

support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As Honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A ? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this ; that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso.....*

B. Pocker Sahib Bahadur : With your permission, Sir, may I just correct my learned Friend ? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was

*Dots in the original debates indicate interruption.

there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them. (*Interruption.*)

Mr. Vice-President : Order, order.

The Honourable Dr. B. R. Ambedkar : I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My honourable Friend Mr. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called “Legislative and Executive Powers in Australia” by a great lawyer Mr. Wynes. This is what he says :

“Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised.”

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does, the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as set out in the proviso with the position as it is found in Australia, I submit that we are not making

any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent List. Let me give one or two illustrations. The Constituent Assembly has passed article 11, which abolishes unreliability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws? As everyone will remember, the execution of such a law might require The establishing of additional police, special machinery for taking down if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it? I would like to know if there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bhargava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is

so much interested in putting down these evils should have some authority for executing laws of this character ? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect ? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India, cases after cases in which it was reported that no Provincial government or at least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the central Government should be mere paper legislations with no effect given to them ? How can effect be given to them unless the centre has got some authority to make good the administration of laws which it makes ? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the centre makes in the Concurrent Held remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Governments ought to welcome this proviso because there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administration means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit. Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. (*Cheers*).

[All 4 amendments were negatived. Article 60 was adopted without any amendment and added to the Constitution.]

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ARTICLE 61

***Mr. Vice-President:** Dr. Ambedkar.

Shri Lakshminarayan Sahu : (Orissa : General): Sir, this is a very important article on which I would like to.....

Mr. Vice-President: I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

Shri Lakshminarayan Sahu: But, Sir.....

Mr. Vice-President: Kindly do not try to over-rule the Chair. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the point that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According to him they should be fifteen. The second part of his proposition is that the Members of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

*CAD, Vol. VII, 30th December 1948, pp. 1156-61.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation, I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage. I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so, I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make of a schedule which is called Schedule 3-A. It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instruction will be this :

“In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collectively to command the confidence of Parliament.”

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baig has in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility, and there is no use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adopted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose

its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir : On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors ?

The Honourable Dr. B. R. Ambedkar : The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was *a persona non-grata* with the House : the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of The people. There is also the other view that notwithstanding the advice of the Prime Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what

is really the *summon bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statute. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance. Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Ministers of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach

of what might he called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a member of the cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

Supposing you have no Prime Minister, what would really happen ? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately, singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely

to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the Legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, *viz.*, that if a person who is appointed a member of the Cabinet is not a member of the Legislature, he must become a member of the Legislature within six months, I may point out that this has been provided for in article 62(5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this : whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them ? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

Shri H. V. Kamath : I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the fifth Week.

Mr. Vice-President: He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

The Honourable Dr. B. R. Ambedkar : That does not require any reply. All that has to be left to the Prime Minister.

Mr. Vice-President: I will now put the amendments, one by one, to vote.

[All 5 amendments were negatived. Article 61 was adopted and added to the Constitution.]

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ARTICLE 62

Mr. Vice-President: (Dr. H. C. Mookherjee) : We shall now resume discussion of article 62.

(Amendments Nos. 1310 and 1311 were not moved.)

Nos. 1312 and 1329 are of similar Import. No. 1329 may be moved. Dr. Ambedkar.

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

“That utter clause (5) of article 62 the following new clause he inserted ;—(5) (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall he generally guided by the instructions set out in Schedule III-A, hut the validity of anything done by the President shall not he called in question on the ground that it was done otherwise than in accordance with such instructions.”

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†**Shri Mahavir Tyagi :** ...Then there is the amendment of Prof. Shah in which he says that Ministers should know the English language for ten years, and Hindi after the next ten years. I happen to be an anarchist by faith so far as literacy is concerned, I do not believe in the present-day education. I am opposed to the notion of literacy also, even though it has its own value. If I were a boy now, I would refuse to read and write. As it was, I practically refused to read and write and hence I am a semi-literate. The majority in India are illiterate persons. Why should they be denied their share in the administration of the country ? I wonder, why should literacy be considered as the supreme achievement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry, Mechanics, Physique or Beauty be not chosen as a better criterion. Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering

*CAD, Vol. VII, 31st December 1948, p. 1167.

†*Ibid.*, p. 1184.

their States very well. I submit. Sir, that we should not attach too much importance to literacy. I ask Dr. Ambedkar, does he ever write ? Probably he has got writers to write for him and readers to read to him. I do not see why Ministers need read and write. Whenever they want to write anything, they can use typists. Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister. It is not literacy which is important.

Shri H. V. Kamath : Does my redoubtable friend want to keep India as illiterate as she is today?

The Honourable Dr. B. R. Ambedkar : Have you any conscientious objection against literacy ?

Shri Mahavir Tyagi: No, Sir.

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***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, of the amendments that have been moved I am prepared to accept amendment No. 1322 and 1326 as amended by No. 71 on List V. As to the rest of the amendments I should just like to make a sort of running commentary.

These amendments raise three points. The first point relates to the term of a Minister, the second relates to the qualifications of a Minister and the third relates to condition for membership of a Cabinet. I shall take the first point for consideration, *viz.*, the term of a Minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin. Mr. Pocker's amendment is that the Minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the Minister shall be liable to removal only on impeachment for certain specified offences such as bribery, corruption, treason and so on, irrespective of the question whether he enjoys the confidence of the House or not. Even

*CAD, Vol. VII, 31st December 1948, pp. 1185-89.

if a minister lost the confidence of the House, so long as there was no impeachment of that Minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in sub-clause (2) of article 62 is a much better provision and covers both the points. Article 62, (2) states that the ministers shall hold office during the pleasure of the President. That means that a Minister will be liable to removal on two grounds. One ground on which he would be liable to dismissal under the provisions contained in sub-clause (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure, because the word used here is "pleasure". It would be perfectly open under that particular clause of article 62 for the President to call for the removal of a particular Minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular Minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a Minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my Honourable Friends, Messrs. Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely, the qualifications of Ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a Minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso, namely, that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a Minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K. T. Shah. He said that a Minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister

unless he is at the time of his appointment an elected member of the House. I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this.—it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all, the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification, in my judgment, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority ? Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party

as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party Government, so that Government may be able to meet an emergency—in that event, again, no such situation can be met except by a coalition Government and if a coalition Government takes the place, *ex hypothesi* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both these grounds this amendment is not a practicable amendment,

With regard to the educational qualification, notwithstanding what my friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu—whatever it is—in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is, rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. This amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now, this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President

was debated in this House and I do remember that I did say that such a provision might be necessary.....*

Shri H. V. Kamath : May I remind Dr. Ambedkar of what exactly he said? I am reading from the official type-script of the Assembly Secretariat. These are his very words :

“If any person in the government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure hut not upon the President.”

The Honourable Dr. B. R. Ambedkar : That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my Friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a Factory Inspector. Now, Sir, the position that we have to consider is this : no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purify. The question really is this? what ought to be the sanctions for maintaining that purity? It seems to me there are two sanctions. One is this, namely, that we should require by law and by Constitution,—if this provision is to be effective—not only that the Ministers should make a declaration of ‘their’ assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was Corrupt of not during the tenure of his office should be able to see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister’s increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgment, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have

*Dots in the original debates indicate interruption.

come to be so abnormal and fourthly, declaring that to be an offence, followed up by a penalty or by a fine. The mere declaration at the initial state.....*

Mr. Naziruddin Ahmad : How could you trace or check invisible assets or secret assets ?

The Honourable Dr. B. R. Ambedkar : The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

Shri H. V. K a math : May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propounded the other day, that he has not recanted,?

The Honourable Dr. B. R. Ambedkar : I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective, and therefore, I am not in a position to accept it.

Prof. Shibban Lal Saksena : Make it more comprehensive.

The Honourable Dr. B. R. Ambedkar : I cannot do it now. It was the business of those who move the amendment to make the tiling foolproof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection, nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forge. As I said, the legal sanction is inadequate. Have we no other sanction at all ? In my judgment, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My Honourable Friend. Mr. H. V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is because public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my

*Dots in the original debates indicate interruption.

submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Shri Lokanath Misra (Orissa; General): Is that not a more impossible task ?

The Honourable Dr. B. R. Ambedkar : Democracy has to perform many more impossible tasks. If you want democracy, you must face them.

Now, Sir, I come to the amendment of my Honourable Friend, Mr. Naziruddin Ahmad. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the Minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions ? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

Prof. Shibban Lal Saksena : What about nominated members being in the Cabinet ?

The Honourable Dr. B. R. Ambedkar : I have dealt with that.

Mr. Vice-President: I shall now put the amendments one by one to vote.

(Amendments which were adopted are give below:-

(Amendments by Dr. Ambedkar)

(1) “That after clause (5) of article 62, the following new clause be inserted—

‘5 (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the Instructions set out in Schedule III-A but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.’”

(2) That in clause (3) of article 62, after the word ‘Council’ the words ‘of Minister’ be inserted.

Amendment No. 1326 as amended by amendment No. 71 of List V as further amended by Shri Krishnamachari and Shri Kamath.

“That in clause (5) of article 62, for the words ‘for any period of six consecutive months, is’ the words ‘from the date of his appointment is for a period of six corrective months’, be substituted.”

[Article 62, as attended was adopted and added to the Constitution.]

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ARTICLE 66

***The Honourable Dr. B. R. Ambedkar** (Bombay : General): I do not accept any of the amendments, nor do I think that any reply is called for.

Mr. Vice-President: I shall now put the amendments one by one to vote. Amendment No. 1358. The question is:

That in article 66 the words and two Houses tone know respectively as the council of State ‘be deleted.’”

The amendment was negated.

Mr. Vice-President: amendment No. 1356. The question is:

“That in article 66 for the words ‘There shall be a Parliament for the Union which’ the words The Legislatures the Union shall be called the Indian National Congress and be substituted.”

The amendment was negative.

Mr. Vice-President: Amendment No. 1357. The question is :

“That in article 66, the words ‘The President and’ be deleted.”

The amendment was negative.

Mr. Vice-President: The question is:

“That article 66 stand part of the constitution.”

The motion was adopted.

Article 66 was added to the constitution.

ARTICLE 67

Mr. Vice-President: We next come to article 67. The motion: is :

“That article 67 form part of the Constitution.”

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, I have an humble suggestion to make in the matter of procedure when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of states and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts : one relating to the composition of the council of states—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People, clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straightway to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when Honourable Members deal with the Council of States they may confine their discussion on it and later on they may concentrate their discussion on the part of the article relating to, the House of the People.

Mr. Vice-President: Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi ?

The Honourable Dr. B. R. Ambedkar : I am quite agreeable to the suggestion for the purpose of facilitating discussion.

Mr. Vice-President: Then we can take up the amendments in their particular order.

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

“That for clause (1) of article 67, the following be substituted :

‘(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States.’ ”

The only important tiling is that the number fifteen has been brought down to twelve.

(Amendment Nos. 1371, 1373 and 1374 were not moved.)

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† **Mr. Vice-President :** There are three amendments which may be considered together, amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

Amendments Nos. 1371, 1373 and 1374 were not moved.

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved.

Amendment No. 1376 is identical with amendment No. 1375, so I am not going to put it to vote. Amendment No. 1375, Dr. Ambedkar.

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

“That the proviso to clause (1) of article 67 be deleted.”

With your permission, Sir, may I also move amendment No. 1378 ? It is in substitution of this proviso.

Mr. Vice-President: Yes.

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

“That the following new clause be added after clause (1) of article 67 :

‘(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.’ “

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‡ **Mr. Vice-President:** Amendment No. 1380 standing in the name of Dr. Ambedkar.

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

“That for clause (2) of article 67, the following be substituted :

‘(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.’ ”

*CAD, Vol. VII, 3rd January 1949, p. 1202.

† *Ibid.*, p. 1205.

‡ *Ibid.*, p. 1211.

***Mr. Vice-President:** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to amendments Nos. 1369, 1375, 1378, 1380, 1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, on examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object †

Mr. Vice-President: It was not moved.

The Honourable Dr. B. R. Ambedkar : Then I do not think I need say anything about it. There remain only two—one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should clear the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the council of States they got two-fifths representation which was 40 per cent. That is not one origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this: That there should be one seat for every million up to five millions, plus

*CAD, Vol. VII, 3rd January 1949, pp. 1225-28.

†Dots in the original debates indicate interruption.

one seat for every additional two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of Indian provinces and the representatives of the Indian States. Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the States had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original State of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this :