left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court ? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—I am sorry it is section 242 sub-clause (4)—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—I do not say that it will happen—but it is quite conceivable that the chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would

be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State ? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal legislature. So that if the executive differed from the chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the Constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the chief Justice and adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

[Dr. Amhedkar's both the amendments were accepted Article. 122, as amended, was added to the Constitution.]

ARTICLE 124

***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles. Speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the Judiciary—he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not given him the same independence which we have given to the Judiciary, although I personally feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course of the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of appointment of officers and servants of the Supreme court. I see both from the original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not posses the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From that point of view, I should have thought that it would have been proper in the interests of the people that such a power should have been given to the Auditor-General, But, sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

*CAD, Vol. VIII, 30th May 1949, pp. 407-08.

Coming to the amendments, I accept the amendments moved by Mr. T. T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments, certainly to a large extent, improve the position of the Auditor-General which has been assigned to him in the draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments, Mr. Sidhva seems to have a complaint. If I understand him properly, his complaint was that the expenses of the Auditor-General should not be made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India, the mere fact that that has been done, does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might have been discontended for some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List I, 1975 of Mr. B. Das, 130 of Mr. T. T. Krishnamachari, 131 of Mr; T. T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

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

[Following amendments were adopted.]

1 "That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, of Part V for the word 'Auditor-General' wherever it occurs, (including the heading) the words 'Comptroller and Auditor-General' be substituted."

2 "That in clause (1) of article 124 after the word 'President' the words 'by warrant under his hand and seal' be inserted."

3 "That with reference to amendment No. 1975 of the List of amendments, after clause (1) of article 124, the following new clause be inserted :—

'(1-a) Every person appointed to be the comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.'"

4 "That for amendment No. 25-A of List-I (Third Week) of amendments to Amendments, dated the 2Sth May 1949, the following be substituted :—

"that with reference to amendment No. 1980 of the List of amendments, for clause (4) of article 124, the following clause be substituted :—

'(4) Subject to the provisions of any law made by Parliament; the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.'"

5 "That with reference to amendment No. 1981 of the List of amendments, for clause (5) of article 124, the following clause be substituted :—

"(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.'"

Article 124, as amended was added to the constitution.

ARTICLE 125

***Mr. President:** Amendment No. 1986, by Dr. Ambedkar.

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

"That for the Explanation to article 125, the following Explanation be' substituted :—

"*Explanation.*— In this article, the expression 'law made by Parliament' includes any law ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India'."

The House probably will remember that the functions of the Auditor-General are regulated not by law made by Parliament, but by Ordinance, order, bye-law, rule or regulation, etc., made by the Governor-General, under the powers conferred upon him by the Government of India Act,

*CAD, Vol. VIII, 30th May 1949, p. 412.

1935. Consequently, in order to keep alive the ordinances, orders, bye-laws, rules and regulations made by the Governor-General, it is necessary to amplify the explanation so as to include these orders also.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, with regard to the amendment of my Friend Mr. Kunzru I am prepared to accept it provided he is prepared to drop the words "or any local".....†

Pandit Hirday Nath Kunzru : I have dropped them.

The Honourable Dr. B. R. Ambedkar: Because local audit is a matter which is within the control of the Provincial Governments. But the addition of the words "other authority" I think may be necessary or even useful. As he has himself said, the policy of the Government of India today is to create a great many corporations to manage undertakings which it is not possible to manage departmentally and consequently it is necessary that the Government of India should make some provision for the audit of these corporations. That being so I think it is desirable to vest the Central Government with power to allow the Auditor-General to audit even the accounts of all such authorities. Subject to the modification I have suggested, I am prepared to accept the amendment.

With regard to the point made by my Friend Mr. Sidhva that many of these rules with regard to the duties of the Auditor-General are made by the executive, and, therefore, since by the amendment which I have suggested we are continuing to give these powers the same operation which they had before, we are practically investing the Executive with the authority to prescribe the duties of the Auditor-General. Obviously, there is an incongruity in this position, in that an officer who is supposed to control the Executive Government with regard to the administration of the finance should have his duties prescribed by rules laid by the Executive. Now the only reply that I can give to my honourable Friend, Mr. Sidhva, is this that these provisions have been taken bodily to a large extent from the provisions contained in section 151 of the present Government of India Act, 1935, which deal with the custody of public money, and section 166 which deals with the rules made by the Governor-General with regard to the duties of the Auditor-General.

---

*CAD, Vol. VIII, 30th May 1949, pp. 414-15.

†Dots indicate interruption.

Under the scheme of that Act the rules were required to be made by the Governor-General in the exercise of what is called his individual judgment, that is to say, he would not be required to take the advice of his Ministry in making these rules. To that extent the rules made by the Governor-General prescribing the duties of the Auditor-General would undoubtedly be independent of the Executive. Today we are not vesting the President with any such power of independent judgment so that if any modification in these rules were to be made by the President he would undoubtedly be acting on the advice of the Ministry of the day, that is to say, the Executive. I admit that to that extent there is a certain amount of anomaly, but I do hope that my honourable friend, Mr. Sidhva, who, I hope, will continue to function as a Member when the new Parliament is constituted, will take on himself the earliest opportunity of urging Parliament to change the position and to convert the rules into laws made by Parliament.

[Following amendment of Pandit Kunzru in addition to that of Dr. Ambedkar mentioned before was accepted.]

"That in clause (1) of article 130, after the word 'may' the words 'on behalf of the people of the State' be inserted."

(Article 125, as amended, was added to the Constitution.)

ARTICLE 127

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

"That in article 127, for the word 'Parliament' the words 'each House of Parliament' be substituted."

It is only a formal amendment.

The amendment was adopted.

* * * * *

ARTICLE 130

†**The Honourable Dr. B. R. Ambedkar** : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments

* CAD, Vol. VIII, 30th May 1949, p. 415.

† *Ibid.,* p. 423.

thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

[All the three amendments moved by Prof. K.T. Shah, Mr. Mod. Tahi and Mr. Naziruddin Ahmad were rejected by the House.]

* * * * *

ARTICLE 131

***Mr. President:** It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari: The choice of the alternative may be left to the mover. Dr. Ambedkar may say which he proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting Committee will be the person to make the choice, if you allow it to him, that will solve the problem. He might move one of the alternatives. This procedure is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President: Is Dr. Ambedkar prepared to accept one of the other alternatives ?

The Honourable Dr. B. R. Ambedkar: Sir, I want to say a word regarding procedure to be followed. Taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one tiling in common *viz.,* that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendments here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupte, and then Mr. Kamath and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there

* CAD, Vol. VIII, 30th May 1949, p. 425.

would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the matter.

Mr. President: There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the President.

Shri Alladi Krishnaswami Ayyar (Madras : General): If the question of appointment or not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's views in the matter.

* * * * *

***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** Mr. President, Sir after such a prolonged debate on the amendment I think it is quite unnecessary for me to take the time of the House in making any prolonged speech. I have risen only to make two things clear; one is to state to the House the exact co-relation between the two alternatives that have been placed by the Drafting Committee before the House and amendment No. 2015 which has been debated since yesterday. My second purpose is to state the exact issue before the House, so that the House may be able to know what it is that it is called upon to bear in mind in deciding between the alternatives presented by the Drafting Committee and the new amendment.

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decide upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all, because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises : why is it that the Drafting Committee thought it tit to present an alternative ? Now, the reason why the Drafting Committee presented an alternative

* CAD, Vol. VIII, 31st May 1949, pp. 467-69

is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions—to use a familiar phraseology, "no functions which he is required to discharge either in his discretion or in his individual judgment." According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought that another alternative might be suggested.

It has been said in the course of the debate that the argument against election is that there would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking for myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. So far as I could visualise, the election of the Governor would be on the basis of personality : is he the right sort of person by his status, by his character, by his education, by his position in the public to fill in a post of Governor ? In the case of the Prime Minister the position would be; is his programme suitable, is his programme right ? There could not therefore be any conflict even if we adopt the principle of election.

The other argument is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble ? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now, so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the

second alternative suggested by the Drafting Committee and this particular amendment. In my judgment there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this : that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is…….

Shri Rohini Kumar Chaudhari : Can he contemplate any situation, where a Governor—whether you call him a mere symbol or not—will not have the power to form the first Ministry ? Will he not be competent to call upon any one, whether he has a big majority or a substantial minority ? And that is a very big power of which he cannot be deprived under any circumstances.

The Honourable Dr. B. R. Ambedkar : Well that power an elected or a nominated Governor will have. If he happens to call the wrong person to form a Ministry, he will soon find to his cost that he has made a wrong choice. That is not a thing that could be avoided by having an elected Governor. Such a Governor may have a friend of his choice whom he can call in to form a Ministry and that issue can be settled by the House itself by a motion of no-confidence or confidence. But that is not the aspect of the question which is material. The aspect of the question which is material is. Is the Governor going to have any power of interference in the working of a Ministry winch is composed of a majority in the local Legislature ? If that Governor has no power of interference in the internal administration of a Ministry which has a majority, then it seems to me that the question whether he is nominated or elected is a wholly immaterial one. That is the way I look at it and I want to tell the House that in coming to their decision they should not bother with the more or less academic question—wether the Governor has to be nominated or to be elected—they should bear in mind this question : What are the powers with which the Governor is going to be endowed ? That matter, I submit, is not before us today. We shall take it up at a later stage when we come to the question of articles 175 and 188 and probably by "amendment or the addition of some other clause which would give him powers. The House should be careful and watchful of these new sections that will be placed before them at a later stage. But today it seems to me, if the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with no power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.

Shri L. Krishnaswami Bharathi : Is the honourable Member accepting the amendment ?

The Honourable Dr. B. R. Ambdekar : I am leaving it to the House.

Mr. President: I shall then put amendment 2015 moved by Shri Brajeshwar Prasad to the vote.

The question is :

"That for article 131. the following be substituted :—

'131. The Governor of a State shall be appointed by the President by warrant under his hand and seal.'"

The amendment was adopted.

Mr. President: I think after this all the other amendments to this article fall to the ground and therefore I shall put the article as amended to the vote.

Article 131, as amended, was added to the Constitution.

ARTICLE 132

***Mr. President:** There is an amendment by Dr. Ambedkar.

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

"That with reference to amendments Nos. 2033 and 2041 of the List of Amendments for article 132, the following article be substituted :—

'*Term of office of Governor.*—132. (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may. by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a governor shall hold office for a term of five years from the date on which he enters upon his office :

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office'."

Now, Sir, this article…….†

Prof. Shibban Lal Saksena : On a point of order. Amendment No. 2033 has not been moved. There is another amendment 2041, to which this is an amendment. But even that has not been moved.

Mr. President: But that has not been moved.

Shri T. T. Krishnamachari : Amendment No. 2041, stands in the name of Dr. Ambedkar.

Mr. President: Well, he may formally move it.

The Honourable Dr. B. R. Ambedkar : I have said that I am moving this in place of that amendment.

Mr. President: Dr. Ambedkar is moving No. 2041.

* * * * *

‡The Honourable Dr. B. R. Ambedkar : Sir, the position is this : This power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor.

* CAD, Vol. VIII, 31st May 1949, p. 470.

†Dots indicate interruption.

‡ *Ibid.,* p. 474.

It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under (he formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unneccessary to categories the conditions under which the President may undertake the removal of the Governor.

[Amendment of Dr. Ambedkar as given above, was accepted. Article 132, as amended was added to the Constitution.]

ARTICLE 134

***Mr. President:** We have dropped the first alternative, and we have to take the amendments only to the second alternative, and I think amendment No. 164 standing in the name of Dr. Ambedkar would cover.

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

"That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following be substituted :—

Qualifications for appointment as Governor. —'No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years'."

Sir, may I take it that the amendment is moved ?

Shri T. T. Krishnamachari : Mr. President, the Chair and the House can permit the substitution of an amendment.

Mr. President : You need not read the amendment in full.

The Honourable dr. B. R. Ambedkar : Sir, I move Amendment No. 2061,.Sir, I also move that for amendment No. 2061, the following be substituted :—

"*Qualifications for appointment as Governor.*—" No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years.'"

[Motion was accepted. Article 134 was added to the Constitution.]

ARTICLE 135

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

"That in clause (1) of article 135, for the words 'either of Parliament or,' the words 'of either House of Parliament or of a House' be substituted."

This is a formal amendment. Sir, I move :

"That in clause (1) of article 135—

(a) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted.

(b) for the words 'in Parliament or such legislature as the case may be' the words 'in that House' be substituted."

* CAD, Vol. VIII, 31st May 1949, p. 475.

† *Ibid.,* p. 476.

Sir, I move :

"That in clause (2) of article 135, for the words or position of emolument' the words 'of profit' be substituted."

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

"That in clause (3) of article 135 the words "the Governor shall have an official residence, and" be deleted."

Mr. President : "There" also must be deleted.

Shri H. V. Kamath: "There" will remain…….I do not know which constitution has given inspiration to Dr. Ambedkar and his collegues of the Drafting Committee.

An Honourable Member : Irish constitution.

The Honourable Dr. B. R. Ambedkar : We have passed article 48 exactly in the same terms with reference to the President. Here, we are merely following article 48.

* * * * *

(All amendments of Dr. Ambedkar were accepted. Other rejected.)

* * * * *

[Article 135 as amended was adopted and added to the Constituted.]

***Mr. President:** There is notice of an amendment by Professor Shah suggesting the addition of a new article after article 135.

The Honourable Dr. B. R. Ambedkar : Before we go to the next amendment I would like to suggest that in article 135, the word "elected" be dropped.

Mr. President: That is understood.

ARTICLE 136

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

"That in article 136 for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice or, in his absence, any other judge of the High Court exercising jurisdiction in relation to the State' be substituted."

* * * * *

Mr. President : As amendments Nos. 2107, 2108 and 2109 are not, I understand, being moved, does Dr. Ambedkar wish to make any reply to the amendments moved ?

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shri T. T. Krishnamachari and also the one moved by my friend Mr. Kamath.

*CAD, Vol. VIII, 31st May l948, p. 482.

† *Ibid p.* 484.

(The amendments which were accepted by Dr. Ambedkar were as under :)

"That for amendment No. 2104 of the List of Amendments, the following be substituted :—

"That in article 136, for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior-most judge of that Court available' be substituted'."

"That for amendment No. 2106 of the List of Amendments, the following be substituted :—

"That in article 136, for the words 'I, A, B., do solemnly affirm (or swear)' the following be substituted :—

"I, A, B, do $\frac{\text{swear in the name of God"}}{\text{solemnly affirm}}$

Pandit Hirday Nath Kunzana : (United Provinces ; General): How does the oath read ? Is it, "I do swear in the name of God, or I do solemnly affirm." or not ? The question is this : Some people may think that the Governor should take the in the name of God. There may however be people in this country who are athiests. (Interruption). (Mr. President read out the oath.) I see that there is an alternative. That is what I wanted to know. Nobody should be compelled to swear in the name of God if he does not want to do so.

Mr. President : No. no.

The question is ;

"That article 136, as amended, stand part of the Constitution."

(The motion was adopted.)

* * * * *

Article 136, as amended, was added to the Constitution.

Assembly then adjourned till Eight of the clock on Wednesday, the 1st June, 1949.

ARTICLE 137

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

(Amendment No. 2111 was not moved.)

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

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

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

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

[Article 137 was deleted from the Constitution]

* * * * *

* CAD, Vol. VIII, 1st June 1948, p. 487.

ARTICLE 143

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

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

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

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

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

* CAD, Vol. VIII, 1st June, pp. 500-02.

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

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

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

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

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

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government. The only question

that arises is, how should we provide for the mention of this discretionary power ? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143 "that except as provided in articles so and so specifically mentioned—articles 175, 188. 2(H) or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

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

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

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

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

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

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

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

[Two amendments were rejected. Article 143 was added to the Constitution.]

* * * * *

ARTICLE 144

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

"That fur clause (1) of article 144, the following be substituted .—

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

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

(la) The Council shall be collectively responsible to the Legislative Assembly of the state'."

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

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

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

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

* CAD, Vol. VIII, 1st June 1949, p. 503

* * * * *

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

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

Sir, this is nothing but a verbal amendment.

* * * * *

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

"That clause (*6*) of article 144 he omitted."

Shri Brajeshwar Prasad : Why ?

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

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

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

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

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

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

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

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

Mr. President : The question is whether it should stand here or it should be transferred to the Instrument of Instructions....

* * * * *

* CAD, Vol. VIII, 1st June 1949, p. 506.

† *Ibid* p. 507.

‡ *Ibid* p. 519.

***Mr. President:** ...Dr. Ambedkar.

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

The third amendment which has been considerably debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. In that connection, what I would like to say is tills, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable

* CAD, Vol. VIII, 1st June 1949, p. 520-21.

†*Ibid* p.p. 520-21.

length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

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

Mr. President : You have already said all that.

The Honourable Dr. B. R. Ambedkar : The fourth point is the one which have been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced in the Draft Constitution is to be found in the recommendations of the sub-committee on tribal people appointed by the Minorities Committee of the Constituent Assembly. In the report made by that committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular committee. It is said there, that in the Provinces of Bihar, Central Provinces and Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneoulsy of welfare work pertaining to Schedule Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the report of the Tribal Committee which was headed "Statutory Recommendation". It was the intention of this committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

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

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

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

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

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

[Dr. Ambedkar's all amendments mentioned hereinbefore were adopted, rest were negatived. Article 144, as amended was added to the Constitution.]

ARTICLE 145

* * * * *

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

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

[Following amendment of Naziruddin Ahmed was accepted by Dr. Ambedkar and the House.]

"That for clauses (2) and (4) of article 145, the following be substituted :—

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

[Article 145, as amended was added to the Constitution.]

ARTICLE 146

* * * * *

†The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** 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

* CAD, Vol. VIII, 1st June 1949, p. 528

† *Ibid,* 2nd June 1949. P. 532