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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

Subedar Major Harbans Lal Jaidka.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 2nd 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.

ADJOURNMENT OF THE HOUSE

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I submit that it is difficult for Members to follow the stream of amendments which are coming every day. I do not complain against amendments coming in, but I only wish that we should have some breathing time to consider them carefully and then come prepared and, if necessary, to submit supplementary amendments. We are after all passing a Constitution for India, which should be the best Constitution in the world. I find new lists of amendments are coming in every conceivable number and size and they are of a very radical character. Some are absolutely new amendments to the Constitution itself and not merely amendments to amendments, though they come by way of disguise as being "with reference to" regular amendments or even of amendments to amendments. I do not oppose this tendency. In fact, Members should have the right to change their opinions, if they find it proper and necessary. May I suggest, therefore, that a Committee be appointed by Members who would really take interest in these matters? Let us have an overall picture of the amendments that the Members do submit and then we should have some time to consider them and to submit further amendments if necessary. I find the Drafting Committee is put to a very hard test. They have to pass through a large number of amendments daily without notice— and I fully sympathize with them. I, therefore, feel that some time should be given to the Members so that they may make up their minds as to what amendments are really necessary. In framing the Constitution, time should not be much important, and I believe that, at any rate, we cannot pass the Constitution by the 15th of August. May I, therefore, suggest to the honourable members and to you Sir, that there should be an adjournment of one or two months? In the meantime those who want to send amendments should work hard and send in all their amendments once for all so that we may come prepared. The debates will in that case be more useful. At present much bewilderment exist amongst the Members on the new amendments and so the debates are more less confined to the general aspect of the subject, which is not particularly useful. I therefore submit that we should be given sufficient time. The heat which has subsided for two or three days is likely to reappear with vengeance and that is another additional factor to be taken into consideration. I ask the House to consider all these matters and to suggest a way out.

Prof. Shibban Lal Saksena (United Provinces: General): I am opposed to any adjournment of the House. I am surprised at the suggestion of Mr. Naziruddin Ahmad for adjournment of the House for a month or two. I think that these fresh amendments to amendments will continue until the very last day that we discuss the Constitution and there can be no finality about them. If we want to finish the Constitution, we must continue to sit irrespective of the heat. If we adjourn, the passing of the Constitution may have to wait up

[Prof. Shibban Lal Saksena]

to the next year. We should continue to sit and finish the Constitution whatever may happen. At the same time I think we must get full time to understand and consider the amendments, but on that score we must not adjourn. We must continue till we finish.

Shri R.K. Sidhwa : (S. P. & Berar: General): Mr. President, the first part of Mr. Naziruddin Ahmad's point is really reasonable, that is to say the amendments reach us the previous night, say, at 9 o'clock or 10 o'clock and when amendments to an amendment are to be sent, it is more difficult for us, as we meet at 8 o'clock in the following morning. From that point of view, his argument, that some time should be given, is justified. I did not follow him about the adjournment of the House and I am not in favour of the adjournment of the House. I would however suggest that when these amendments come in you should give us one day more, that is to say, the discussion on those important amendments should be taken on the day after and not on the following day, so that if we have to send amendments to amendments, we can do so. That is the only solution and that will enable Members to send amendments in time. I am, however, not in favour of the adjournment of the House; we must continue to sit and finish the Constitution. That is my point, Sir.

Mr. President : As far as possible, I have been trying to accommodate Members with regard to the new amendments which they wish to give. Now, the suggestion is that when a new amendment to an amendment, which is already on the Order Paper, comes in, I should give further time for fresh amendments to this new amendment. I do not know if we go on in that way, we shall ever come to an end of amendments because we have already given time for giving amendments.

Shri R. K. Sidhwa : Sir, the new amendments come from the office on the previous night and they come at 9.30 p.m.

Mr. President : We have got more than 4,000 amendments, which originally came in and then amendments to these amendments have been coming and if it is suggested that we should give further time for these amendments to these amendments, as I said, there will be no end to these amendments. If there is any question which requires further consideration and if any amendment raises any point on which Members feel that they are not in a position to express themselves, that will be a ground for postponing the consideration of that particular amendment and if the Members are so inclined, personally I shall not stand in the way of adjourning discussion of any particular article or amendment which requires more consideration, but I do not think the House wants, and certainly I do not want, the adjournment of the House either for any Members to give fresh amendments or on account of the heat. I understand that there was some suggestion or consideration given by Members to the question of getting an adjournment on account of the heat but fortunately for us, as soon as the question of getting the House adjourned on account of heat came, the heat somehow disappeared and so that agitation also I think has now subsided. I hope we shall go along without any thought of adjournment on account of the heat. But adjournment of particular items I shall always be prepared to consider if there is any substantial ground for that.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, there is one real difficulty that I should request you to consider. The notices of amendments or amendments to amendments are received by members—at least by many Members—at about half-past ten in the night and you can see for yourself that there is not much time left after the receipt of the amendments to study them carefully. If it is possible to circulate these amendments earlier, then the complaint that has been made this morning will I think subside, but

so long as we receive amendments as we do at present between half-past ten and eleven, this complaint is bound to continue.

Mr. President : If there is any amendment which requires consideration about which Members want time, I shall be present to consider any suggestion of that sort. The amendments reach Members at ten because the amendments come till five in the afternoon and they cannot very well reach the Members before ten.

Shri R.K. Sidhwa : It is neither the fault of the office nor our fault.

Mr. President : But they have to be typed and then circulated.

Shri R.K. Sidhwa : We get fresh amendments from office at ten, I mean from the Drafting Committee.

Mr. President : The Drafting Committee is also sitting from day to day and they sit every day after the House rises and they have to consider all that has taken place and in view of other considerations they have to prepare their draft and those drafts come till about five in the office and then they have to be typed and circulated. All that takes time. But as I have said, I shall always be prepared to consider adjournment of discussion of any particular item about which members have doubt.

DRAFT CONSTITUTION—(*contd.*)

Article 146

Mr. President : We are now going to deal with a number of articles which are more or less word for word reproduction of articles which we have passed only during the last few days and I think there would not be much of discussion with regard to many of these articles. Article 146.

(Amendment No. 2212 was not moved.)

Professor Shah has tabled an amendment 2213. Do you wish to move that?

Prof. K.T. Shah (Bihar: General): Yes, Sir. Sir, I beg to move:

"That in clause (1) of article 146, for the word 'Governor' the words the Government of the State Government of the State concerned be substituted.

That in clause (2) of article 146, for the word 'Governor' where it first occurs the words 'Government of the State' be substituted."

The amendment clause will therefore be:

"All executive action of the Government of a State shall be expressed to be taken in the name of the Government of the State concerned."

and a similar change will follow in the second clause.

The reason why I put forward this amendment is that it is very unusual—not to say improper—for us to attach in our Constitution such a personal importance to the Governor, who is after all a temporary Head of the State, elected only for a few years, to make all executive action of Government being taken in his name. It is all very well for those countries where a hereditary, permanent, life-long King is the Head of the State, and where consequently action is taken in his name. Even then it is impersonal to the extent that it is spoken of as His Majesty's Government. But in this case the suggestion that all executive action be taken in the name of the Governor seems to me to be utterly incongruous with the democratic republic that we are thinking of establishing. The Governor is a bird of passage. He is there for five years at most, and therefore not having that permanence of headship and perpetuity which a hereditary monarchy would posses. It is improper and unreal, therefore, to suggest that every executive action be in the name of the Governor.

[Prof. K. T. Shah]

The orders of the Government of India even today have been expressed and all along have been expressed as the orders of the Government of India. An impersonal of that kind is much more suitable and appropriate for the form of Government that we are going to establish, then the personal prominence that this clause seems to suggest to the Governor individually.

I realise that this is only confined to the executive side of the Government. But even so I think the argument I have been advancing should be conclusive that the action of Government should be impersonal, and in the name of the Government of Province A or B or State X or Y as the case may be.

The orders I take it will be signed by the Secretary. If so, it would be still more appropriate to speak in the name of the State as a whole than in the name of the Governor who does not sign.

If on the other hand, it is intended that all executive action will be also signed by the Governor, and would, therefore, be more appropriate to be taken in the name of the Governor, I would enter a more emphatic objection. For in that case, apart from the foregoing argument, it would be almost impossible for the Governor personally, so to say, to look to every order of Government, and as such the machine may become unworkable. I, therefore, suggest, that instead of the Government action being in the name of the Governor, we must have a more appropriate and more impersonal expression— the Government of the State concerned—and I think there will be no objection to his suggestion.

Shrimati G. Durgabai (Madras: General): Sir, I think the language of this article is exactly the same as was adopted in article 64.

Mr. President : Amendment No. 2214 is of a drafting nature.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment. Article 146 is only a logical consequence of article 130. Article 130 says that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expression of executive action must be in the name of the Governor as is provided for in article 146.

In regard to the observations made by my honourable Friend Prof. K. T. Shah that under the old regime, all executive action was expressed in the name of the Government of India, my reply is that that was due to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

Mr. President : The question is:

"That in clause (1) of article 146, for the word 'Governor' the words 'the Government of the State concerned' be substituted.

'That in clause (2) of article 146, for the word 'Governor' where it first occurs the words 'Government of the State' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That article 146 stand part of the Constitution."

The motion was adopted.

Article 146 was added to the Constitution.

Article 147

Mr. President : The motion is:

"That article 147 form part of the Constitution."

Amendment No. 2215, Mr. Kamath.

Shri R. K. Sidhwa : It is a negative one, Sir.

Mr. President : There is an alternative also. Mr. Kamath, which part do you like to move?

Shri H. V. Kamath : (C. P. & Berar: General): I would like to move the first part, Sir.

Mr. President : Then, it is a negative one.

Shri H. V. Kamath : I shall not move it; but I shall speak on the article, Sir.

(Amendment Nos. 2216, 2217, 2218, 2219 and 2220 were not moved.)

Shri H. V. Kamath : Mr. President, I fail to see any valid reason for the retention of this article. It may be argued that it is on the same lines as an article which we have already adopted with reference to the President. But, now that we have accepted nominated Governors in the States, this article, to my mind, requires to be recast, if not entirely deleted.

There are certain aspects in this article which are wholly incongruous with, at least not in conformity with, the principle of nominated Governors for the States. If the House will carefully consider clause (c) of this article, to take only one instance, the House will see that the nominate Governor has been given power to interfere in what may be called the day-to-day business of the Council of Ministers. I wonder why the Governor should call upon the Chief Minister 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. I submit that this is entirely a matter for the Council to decide among themselves and the Governor has no *locus standi*, has no privilege or power or right whatever to step in here. The business of the Council of Ministers, is entirely a matter for them to arrange and discuss among themselves and to arrive at any particular procedure they like. If a matter has been considered by one of the Ministers, but has not been considered by the whole Council, the Governor cannot step in and tell the Chief Minister, 'you must put it before the Council of Ministers'. The Chief Minister and his colleagues are competent enough to decide which matter should go before the Council and which it is not necessary to be put before the Council. This to my mind is in tune with the tenets of constitutional democracy that we propose to set up in the States. My Friend Mr. B. Das asks, where is democracy? I am inclined to agree with him that there is no true democracy any where in the whole world. But we are trying to arrive at an approximation. I hope, if all of us pull our weight together, if we all put our shoulders to the wheel, we may at no distant date arrive at some sort of an approximation to democracy.

Then, Sir, there is another aspect to clause (b) of this article, which in my humble judgment offends against the new set-up that we have accepted for the States. Under this clause, the Governor can call for any information relating to the administration of the State. This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the State to decide which matter he would like to put before the Governor and which not. If he and his colleagues in their collective wisdom arrive at the opinion

[Shri H. V. Kamath]

that a particular matter may go to the Governor, certainly they may put it up to the Governor. But the Governor has no right to call for any information regarding the administration of the affairs of the State and proposals for legislation. This is another aspect of this article which to my mind violates the principle of constitutional democracy which we are going to set up in the States, and is repugnant to the principle of nomination that we have accepted for State Governorship. I would have been very happy if this article had been deleted. These are all matters of Government business for which I understand, I definitely know, there are manuals in every province and every State dealing with the conduct of Government business. These things could have been easily taken up later on and incorporated in the manual as to the procedure for the conduct of Government business. As it, is, the whole article is out of tune with the new set-up that we have accepted after the adoption of article 131 in the changed form. I would therefore request the Honourable Dr. Ambedkar to hold this article over, if he has not considered it already, for further mature consideration by himself and his team of wise men. If it cannot be deleted, I hope it will be possible to recast it in the light of what has happened in the last few days, and, for that purpose, that it will be possible for us to hold it over for some time.

Dr. P. S. Deshmukh : (C. P. & Berar: General): Mr. President, Sir, I am afraid I am not able to agree with my honourable Friend Mr. Kamath in his suggestion that the article should be omitted. If he were to pay a little more attention to the provision made by article 146, which we have just passed he will. I think, admit the wisdom of incorporating this article in the Constitution. Now under article 146 every order which is issued by the Ministry or the Cabinet or even individual Ministers will be an order which will be published and proclaimed in the name of the Governor. If article 147 is not there, there is nothing which will empower the Governor to know the various actions taken from day to day, and the orders passed and issued in his name. My Friend has said that this would refer even to routine matter. I can tell him, Sir, that ordinary matters which are unimportant, and which are of a routine nature, I am sure, no Governor in his wisdom would like to question, or request the Chief Minister that they should go to the Cabinet for reconsideration.

Shri H. V. Kamath : What is the guarantee?

Dr. P. S. Deshmukh : The guarantee is the Governor's wisdom, and the wisdom of the authority that will appoint such a........

Shri H. V. Kamath : What is the guarantee I asked?

Dr. P. S. Deshmukh : The guarantee I said is the Governor's wisdom and the wisdom of the authority that will appoint the Governor.

Sir, this article can never refer to unimportant, routine matters, but it can refer only to orders which the Governor thinks are likely to have larger repercussions, and are of such importance that it will be wise if all the Ministers in the Cabinet were to consider it. And apart from this direction that the question may be considered by the Cabinet, there is nothing. The Governor is not given the authority to over-rule the decision of the Cabinet. The article merely empowers the Governor whenever he considers that an individual Minister's decision should rather be given some more attention, that he would refer it for the consideration of the whole Cabinet.

My Friend Mr. Kamath has also attacked part (b) of the article. So far as this part is concerned I consider that this also is extremely necessary. For instance, suppose the Cabinet or certain Ministers are not pulling on well with the Governor; then they would be in a position to keep the Governor absolutely in the dark. On the other hand I feel confident that these powers given to

the Governor are not likely to be misused at any time, and that it is essential that he should have fullest information regarding the day-to-day administration so that he may be able to prevent pursuit of wrong policies and also communicate to the President and the Government of India the nature and course of the provincial Government. After all the Governor is essentially a link between provincial autonomy and the President and the Government of India, and that function he can discharge adequately only if he has the authority to ask the Cabinet to reconsider certain things and also to keep himself informed from day to day as to what orders have been issued and what sort of administration is being carried on.

Then, Sir, my friend also objected to proposals for legislation going up before the Governor; but this too is useful and desirable. The Governor must know beforehand any legislation that is proposed to be placed before the provincial assembly, what is the nature of that legislation and how it bears on the existing situation or compares with legislation in other parts of India. It is his duty also to see how it conforms with the policy of the Government of India. He is the one man who will be on the spot and who could advise the Chief Minister from a wider and a more impartial stand-point. Apart from giving advice, I do not think he is likely to go every much further. In any case this article does not confer upon him any grater powers. But this much authority he should and must have, i.e.., of asking the Cabinet to consider the *pros* and *cons* of the proposed legislation so that the administration of the province does not suffer either to the detriment of the Ministers of the Province or of the Government of India as a whole.

Shri H. V. Kamath : May, I ask why we should not trust the wisdom of the Chief Minister? Is not the Chief Minister wise enough?

Dr. P. S. Deshmukh : If my learned Friend Mr. Kamath were to consider the whole thing coolly, he will find that in fact, everything is and has been left to the Chief Minister, and the Governor is not likely to interfere. He only claims the right to get the information he may consider necessary. He is not given under this article any power to say that such and such legislation shall not be passed. The article provides that all decisions relating to the State should merely communicated to the Governor.

Shri H. V. Kamath : Why should not the Governor ask for it? Why should the Chief Minister be required to do it?

Dr. P. S. Deshmukh : This is, Sir, only a mutual arrangement and I do not find anything objectionable in this arrangement. The article provides that the Chief Minister shall give the Governor certain information and other information the Governor is empowered to ask for. There is no question of dignity or of standing on ceremonies. I therefore strongly support the article, and suggest that it be passed as it stands.

Shri B. Das (Orissa: General): Sir, as we are finishing the articles (Part IV Chapter II) relating to the Governor's powers and conduct of business, I think it my duty to tell the House my reactions. I wish I had the robust optimism of my Friend Dr. Panjab Rao Deshmukh as to believe that the Governor is a useful functionary. What has been the experience in the provinces since Congressmen came into power under Independent India? How has the Governor functioned? It is common knowledge, and it has been repeated by responsible members of this House that the Governor was nothing but a cipher. If that be the case, how is it then that this Governor, this nominated Governor of the Central Government and the Ministers elected by the State Unions and the Provinces will be able to co-operate? The Governor, according to my Friend Dr. Deshmukh is full of wisdom. I question that, and I doubt it very much, particularly when the Governor is a nominated Governor, nominated by the President and the Central Government. I wish we ought not to have a Federal Constitution and a Union Government any

[Shri B. Das]

more. We have now centralised all power in the hands of the President and the Cabinet, and it is not bad. It will save a lot of expenditure if we abolish all provincial Government, provincial Governors and provincial Ministers.

Mr. President : There is no use discussing that question; we have already passed that.

Shri B. Das : But my Friend Mr. Kamath referred this morning to the nominated Governors and their functions.

The point is, if we are going to centralise all power in the hands of the President and the Governors we should see if they are elected Governors or not. But the Drafting Committee has had no time to examine this point and the clauses if they fit in with nominated Governors. That is the mischief of this whole chapter. We know sections of constitutions remain dead letters. Certain sections of the American Constitution have gone to the winds. Some of the sections in this Constitution will also go to the winds. If however, there are some who have the illusion that the Governors will exercise their statutory powers against the elected Ministries, let them take note of the present practice under which the Governors know nothing absolutely of what is happening in their respective Province, where the provincial Cabinet is submitting no notes to the Governor as to what is happening.

There is a perpetual clash and perhaps the President and our beloved Premier may have to intervene at various stages to bring about harmony between the Governor and the provincial Cabinet. In spite of that I would make bold to utter a prophecy, *viz.*, that the provincial Cabinets will win and the Governors will remain the ciphers that they have been for the last two years.

Shri B. M. Gupte (Bombay: General): Sir, without going whole-hog with my honourable Friend Mr. Kamath I should like to support him as far as sub-clause (c) is concerned. In my opinion there are certain difficulties in the working of this sub-clause. The sub-clause says:

"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."

I do not understand how the Governor will know what particular decision has been taken by a minister in a particular matter, because according to sub-clause (a) the decision of the cabinet only are to go to him.

According to the working of the system of cabinet there are two sets of decisions. A minister in his own department and on his own responsibility, without the concurrence or even the knowledge of his colleagues, takes certain decisions on various matters that come before him from day to day. But there are other matters of greater importance which a minister is bound to submit for the collective decision of the Cabinet. Only the second set of decisions go to the Governor. As regards the first set of decisions there is no mention made at all in the article itself. I therefore do not understand how he is to know them. I may be told that the Governor might take advantage of sub-clause (b) and ask for information. I can understand that once he gets the information he can ask for more particulars but how is the initially to get the information regarding a certain decision taken by an individual minister? Without such a channel of information he is called upon to intervene and practically he might even stop the implementation of a decision taken by a minister. The point to be considered is how far this is consistent with his position as a constitutional head. Is it necessary to clothe the Governor with this authority or is it even desirable? I do not mean to suggest that the province should lose the benefit of the sage counsel of a Governor. He might be an elder statesman with ripe experience and wide knowledge. But the same purpose can be achieved even without giving him the statutory

right. He can make private suggestion to the Premier. We have got the example of the letters of Queen Victoria. We have there the evidence of how a sagacious monarch without any statutory or constitutional right could exert a profound influence on the decisions of the Cabinet by making various private suggestions to the Prime Minister. I therefore submit that it is not necessary to clothe the Governor with this statutory right.

It might be said that it may not be necessary but it is desirable. But there is the danger that it might lead to trouble. Suppose a Governor exercises his statutory right and objects to a decision made by a minister. Human nature being what it is, the minister concerned is bound to resent it. He might wonder how the Governor received the information. Is there any watch-dog on him or is there any tale-bearer? In the Government of India Act, 1935, there was the right of the Secretary to Government having direct access to the Governor. When that particular provision was debated in the House of Commons somebody described the secretaries as watch-dogs on the ministers. Very rightly the Drafting Committee has rejected this obnoxious right of access to the Governor on the part of the secretaries. In the absence of these watch-dogs the minister might wonder who told the Governor. Is there any tale-bearer? Today one minister might resent such interference and tomorrow another minister might become disgruntled. It is thus likely that bitterness may grow and in my opinion it might ultimately lead to a disturbance of the cordial relations which must subsist between the Cabinet and the Governor.

Moreover, if the statutory provision is there, perhaps an ambitious governor like President Milleraeu in France might be tempted to misuse or overuse it. I therefore, submit that it is unnecessary to keep that provision and at least it is worthwhile considering whether it is necessary to put it in the form in which it appears in the Draft Constitution.

Prof. Shibban Lal Saksena : Sir, I could not understand the opposition of my honourable Friend Mr. Kamath to this article on the ground that the Governors are nominated. He was the person who supported the proposition and now he says that because they are nominated therefore they should not have this power. If after the Governors are nominated this section is also removed, it is better to remove the Governors altogether.

According to the scheme which the House has approved, the Governor will be nominated by the President and we have given him power in his discretion. If the Governor as the Head of the State is not aware as to what is happening in the State, or what decisions his ministers have taken, how can he functions as the head of the State at all?

Shri H. V. Kamath : Through the Chief Minister.

Prof. Shibban Lal Saksena : The Chief Minister may not tell him anything. So this section is necessary so that the Governor may at least know what is happening in his State.

Under the scheme of things which the Drafting Committee has proposed they contemplate a Governor who shall try to be a liaison officer between the President at the Centre and the provincial Governments. He will try to see that the provincial Governments' policies fit in with the scheme of the Central Government. He will try to give advice and guidance to the Ministry on account of his superior wisdom and experience. The President, I hope, will nominate only such persons who have ripe administrative experience and wisdom and have the necessary political and intellectual stature to be Governors, so that they can give proper guidance to the provincial Cabinets. The Governor will have to keep himself above party politics and in this way

[Prof. Shibban Lal Saksena]

his position will be more important and effective. If, as suggested, he is not even entitled to obtain information from his ministers or know what is going on in the State in his name, I do not think it is worthwhile having him at all.

Mr. Gupte took objection to clause (c). He felt that if the Governor is entitled to get the decision of a minister reversed it might lead to heart burning. Personally I feel that the Governor under the new scheme of things will try to get the confidence of the whole Council of Ministers. The clause only says that if an individual minister takes some important decision on his own responsibility and it is not considered by the whole ministry then he will desire the matter to be considered by the council. Mr. Gupte complained that the minister might wonder how the Governor came to know about his decision. Under clause (b) he can call for the information from the Prime Minister himself. There is no reason to think that there are some backbiters, or somebody has been going to the Governor behind the back of the ministers. The Governor will also be touring and will come to know many things through his personal experience. Under the scheme of things the House has adopted, the Governor will have to be nominated in a manner that he can enjoy the respect of the council of ministers, by his superior intellectual calibre and sound administrative' wisdom and advice. Then the ministers will trust the Governor and will devote themselves to the welfare and the promotion of the real interests of the province.

Mr. President : I think we have had enough discussion on this article and I would like honourable Members to cut short their speeches.

Shri R. K. Sidhwa : Sir, we are all clear in our minds as far as one point is concerned, *viz.*, that the Governor who will be appointed will be in his status the first citizen of the province though he will have no executive power as far as good government and the maintenance of law and order are concerned. Since that is a settled fact we must know what is the interpretation of this article. Undoubtedly clauses (a), (b) and (c) create some kind of confusion and I am prepared to accept that. Under clause (a) it shall be the duty of the Chief Minister, it is obligatory on the Chief Minister to supply any information that the Governor wants from him. It may be argued that if the Chief Minister feels that the Governor is not entitled to call for information he might refuse to supply it, because he is the executive head of the province. The result will be that there might be some conflict. To avoid that the Chief Minister has the freedom to complain to the President who might intervene.

As regards clause (c) it has been argued by those who are opposed to it that the Governor might require to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, which has not been considered by the Council. Mr. Gupte asked how is the Governor to know what a minister has done. Any file that goes to the Governor contains a full note as to whether the subject-matter has been handled by a minister or by the Council of Ministers.

Shri B. M. Gupte : Individual minister's file would not go to him.

Shri R. K. Sidhwa : It is the practice everywhere. Every file goes to the Governor for his signature. The Constitution says that all orders are to be made in the name of the Governor and therefore formally the whole file goes to him—not merely one paper. He has to see the whole file before he puts his signature.

Shri H. V. Kamath : A file should go to him only after the entire Council has decided a matter; not the decision of an individual minister.

Shri Mahavir Tyagi (United Provinces: General): That might be observed in Sind but not in the provinces here.

Shri R. K. Sidhwa : If the file does not go to him he can call for it. He might say "I would like to know what I have to say before I put my signature." The head of the department might sign a cheque, which might be a formal one but he has to take the responsibility as far as his signature is concerned. You cannot say that he cannot call for the file and so that point does not arise. Supposing a minister takes a decision on which the Governor feels some doubt that the matter should be considered by the whole Cabinet, he would be justified in asking for its reconsideration by the Council of Ministers. I know of instances where a Minister has taken a decision, which the Council of Ministers reconsidered at the instance of the Governor and they had to revise it. There is nothing wrong in this. On the other hand the Council might tell him that the minister was perfectly right. Therefore clause (c) is more justified then clauses (a) and (b). Clause (c) is very necessary, for I have seen sometimes a minister in his individual judgment, issues certain orders and sends them to the Governor. It may be a contentious matter on which the Governor may honestly feel that it is in the interest of the province and its people that the matter should be considered by the Council. He would be perfectly justified in doing so. So while there is room for some improvement in language under clauses (a) and (b), clause (c) on which greater stress has been laid must be retained.

Shri Biswanath Das (Orissa: General): Sir, I am sorry I have to come here despite your advice to hasten the decision on the article by minimising discussion. If I have come up to speak it was because I thought that a certain aspect of this article has to be clearly and fully realised before honourable Members are called upon to vote. It is better at this stage to know what powers and responsibilities we are going to invest a Governor of a province with. I quite see the difficulties of the Drafting Committee when they were faced with a situation wherein root and branch changes were brought before them at the eleventh hour. If that is the difficulty they could very well take time to consider.

My Friend Dr. Deshmukh stated that the Governor is to direct and advise. If that is the idea behind the Drafting Committee and also leaders of thought in the Assembly I think not only the powers contained in article 147 but something more is called for.

The question we have to consider in this House is whether the Governor is going to be a constitutional head or a Governor who has to play his role in advising the ministry and directing into proper channel ministerial thought and action. If it is the later, if he has to interfere in shaping the administration and raising the standard, then this power is not unnatural but is necessary. All that I want to know and the Assembly has a right to demand to know is the background behind this article. This article was drafted under different circumstances and conditions keeping in view certain essentials, *viz.*, the Governor is to be elected on the basis of adult suffrage. Now the conditions have changed.

I would just invite the attention of honourable Members to clause (b) which says:

"to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for."

I for myself do not see why a Governor who is wedded to the Constitution and who is to be a constitutional head should dabble in matters regarding

[Shri Biswanath Das]

administration. The question might be asked as to whether the Governor should not know the proposals for legislation. Here again, I state that provision has been made that the proceedings of the Council of Ministers should be communicated to the Governor. Further, all the legislation, that is approved or passed by the legislature is to be submitted to him for his assent. Therefore there is every opportunity given to the Governor to know what legislation is coming and the shape in which it is coming. That being so, clause (b) seems to be wholly unnecessary. But if it is the desire of the House that the Government should have also the Governor's say in matters of administration the provision is justified. While discussing this article it would be unfair on my part if I do not invite attention to the Fourth Schedule wherein Instrument of Instructions has been provided. The Instrument of Instructions to the Governors has no legal force or validity in law. Whatever it is, be it a Sermon on the Mount, or be it something real, it allows scope for certain executive activities by the Governor. I specially refer to Para 4 which says:

> "That 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........."

Is the House, after the change in the modus of selection or election of the Governor, going to invest him with these powers? If so, I could understand the background and would say that clause (b) is fully justified. I therefore feel that those that are responsible for giving a lead to this Assembly to pass the articles have also the responsibility of explaining to honourable Members as to what is there in their minds in regard to the relations that should exist between the Governor and the Government and how they propose to avoid clashes and compose differences between them.

For myself, let me tell you a bit of my experience. I still recollect the days when contentious matters came up; how the Governor always took scrupulous care to be a disinterested person and said that in matters of contentious legislation he had no opinion to offer in the Cabinet because of his power of assent. If this is the case, there is no meaning in intimating to him beforehand what the legislative programme of the leader of the party or the Cabinet is going to be. Especially I visualise, in course of time as the Constitution works, there may be possible scope for the emergence of parties with differing political programmes and ideologies in the Centre and in the States. In such cases the Governor nominated by the Prime Minister at the Centre may not in all cases be acceptable to a Cabinet in the State headed by a different political party. In such circumstances rub can never be avoided if the power to give administrative pin-pricks is vested in the Governor.

Lastly, I wish to place before the House the fact that under the Government of India Act of 1935 ample powers were vested in the Governor to interfere and to keep himself informed of things done by the provincial Government. He had in his hands the nose-strings of the bull so to say. But there is nothing in this Constitution to control the Governor once he is appointed by the President on the advice of the Prime Minister of India, till the Governor himself chooses to resign. Therefore I feel that you are appointing a Governor who is responsible morally to the Prime Minister of India and to the President of the Indian Republic. There is little now in law limiting him to be a symbol or subject him to the control of the Centre or by the President. Therefore it is a pertinent question for honourable Members to ask, whether you are going to vest powers, of a wider scope in the Governor, capable of creating mischief and at the same time provide no power of control over him vested in the President or the Prime Minister of the Republic.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I cannot understand the objection that is raised to the powers of the Governor under article 147. The House has accepted and very rightly accepted, that there should be a Governor in the provinces. That Governor is not necessarily to be a cipher as some Members said, nor need he be only a super-host giving lunches and dinners to persons in society. He has a political function to perform and that political function is to be the Constitutional Head.

Some honourable Members who spoke are under the impression that a Constitutional Head has no functions at all and that he has to do nothing else than to endorse what the Premier or the Ministers do, without even giving them the benefit of his advice or giving them the impressions of a detached spectator on governmental actions. This I submit is entirely wrong. The Governmental set-up which we have envisaged is on the model of the British Constitution. Article 147 is a repetition of article 65 which we have already accepted with regard to the President in the Centre. The responsibility of Government, if at all, is much more comprehensive and stronger in the Centre under this Constitution than in the Provinces. In view of this, I cannot understand why these objections are taken again and again in respect of the same powers.

My Friend, Mr. Gupte, referred to sub-clause (c) and asked the question, where is the Governor to get the information from? If you read sub-clause (b) it says—

> "It shall be the duty of the Chief Minister of each State to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;"

Under this clause it will be open for the Governor to ask the Chief Minister for information with regard to important questions and if he feels that certain decisions have been taken not by the Cabinet as a whole but by an individual Minister which requires reconsideration at the hands of the Cabinet as a whole, clause (c) will give him the power to get that done. What is wrong about it? When a Minister acts behind the back of his colleagues, behind the back of the Chief Minister who is responsible for all the actions of the Ministers, why cannot the Governor say, "Here is a particular order. I feel that it is a matter of great importance. I want that by virtue of collective responsibility all the Ministers must meet together and consider it"? If they accept it, he is bound to accept their advice. He has no right to over-rule them. It is merely a matter of caution that a decision, which in the opinion of the Constitutional head, is such as requires the *imprimatur* of the whole Cabinet and not of a single Minister, should so receive it. Therefore it is a safeguard which preserves the collective responsibility and the powers of the Prime Minister, and not a power which interferes with the Government. Therefore the fear that it would so interfere is entirely unfounded.

Then as regards my honourable Friend, Mr. Biswanath Das, I am reminded of the claim of the psycho-analyst that when an infant in the beginning of his life gets a certain complex that continues throughout life. My Friend, Mr. Biswanath Das, when he was Prime Minister of Orissa in 1938, had an extraordinarily bad Governor and the complex that he acquired then about the powers of the Governors continues even after ten years. He forgets that even in those days in 1938 there were several Governors who took up a strictly constitutional attitude, and who out of their experience of parliamentary life in England now and then asked the Ministers to reconsider certain points of view. This was extremely helpful. I am particularly referring to Sir Roger Lumley, the then Governor of Bombay. We need not import the old complex into the new regime. The new Governor has no power except as a constitutional head. He is going to be nominated by the Centre. He is going to be a detached spectator of what is going on in the province. His function is to maintain the dignity, the stability and the collective responsibility of his government. Now in that limited sphere he can exercise some influence.

[Shri K. M. Munshi]

That influence he can exercise only if he is given these limited powers. I would mention to the House that since we are copying the British model, we have also to consider what are the duties and functions of the constitutional head there.

Shri Biswanath Das : Let me accept Mr. Munshi's comments on me, for I do not worry about them, but I would request him to reply to the points that I have raised.

Shri K. M. Munshi : I want to make it clear that the position of the Governor must be considered from the point of view of a constitutional head as in England. A constitutional head is not a cipher. I will read for the benefit of the House the position of the king in England as enunciated by the late Mr. Asquith who could not be considered a weak Prime Minister at any time of his life. This is his definition of the position of the constitutional head in England:—

> "We have now a well-established tradition that in the last resort, the occupant of the Throne accepts and acts on the advice of his Ministers... He is entitled and bound to give his Ministers all relevant information which comes to him;"

Therefore it is not as though he cannot get any information apart from what he gets from his Ministers.

> "to point out objections which seem to him valid against the course which they advice; to suggest, if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament."

Therefore the constitutional head in England is not a dummy. He is not a cipher. He has got an important role of advising his Ministers.

Shri H. V. Kamath : On a point of information, Sir, may I ask Mr. Munshi whether in any written Constitution of the world any Constitutional head is invested with powers envisaged in article 147?

Shri K. M. Munshi : So far as this Constitution is concerned, as I have said, we have tried to adopt the British model as far as we can, consistently with the conditions in this country, and so the constitutional head to of the province—and the President—must be put on the same level as the constitutional head in England. Sir, there are going to be many minorities in the provinces and it is the duty of the Governor to see that there is a balance in the general policies followed by governments. It may happen in this way. The Prime Minister, being the head of the majority party, has certain policies to put through. He may find that the minorities are not able to accept those policies, but the Governor exercising influence over his Prime Minister might be able to bring about some harmony among the parties, 'behind the Speaker's chair' as it is said in England. Therefore he must have the right to ask his Ministers to reconsider certain programmes. Of course, ultimately he must accept the advice of his Ministers. If the Prime Minister finally says, "this is my policy, this is my advice," the Governor will have to accept them. But till that stage is reached, he has got considerable scope for influencing decisions.

Shri Biswanath Das : I am sorry for interrupting. Does Mr. Munshi honestly believe that the position of the Governor in a province has any connection with or any resemblance to the executive in England? That is No. 1. No. 2. is, does he not know that the king in England is not even in a position to use the Royal Seal, that it is being used by the Lord Privy Seal? Therefore how does he compare the position and power of the king of England and

the British Cabinet with these of a provincial Governor and his Council of Ministers?

Shri K. M. Munshi : I do not understand this objection which is being raised against this article. He wants to build up democracy in this country. We are going to have a government of a type which is more or less on the British model. That being so, nothing need prevent us from following the successful experiment in England. We are not going to have a new experiment. It the Governor has not even the function of influencing his Ministers or even asking them to reconsider their decision, the only alternative is the suggestion made two years ago but rejected that the Premier, once elected, should be the constitutional head, the complete master of the government in the province during his tenure of office for five years. There is no harm, but there is great advantage if the Governor exercise his influence over his Cabinet. As I said, we have single parties in the provinces now, but a time might come when there will be many parties, when the Premier might fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit that the powers that are given here are legitimate powers given to a constitutional head and they are essential for working out a smooth democracy and they will be most beneficial to the ministers themselves, because then they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessible to the other parties. From this point of view these powers, which we have accepted for the Governor, are essential and must be retained.

Shri Rohini Kumar Chaudhuri : (Assam : General): Mr. President, Sir, I consider this article 147 will be a blot on our future Constitution, if it is adopted. Sir, just as a piece of cow-dung may spoil the whole vessel of milk, this particular provision will spoil this whole Constitution of ours. I am speaking from personal experience and I consider that this is a most unwanted provision and this will lead to friction in the provincial administration. The first question that you ought to remember is whether in a province the Chief Minister is the most effective person or the Governor. Can you for a moment deny that the Chief Minister is certainly the person in authority in a province except in certain matters which will be under the Constitution in the discretion of the Governor? Now is it fair to say that it shall be the duty of the Chief Minister to do a certain thing or to furnish certain information to the Governor? Let me take, for instance, the first clause of this article. It says: "It shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation." This is a work which can be and is left to the Chief Secretary of the Government. Will the Chief Minister be guilty of breach of duty if for any reason, the Chief Secretary or the Secretary in charge does not forward the copy of the proceedings of the Council of Ministers to the Governor? This article should be worded in this way—"That all information relating to the administration of the State so far as it affects the exercise of the right, power and discretion of the Governor shall be communicated to the Governor". As for other things the Governor has absolutely nothing to do; it is only in those matters which may affect the exercise of his discretion information may be sent. The decision of the Council of Ministers may be forwarded to the Governor, but not any other matter and even in that, it should be left to the ordinary office channel for the proceedings to be sent to him. No Chief Minister should be considered as failing in his duty if for any reason copies of the Proceedings are not sent to the Governor. Then, Sir, clause (b) reads as follows:—

> "To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;"

[Shri Rohini Kumar Chaudhuri]

What is his business to call for any information? What can he do after getting the information? He has no business to call for any information or any file or anything of that kind. Even in the present arrangement there is no such provision. All files go to the Chief Minister. It is no part of his duty to send certain things to the Governor. I think that the whole section is very badly worded and this clause should be worded in this way:—

"The Governor may call for any information relating to the administration of the affairs of the State and such information shall be furnished to him if in the opinion of the Chief Minister such information is necessary for a proper exercise of the duties of the Governor."

In all other matters, the Governor has no duty. It is only that information which may help him in the exercise of his duty, which may be sent to him. I am afraid the clause has been unhappily worded. It seems as if to say that the Governor is the same Governor, a representative of the British monarch and as such the Chief Minister is subject to him and must carry out his orders; it is not so under the present Constitution as we are framing it. We are not placing anybody here either as a monarch or as any representative of the monarch. There is no question of monarchy; it is a question of democracy. The Governor has no business to poke his nose into the affairs of the State which is entirely the consideration of the Ministry. He can only butt in when such information is necessary for the exercise of his discretionary power, and in no other matter can he call upon the Chief Minister to give information and it cannot be a breach of duty of the Chief Minister not to give him that information which is entirely within his consideration. If the Governor can show some relevancy, then, of course, the information will be given to him and not otherwise.

The third clause, I submit Sir, is the most dangerous of all the clauses under this article. It says: "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." There are many things which are done by Ministry, of course by informal consultation; there are many things which a particular minister does and if he has any doubt he usually consults the Chief Minister. Who is the Governor to ask the Chief Minister to take that matter to the Council of Ministers? Why should he do it? I, as a Minister, have passed a certain order and when I find that I am in doubt, I ask the Chief Minister whether the order is proper or not. If the Chief Minister says it is all right, I pass the order; the order is urgent and action on that order should be taken immediately. What has the Governor to do with that? How can the Governor ask the Chief Minister to reconsider this matter? It may not be at all within his province of powers and why should it be reconsidered? Take for Instance, Sir, a Judicial Minister remits a death sentence; he does so after having taken into consideration all matters; he has also consulted the Chief Minister, but his decision is against the advice of the Secretary and what the Secretary does is, he goes to the Governor and says: "Here is a man whose sentence is being remitted and you ought to...........".

Mr. President : Where is the provision in this Constitution which gives power to a Minister to grant pardon ?

Shri Rohini Kumar Chaudhuri : That is true, Sir, but I am only giving an illustration. After all the Minister passes the order.

Mr. President : Not from this Constitution.

Shri Rohini Kumar Chaudhuri : Let me give another instance. Take, for

instance, that a settlement has been made by the Ministry of certain shops, excise or something, in contravention of the wishes of the Secretary or of the head of the Department, and they do not agree with that order. Now they approach the Governor for a reconsideration of the matter; the order may have been passed after consultation with the Chief Minister and then the Governor says that this matter ought to be considered by the Council of Ministers and the time passes. Why should the Governor be allowed to interfere in such a matter, that is my question. I am only giving an illustration and there may be other illustrations. But why in those matters where the Governor has nothing to do, where the orders have been passed after consultation with the Chief Minister by a particular Minister, what authority has the Governor to ask the Chief Minister again to consider this matter by the Council of Minister? Why? That only delays the matter and makes the order infructuous. Under what circumstances can you imagine that he should be able to do it? You may say that the Chief Minister has made a mistake and therefore this is a matter which ought to be considered by the Council of Ministers. But, who is the governor to find out mistakes in a Minister in matters not affecting his special powers? That is the question I would like to ask. Who is the Governor to poke his nose and ask the Chief Minister or the Ministry to reconsider a matter because he does not agree with him or because his officers do not agree with the Ministers? This clause is a very dangerous clause; this is a very bad clause.

Shri R.K. Sidhwa : I may say, here, Sir, that in certain provinces, a Minister without consulting the Prime Minister or the Chief Minister sends papers to the Governor and he is allowed to do so.

Shri Rohini Kumar Chaudhuri : That is wrong. Why should the Governor interfere? The Chief Minister is always there and if he finds that a particular Minister is acting contrary to the policy of his Government, he can call for any papers, he can advise the Minister or he can himself pass orders. What business has the Governor to do here? I would request the Honourable Dr. Ambedkar to reconsider the whole position in view of what I have said. I am sure that whatever we may say about the other clauses, clause (c) is going to lead to friction and quarrel between the Ministry and the Governor.

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

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

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

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

[The Honourable Dr. B. R. Ambedkar]

That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

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

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

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all: He is the representative not of a party, he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all Cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of

the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform what I say not functions because he has none, but the duties which every good Governor ought to discharge. (*Cheers.*)

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

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

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

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

Mr. President : The question is :

"That article 147 stand part of the Constitution."

The motion was adopted.

Article 147 was added to the Constitution.

New Article 147-A

Mr. President : There is another article proposed to be added—147-A by Prof. Shah.

Prof. K. T. Shah : I do not wish to move it.

Article 150

Mr. President : Articles 148 and 149 have been passed. We go to article 150.

Shri L. Krishnaswami Bharathi (Madras: General): May I suggest that this article be held over?

Mr. President : Is it the wish of the House that the consideration of this article be held over.

Honourable Members : Yes.

Article 151

Mr. President : We go to 151.

(Amendment Nos. 2298 to 2304 were not moved.)

(No. 2305 was not moved.)

There is an amendment to this— 181 of Third List by Mr. Gupte but the original amendment is not moved.

Shri Brajeshwar Prasad (Bihar: General): Sir, I will move 2305.

I beg to move:

"That in clause (1) of article 151, The words 'and the expiration of the said period of five years shall operate as a dissolution of the Assembly' be deleted."

Shri B. M. Gupte : Sir, I move:

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

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

Prof. Shibban Lal Saksena : On a point of Order. This amendment No. 2304 has not been moved.

Mr. President : I am afraid it is my mistake. This has reference to 2304 and not to 2305.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): I am moving 2304. Sir, I beg to move:

"That in clause (1) of article 151, after the words 'its first meeting' the words 'and no longer' be inserted."

Shri B. M. Gupte : Sir, before I proceed I request permission to rectify a mistake which has occurred owing to inadvertence or oversight. I want to say 'Parliament by law for a period' instead of 'Parliament for a period' in my amendment.

Mr. President : Yes, you have permission to do that.

Shri B. M. Gupte : This provision is exactly similar to the one which we have already adopted for the Central Parliament— article 68. Here it is less objectionable. There the Parliament is allowed to extend its own life. Here I have given authority to Parliament to extend the life of the State Legislature. Some persons might argue that in view of article 227 it is not necessary to give this power to Parliament because in an emergency the Parliament is given the right to legislate on all State matters and therefore it may not be necessary to extend the life of the State Legislature. But that will not be proper, because an emergency does not necessarily mean that all the machinery of the provincial responsible Governments should be scrapped. On the contrary in order to enlist better co-operation in war effort or in an emergency effort, it is necessary to keep that machinery going; and if this provision is not made and if the time of the State legislature expires during that emergency then our object could not be achieved. Automatically the Legislature would be dissolved and the whole machinery would be suspended. Therefore I submit that there should be this power for the Parliament to extend the period if it so desires and if it is necessary in the public interest at that time. I therefore move this amendment.

Mr. President : Nos. 2306 and 2307 are of a drafting nature. 2308—Dr. Ambedkar.

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

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

(Amendment No. 2309 was not moved.)

Mr. President : Now the amendments are moved. Does any one want to say anything about this article or the amendments?

Prof. Shibban Lal Saksena : Sir, before I proceed I would like to know whether this article can be taken up before article 150 has been passed,

because this article lays down that one-third of the Members shall retire after three years. Unless we know the composition of the Council how can we decide whether they should retire after two years or three years?

Mr. President : Whatever the composition of the Council may be, half of the Members will retire at the end the second year, or if it is so decided, one third may retire. That will not in any way depend on the composition of the Council.

Prof. Shibban Lal Saksena : If that is your ruling, Sir, I bow to it.

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

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

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

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

I have only to say that the amendment of Mr. Gupte, which gives to the Parliament the power to increase the life of the Legislatures by one year at a time until an emergency is over, is almost wholly undemocratic. The result may be that sometimes the Legislative Assemblies in the Provinces may continue for even ten or twelve years. Suppose there is a war and the war lasts long. Then every year, the life of the Assemblies will be extended. I say that Mr. Gupte's amendment which wants to give to the Parliament the power to increase the life of the provincial Legislature by a year at a time is something which is wholly undemocratic. I know we have allowed such a provision in the case of the Parliament, and I opposed it then also. I am sorry the Prime Minister is not here; I wish he were here and he had given us his views upon this subject. So far as I know he is opposed to this provision. It has been said that when a war is on, an election is difficult. But I say it is in war that people's tempers are so altered that there must be an election to know the views of the people. I, therefore think that this power of increasing the life of the provincial Legislature year by year indefinitely is something which besides being wholly undemocratic will be very harmful. In fact we know that in the United States of America, the Presidential election was held at the height of the war and President Roosevelt was re-elected, and I think that raised the prestige of the United States very high. I think it is only proper that the elections to Legislatures should be held after the fixed period of five years, irrespective of the fact whether there is war or no war. The people have the right to demand fresh elections every fifth year. It is a right which should not be taken away from the people on the pretext of any emergency. If this power is given to Parliament, it may be abused and the people may be deprived of the right of removing an unwanted government and of choosing the government of their choice. I am therefore opposed to this amendment of Mr. Gupte.

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

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

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

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

The question is:

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

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

The amendment was adopted.

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

Shri Brajeshwar Prasad : Sir, I would like to withdraw my amendment.

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

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

The question is:

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

The amendment was adopted.

Mr. President : Then I put article 151, as amended by these two amendments to the House.

The question is:

"That article 151, as amended, stand part of the Constitution."

The amendment was adopted.

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

Article 152

Mr. President : Then we come to article 152. To this article, there is the amendment of Dr. Ambedkar, No. 2311, to which there are several amendments, one of which is amendment no. 38 of the First List.

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

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

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

(a) is a citizen of India;

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

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

Mr. President : As I said, there are several amendments to this.

These may be moved now.

(Amendment Nos. 126, 127, 128 and 129, in the Supplementary List were not moved.)

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move amendment No. 38 of List I, Third Week, which is:

"That in amendment No. 2311 of the List of Amendments in clause (b) of the proposed article 152, for the word "thirty-five" the word "thirty" be substituted."

This is in conformity with what we have already passed in regard to age qualification for the members of the Upper House in the Parliament, and therefore, there is not much to be said as to why this amendment is being moved here. But before I close I would like to clear a doubt regarding clause (c) of this article which has been proposed by Dr. Ambedkar. It says, the person shall "possess such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State."

Sir, my doubt—the doubt that I have in mind—is this. While we are wedded to the principle of adult franchise and hope that Members of both these Assemblies will be popularly elected persons, who will be entitled not only to send their representatives to sit in this House and also in the Upper House— whether of the Centre or the provincial bodies—my fear is that according to this sub-clause as it stands it is quite possible that a property qualification or any other qualification may be introduced whereby Members may be debarred from offering themselves as candidates for either House of the Legislature.

Sir, in moving the constitution for the Upper House of the provincial Legislature, that is of the State, reference has been made to the constitutions of Canada and South Africa, where there is a property qualification prescribed for those who can be members of the Upper House. If that idea remains in our minds that this sub-clause can at any stage be introduced— and I am not even sure that, where this sub-clause is retained, members of the Lower House or the Upper House may not have their qualifications restricted, and what you have granted by adult franchise namely that every adult can vote and every adult aged 25 or 30 can be a member of the Lower or Upper House—and if any other qualifications are prescribed, his right may be thereby taken away. My point is that either we draw our rights from the Constitution laid down in this House or they are drawn from the Parliament which may change those rights from time to time. We have no objection should a Parliament, which would be also a sovereign body, wish to change the constitution. There is a certain prescribed method and only by a certain number of votes can that constitution be changed. But suppose at any given time in a provincial Legislature or in a Parliament a motion is put and the qualification of the members is raised, then I am afraid that the safeguard or the provision we have placed that every adult, or every adult aged 25 or 30 shall be able to be a member of either House may be nullified. So I hope that Dr. Ambedkar will assure the House that that possibility is not in his mind because as far as disqualifications are concerned, there is a separate article disqualifying a member from appearing as or becoming a member of either of the two Houses. Here it is specifically mentioned that the qualifications of the members may be prescribed from time to time. Sir, I move.

(Amendments Nos. 2312 to 2318 were not moved.)

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

"That in article 152, after the word 'age' where it occurs for the first time the words 'is literate, and is not otherwise disqualified from being elected' : and after the word 'age' where it occurs for the second time, the words 'is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected' be added."

The important point that I would like to make for the consideration of this amendment is the necessity of at least candidates being literate who seek

[Prof. K. T. Shah]

to be elected to the Legislature. We have an appalling volume of ignorance in this country—utter illiteracy. And the danger of illiteracy becoming predominant, or rather the danger of illiterate candidates coming into the Legislature, appears to me to be so great that I think we would do well to lay down a positive requirement by or qualification for candidates, seeking election to the Legislature, to be literate at least.

Under the prevailing state of things, it is difficult to demand that electors shall be all literate, as we have some 85 per cent of the population illiterate, and with adult franchise the voters would naturally be largely illiterate. It is, however, a misfortune which we would like to correct at the earliest opportunity, and I trust that within a measurable period of time—perhaps ten years—illiteracy would be completely abolished; and voters will all have this minimum of requirement in democratic citizenship.

But even while it prevails, and while this danger of something like over three-fourths of the population, if not more, being illiterate is before us, I think it is necessary to insert in this Constitution the positive requirement that the candidate will be at least literate; and that anyone who is not literate will be disqualified.

The other items, Sir, in my amendment making disqualifications for candidates, are not so very important; and I do not lay so much stress by them. The amendment moved by the Chairman of the Drafting Committee if carried, would perhaps attend to some of those. But in this matter of literacy of the candidate, I feel very strongly; and I trust the House will agree with me, and lay down this qualification of literacy by the Constitution, and not by an Act of Parliament only.

I commend my amendment to the House.

Mr. President : The amendments have been moved. Any one wishing to speak on the article or any of the amendments may do so now.

Mr. Naziruddin Ahmad : Mr. President, I have some difficulty in accepting amendment No. 68 moved by Shrimati Purnima Banerji. The first difficulty is that I feel that in the Legislative Assembly where a member should be more vigorous, more youthful, and more energetic than the Members of the Legislative Council who would be elderly statesmen, the amendment states that the Members of the Legislative Assembly must be at least thirty five and the Members of the Legislative Council at least thirty. I submit that the whole thing should have been the other way round. As in the amendment moved by Dr. Ambedkar, the age-limit of the Lower House...

Mr. President : I think you are under a misapprehension. She wants for the words "thirty-five" the word "thirty". That refers to the Council and not to the Assembly. "In case of a seat in the Legislative Council not less than 35 years"—she wants that to be substituted by "30".

Mr. Naziruddin Ahmad : But, Sir, in the corresponding provision to the Central Legislature—the Parliament—the provision is that for the House of the People—the Lower House—the age limit would be twenty-five and for the Legislative Council not less than thirty-five. But as it is printed and circulated.

Mr. President : It is said that in the case of a seat in the Council of State not less than thirty-five years and in the case of a seat in the House of the People not less than thirty.

Mr. Naziruddin Ahmad : So the age limit is—Upper House 30 and Lower House 25. In that case I have nothing further to say. The speed and

rapidity with which amendments are being showered upon us is responsible for this slip.

Prof. Shibban Lal Saksena : Mr. President, Sir, the original clause has been substituted by the amendment of Dr. Ambedkar. Sir, in this amendment I object to two things: my first objection is to clause (c). This clause says:

"possess such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State."

It does not even say 'Parliament'. I would have wished that these qualifications were laid down in the Constitution itself. One of the main objects of the Constitution is to lay down the qualifications of candidates and unfortunately these have been left to be decided by the Legislature of the State. The result will be that every State will have a different set of qualifications for its candidates. A men who can be a member of the Assembly in Bombay may not be eligible to be so in the United Provinces, because the qualifications in Bombay may be different from those in the United Provinces. This, I think, is a mistake which I hope Dr. Ambedkar will correct.

Again, Sir, as I said, I am totally opposed to even Parliament being given the power of prescribing qualifications; the Constitution itself should lay down what those qualifications shall be. Otherwise, qualifications of candidates will be made a plaything of party politics. For instance, a die-hard Government might come into power and lay it down that only zamindars, or persons paying income-tax of a particular amount would be eligible to seek election. The result will be that ordinary people will go to the wall. I, therefore, think, Sir, that clause (c) should be deleted.

Then, coming to clause (b), it lays down that a person shall not be qualified for election unless he is not less than twenty-five years of age in the case of the Legislative Assembly, and thirty years, in the case of the Legislative Council. As I said the other day, in the case of other constitutions these limits are not generally prescribed. In England any voter can be a member of Parliament. I have known persons who have become members of provincial Assemblies at a much younger age. I, therefore, think, Sir, that at least for the provincial Legislatures which are the training grounds in parliamentary affairs, the age of eligibility for membership should be fixed at twenty-one years.

Mr. President : We had all these arguments when we discussed article 68-A. Is it necessary to repeat the same arguments once again?

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

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

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

[The Honourable Dr. B. R. Ambedkar]

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to reserve for the Drafting Committee the right to reconsider the last part of sub-clause (c). Subject to that I think the article, as amended, may be passed.

Mr. President : I shall now put the article with the various amendments to vote: first is the amendment of Shrimati Purnima Banerji—No. 38 of List I.

The question is:

"That in amendment No. 2311 of the List of Amendments, in clause (b) of the proposed article 152, for the word 'thirty-five' the word 'thirty' be substituted."

The amendment was adopted.

Mr. President : The question is:

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

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

(a) is a citizen of India;

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

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

The amendment was adopted.

Mr. President : The question is:

"That in article 152, after the word 'age' where it occurs for the first time the words is 'literate', and is not otherwise disqualified from being elected; and after the word 'age' where it occurs for the second time, the words 'is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected' be added."

The amendment was negatived.

Mr. President : The question is:

"That article 152, as amended, stand part of the Constitution."

The motion was adopted.

Article 152, as amended, was added to the Constitution.

Mr. President : Then we have notice of another article, No. 152-A, which I think is covered by the article which we have just passed; so, that need not be taken up.

Then we go to article 153.

Article 153

Mr. President : Article 153 is for the consideration of the House.

With regard to the very first amendment, No. 2321, as we had a similar amendment with regard to article 69 which was discussed at great length the other day, does Professor Shah wish to move it?

Prof. K. T. Shah : If I am in order I would like to move it. But if you rule it out, it cannot be moved.

Mr. President : It is not a question of ruling it out. If it is moved, there will be a repetition of the arguments once put forward.

Prof. K. T. Shah : I agree that this is a similar amendment, but not identical.

Mr. President : I have not said it is identical.

Prof. K. T. Shah : All right. I do not move it, Sir.

Mr. President : Amendment Nos. 2322, 2323, 2324, 2325 and 2326 are not moved, as they are verbal amendments.

Prof. K. T. Shah : As my amendment No. 2327 is part of the amendments not moved, I do not move it.

Mr. President : Then amendments Nos. 2328, 2329 and 2330 also go, Amendment No. 2331 is not moved.

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

"That at the end of sub-clause (c) of clause (2) of article 153, the words 'if the Governor is satisfied that the administration is failing and the ministry has become unstable' be inserted."

In this clause certain powers have been given to the Governor to summon, prorogue or dissolve the Legislative Assembly. Now I want that some reasons may be enumerated which necessitate the dissolution of a House, I find that to clause (3) of article 153 there is an amendment of Dr. Ambedkar in which he wants to omit the clause which runs thus: "(3) the functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion." I, on the other hand, want that some reasons should be given for the dissolution. Nowhere in the Constitution are we enumerating the conditions and circumstances under which the House can be dissolved. If we do not put any condition, there might be difficulties. Supposing in some province there is a party in power with whose views the Governor does not agree. In such cases it is possible that the Governor may find some reasons to dissolve the Assembly and make arrangements for fresh elections. If such things happen there will be no justification for a dissolution of the House. Simply because a Governor does not subscribe to the views of the majority party the Assembly should not be dissolved. To avoid such difficulties I think it is necessary that some conditions and circumstances should be enumerated in the Constitution under which alone the Governor can dissolve the House. There should be no other reason for dissolution of the House except maladministration or instability of the Ministry and its unfitness to work. Therefore this matter should be considered and we should provide for certain conditions and circumstances under which the Governor can dissolve the House.

Mr. President : The next amendment, No. 2333, is not moved, Dr. Ambedkar may move amendment No. 2334.

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

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

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

Mr. President : Amendment No. 2335 is the same as the amendment just moved. Amendment No. 2336 is not moved.

Shri H.V. Kamath : Mr. President, Sir, may I have your leave to touch upon the meaning or interpretation of the amendment that has just been

[Shri H. V. Kamath]

moved by my learned Friend, Dr. Ambedkar? If this amendment is accepted by the House it would do away with the discretionary powers given to the Governor. There is, however, sub-clause (b). Am I to understand that so far as proroguing of the House is concerned, the Governor acts in consultation with the Chief Minister or the Cabinet and therefore no reference to it is necessary in clause (3)?

Mr. President : He wants clause (3) to be deleted.

Shri H.V. Kamath : In clause (3) there is reference to sub-clauses (a) and (c). I put (a) and (b) on a par with each other. The Governor can summon the Houses or either House to meet at such time and place as he thinks fit. Then I do not know why the act of prorogation should be on a different level.

Mr. President : That is exactly what is not being done now. All the three are being put on a par.

Shri H. V. Kamath : Then I would like to refer to another aspect of this deletion. That is the point which you were good enough to raise in this House the other day, that is to say, that the President of the Union shall have a Council of Ministers to aid and advise him in the exercise of his functions.

The corresponding article here is 143:

"That 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, as you pointed out in connection with an article relating to the President *vis-a-vis* his Council of Ministers, is there any article, is there any provision, in the Constitution which binds the Governor to accept or to follow always the advice tendered to him by his Council of Ministers? Power is being conferred upon him under this article to dissolve the Legislative Assembly. This is a fairly serious matter in all democracies. There have been instances in various democracies, even in our own provinces sometimes, when a Cabinet seeking to gain time against a motion of censure being brought against them, have sought the Governor's aid, in getting the Assembly prorogued. This of course is not so serious as dissolution of the Legislative Assembly. Here the article blandly says, "subject to the provisions of this article." As regards clause (1) of the article, I am glad that our Parliament and our other Legislatures would meet more often and for longer periods. I hope that will be considered and will be given effect to at the appropriate time. Clause (2) of this article is important because it deals with the dissolution of the Assembly by the Governor of a State and in view of the fact that there is no specific provision—of course it may be understood and reading between the lines Dr. Ambedkar might say that the substance of it is there, but we have not yet decided even to do away with the discretionary powers of the Governor and only yesterday we had a fully-dress debate on the subject is this House—there is no specific provision is the constitution binding the Governor to accept the advice tendered to him by his Council of Ministers, there is a lacuna in the Constitution. Notwithstanding this, we are conferring upon him the power to dissolve the Legislative Assembly, without even mentioning that he should consult or be guided by the advice of his Ministers in this regard. I am constrained to say that this power which we are conferring upon the Governor will be out of tune with the new set-up that we are going to create in the country unless we bind the Governor to accept the advice tendered to him by his Ministers. I hope that this article will

be held over and the Drafting Committee will bring forward another motion later on revising or altering this article in a suitable manner.

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

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

Shri Brajeshwar Prasad : (Rose to speak).

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

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

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

The question is:

"That at the end of sub-clause (c) of clause (2) of article 153, the words 'if the Governor is satisfied that the administration is failing and the ministry has become unstable' be inserted."

The amendment was negatived.

Mr. President : The question is:

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

The amendment was adopted.

Mr. President : The question is:

"That article 153, as amended, stand part of the Constitution." The motion was adopted.

Article 153, as amended, was added to the Constitution.

New Article 153-A

Mr. President : There is notice of a new article by Professor Shah.

Prof. K.T. Shah : I am told that this matter came up before but I am not aware of it. Perhaps the honourable Chairman of the Drafting Committee would inform me. If it has already been decided, then I would not move this, but I do not think it has come up.

Mr. President : (after referring to amendment No. 1483). That has nothing to do with the right of members.

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

"That after article 153, the following new article 153-A be added:—

'153-A. If at any time when the Assembly is not sitting, it appears necessary to more than half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of the Requisition; provided that the Speaker may, if he deems proper, call upon such Requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.' "

Sir, this right of Requisition is, in my opinion an important right which should be given to members of the Assembly provided they are in number more than half the total membership of any State Legislative Assembly. The entire framework of this Constitution, Sir, has been so designed as to vest all powers even in regard to the Legislature in the executive, I mean powers of convening, of dissolving, of proroguing or of adjourning the House. It seems to me therefore that within the safeguard. I have indicated in this amendment the right of Requisitioning and assent of the Speaker by more than half the total membership of the House is not only liable to be abused, but may be of great service.

As the House is aware, it is possible that between two sessions of a State Legislature there may be as much as six months. Within a period of six months, it is not inconceivable that a situation may arise, that could not be dealt with except by deliberation and action of the Legislature itself. There may be factors at work, however, whereby the executive is either unable or unwilling to call such a meeting. It becomes, therefore, important for the rest of the members or rather for the private members, if I may say so, of the Legislature, to request that a meeting be called. And hence my amendment providing for the right to requisition.

I have provided, I think, more than ample safeguards that a right of this kind shall not be abused. It has been laid down in the first instance that not a fraction, but a definite absolute majority of the House so considers necessary to convene a meeting. Secondly that if they do so, they will have to address the presiding authority in writing specifying the special situation which requires a meeting of this kind to be convened; Thirdly that they may have to bear, if the Speaker so thinks proper, the entire expenditure of the meeting being convened unless the Assembly when it meets realizes the gravity of the situation or the wisdom of those people who make such a request, and specifically resolve to exonerate them from the charge and causes the meeting to be convened in the ordinary manner.

Subject to these precautions or safeguards, I think the right of requisitioning is in no way likely to be abused; on the contrary it is possible that thereby a sense of responsibility may be created in the ordinary member; a sense of close interest by the average private member in the doings or happenings in the province may be generated, and as such the real training, if one may say so, of responsible Government may be induced in the Legislature as such.

I know that this demand is somewhat unusual, but I trust the mere "unusualness" of it will not be an argument to damn it. I trust the House will see the force of the arguments I have put forward and accept my motion.

Mr. President : Does anyone wish to say anything about this amendment?

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

Mr. President : The question is:

"That after article 153, the following new article 153-A be added :—

'153-A. If at any time when the Assembly is not sitting, it appears necessary to more than half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of Requisition; provided that the Speaker may, if he deems proper, call upon such requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.' "

The amendment was negatived.

Article 154

Mr. President : I find that this article 154 is word for word the same as article 70, which we have already adopted with only this difference that one relates to the States and the other relates to the Union. Is it necessary to have any long discussion about this?

Many Honourable Members : No, Sir.

Mr. President : The question is:

"That article 154 stand part of the Constitution."

The motion was adopted.

Article 154 was added to the Constitution.

Article 155

Mr. President : This article also is word for word same as article 71 except that the present article refers to the State and the previous article refers to the Centre. The amendments to this also are of a verbal nature except the one by Mr. Sidhva—Amendment No. 2348.

Shri R. K. Sidhva : I do not wish to move that.

Mr. President : The question is:

"That article 155 stand part of the Constitution."

The motion was adopted.

Article 155 was added to the Constitution.

Article 156

Mr. President : This article is also the same as article 72, which we have already accepted. Of course there are some amendments.

(Amendment Nos. 2349 to 2352 were not moved.)

The question is:

"That article 156 stand part of the Constitution."

The motion was adopted.

Article 156 was added to the Constitution.

Article 157

Mr. President : There is no amendment, to this article as far as I can see, which is of a very substantial nature. All are verbal amendments. This article is similar to article 76 relating to the Union.

The question is:

"That article 157 stand part of the Constitution."

The motion was adopted.

Article 157 was added to the Constitution.

Mr. President : Then there is notice of another amendment to insert a new article-157-A, given by Prof. Shah.

Prof. K.T. Shah : Sir, this matter has been discussed in the past and it has been rejected. Therefore, I do not wish to move it.

(Amendment No. 2359 was not moved.)

Article 158

Mr. President : The motion is:

"That article 158 form part of the Constitution."

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

"That in article 158, for the words 'A member holding office as' the word 'The' be substituted and in clause (b) of article 158, for the words 'such members' the word 'he' and for the words 'to the Deputy Speaker' the words 'the member of the Legislative Assembly' be substituted respectively."

If the amendment is accepted, it will run as follows:

"The Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be member of the Assembly;

(b) may at any time by writing under his hand addressed if he is the Speaker to the members of the Legislative Assembly and if he is the Deputy Speaker, to the Speaker, resign his office, and ....."

I will say a few words in this connection. The Speaker of the Assembly must necessarily be a member of the House. He is resigning or vacating the office, not as a member, but as the Speaker of the Assembly. Therefore, the wording, "A member holding office as", I think is redundant and it should be, "Speaker or Deputy Speaker of the Assembly." So far as the addressing of the resignation is concerned, I would submit that the Speaker of the Assembly is elected by the members of the House. The Speaker is the highest official in the Assembly. If he resigns he must address to the members of the Assembly and not to the Deputy Speaker. He may hand over the resignation letter to the Deputy Speaker: that is a different matter. So far as the addressing of the application for resignation is concerned, he must address it to the members of the Assembly who have elected him as such. Therefore, I think that this provision should be amended like this. With these few words, I commend this amendment to the House for acceptance.

(Amendment No. 2361 was not moved.)

Mr. President : Amendment No. 2362.

Shri H.V. Kamath : A similar amendment has been lost earlier, Sir, and I am not anxious to see the same fate overtake this amendment as well.

(Amendment Nos. 2363 and 2364 were not moved.)

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

"That in clause (c) of article 158, for the words 'all the then members of the Assembly' the words 'the members of the Assembly present and voting' be substituted."

Clause (c) runs as follows:

"(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly."

Sir, so far as I can understand the meaning of the wording, "all the then members of the Assembly", it includes all the members of the Assembly. Supposing a House is composed of 300 members then, it will mean all the members of the Assembly, that is 300. Supposing fifty members of the House are not present in the House, then, those members will not have the right to give their votes so far as this question is concerned. Therefore, I think that it would be better that this matter should be considered by only those members who are present in the Assembly and who can vote in the matter. If this phrase "all the then members of the Assembly" means the members who are present in the Assembly, then, I have no objection. If it means all the members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment.

(Amendment Nos. 2366, 2367 and 2368 were not moved.)

Mr. President : Amendment No. 2369.

Shri T. T. Krishnamachari (Madras: General): May I ask, Sir, if Mr. Jaspat Roy Kapoor is going to move another amendment which stands in his name, article 159-A, which is another version of the amendment which is now before the House. If he is going to move that amendment, I think there is no point in moving this amendment. I think the latter amendment will serve the purpose he has in mind more adequately.

Shri Jaspat Roy Kapoor (United Provinces: General): I may assure my honourable Friend Mr. T.T. Krishnamachari that I will move all the relevant amendments. In order to enable me to move the final amendment, I think it is necessary that I should move amendment No. 2369. Otherwise it will not be permissible for me to move any other amendment which is an amendment to this amendment.

Mr. President : You may formally move this and then go to the amendments to this amendment.

Shri Jaspat Roy Kapoor : Is it your suggestion, Sir, that I need not read this?

Mr. President : Yes.

Shri Jaspat Roy Kapoor : Mr. President, I beg to move amendment No. 2369 in the printed List of Amendments, Volume I:

"That at the end of article 158, the following new clause be inserted :—

'(2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorised to preside during the absence of the Deputy Speaker.' "

To improve upon this amendment I have given notice of amendments to this amendment. I will first move amendment No. 138 which runs thus :

'That for amendment No. 2369 of the List of Amendment, the following be substituted :—

"That after article 158, the following new article be inserted :—

158-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply in relation

[Shri Jaspat Roy Kapoor]

to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent." '

There is yet another amendment to this amendment, No. 195:

"That with reference to amendment No. 2369 of the List of Amendment and No. 138 of List II (Third Week), after article 159, the following new article be inserted :—

'159-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration.

Perhaps it is unnecessary to read amendment No. 195. The only change that it seeks to make in amendment No. 138, is that the location of this new article should be after 159 and not after 158.

Sir, the principle and propriety of the procedure suggested in this amendment has already been agreed to by this House on a previous occasion in dealing with the procedure in respect of the two Houses of Parliament. This amendment is on the same lines as article 75-A and 78-A which the House has already adopted. This amendment only seeks to lay down the same procedure as we have laid down in the case of the two Houses of Parliament. Obviously it would be unfair to the Legislative Assembly and it would be embarrassing to the Speaker and the Deputy Speaker to preside over the deliberations in the Assembly when a motion of no-confidence is being moved against him, and I think that, in order to be fair to the House and also to relieve the Speaker or the Deputy Speaker of the embarrassing position in which he would find himself when such a motion of no-confidence against him is being discussed in the House, it is necessary that the Speaker or the Deputy Speaker, as the case may be should not preside over the sitting of the Assembly and somebody else should preside in his place as is provided in this amendment. I need not say anything more on this subject because it has already been discussed on a previous occasion and I simply commend it for the acceptance of the House.

Mr. President : I think this should come after 159. It is moved and we shall reserve voting after article 159 is disposed of.

I will put article 158 to vote. I will first put the amendments of Mr. Tahir to vote.

Mr. President : The question is:

"That in article 158, for the words 'A member holding office as' the word 'The' be substituted and in clause (b) of article 158, for the words 'such member' the word 'he' and for the words 'to the Deputy Speaker' the words 'the member of the Legislative Assembly' be substituted respectively."

The amendment was negatived.

Mr. President : The question is:

"That in clause (c) of article 158, for words 'all the then members of the Assembly' the words 'the members of the Assembly present and voting' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That article 158 stand part of the Constitution."

The motion was adopted.

Article 158 was added to the Constitution.

Article 159

Mr. President : We take up article 159.

(Amendment Nos. 2370 and 2371 were not moved.)

Mr. President : The question is:

"That article 159 stand part of the Constitution."

The motion was adopted.

Article 159 was added to the Constitution.

New Article 159-A (*contd.*)

Mr. President : I now take vote on the amendment moved by Mr. Kapoor.

"That with reference to amendment No. 2369 of the List of Amendments and No. 138 of List II (Third Week), after article 159 the following new article be inserted:—

The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration.

'159-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of the clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.' "

The amendment was adopted.

New Article 159-A was added to the Constitution.

Article 160

Mr. President : We take up article 160.

There is no amendment to this either.

Mr. Naziruddin Ahmed : No. 2373, Sir. Sir, I beg to move:

"That in article 160 for the word 'another' the word 'a' be substituted."

I move the second part only. This amendment has been twice last in another connection, but I still venture to submit it for the reconsideration of the House so that the other context may be reconsidered by the Drafting Committee. The article provides that if the Deputy Chairman or the Chairman of the Council loses his seat or so often as the office as the office of the Chairman or Deputy Chairman becomes vacant 'another' member shall be elected. The question is about another member. I submit that when the Chairman or the Deputy Chairman loses his seat then of course for that election that Chairman or Deputy Chairman is not eligible for election because he is not a member, but there is a provision that as many times as the office of the Chairman or Deputy Chairman becomes vacant, another member should be elected. Supposing that a Deputy Chairman loses his seat, there is a first vacancy. For that election the late Deputy Chairman will not be eligible because he would not be member but then if there is a second vacancy and, meanwhile, let us suppose that the Deputy Chairman is re-elected a member of the Council, the question is, would you allow him to contest or not? At the time of the second or subsequent vacancy he may have been re-elected and for all that I know he would be quite eligible; but the effect of the wording would be, if you say 'another member,' I beg to ask whether that member if he is otherwise qualified in the

[Mr. Naziruddin Ahmad]

meantime, would he be shut out? If it is a desired to shut him out, that is a different matter; but I do not think there is a desire to shut him out. On the other hand there is a belief that as soon as a man loses his seat, he cannot possibly be a candidate because he is not a member but the very supposition which is the basis of the amendment is that meanwhile he may be re-elected. The question is whether you will allow him to contest. I submit that on re-consideration possibly the amendment may be accepted. It is not a verbal amendment but a substantial amendment. It gives a right to a member who has been meanwhile re-elected although he has lost his seat before.

Mr. President : Dr. Ambedkar.

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

Mr. President : The question is:

"For the word 'another' the word 'a' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That article 160 stand part of the Constitution."

The motion was adopted.

Article 160 was added to the Constitution.

Mr. President : Prof. Shah has given notice of a new Article.

Prof. K. T. Shah : This has already been covered.

Article 161

Mr. President : Article 161. Mr. Jaspat Roy Kapoor's amendment No. 196 will come in as a separate article.

Shri T.T. Krishnamachari : Somebody may raise some procedural objection later on. So, better it is moved now.

Mr. President : Mr. Kapoor may move No. 2381.

Shri Jaspat Roy Kapoor : Sir, I beg to move:

"That after article 161, the following new clause be inserted :—

'(2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorises to preside during the absence of the Deputy Speaker.' "

To this I move another amendment, No. 139 in the List of Amendments to Amendments, Third Week. I beg to move:

"That for amendment No. 2381 of the List of Amendments, the following be substituted :—

'That after article 161, the following new article be inserted :—

161-A. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, 'the Deputy Chairman, is absent.' "

To this again. I beg to move another amendment No. 196 in the same List

of Amendments to Amendments. I beg to move:

"That with reference to amendment No. 2381 of the List of Amendments and No. 139 of List II (Third Week) after article 162 the following article be inserted :—

The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration.

'162-A. At any sitting of the Legislative Council of State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.' "

I need hardly say anything in support of this. It is just on the same lines as article 159-A which we have just adopted and we might readily adopt this amendment.

(Amendment Nos. 2376 to 2380 were not moved.)

Mr. President : I put article 161 to vote and put this last amendment 196 separately.

Mr. President : The question is:

"That article 161 stand part of the Constitution."

The motion was adopted.

Article 161 was added to the Constitution.

Article 162

Mr. President : Then I take up article 162. New article 162-A will come later.

(Amendments Nos. 2383, and 2384 and 2385 were not moved.)

Then there is no amendment to article 162.

The question is:

"That article 162 stand part of the Constitution."

The motion was adopted.

Article 162 was added to the Constitution.

New Article 162-A

Mr. President : Now I put article 162-A which has been moved as amendment No. 196, List VI, by Mr. Kapoor.

The question is:

"That with reference to amendment No. 2381 of the List of Amendments and No. 139 of List II (Third Week) after article 162 the following article be inserted :

The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration.

'162-A. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.' "

The amendment was adopted.

New Article 162-A was added to the Constitution.

Article 163

Mr. President : We go to article 163.

(Amendment Nos. 2386, 2387 and 2388 were not moved.)

There is then no amendment to article 163.

The question is:

"That article 163 stand part of the Constitution."

The motion was adopted.

Article 163 was added to the Constitution.

New Article 163-A

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

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

Shri T.T. Krishnamachari : Sir, quite a similar article—article 79-A has been tabled and it is being held over, and conditions relating to this new article 163-A are more or less the same as those of article 79-A.

Mr. President : Then it is passed over. Article 164.

Shri T. T. Krishnamachari : I suggest that this particular article might be held over for this reason. We have difficulties in regard to making up our minds about joint sittings which also occur in subsequent articles. We have not yet made up our mind really how to fit it in with some of the new ideas that have come into being by the acceptance by the House of certain amendments. I suggest, therefore, that this article may be held over.

Mr. President : Is it the wish of the House this should be held over? Honourable Members: Yes.

Article 165

Mr. President : Article 165; to this there is the amendment No. 2397 by Mr. Tahir.

(Amendment Nos. 2397, 2398 and 2399 were not moved.)

There is then No. 2400, but that is a verbal amendment.

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

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

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

Mr. President : The question is:

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

The motion was adopted.

Mr. President : Now article 165, as amended, is before the House.

The question is:

"That article 165, as amended, stand part of the Constitution."

The motion was adopted.

Article 165, as amended, was added to the Constitution.

Shri H. V. Kamath : Sir, how does this article find a place under this Chapter which is headed " Disqualifications of Members"? Article 165 deals not with disqualification but with a declaration.

Mr. President : That is a matter which may be looked into by Dr. Ambedkar.

Article 166

(Amendment No. 2401 was not moved.)

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

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

'(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislature of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States'."

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

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

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

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

Mr. President : No. 2405 is covered by the previous one, I think.

(Amendment Nos. 2405 and 2406 were not moved.)

Mr. Mohd. Tahir : Sir, I move:

"That sub-clause (a) of clause (3) of article 166 be deleted."

Sub-clause (a) says that if a member of a House becomes subject to any of the disqualifications mentioned in clause (1) of the next article, that is, article 167, his seat shall become vacant. But if a man is subject to the disqualifications mentioned under clause (1) of article 167, how can he become a member of the Legislature? It is not necessary to retain this clause because a Member cannot be a Member if he is disqualified under clause (1) of article 167.

(Amendment No. 2408 was not moved.)

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

"That in clause (3) of article 166, the following new sub-clause be inserted:

'(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;

(d) or dies.' "

May I just mention one or two points about the second part of the amendment relating to the death of a Member? When I moved a similar amendment on an earlier occasion, my query remained unanswered. The point that

[Shri H. V. Kamath]

I raised then was whether a vacancy arises or not in the event of the death of a member. If we turn to articles 51 and 55 regarding the vacancy arising in the office of the President or Vice-President, it is explicitly laid down there that a vacancy will arise by reason of death, resignation or otherwise. Here clause (a) refers to "otherwise" and (b) of course refers to resignation. Here no mention is made about a provision in the event of death by which a seat becomes vacant. I do not see why for the President and the Vice-President such a thing is mentioned and we omit any such mention in the case of a Member of Parliament! We have such a provision in the Rules of Procedure in the Assembly which we adopted two years ago. The relevant portion of Rule 5 of those Rules reads:

"When a vacancy occurs by reason by death, resignation or otherwise."

I do not know whether it is sheer consideration of prestige that stands in the way of the Drafting Committee or Dr. Ambedkar accepting this amendment of mine. Speaking on my previous amendment, Mr. Sidhva said that if a member dies the "office" knows about it. I do not know which office he meant or which office will know it. Therefore, it is better to say in this article that a vacancy will arise also in the event of death of a member of the House.

Shri R. K Sidhva: I said-who will intimate to the office after his death.

Shri H. V. Kamath: That is what the honourable Member said. But which office will know it? Where you have definitely stated that a vacancy will arise in the event of the death of the President or the Vice-President and it is also stated in the Rules of our Assembly, I do not understand why an omission should occur with respect to this article.

(Amendment Nos. 2410 to 2414 were not moved.)

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

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

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

Mr. President : The question is:

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

'(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then, at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.' "

The amendment was adopted.

Mr. President : The question is:

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

The amendment was adopted.

Mr. President : The question is:

"That sub-clause (a) of clause (3) of article 166 be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of article 166, the following new sub-clauses be inserted:—

'(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;

(d) of dies.' "

The amendment was negatived.

Mr. President : The question is:

"That article 166, as amended, stand part of the Constitution."

The motion was adopted.

Article 166, as amended, was added to the Constitution.

Article 167

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

"That in sub-clause (a) of clause (1) of article 167, after the word 'profit' the following be inserted :—

'or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article.' "

The amendment portion would read :

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative council of State—

(a) if he holds any office of profit or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article under the Government, etc....."

The old-time disqualification, arising out of the possibility of conflict of interests between one's own private interests and that of public service, had led to the insertion as a disqualification the holding of any office of profit. Under present conditions, however, the mere holding of an office of profit, that is to say, any post carrying some salary or allowance attached to it is scarcely a temptation to at least many likely candidates who have attained prominence in their business or profession, and whose other source of income may be much greater than Government salaries can possibly be.

This, however, does not make holding of a post of profit under Government the less a disqualification. I want, however, to add certain other things, which are, as we notice, far more likely to be sources of temptation to sacrifice public interest to private advantage, than mere holding of an office of profit. Whatever may have been the conditions in the days of Walpole, today a Government office as such hardly suffices to tempt a legislator or a candidate for the Legislature, who has a flourishing private profession, trade or business, wherein much greater prospects of gain can be had by contact with Government or membership of the House.

One of the most considerable sources of temptation or corruption in these days of great building activity is that of a building contract. The possibility of enormous profits being obtained through large building and development projects, in which the State is interested directly or indirectly—and every day the State becomes more interested in those projects—will be a source of gain to such an extent that those who have it in their power to grant, and those who have such contracts, can afford to subsidise to any extent, if only people can canvass for them sufficiently, or help to obtain such contracts for them on easy terms from Government. The same applies to supply of

[Prof. K. T. Shah]

other materials on a large scale needed by a modern Government. A Member of the Legislature should, I think, be free any such temptation; and anyone therefore who holds such contracts, or who is interested as a shareholder even in a joint stock Building or Construction or Manufacturing company, or who is interested as a shareholder in a company which is supplying articles on a large scale-articles of building materials or for any other needed by Government, should be disqualified from membership of the Legislature. The number of such interests in very varied and large, and any one so interested ought to be, in my opinion, disqualified.

I am therefore, suggesting that if you wish your Legislators to be free from temptation, if you wish them to serve the public disinterestedly, and solely with an eye on public service, then I think it is necessary that you should accept this suggestion to disqualify any one interested, of the kind I have mentioned. It must be disqualification for candidature to the Legislature of the Centre as well as of a State. Sir, I move:

(Amendment No. 2416 was not moved.)

Mr. Mohd. Tahir : Mr. President , Sir, I would like to move only the latter part of my amendment. Sir, I move:

"That after the words 'Legislature of the State' the words 'or any Local Authority of such State' be inserted."

Sir, the intention of my amendment is quite clear and obvious. I do not want to make any speech. If my honourable Friend wants to accept it, he may accept it.

(Amendment No. 2418 was not moved.)

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

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

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

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

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

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

Shri Mahavir Tyagi: But we must know what it is....

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

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

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

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

I move:

"That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word `or' be added."

Sir, in a similar article dealing with disqualifications of members (article 83) the word 'and' has been substituted by the word 'or'. I think, Sir, the Drafting

Committee will follow its own precedent and make a similar change here. That is why I said that it is a drafting amendment. Whether the word 'and' is deleted, or in its place 'or' is substituted, more or less comes to the same thing, according to my untrained mind. That is why I said I leave it to the wise men of the Drafting Committee, because I am a mere novice in these matters. I thought 'or' would be more appropriate, because if any one of these disqualifications arises—if a person is disqualified for any of these reasons—then the article will apply.

Mr. President : Dr. Ambedkar might consider it.

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

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

Mr. President : Won't they read cumulatively?

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

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

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

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

Mr. Mohd. Tahir : I beg to move:

"That after sub-clause (e) of clause (1) of article 177, the following new sub-clause be inserted :—

'(f) if he is not registered as voter.' "

Sir, clauses (a) to (e) of this article enumerate the disqualifications for being a member. I want that this should be included in this article so that if a man is not a registered voter he cannot become a member of the Assembly. If candidature is not restricted to persons whose names are on the roll, every man could come and file his nomination paper for election. Therefore it is necessary that a clause of this kind should be added.

Mr. President : The Honourable Member may move his other amendments, 2430 and 2432 also now.

Mr. Mohd. Tahir : Sir, in this amendment I move only the latter part. I move:

"That in clause (2) of article 167, after the words 'Government of any State', the words for an local 'or other Authority subject to the control of such State', be inserted."

I am not making any speech.

Sir, as you have suggested I shall move this amendment 2432 also now. I am not moving the first part of it. The second part which I move runs thus:

"That in sub-clause (a) of clause (2) of article 167, after the words 'for any State', the words 'or a Chairman, a Vice-Chairman, a President, or a Vice-President of any Local or other Authority of such State' be inserted."

I am not moving 2433.

Shri T.T. Krishnamachari : Sir, with reference to amendments Nos. 2419 and 2430 of the List of Amendments, I beg to move:

"That for sub-clauses (a) and (b) of clause (2) of article 167, the following be substituted :—

'He is a minister either for India or for any such State.' "

Sir, the wording really follows the wording of a similar sub-clause in article 83 which has been accepted by the House. This is necessary because the

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reference in sub-clause (2)(b) to Part III of the first Schedule is one we are trying to obliterate, because we do not visualise the contingency of having to make a separate provision of this nature so far as the States in Part III of this Schedule are concerned. Any necessary provision to that effect will be made in a separate Chapter.

There are certain obligations imposed in the wording of sub-clause (b) as it stands which we would like to avoid and we feel that the wording "he is a minister either for India or for any such State" will be adequate for all purposes.

I hope the House will accept the amendment.

Shri Mahavir Tyagi : Sir, I hope you will not mind my saying a few words on this article—we have already passed a number of them today. I would like to ask Dr. Ambedkar to make it expressly clear as to what the expression 'allegiance or adherence to a foreign State' occurring in his amendment signifies. Sir, 'adherence' is a very wide term. Its meaning is not very exact." I wonder if our adherence to the Commonwealth will disqualify many of us, particularly our Prime Minister who was instrumental in our agreeing to some little adherence to a foreign State like England. We have recognised a foreign king to some extent by becoming a member of the Commonwealth. Now, will not that adherence disqualify a lot of us? If it does, then it is only Dr. Ambedkar who will remain in the House. We would all be disqualified. We have adhere to the Commonwealth and to the King of England who is a foreigner. Since the word 'adherence' is extremely ambiguous I think some change in the wording of the amendment should be made or a promise be given by the Drafting Committee that it will not be left so ambiguous. Our relation with the Commonwealth and other Dominions may be interpreted as with a foreign State. This is not a matter of treaty. It is a question of permanent relationship that we have established. A treaty is a contract. Here it is not a treaty. It is actual adherence to foreign dominions. I would like Dr. Ambedkar to throw light on this issue. Either the wording should be changed so as to enable us to remain in the Commonwealth, or an assurance be given that the Commonwealth countries will not be deemed to be foreign States for the purpose of this article.

I am glad that Shri Mohanlal Gautam has not moved his amendment; otherwise many of us who have not passed the matriculation examination would have been disqualified. I would be treated as disqualified if the matriculation qualification were there. My education is hardly equal to the primary school. I only desire that such of our countrymen as are illiterates like me be not disqualified by these provisions.

Prof. Shibban Lal Saksena : Sir, I want to draw attention to two things. Sub-clause (e) says, 'if he is so disqualified by or under any law made by the Legislature of the State'.

In another article we have laid down that the Legislature of the State is empowered to lay down qualifications and here we empower it to lay down disqualifications. But then Dr. Ambedkar has assured us that Parliament will lay down qualifications and not the Legislature of the State. So I request Dr. Ambedkar to tell us whether this power will also be exercised by the Parliament or not. Here we say that the Legislature of the State can declare the public office the holding of which will not disqualify a person from being a member of the Legislature of the State. I think this thing should also be left to Parliament. The Parliament should lay down the public office such as parliamentary Secretaries, Deputy Minister etc., the holding of which will not disqualify the holders of these offices in a State from continuing to be members of

the legislature. The laws disqualifying persons from being candidates for the legislature should also be uniform in all the States. Otherwise the result will be that every State will pass different laws and a person who can be a candidate for the membership of the Bombay legislature may not be able to be a candidate for the membership of the legislature in the United Provinces. This lacuna should be removed, and instead of 'State legislature' we should empower 'Parliament' to make uniform laws for all provinces.

Shri Brajeshwar Prasad : Sir, I am sorry that Mr. Mohanlal Gautam has not moved his amendment. I feel that there should be some educational qualifications for a member of the legislature. The impression has become prevalent that is not necessary to have any educational, administrative or judicial experience for a member of the legislature. A doctor, or an engineer or a lawyer has to undergo certain specific periods of specialised training. I consider that the role of the legislator is far more important that either that of a doctor, a lawyer or an engineer. But in order to become a legislator, it is considered to be enough if he is a demagogue, a loud tongued orator, a professional political dancer, a man with hundred faces and a confirmed scoundrel. I feel, Sir, that if we want to build up a decent system of government, some educational qualifications for legislators must be considered necessary. Sir, I have nothing more to say.

Shri M. Thirumala Rao (Madras: General): May I know, Sir, if the honourable Member used the word 'scoundrel'? I should not hear him well. If he has used the word, is the word parliamentary?

Mr. President : That word should not have been used, if it has been used.

Shri T. T. Krishnamachari : It only follows the saying that politics is the last refuge of the scoundrel.

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

My Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country, and if my Friend, Mr. Tyagi has got Volume II of the printed List of Amendments he will see what the proposed amendment is. The proposed amendment gives power to the President to declare what are not foreign countries, and that declaration would govern whether a particular country is or is not a foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to be rather worried that when a country is declared not to be a

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foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would *ipso facto* acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under Commonwealth relationship would be this; In all the Dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean in this, that the citizens of the Dominions residing in India would not be treated as aliens, they would have some rights which aliens would not have, but they would certainly not be entitled, in my judgement, to get the full rights of citizenship which we would be giving to the people of our country. I hope my Friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

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

Mr. President : The question is:

"That in sub-clause (a) of clause (1) of article 167, after the word 'profit' the following be inserted :—

'or contract of building or of supply of any article, or is a shareholder in any Joint Stock Company which has such a contract of building or of supply of any article.' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of clause (1) of article after the words 'Legislature of the State' the words 'or any Local Authority of such State' be inserted."

The amendment was negatived.

Mr. President : The question is:

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

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

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word 'or' be added."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (d) of clause (1) of article 167, the following new sub-clause he inserted :

'(f) if he is not registered as voter.' "

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 167, after the words 'Government of any State', the words `or any local or other Authority subject to the control of such State, be inserted."

The amendment was negatived.

Mr. President : The question is

"That for sub-clause (a) and (b) of clause (2) of article 167, the following be substituted :—

'He is a minister either for India or for any such State.' "

The amendment was adopted.

Shri T. T. Krishnamachari : The other two amendments of Mr. Mohd. Tahir fall to the ground because those clause are eliminated by the acceptance of the amendment I had moved.

Mr. President : Yes amendment Nos. 2432 and 2433 fall to the ground.

Mr. President : The amendment moved by Dr. Ambedkar and the other moved by Mr. Krishnamachari have been carried and I would put the article, as amended to vote.

Mr. President : The question is:

"That article 167, as amended, stand part of the Constitution."

The motion was adopted.

Article 167, as amended, was added to the Constitution.

Mr. President : We adjourn till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Friday the 3rd June 1949.