

Pandit Kunzru: May I ask the Hon. the Law Minister how he then regards Article 371 as analogous to Section 126 of the Government of India Act which restricted the executive authority of the Government of India to matters included in the Federal list ?

Dr. Ambedkar: I do not think my hon. Friend has understood me. The point is this. Let me put it in a somewhat pointed manner. When one Government has the right to give directions to another, could such directions be the subject matter of discussion in an Assembly to which that particular Government is responsible ? That is the question. I am not using Section 126 for the larger issue. I am using it for the limited issue, namely, that wherever there is power to give direction, that power implies responsibility and wherever there is responsibility there must be discussion. That is my point.

Now, Sir, you were good enough to ask me to explain what “general control” meant. Now, it seems to me that the words “general control” are used in order to include every matter of administration arising within that particular State. The direction need not be confined to any particular matter. Today the direction may be given with regard to the Police administration; tommorrow it may be given with regard to revenue administration; at a later stage it might be found necessary to issue a similar direction with regard to finance. “General control” means control extending over the whole field of administration. That is how I use the word general control.

It would not be permissible for me, I suppose, to give the history as to how this Article came to be drafted. I would not ask your permission, nor if you give it would I use it. But I have a very clear picture in my mind as to what this Article was intended to cover. This Article does not take away the powers given to the State under the various Articles to which I have referred, namely, 154, 162, 163 and 168, the power of executive authority, of administration and of legislation. But in the interest of good Government it superimposed the authority of a direction given by the Centre in order that the levels of administration may not fall down. That, Sir, is the implication of Article 371.

Dr. R. U. Singh (Uttar Pradesh): May I ask a question, Sir? Is it contended that when control has been exercised, or is being exercised, and directions have been given, Parliament is not competent to discuss the matter ?

Mr. Speaker: He is advocating just the reverse.

Dr. Ambedkar : Sir, you referred to the question whether there is a Legislature or whether there is no Legislature is a matter which can be taken into consideration in coming to a conclusion. Theoretically, of course, no such consideration can be paid to the existence or non-existence of a Legislature, because the Constitution itself expressly says in Article 385 that where there is no Legislature, the Rajpramukh shall be deemed to be the Legislature. But it may say so, this matter whether there is a local Legislature where the particular point could be agitated or not, was taken into consideration by your predecessor in dealing with questions during the last war. As you remember, Sir, in 1939 when the war was declared, the Congress party which was the governing party in the various provinces resigned on account of certain differences between the party and the Government, and consequently, section 93 was applied. Here certain Members asked certain questions with regard to the administration in the Provinces as conducted by the Governor and his Advisers. It was then held that it was right and permissible for Members of the Central Assembly to ask questions for information with regard to the administration in the Provinces where there was no Legislature functioning. I remember having read the proceedings, and much emphasis was laid on the fact—not on the legal fact, but as a *de facto* position—that since the people have no opportunity to ventilate their grievances before a properly constituted Legislature, that in itself was an additional ground for permitting questions being asked in the Central Legislature about provincial administrations. So technically it would not be right to take this into consideration because the Rajpramukh is the Legislature. But I say, technicalities in a matter of this sort, should not be allowed to come in, much as some hon. Members might like to.

Mr. Speaker: At this point, may I ask whether he would place question for information on the same footing as a discussion ?

Dr. Ambedkar: As I said, the precedents which I have collected refer only to questions. According to Sir N. N. Sarcar which is the authority I have relied on, the matter, can be discussed, the propriety or otherwise of a direction can be discussed. It seems to me that as he has used the word "discussion" it would be large enough to include even an adjournment motion.

Now, Sir, I come to the other question which you have been good enough to put to me, "What is the scope of article 371 ?" Now, Sir, reading article 371, I should like to point out one important matter and it is this, that article does not cast upon the Government of India the duty of having general control. It is not an article which imposes a duty. It is an article which permits the Government of India to give directions. Now, Sir, this distinction which I am making is a very important distinction and it must be very clearly borne in mind.

Shri Kamath (Madhya Pradesh): May I point out that the language used in Article 371 is—

"..... the Government of every State.....shall be under the general control etc, etc."

Dr. Ambedkar: 'Shall be' means what? It is the duty of the State to be under. There is no duty on the Central Government.

Shri Kamath: There is mutuality.

Dr. Ambedkar: No, no mutuality at all.

Now, the position is this. That distinction is important from this point of view. When there is the duty cast to do a certain thing, then a motion of censure could be passed either upon the mis-performance of the duty or upon the failure to perform the duty. But if it is agreed that this article merely permits the Government of India, in the interest of better administration, to issue on certain occasions or in certain situations, certain directions telling the Provincial Government that they may do this or they may not do that, then I am

sure about it that the only question that can arise for consideration is, what direction was given, whether the direction was proper, and whether any steps were taken to see that the directions were carried out. If the Central Government in its wisdom, in its discretion, felt that notwithstanding the fact that there were elements in the situation which called for the issue of an order, did not think it necessary, proper or wise to give a direction, then the Central Government could not be called to account for failure to do so. That, I submit, is a distinction which must be borne in mind.

Pandit Kunzru: How does my friend come to that conclusion ?

Dr. Ambedkar: That is how I read it. My friend, as I said, may read it differently ; I know, and people who are, if I may say so, more enthusiastic than cautious may probably like to give a more stretched meaning to this article. But looking at it from this point of view, from the fact that the Constitution has vested the States with the right to administer their affairs, and has only given what may be called in the case of States in Part B certain residuary powers to give directions on certain matters and on certain occasions, this power which may be exercised, as I said, under article 371 must be of a very limited character. My submission, therefore, is that although as I read article 371, I cannot help accepting the conclusion that it does admit the possibility of discussing a matter relating to the administration of States in Part B, it must be of a very narrow character. That is all I have to say.

The Minister of Transport and Railways (Shri Gopalaswami): I only want to refer to one particular point. If you are going to give a general ruling on the applicability of article 371, its interpretation and the admissibility of an adjournment motion, based upon that article, I should like you, Sir, to defer your ruling till other Members like me have put certain points before you. But if you are going to reject this motion on the short ground on which the Hon. Law Minister ended his speech, I need not waste the time of the House by putting these points before you.

Mr. Speaker: I will tell him what is passing in my mind. I do not propose to hurry up any decision. I have heard the Hon. Law Minister, I have heard his point of view, and if other Members are anxious to address on the purely constitutional aspect of it, without going into the merits, I am prepared to hear them; but that discussion should be of a very short duration. I have not yet made up my mind as to

Dr. Tek Chand (Punjab): Shall we do it today or on some other day? This question raises very important

Mr. Speaker: I have not finished. The hon. Member will please let me finish first, and then he will see that I entirely agree with him, and that I am going to do what he wishes to be done. The point I was coming to is this. I am restricting myself only to the facts of the present case, and I want to know whether I have understood the Hon. Law Minister correctly. He has given his views on the wider issues about the scope and there might be, as he says, occasions when the Centre may exercise this power; but am I clear in understanding him this way that, supposing no directions are given by the Centre or no control is exercised, then the present motion would not be in order. Is that his conclusion?

Dr. Ambedkar: That is my view.

Mr. Speaker: The other position I want to get clarified was about the words 'general control'. He stated that the word 'general' means the control extending to the whole administration.

Dr. Ambedkar: And not detailed control, not over day to day administration.

Mr. Speaker: That is what I wanted to be clear about. Subject to the general policy laid down by the Centre, the States will have perfect autonomy.

Dr. Ambedkar: But with the further fact that if the Government of India is satisfied that the directions are not carried out, then the other provisions will come into operation.

Mr. Speaker: That is a different matter. But no question for a discussion can arise in this House unless the power in Article 371 is exercised by the Centre.

(11)

PARLIAMENT (PREVENTION OF
DISQUALIFICATION) BILL

***The Minister of Law (Dr. Ambedkar):** I beg to move :

“That the Bill to make provision in regard to certain offices of profit under article 102 of the Constitution, be taken into consideration”.

I do not think that it is necessary for me to make any long statement to enable the hon. Members to understand the provisions of this Bill. It is a very short one. It has only one clause but just to put hon. Members in a position to know exactly what is being done, I would like to say that article 102 of the Constitution provides that certain persons shall be disqualified from being Members of Parliament. One of the disqualifications relates to holding of an office of profit under Government. So far as Ministers are concerned, they are exempted from the operation of article 102 by clause (2) of that article. We have however in the Government of India not only Ministers but also other categories of Ministers *viz.* Deputy Ministers and Ministers of State. These offices were created before the Constitution came into operation. Their occupants were entitled to hold office at the same time as Members of Parliament because during the period which intervened between the 15th August 1947 and the 26th January 1950 the Government of India Act 1935, as adapted, did not contain the provision to which I have made reference *viz.*, holding of an office of profit as a disqualification. The situation has, of course, now altered by reason of the provision contained in Article 102 so that from the 26th January 1950 Ministers of States and Deputy Ministers would have become disqualified from sitting in Parliament. In order to get over the difficulty the Government issued an Ordinance permitting them to sit in Parliament and to remove the disqualification they would have otherwise incurred. As hon. Members know, under the new Constitution, the life of an Ordinance is a very

* P. D., Vol. 2, Part II, 9th March 1950, p. 1330.

short one *viz.*, six weeks from the re-assembly of Parliament. In this particular case Parliament assembled on the 28th January so that the Ordinance would expire on the 12th of this month. It is necessary that this Bill should be got through before the Ordinance ceases to have legal operation. The Bill seeks to include what I may say, clause (a) of Section 2 of the Ordinance, which referred to Deputy Ministers and Ministers of State. The present Bill does not propose to give effect to clause (b) of section 2 of the original Ordinance which made provision for part-time offices. Instead of that, the Bill seeks to include two more offices *viz.*, Parliamentary Secretaries and Parliamentary Under-Secretaries. It is felt that although these offices are not in existence now and have not been created, it is quite possible that the Government of India may find it necessary to create them. It was therefore felt that it would be better to enlarge the scope of the Bill in order to include these offices as well. I do not think that any more argument is necessary to support the Bill and I hope the House will accept it.

Mr. Deputy Speaker: Motion moved.

***Dr. Ambedkar:** I would like to understand, whether my hon. Friend agrees to the proposal in the Bill that these two offices should be created and being created, they should be exempted from the provision enacted in article 102 of the Constitution? Let us understand it very clearly and if my hon. friend is going to take the whole of the half hour, there is no use going any further.

Shri Tyagi: If he is tired, he might go home.

Mr. Deputy Speaker: I agree any length of time can be taken but so far as this Bill is concerned, it is a very small point.

****Dr. Ambedkar:** I only wanted to understand what exactly was the point my hon. friend was driving at and if he was going to take the whole of the half hour, it is much better to begin tomorrow and finish the Bill.

*P. D., Vol. 2, Part II, 9th March 1950, p. 1334.

***Ibid.*, p. 1334.

Shri Tyagi: When people are not quick to understand, I take time to make them understand.

Pandit Kunzru (Uttar Pradesh): Do Government insist that the Bill should be passed today?

Dr. Ambedkar: I am not saying so. It is only the Hon. Deputy Speaker who says, "let us sit for half an hour."

Pandit Kunzru: I think it will be a fruitless discussion and I venture to think that the discussion will end quicker if we adjourn till tomorrow.

***Dr. Ambedkar:** On the first point raised by my friend, Mr. Tyagi, as to whether there is at all any necessity for bringing in this measure, I think what has fallen from the Prime Minister should suffice, and I would only like to add this by way of clarification : Our real difficulty has arisen by reason of the fact that the definition Article, Article 366, does not define the word "Minister". Therefore the word "Minister" is left to be interpreted in two ways, either in the larger sense which would include not only Members who are Ministers but also Members who are Deputy Ministers or Ministers of State. It would also include in the popular sense Parliamentary Secretaries and also Parliamentary Under-Secretaries. That is one interpretation which is perfectly possible, but it is also possible to put a narrow construction whereby Ministers would mean not Ministers including Deputy Ministers, Ministers of State, Parliamentary Secretaries or Parliamentary Under Secretaries, but only Members of the Cabinet. As the House knows that there is customarily—I am deliberately using the word 'customarily'—quite a distinction between Ministers who are Members of the Cabinet and Ministers who are not Members of the Cabinet, and it is quite possible for anybody, even for a Court, to put the narrower construction and confine the *de jure* interpretation of the word "Ministers" to Members of the Cabinet only, in which case undoubtedly.....

Pandit Kunzru : Which Court is my hon. Friend referring to ?

Dr. Ambedkar : Any Court. I am coming to that also. I was only speaking generally. Any person may question that interpretation. If that interpretation is questioned, obviously, there would be difficulties. Therefore, it is by way of caution, by way of removing any kind of doubt or difficulty that this Bill has been brought in, and as I said, if the interpretation given by my friend, Mr. Tyagi, was upheld in a place where such question was likely to be raised, no one would be unhappy if it was then found that the Bill was unnecessary, but if unfortunately notwithstanding the great argument, the extensive argument, the original argument addressed by my friend, Mr. Tyagi, it was found that that construction was not the correct construction, then it would be obvious that the Parliament did wise in passing this Bill. Therefore so far as the exact provisions of the Bill are concerned, I think a cautious House ought to support them. I would not say anything more on that point.

In regard to the other question, *viz.*, disqualification incurred by Members of the House by reason of the fact that they are holding some kind of office which is outside the Ministerial offices.....

Shri Sidhva: I mentioned Committees.

Dr. Ambedkar: That is why I said non-Ministerial offices. I am using the exact legal term. That question, I think, requires to be considered. That question was raised yesterday after Parliament rose, but unfortunately when I went to my room, I found that all the libraries were closed and I could not get the necessary books of reference which I wanted to consult, because I knew that this matter would be raised in the House and I thought that I should be prepared to give some kind of reply as far as I could under the circumstances. I have applied my mind to this matter and all I can say is that I have come to some tentative conclusion which I should like to present before the House.

In the first place, I should, like to remove the sort of scare which has been raised by my friend, Mr. Sidhva, that any enemy of his might create trouble. I hope he has none. I think he is one who may be correctly described as *Ajatashatru*. Any how, our Constitution has made ample provision that matters of this sort relating to disqualification should not go to a Court. By Article 103 we have left the power to decide whether any particular Member of Parliament has incurred a disqualification by reason of accepting an office of profit or not, with the President. The President is the final authority. Under Article 103 the President has been released—very deliberately and very wisely—from acting on the advice of the Ministry, because it was felt that the Ministry might give an interested advice to the President. Therefore, in this particular case relating to disqualification arising out of holding an office of profit, the President is required to act on the advice of the Election Commissioner.

Shri Kamath: What about clause (2) of Article 103 ?

Dr. Ambedkar: I am coming to that. Article 103 is, so to say, an exception to article 74. Under Article 74 the President is required to accept the advice of the Ministers in all matters relating to legislation and administration. With regard to this, an exception has been made, and as I said, a deliberate exception has been made so that no political influence could be brought to bear on the decision of the question by the President.

Shri Kamath: Which is the body which acts for the Election Commissioner now ?

Dr. Ambedkar: We are immediately constituting the office of the Election Commissioner, and I have no doubt about it that before any such question is presented to the President, the Election Commissioner will be there to deal with the matter.

Shri Kamath: In this particular case, clause (2) of Article 103 which is mandatory has not been observed.

Clause (2) says :

“Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.”

Mr. Deputy Speaker: No such question has been referred to the President.

Shri Tyagi : *rose*—

Dr. Ambedkar: Sir, I cannot answer to all these petty questions which have no bearing on the question. My friend, Mr. Sidhva, had suggested to the House that any number of people could go to the High Court or the Supreme Court and obtain a decision. That procedure is barred under the Constitution. That matter is left entirely to the President.

Now, I come to the other question which Mr. Sidhva very pointedly raised as to what would happen to Members of Parliament who have been appointed to various Committees. Would they incur disqualification or would they not incur disqualification? Now, I have here before me an analysis of the various types of Committees on which Members might be invited to serve and where they might get some sort of remuneration or fee or something. The first is this : Membership of Committees or Commissions constituted by a resolution of Parliament or under rules made by Parliament, for instance, the Public Accounts Committee, the Estimates Committee, the Standing Committees attached to various Ministries etc. There might be various others, but the substantial point is that Committees are appointed by a resolution of Parliament or under the rules made by Parliament. I speak of course without any kind of dogmatism but I do not feel any doubt that the membership of any such committee would involve any disqualification, for the simple reason that the appointment is made by Parliament either by rules relating to any particular committee or generally by rules framed for the constitution of committees.

The second class of membership relates to all corporate bodies constituted by an Act of Parliament, such as, for instance, where an Act provides for the election of Members by Parliament either from among its Members or from

outsiders, for example the Indian Oilseeds Committee, the Indian Nursing Council, the Employees State Insurance Corporation or the Central Silk Board. Under the same category are also cases where such Members are appointed by the Central Government, such as, for instance, the Coal Mines Stowing Board, the Delhi Transport Authority and so on. I am only expressing here my tentative conclusions and it seems to me that under the first category where Parliament provides for the election to certain statutory bodies that could not be regarded as an appointment by Government and therefore membership of a committee like that, in my judgment, would not involve any disqualification. But with regard to the second category where such Members are appointed by the Central Government I feel a certain amount of doubt. I think that that probably might involve a certain disqualification, for the simple reason that although the bodies to which appointments are made are statutory bodies created by a law enacted by Parliament, yet the appointment is by Government. Therefore, that is one element to be taken into consideration in deciding whether the possible consequence may not be disqualification. It is possible to make a further distinction, namely, that a Member of Parliament appointed by Government to a statutory body such as under the Coal Mines Safety (Stowing) Act or the Delhi Transport Authority may be paid out of the funds belonging to that particular authority and not from funds belonging to Government; whether that would be a possible basis for distinction I have my doubts. I personally think that that would involve disqualification, because it may be regarded and interpreted as a fraud upon the Statute, by getting a Member of Parliament to be appointed but to be paid by somebody else. I think that is a case which must be excluded

Shri T. T. Krishnamachari (Madras): It is not considered as falling into that Category.

Dr. Ambedkar: I do not know. My friend Mr. T.T. Krishnamachari will allow me to say that I have not slept the whole of last night. I have been reading Halsbury and a number of other books, as the subject is so complicated. Anson's is the only book I have which could give some guidance

and I shall pass it on to him. It was published in 1922 and probably it gives the best assistance in this matter. My hon. Friend will have his right to speak and here I am only expressing my tentative conclusion.

Shri Kamath : The Hon. Minister will have good sleep to night.

Shrimati Durgabai (Madras): What is the position in regard to the All-India Nursing Council constituted under an Act of Parliament ?

Dr. Ambedkar : Probably that would not involve any disqualification. Now I come to membership of Advisory Councils or committees constituted under an Act of Parliament or appointed by a statutory corporation. Take for instance the Damodar Valley Corporation. As I said, I am not certain about it also. (*Interruption*) I am not advising any particular client. I am very sorry to say that, I am making a general statement. If the hon. lady is interested in the Nursing Council she had better go to a lawyer and obtain his advice.

Shri Sidhva : That is not fair.

Shrimati Durgabai : You said that Coal Mines Safety (Stowing) Act does not come under the disqualification

Dr. Ambedkar : I looked it up overnight and found out what the provisions were.

Then I come to membership of committees, Commissions or Councils or other similar bodies constituted by Government for specific purposes by resolution or order, for instance, membership of the Governing Body of the Indian Council of Agricultural Research, membership of the Fiscal Commission, membership of the Government Trading Enquiry Committee (*Interruption*) I do not want to hide anything—membership of the Special Recruitment Board, representatives or delegates to United Nations Organisation or any international conference or association. I feel rather doubtful about membership of committees, commissions or councils or other similar bodies constituted by Government for a specified purpose by resolution or by order.

As I have stated my view is that in certain cases Members of Parliament would not be affected. In certain cases they might be affected. As my friend Prof. Ranga said—and I wholeheartedly agree with him—this question of disqualification by reason of holding an office of profit is one of the most important matters. It has been and could be a tremendous influence for corruption and therefore we have to proceed very carefully in this matter. In England I do not know what they do but I have found that they have no general law as such. Whenever they make a law under which they create a particular office, in that very Act they provide whether the holder of that office shall be deemed to be disqualified for being a Member of Parliament, so that no general theory is there. Each case is dealt with particularly and Anson's Vol. I gives quite a long list. There every Act is mentioned and the office it has created and whether the holder of that office under the particular Act shall continue to be a Member of Parliament or not. I am afraid we have therefore to be very cautious.

One thing I am prepared to admit, namely, that those Members who are already holding office, which, as I said, might lead to disqualification, if they have to give up their offices immediately, administrative difficulties might be created. The work might be held up and it might be possible and even desirable to have a short measure removing the disqualification from the holders of those offices for the present, so that we would get sufficient time later on to consider what general principles we should adopt. If there is a certain amount of delay in carrying out the suggestion which I have made, we can rectify it by passing an Indemnity Act, giving it retrospective effect, so that all those who are holding offices today need not be in danger of incurring any such disqualification. I do not think that we can really rush into this matter and have a general clause exempting anybody and everybody without either proper consideration or examination. I admit that if the disqualification applied without any qualification to Members who are working on various committees, some difficulties might be created. If the House so desires I would be quite prepared to consider a small measure of one clause and bring it before the House to give it retrospective effect and also to add to it an indemnity clause,

so that if there is any lacuna in the legal position a Member will not be deemed to have vacated his seat. More than that I am afraid I cannot do at this stage.

With regard to the omission of part-time offices from the Bill I think the reply that I have given, namely, that you have to be very cautious in extending the principle of exemption to holders of office, applies to them also. I may say that the original clause in the Ordinance was taken from the war-time Ordinance which was Ordinance LII of 1942. My friend Mr. Kamath will realize that it is perfectly legitimate to widen the principle in an emergency when there are so many offices to be filled and the number of men available is so few that we have necessarily to go to Parliament to pick up Members to officiate on those occasions. But what is necessary in wartime and in an emergency should not be applied in normal times. That was the consideration which prevailed upon me in deleting the clause which originally found its place in the Ordinance.

Shri Kamath : Was it not the Law Ministry itself which drafted the Ordinance ?

Dr. Ambedkar : The Law Ministry can forget and also be forgiven. The Law Minister is not omniscient. I live to learn, and if I can learn from my friend Mr. Kamath I shall be only too grateful. This is all that I have to say.

Shri Kamath : *rose* —

Mr. Deputy Speaker : We have only three minutes to adjourn for Lunch. I hope the hon. Member would not take more than three minutes.

Shri Kamath : There are some legal and constitutional points which I have to make and I will take more than three minutes.

At the outset may I make it clear that in my judgment—I have learnt a lot from Dr. Ambedkar during Constitution making and I have much more to learn from him ; I wish to reciprocate the compliment—there is no need to rush or hustle this Bill through, because even if this Bill were passed by this House before this midnight, that is, of the 10th, it will

not, constitutionally speaking validate the membership of the Deputy Ministers and the Ministers of State; it will not remove the disqualification which they have incurred already.

Dr. Ambedkar : With your permission, Sir, I would just like to mention that there is nothing original in this point. It is borrowed from the view of the Patna High Court. But I find both my friend Mr. Tyagi and Mr. Kamath are making this point. The President is not the court; the President may take a very different view from what the court may take.

***Shri Kamath :** The Constitution does not make that clear at all. It refers only to Cabinet Ministers, as Dr. Ambedkar said, and that was why the Ordinance was promulgated by the President.

Sir, the next point is this.

Some Hon. Members : It is time for the House to rise.

Mr. Deputy Speaker : hon. Members are giving him a little more time ?

Shri Kamath : Because of the legal points in which my hon. Friend Dr. Ambedkar is interested

Dr. Ambedkar : I am interested only in getting the Bill through.

Mr. Deputy Speaker : The House wants to rise evidently. The House stands adjourned till 2-30.

The House then adjourned for Lunch till Half-Past Two of the Clock.

The House re-assembled after Lunch at Half-Past Two of the Clock.

[MR. DEPUTY SPEAKER *in the Chair*]

Shri Kamath : Sir, the Law Minister is not here.

Shri Sidhva : The Minister of State for Parliamentary Affairs is there.

Mr. Deputy Speaker : Yes,

Shri Kamath : Oh, the Law Minister has come.

I am glad that my hon. friend has arrived in the nick of time. I am glad also that in the forenoon he admitted—casually, of course—that a mistake, constitutional though technical, had been committed in respect of this matter.

Dr, Ambedkar : I have not admitted any such thing at all.

Shri Kamath : He referred to the Patna High Court ruling and said that Mr. Tyagi and myself are taking a stand upon that ruling and that we need not go very deep into that aspect of the matter. He further went on to say that he is not interested in legal issues or legal points—he is interested in merely getting the Bill passed or rushed through, I do not remember what was the word he used. May I ask you, Sir, and the House, that if the Minister of Law is not interested in legal points who would be interested in legal points ?

Mr. Deputy Speaker : Leave that alone.

Shri Kamath : Sir, that concerns the right of the Members of this House. The Minister of Law is there and he says that he is not interested in legal points.

Dr. Ambedkar : I am interested in the merits of the case.

Shri Kamath : Sir, legal points to a Law Minister at least—if he means to be a Law Minister in truth, in fact and in earnest—must be as much a case of merit as of law.

Mr. Deputy Speaker : What is the good of misunderstanding the Hon. the Law Minister ? He says, “So far as the law is concerned, leave it to me. Please tell me facts if there are any.”

Shri Kamath : May I ask on a point of right as a Member of the House whether if a Minister takes a particular stand, a Member cannot raise a point of privilege of the House ? I do not know what the future has in store for him ; he perhaps is thinking of some other portfolio. I do not know anything about reshuffling of portfolios but there are lots of reports in the papers. But I feel that it should not have been stated in the House that a Minister of Law is not interested in legal points.

Dr. Ambedkar : Parliament is not a Court.

Parliament (Prevention of disqualification) Bill

***Mr. Deputy Speaker :** Dr. Ambedkar.

Dr. Ambedkar : I find that Members have really travelled ground which is far away from the main proposition embodied in this Bill. I have been asked to explain how this doubt arose. In whose mind did it arise first ? I have been asked to explain how is it that in no other country such as Australia or Canada is any such legislation found necessary ?

Well, with regard to the first point, I have no hesitation in saying that I myself felt doubts. I admit that, because notwithstanding many allegations that have been made, I was to some extent responsible for the framing of the Constitution. I have no hesitation in saying that I do not know of any Constitution in the world which can be said to be proof against doubt or against any kind of wrong understanding. Otherwise, if every Constitution was proof against doubt that would not have been these voluminous decisions of the various Supreme Courts in the different countries. Therefore, if I felt even as Chairman of the Drafting Committee that there was doubt in this matter, I am not ashamed to acknowledge it and there is nothing cavalierly in my behaviour when I say there is some doubt in this matter.

I shall explain why I felt there was doubt. My friend, Mr. Krishnamachari said that the phrase 'Council of Ministers' was taken really from the Government of India Act, 1935 where the language used was 'Council of Ministers' and that language was evidently borrowed by the draftsmen of the 1935 Act from the older Act where the words were 'Executive Council'. Now, I felt that if anybody was to interpret the phrase 'Council of Ministers' he would, no doubt, be justified in taking into consideration the circumstances in which that phrase 'Executive Council' was used, and would be justified, in interpreting the intention of the phrase 'Council of

*P.D., Vol. 2, Part II, 10th March 1950, pp. 1360-64.

Ministers' by reference to the 'Executive Council'. Now, it is quite obvious that the 'Executive Council' meant only members of the Executive Council of the rank of Ministers, because at that time there did not exist any such category of people as we call now by the names Deputy Minister or Minister of State or Parliamentary Secretary or Parliamentary Under Secretary. These are offices which have been created long after the Government of India Act, 1935 in its original form ceased to be in existence. I, therefore, felt that probably as we had especially not defined the word 'Minister' or 'Council of Ministers' in the article dealing with definitions, it would be open to anybody to suggest that the 'Council of Ministers' was a phrase used on the same analogy as the 'Executive Council' and therefore it would be open for anybody to say that these officers were not intended to be included.

That is the basis of the doubt which I felt, and I do not see any reason why Parliament should not be called upon to pass a law to place the matter beyond doubt. I do not think, therefore, that there is any unwarranted attempt on the part of the Government to force upon the Parliament a Bill the object of which is to remove doubt. I can point out many cases where Parliaments have passed Acts for the purpose of removing a doubt, and I do not think I am asking Parliament to enter upon any very extraordinary activity in doing the same with regard to this Bill.

With regard to the point raised by my friend, Pandit Kunzru, as to how the Governments in Canada or Australia or other Dominions are carrying on their affairs without any such legislation as is proposed now, I really want to know from him whether he thinks that the Constitution of Australia or Canada does not contain any such provisions as is embodied in Article 102, laying down disqualifications on the ground of holding an office of profit. I have had time only to refer to the Australian Constitution and there is a definite section there that a person holding an office of profit under the Crown shall not be qualified for being a Member of Parliament.

Pandit Kunzru : That is right.

Dr. Ambedkar : I do not know whether he had had the time to examine any law made by the Australian Parliament to overcome any difficulties which undoubtedly must arise by reason of that particular section in the Australian Constitution. I have not had the time to examine it, but I just cannot understand how, if the Australian Parliament does permit its Members to hold offices of profit and at the same time sit in Parliament and be Members, they could have done so without some kind of legislation. As I said, I have not had the time to study this, but *prima facie* it seems to me one of the most impossible propositions that the Australian Parliament should be permitting its Members to sit in the Parliament, vote and take part in the proceedings and at the same time hold offices of profit, without a law such as the one proposed here, but I cannot say.

Now, I come to another point and it is this. My friend, Mr. Kamath, among the various points that he was seeking to make which on account of my limited intelligence I could not unfortunately follow, made one point which, I think, I could follow and which, I think, requires some kind of explanation. He has said that the draft of the Bill brings in also a member of the Government of any State, and his contention was that the draft was clumsy. I think that if he had read the clause carefully and also referred to clause 1 of Article 102, would have seen that the language is not only necessary but perfectly justified. My friend will realise that clause 2 of the Bill deals with two cases, one for being chosen as a Member, and one for being a Member, that is to say, continuing to be a Member. Now, it is proposed that not only a person holding an office of profit under the Government of India should not be disqualified from standing as a Member of Parliament, but similarly a Minister of State or Deputy Minister or Parliamentary Secretary or Parliamentary Under-Secretary who is holding that office in a State, he also, if he wishes to stand in the general election for membership of Parliament, should not be disqualified by reason of the fact that he holds that office in the State. That is the reason why holding an office of profit in a State has also to be brought in because

the object of the Bill is to free both categories of people,—Ministers of State or Deputy Ministers or Parliamentary Secretaries or Parliamentary Under Secretaries, whether they are in the Centre or whether they are in a State—from this embargo. That is the reason why the words “under the Government of India or the Government of any State” have been brought in.

Shri Kamath : What about the point I raised ?

Dr. Ambedkar : I am coming to that.

The question may arise that if you permit the holder of an office mentioned in clause 2, in a State, to stand for election for Parliament, then he would also be entitled to continue to be a Member of Parliament after he is elected, because the words are “for being chosen, and for being”. My friend will see that that difficulty will absolutely disappear automatically by a constitutional provision contained in Article 101, because as soon as a Minister of State or a Deputy Minister or a Parliamentary Secretary or a Parliamentary Under-Secretary from a State is elected to Parliament, he will have to make his choice whether he would continue to be a Member of Parliament or whether he would continue to be a Member of the State Legislature. Consequently, although the provision is worded in this manner, it certainly would not create any kind of difficulty which he perhaps has in mind.

Shri Kamath : Under the Constitution, is it possible for the States or even for the Centre to have Ministers of State or Deputy Ministers who are not members of the Legislature concerned ? A Minister could be a Minister without being a Member of the Legislature, but so far as I can interpret the Constitution, a Minister of State or a Deputy Minister cannot hold that office without at the same time being a Member of the Legislature.

Dr. Ambedkar : For six months he can. So far as that drafting aspect is concerned, I think I have made the matter quite clear.

My friend, Mr. Krishnamachari, has been writing me on the point which I made that I have spent a great deal of time in studying this matter last night. I am sure about it that my labours would have been considerably shortened if the paper to which he referred just now *viz.*, the Parliamentary paper, had been available to me. As I said, when I went, the Library was closed. I think that either the Library was closed or my friend ran away with the paper and did not allow me an opportunity of studying the paper.

With regard to the comment made by my friend, Mr. Kamath, that I slipped when I said that some portion of the Bill *viz.*, relating to Parliamentary Secretary and so on was a new thing and not contained in the original Ordinance, I do not think there is any ground for him to complain or any necessity for me to apologise. I quite *agree* that if a Member makes a slip, states wrong facts and these facts have the result of either misdirecting the House or misguiding it, there would undoubtedly be ground for doing so, but it was just a slip. Everybody knows that and I do not think therefore, that that was something which required complaint or comment. I can say that I have a less perfect memory than my friend, Mr. Kamath, has. I do not think that there is any point that has been left out by me without being answered.

Pandit Kunzru : Will the Hon. Minister tell us whether the Ministers of State belong to the Council of Ministers or not and whether they are appointed by the President.

Dr. Ambedkar : My hon. Friend asked me that question before. He knows very well, I think, that the position inside the Ministry is never regulated by law. It is always regulated by convention. It is the privilege of the Prime Minister to select any person to be a member of the Cabinet, although he may not be specifically designated as a Minister. It would be perfectly open to him to say "In my cabinet, I will include only certain Ministers. I will not include other Ministers but I would also include a Secretary of State or a Minister of State". The internal arrangement of the Cabinet has always been, as the hon. Member knows, a matter of convention. If he wants I can state the position as it exists now but he must

understand that that is only for the time being. The present Prime Minister may after the method of working of the Cabinet or if a successor comes he may also adopt a different arrangement. There is therefore, no use.....

Pandit Kunzru : May I interrupt my hon. friend ? Does he take the phrase “Council of Ministers” to be synonymous with the Cabinet ?

Dr. Ambedkar : I do not. As I said in my opening speech this morning this is a phrase which is capable of double interpretation. I have seen observations by writers on Constitutional Law, where they have stated that even Parliamentary Secretaries or Parliamentary Under-Secretaries are included in the term Minister. There are also other writers who maintain that ‘Minister’ is a narrower term. Therefore, as I said, it is very difficult to satisfy anybody or give a correct answer. This is a fluid situation and must remain fluid : that is the important part. There is no use pinning me down to give my hon. Friend a clear picture of how the Ministers and the Parliamentary Secretaries, all of them stand together *vis-a-vis* each other.

Pandit Kunzru : I am sorry I have failed to make myself understood. I am not criticising my hon. Friend. All that I am seeking to know is this. If the Council of Ministers does not mean the same thing as a Cabinet, then obviously it can be a wider body than the Cabinet.....

Dr. Ambedkar : Yes.

Pandit Kunzru : and the Ministers of State and the Deputy Ministers can belong to it. No question therefore, arises with regard to their position.

Dr. Ambedkar : I need not dilate upon this. The hon. Prime Minister in a most authoritative statement said that in his opinion the Council of Ministers included everybody.

Shri T. Husain (Bihar): I want to ask one question. It is clear under the Constitution that a Minister can be a Minister for six months without being a Member of Parliament. That is mentioned in the Constitution itself. There is no such mention about the Minister of State or the Deputy Minister,