principle in the case of the Advocate-General. If the principle is accepted that the Advocate-General should have a right of audience in all courts where the State is a party without any authority, I think a provision should be made here. If the Drafting is open to any objection, it may be considered by the Drafting Committee and a suitable draft be adopted.

This is the Principle on which this amendment is based.

(Amendment Nos. 179, 2208 and 2209 were not moved.)

Mr. Naziruddin Ahmad : Sir, I would like to move my amendment with a slight verbal alteration to which, I understand, Dr. Ambedkar has no objection, Sir, I beg to move:

> "That for the existing clauses (3) and (4) of article 145, the following be substituted:—
>
> '(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.' "

Sir, clause (3) as it at present stands, reads as follows:

> "(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed."

This provision will cause a lot of inconvenience. I submit, that the tenure of the Advocate-General should not be made dependent on the vagaries of party politics. It is quite likely that the Advocate-General may be engaged in the midst of a prolonged case in which the State may be interested. His removal, all of a sudden, will prejudice the interests of the State. It is therefore, better to make his tenure dependent upon the pleasure of the Governor.

I understand that this amendment is exactly on the same lines as the one suggested by Dr. Ambedkar himself and that it is acceptable to him. I hope, therefore, that the House will accept it.

The Honourable Dr. B. R. Ambedkar : Are you not moving amendment No. 2211?

Mr. President : He has embodied it in his amendment. It is exactly the same as your amendment which need, not therefore, be moved now.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I have only just one more argument to urge in support of amendment No. 2207 which has been moved by my honourable Friend Mr. Naziruddin Ahmad. According to clause (1) of article 145 the Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State. Now, Sir, one who is an eminent jurist is also eligible for appointment as High Court Judge and as such he is eligible for appointment as Advocate-General also. It is quite likely that an eminent jurist may not be a duly enrolled advocate of a High Court. If an eminent jurist is appointed an Advocate-General and if by chance he is not a duly enrolled member of a High Court, it will certainly not be open to him to appear in any High Court or even in a subordinate court. In view of this, Sir, I think it is necessary that the amendment moved by Mr. Naziruddin Ahmad, or at least the substance of it, should be accepted. It may be said that it will be a rare contingency that a jurist not enrolled in any High Court will be appointed as Advocate-General. I admit that it may be so. But then when we are so very particular in laying down every little detail in this Constitution, I do not see any reason why we should let this lacuna remain.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to oppose the amendment (No. 2207) moved by my honourable Friend Mr. Naziruddin Ahmad. The amendment appears to have been based on a confusion between the functions of the Advocate-General of India and the Advocate-General of a Province. The Advocate-General of India—whom we have styled "Advocate-General" in this Constitution—is really an Advocate-General functioning throughout of India. He has, therefore, to go to all courts in order to act for the Government of India. For instance, whenever a question of the interpretation of the Constitution is taken up before a court, under the present Civil Procedure Code, notice is given to the Government of India to appear in that matter. The Advocate-General of India, therefore, has to appear in all the provincial Courts in order to support the interests of the Centre.

As regards the Advocate-General of a province, his position is entirely different. In his own province, naturally being the Advocate-General, he has audience before all the courts in the province. But as regards the other provinces, he has no *locus standi* as Advocate-General. His *locus standi* would only be that of an advocate of one High Court and he will, therefore, be

[Shri K. M. Munshi]

governed by the provisions of the Legal Practitioners' Act. He has no position as Advocate-General in the other provinces and, therefore, there is no reason why he should be put on the same footing as the Advocate-General of India. Ordinarily, the Advocate-General of one province goes to another provincial High Court not for purposes of any litigation connected with the State. He only goes there for his private practice and therefore to that extent he can appear only under conditions which are imposed by the High Court in which he is going to appear.

There is reciprocity of appearance between one High Court and another ordinarily. But there have been occasions when one High Court has not permission to advocates of another High Court for various reasons—valid or invalid. The regulation of appearance of an advocate of another High Court in one particular High Court depends upon the rules and policy of that High Court. Therefore, it is much better that the Advocate-General's appearance in another High Court is regulated by the Legal Practitioner's Act applicable to all the members of the profession. I, therefore, oppose this amendment.

Mr. Naziruddin Ahmad : I do not advocate private practice in the case of the Advocate-General. It is only when he appears for the State in another High Court that the question arises. May I draw attention to the fact that I do not want the Advocate-General to indulge in private practice? It is only when he appears for the State in another High Court that the question arises. There the question of private practice does not arise. What provision has been made for the Advocate-General appearing for his State in the Supreme Court?

Shri K. M. Munshi : No one has found any difficulty in one Advocate-General appearing in another province. There is no reason why there should be a special provision.

Prof. Shibban Lal Saksena : Sir, I wish to draw attention to one fact. We have taken the British practice in these matters as the model in framing our Constitution. In Britain the Advocate-General has the status of a Minister. Dr. Sen had given notice of an amendment to give our Advocate-General the same status, but has not moved it. I would draw attention to the fact that it will be much better if we followed the practice in England. I request Dr. Ambedkar to tell us why he does not follow that model in this respect.

Dr. P. K. Sen : Sir, I quite appreciate that this debate should not be prolonged at least by me, and I am going to finish my observations as quickly as possible.

The point I wish to place before this House is not in support of my amendment, because I am not moving it, but to express my ideas about the fundamental principles which should govern the office of the Advocate-General. The Advocate-General at the present moment is no doubt often a lawyer of eminence in the province, but his sole duty and function seems to be to advise the Government on occasions in regard to certain points that arise in cases either between the Government and a private party or between parties which in some manner or other are connected with Government. For instance, there is a trust property in the hands of the Government and the trust is being disputed by somebody or other. In various matters like this the Advocate-General's opinion is sought. His office is really a bureau or legal advice. So is also the office of the Legal Remembrancer or the Judicial Secretary. But in neither case is the Government obliged to take opinion or adopt it and, in

many cases, it is treated with scant courtesy. Supposing that the Minister in charge of Labour or Revenue or Local Self-Government wants to initiate a certain measure. He no doubt consults the Advocate-General. But he can ride rough-shod over the opinion of the Advocate-General and take the opinion of any other inferior, irresponsible advocate and proceed upon it. This seems to me to be against all principles whatsoever. The Advocate-General's position should be, as I conceive it, much higher. He ought to be of the status of a Minister. The Law Minister can then influence to a very large extent, the spirit of the legislative and administrative structure of the Government. This has to a very large Crown under the Law Minister, the Advocate-General can hardly do anything, even if he were a man of great eminence to influence legislation. His powers are practically nil. As I conceive it, the position of the Advocate-General should be much higher. Unless it is equivalent to that of a Minister, it is impossible for him to discharge his duties properly. In other words, it comes to this that in my humble opinion, the Advocate-General should be charged with the portfolio of law. The question may arise about attendance in courts. Why should he then go about appearing in case? At the present moment the Advocate-General think that it is one of the Privileges of that office to earn fees by appearing in cases on behalf of the Government in the *mufassal* or even in the High Court. Well, that is a thing which will recede into the background of he is charged with the duties of the office of law Minister. The most preeminent of those duties shall be to establish and maintain a high level in the legislative and executive structure of the Government. He cannot then go and appear for fees in all cases; but in matters affecting high policy he would certainly go as Advocate-General to give an exposition on a high level, before the courts, of the principles and policies that actuated his Government. Now-a-days we are passing through critical times. There are various fissiparous tendencies at work and all manner of discriminatory legislation is being put through which bears the marks of very unwise and unskillful handling. What I submit is that the Advocate-General is one of those few persons who if installed in the office of the Law Minister could take a large share in regulating, shaping and moulding the polish of legislation in all its aspects. The rule of law is, in my humble judgment, the rule that should save the Government from all manner of disruptive tendencies. With the Law Minister, being in charge if these high functions it would be possible for the Government to proceed in the right manner and in the right direction. These are the observations which I humbly place before the House to consider in connection with article 145.

The Honourable Dr. B.R. Ambedkar : I do not think I need add anything to the debate that has taken place. All that I want to say is this: I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

Mr. President : I shall now put amendment No. 2207 of Mr. Naziruddin Ahmad to vote.

The question is:

"That after clause (2) of article 145, the following new clause be added:—

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

Shri T.T. Krishnamachari : What is the number of the amendment, Sir?

Mr. President : I shall put the amendment to vote again.

The question is:

"That after clause (2) of article 145, the following new clause be added:—

[Mr. President]

'(2a) In the performance of his duties the Advocate-General shall have right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

The amendment was negatived.

Mr. President : Then I put Amendment No. 2210 which includes within itself 2211 also.

The question is:

"That for clauses (3) and (4) of article 145, the following be substituted:—

'(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.'"

The motion was adopted.

Mr. President : The question is:

"That article 145, as amended, stand part of the Constitution."

The motion was adopted.

Article 145, as amended; was added to the Constitution.

Mr. President : We shall now adjourn till tomorrow morning, 8 O' clock.

The Constitution Assembly then adjourned till Eight of the Clock on Thursday the 2nd June 1949.