

Monday, 30th May, 1949

Volume VIII

16-5-1949

to

16-6-1949



CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, NEW DELHI-110 005

THE CONSTITUENT ASSEMBLY OF INDIA

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Joint Secretary:

MR. S.N. MUKERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 30th May, 1949

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

INDIA ACT, 1946 (AMENDMENT) BILL

The Honourable Dr. Syama Prasad Mookerjee (West Bengal : General) : Sir, I beg to move :

“That the Bill to amend the India (Central Government and Legislature) Act, 1946, be taken into consideration by the Assembly at once.”

Sir, this Bill seeks to amend the India (Central Government and Legislature) Act of 1946 which was passed by the British Parliament on the 26th March 1946. The Object of this amendment is two-fold. First, it seeks to place cotton, (including ginned and raw cotton and cotton seeds) as one of the commodities which may be centrally controlled. In the second place, it seeks to define coal beyond any doubt and to lay down that coal includes coke and other derivatives of coal.

I shall deal with the second point first. Coal has been under Central control for the last few years and also coke and other derivatives of coal. Recently there have been one or two judicial decisions which have laid down that technically, coke does not come within the definition of coal. The matter was referred to the Law Ministry and we have been advised that it will be safer to amend the Act, give it a retrospective interpretation, and provide beyond all doubt that coal includes coke and all derivatives of coal.

So far as cotton is concerned, when the Defence of India Rules were in operation cotton was a Centrally controlled commodity. Later on as the House will recall, all the powers which were vested by the Central Government and the Central Legislature under the Defence of India Rules lapsed. A special amendment of the Government of India Act was made in March 1946, which I am here now asking your permission to amend further, giving certain powers to the Government of India for a limited period to legislate, if necessary, in respect of certain commodities.

Now these commodities normally fall within the provincial sphere. They were put in the Concurrent List. In other words, if the Central Legislature thought it wise that these commodities should be controlled centrally, that could be done for a period not exceeding five years. The list of such controlled commodities as the House will recall includes eight items : foodstuffs, cotton and woollen textiles, paper, petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron and steel and mica. Now at one stage it was thought that raw cotton also was included within the description of cotton and woollen textiles. But later on it was pointed out that cotton and woollen textiles meant cotton textiles and woollen textiles. If it meant cotton and woollen textiles, then cotton textiles would go out of the purview of such a definition : which of course would become an absurd thing. Cotton, therefore, as the law at present stands, is a commodity which can be dealt with in the provincial sphere and in that sphere alone. Last year, after textile

[The Honourable Dr. Syama Prasad Mookerjee]

control had been re-imposed, it was the unanimous opinion of the provinces and other parties involved that cotton also had to be controlled. We had no legal power to do it. We therefore drafted a Cotton Control Order and asked the provinces to pass legislative measures in pursuance of such control order. Some provinces did so and some provinces delayed. Then the States also came into the field and it took us quite a considerable time before we could persuade all the States to adopt a similar measure. Later on when it came to giving executive directions for enforcing such control order, a lot of complications arose because the Central Government had not the legal power to pass legislation or to take executive action. The matter was referred to the Provincial Governments and the Provincial Governments now all agree that it will be desirable to put cotton as one of the centrally controlled commodities. Of course, whether cotton will continue to be controlled or not, will depend on various factors which may change from time to time.

My main object today is to ask for an amendment of this Parliamentary Act which this House alone can amend and not the Central Legislature, so that, if the Central Legislature so desires, cotton may become a controlled commodity. After this Bill has been passed into law, then another Bill will have to be passed by the Central Legislature in order to include cotton as one of the commodities in the Essential Supplies Act, which already governs the eight commodities I have mentioned already. This is a simple and non-controversial measure which has not evoked any amendment from any Member of the House. I hope the motion will be accepted without discussion.

Mr. President : The question is :

“That the Bill to amend the India (Central Government and Legislature) Act 1946, be taken into consideration by the Assembly at once.”

The motion was adopted.

Mr. President : There is no amendment. So I will put the clauses to the vote of the House.

The question is :

“That clauses 1 to 4 stand part of the Bill.”

The motion was adopted.

Clauses 1 to 4 were added to the Bill.

Mr. President : The question is :

“That the Preamble and the Title stand part of the Bill.”

The motion was adopted.

The Preamble and Title were added to the Bill.

The Honourable Dr. Syama Prasad Mookerjee : Sir, I move that the Bill, as settled by the Assembly, be passed.

Mr. President : The question is:

“That the Bill, as settled by the Assembly, be passed.”

The motion was adopted.

DRAFT CONSTITUTION—(Contd.)

Article 124

Mr. President : The House will now take up the consideration of the Draft Constitution—article 124.

There is an amendment (No. 1974) of Mr. Naziruddin Ahmad to the heading of this Chapter.

As it relates to the heading, we can pass it over.

I see that there is an amendment to add a New Part by Shri Gopal Narain No. 1973.

(The amendment was not moved.)

Now Amendment No. 25 of List for the Third Week may be moved.

Shri T.T. Krishnamachari (Madras : General) : Mr. President, Sir, I move :

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

The reason for this amendment is fairly simple. The function which the Draft Constitution imposes on the Auditor-General is not merely audit but also control over the expenses of Government. Undoubtedly the term ‘Auditor-General’ has been all along used in the 1935 Act to include both these functions. But as it is quite possible that we might empower Parliament to enlarge the scope of the work of the Auditor-General, it was thought fit that the nomenclature of the Auditor-General, should be such as to cover all the duties that devolve on him by virtue of the powers conferred on him by the Draft Constitution. The issue is fairly simple. It is merely a matter of a name which covers the duties now carried on by the Auditor-General and will be carried on by him in the future. I hope the House will find no difficulty in accepting this amendment.

Mr. President : Then there is amendment No. 130, also of Shri T.T. Krishnamachari.

Shri T.T. Krishnamachari : There is another amendment to 1975.

Mr. President : You have given notice of amendment No. 130.

Shri T.T. Krishnamachari : It is merely expanding the scope of amendment No. 1975. Either No. 1975 may be moved now or I will move my more comprehensive amendment.

Mr. President : Mr. B. Das may move amendment No. 1975.

Shri B. Das (Orissa : General) : Sir, I move :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

Sir, this amendment I have given because the Auditor-General, like the Chief Justice of the Supreme Court, is to be appointed by the President and therefore it is essential that the words “by warrant under his hand and seal” should be introduced.

Mr. President : Amendment No. 130 may now be moved.

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“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

[Shri T. T. Krishnamachari]

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.' ”

Sir, this is more or less consequential to the amendment moved by my honourable Friend Mr. B. Das. The Office is now being ennobled by the appointment being made by warrant under the hand and seal of the President. As actually this procedure is followed only in the case of such appointments where the officer concerned has also to take an oath, it is felt that the lacuna may be remedied by the addition of the clause now proposed.

Mr. President : Amendment No. 1976 is not moved, as the House has already disposed of the principle underlying this amendment in connection with some other appointments in the Union.

Amendment No. 1977 is disallowed as of a drafting nature.

(Amendment No. 1978 and 1979 were not moved.)

Amendment No. 1980 is covered by another amendment moved by Shri T.T. Krishnamachari.

Then there are the two amendments to clause (4). One is 25-A of List I.

Shri T.T. Krishnamachari : This is now superseded by No. 131 of List II.

Sir, I move :

“That for amendment No. 25-A of List I of Amendments to Amendments, dated the 28th 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.’ ”

Sir, this is in substitution of clause (4) of article 124 and amplifies the idea contained therein. It also provides that the Auditor-General shall not merely consult the President but shall obtain his approval in regard to the fixing of the salaries, allowances and pensions payable to or in respect of members of his staff. All these hinge on the executive discretion of the authorities concerned, as they might affect the principle of parity with the other services under the Government of India. This is non-controversial and is merely an improvement on the present draft. I hope the House will accept it. Sir, I move.

(Amendments Nos. 25-B and 1981 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“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.’ ”

Sir, the principle is exactly the same as in clause (5) of article 124, and the variation merely is that it covers the administrative expenses of the office of the Comptroller and Auditor-General, which in reality will mean certain ex-

penses like contingencies, travelling expenses, etc., so that it really makes the picture complete. Nothing new has been put in. Sir, I move.

(Amendment No. 1982 was not moved.)

Mr. President : Now, the original article and the amendments moved are before the House for discussion.

Shri R.K. Sidhwa (C.P. & Berar : General) : Mr. President, Sir, I have got only a very few remarks to make in connection with this article and the amendments moved thereto. The Post of the Auditor-General is so very important that I will give it the first place so far as the financial provisions of this Constitution are concerned. The Auditor-General should be always independent of either the legislature or the executive. He is the watch-dog of our finances and his position must be made so strong that he cannot be influenced by anyone, howsoever great he may be. From that point of view I am very glad that certain amendments have been moved whereby the position of the Auditor-General has been made very strong. To that extent I welcome the amendments and also the article as duly amended. I also do not want that the Auditor-General should be responsible to the legislature, but I find that the amendment just now moved by my Friend, Mr. Krishnamachari, says :

“(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.”

I take strong exception to this amendment by which the expenses of the Auditor-General and his office are made chargeable on the revenues of India. The system of charging certain things to revenue existed under the 1935 Act under extraordinary circumstances, when the Secretary of State ruled this country. Now, we are ruling our country; we have done away with the British rule. As I said, the Auditor-General should be placed above the influence of anybody, but Parliament should not be deprived of its right to consider the question of his and his office's salaries and allowances. When we have a legislature responsible to the country, I fail to understand why this old system of charging certain items to revenue should continue. This would mean that the House will have no right of voting on these subjects. We shall no doubt have the right of discussing it, but this alone will not do. Under the new Constitution, we should do away with the system of charging anything to revenue. I therefore desire that this part of the article should be deleted. While as I said I entirely agree that the Auditor-General should be made absolutely independent, I take very strong objection to this amendment which has been moved by Mr. Krishnamachari.

Shri B. Das : Sir, I do feel happy at the way this article 124 has been amended. I have been a member of the old Parliament for twenty-three years under the foreign rule, when the Secretary of State used to appoint the Auditor-General. Later during the war the Finance Member of the Government of India began to dictate terms to the Auditor-General. He was told that he was not to report against anything which did not agree with the whims and whimsicalities of the Finance Department. The Auditor-General was debarred from reporting any irregularities against the European officials of the time. After twenty-three years of hard suffering which some of us went through, we have thrown out the British rule. Therefore, it is necessary for the maintenance of the integrity of the Government of India and high moral principles of the employees of the Government of India in public expenditure that the Auditor-General should be placed in the status wherein we have placed the members of the Federal Public Service Commission and also the Chief Justice of the Supreme Court of India. It is a happy day that the

[Shri B. Das]

Drafting Committee thought fit and changed the draft by these two amendments, which have been moved by my honourable Friend, Mr. T.T. Krishnamachari.

I am surprised that my honourable Friend, Mr. Sidhva, did not agree on the matter of “charged” expenditure. Mr. Sidhva perhaps had forgotten under the British rule by orders of the Secretary of State more than 75 per cent, of the revenues of India were non-voted. Under the new dispensation there are certain functions of the Government which must remain “charged”. Then he forgot that in the demands for Budget grants which have to be passed in the Parliament the interest on borrowed money is a charged expenditure. There are certain other items which are charged. The expenditure of the Governor-General now and later, of the President, is charged to Government. The members of the Legislature are not debarred from criticising the Governor-General’s extravagance or the extravagance of the Auditor-General or the Supreme Court. We have already placed on the charged list especially the Supreme Court. Why should we fight shy in placing the Auditor-General on the charged list, so that he knows the supply sanctioned by Parliament? The amendment which my honourable Friend, Mr. T.T. Krishnamachari has moved says :—

“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”.

Our chosen Cabinet elected by the very Parliament is there. Then the President who functions as the mouth-piece of the Cabinet will see.....

Shri R.K. Sidhwa : Then make everything chargeable.

Shri B. Das : You will have to accept the “charged expenditure”. There are other items which should not be interfered with by Ministries, because every Ministry today always exceeds its sanctioned expenditure and resists any Budget control and any financial control. Surely, my honourable Friend, Mr. Sidhva knows that 118 crores worth of supplementary estimates came on the 31st of March 1949 for sanction by Parliament. So, if the Auditor-General and the staff are not placed at a certain high level, it will be very difficult for them to discharge the responsibility that the Constitution Act imposes on the Auditor-General or, similarly on the Federal Public Service Commission or on the Supreme Court Judges. Therefore, certain items of expenditure should remain “charged”, as also the interest charges, so that the executive need not interfere. Of course, Parliament can interfere by raising debates and discussions and nobody will deny that right to my honourable Friend Mr. Sidhva. I have great pleasure in supporting the amended article 124.

Shri Biswanath Das (Orissa : General) : Sir, the amendment proposed by my honourable Friend, Mr. T.T. Krishnamachari represents the compromise between two opposite points of view. Before I proceed to justify the amendment moved by my honourable Friend, it is better that I place before honourable Members a picture of the activities of the Auditor-General and the Controller.

It would be wrong to say that any power, prestige or responsibility of the Legislature has been limited or restricted by the proposals brought forth by the amendment proposed by my honourable Friend. We have to realize that it is the Legislature that is competent to pass laws. The interpretation of law is being left to the judiciary. Sir, it is the Assembly that sanctions money to be spent by the executive and the executive is the proper authority to spend monies as are sanctioned by the Legislature. Who is the authority that is to audit whether the money sanctioned by the Legislature has been spent properly? To discharge this onerous responsibility, a new authority has been created under

the law by the Legislature and that authority is no other than the Auditor-General. Having thus defined the functions of the executive and the Auditor-General in a definite and specified manner, the question arises as to how is the Auditor-General to function. Sir, I will just now refer to amendment 25-A to article 124 which has been moved just a few minutes ago, which lays down that all appointments to the staff of the Comptroller and Auditor-General shall be made by him or such person as he may direct. This gives power to the Auditor-General to re-appoint the existing staff. Then we come to (4a) which give him power to appoint additional staff that may be required for the purpose. Regarding this, I again invite the attention of honourable Members to the proviso which specifically restricts the powers of the Auditor-General even by the Head of the executive, namely the President of the Indian Republic. I will read it for the benefit of the Members of the House.

“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.”

Even here, I for myself would have desired to wipe off this proviso because it mars the independent action, and independence to that extent of the Auditor-General by putting him in a position where he has to depend on the executive for getting approved the rules that relate to salaries, allowances or leave. To this extent the Auditor-General, instead of being independent of the executive, is made dependent on the executive. Therefore, my honourable Friend, Mr. Sidhva will please see that the amendment proposed by Mr. T.T. Krishnamachari represents merely a compromise. You have reserved to yourself the approval of the President, the Head of the executive, which means approval of the Cabinet, and which means the authority of the Legislature behind the Cabinet to the rules framed regarding salaries, allowances, leave or pensions. Therefore, nothing more is called for. The proposed charged amount is something different, absolutely different from that which has been provided under the Government of India Act of 1935. The British Parliament have made provisions anticipating that there may be conflict between the legislature, and the executive with the Governor-General, but here there is absolutely no conflict contemplated. I will again invite the attention of honourable Members to article 125 which reads : “The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament.” On the other hand it will be seen that the Auditor-General and Comptroller is absolutely left to the mercy of the legislature. Provision for a charged amount has been made only to avoid a clash and deadlock in future in the operation of the responsibilities of the Central Executive and the Auditor-General. Therefore, the provision is a sane one, is a necessary one, is a very desirable one and represents not one view, but merely a compromise view of the two conflicting sets of views.

With these words, I support Mr. Krishnamachari's amendments.

Mr. President : I do not think any further comment is necessary on this.

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 relating to the Auditor-General in this House, assigns to him. Personally 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

[The Honourable Dr. B.R. Ambedkar]

—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 giving 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 possess 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 interest 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.

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 discontented or 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. 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.

The question is :

“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.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

The amendment was adopted.

Mr. President : The question is :—

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

- ‘(1a) 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.’”

The amendment was adopted.

Mr. President : The question is :

“That for amendment No. 25-A of List-I (Third Week) of Amendments to Amendments, dated the 28th 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.’”

The amendment was adopted.

Mr. President : The question is :

“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.’ ”

The amendment was adopted.

Mr. President : The question is :

“That article 124, as amended, stand part of the Constitution.”

The motion was adopted.

Article 124, as amended, was added, to the Constitution.

New Article 124-A

Mr. President : Article 124-A notice of which has been given by Professor Shah.

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

“That the following new article be added :—

‘124-A. The Auditor-General shall be appointed from among persons qualified as Registered Accountants or holding any other equivalent qualifications recognised as such, and having not less than ten years’ practice as such Auditors.’”

Sir, this is very important because the practice has been all along, ever since the Finance Department has been organised, to have the Auditor-General appointed from the members of the Civil Service. The members of the Civil Service have a particular type of education, and develop a particular outlook which does not necessarily have specific reference to the duties and functions of an Auditor-General. If we wish the duties of the Auditor-General to be carried out with efficiency and completeness that is necessary for the proper audit of our accounts, I think it is important to lay down qualifications which will provide for practical experience and technical knowledge in the person appointed as Auditor-General. The system of Government accounting is on the basis of actual cash receipts and disbursements closing on a giving date but in view of the large commercial undertakings that the State is beginning to be committed to and in view also of the variety of dealings that the State has to enter with businessmen, contractors and so on, I think it is important that the audit of accounts should be by those who are familiar with the business practices and as such are able to give efficient service. I have laid down qualification of a Registered Accountant as the minimum, though actually according to the latest legislation these will be described as Chartered Accountants having certain years’ practice. The important point however is that they must have technical qualifications and also practical experience of auditing accounts. The promotion from service of transfer from the ordinary public services, whether called Indian Administrative or Indian Civil Service is I think, not suitable for purposes of this highly specialised appointment. Just as in regard to the judicial appointments we have required special training and experience and not mere membership of the services, so here too I suggest that it would be important if we lay down in the Constitution certain qualifications requiring the necessary technical training and practical qualifications. The actual amendment is in this respect a modest one requiring not more than ten years’ practical experience but in practice the appointment, if the amendment is accepted, would be from amongst top men. The income from practice of such men is under present conditions very high, perhaps far higher than the State would be able to pay but at the same time the status, dignity, respect and importance that would necessarily be attached to such office would make it attractive even to men of that eminence, just as judicial office is also attracting the legal practitioners with the highest income. I accordingly commend this motion to the House.

Mr. President : Does anyone wish to say anything?

Shri T.T. Krishnamachari : Mr. President, Sir, I must say that Professor Shah’s amendment is an original one and quite in conformity with ideas prevalent in the commercial world but I am afraid it is out of tune completely with existing practice in the matter of the appointment of the Auditor-General in this country and elsewhere. Actually the man who is an Auditor-General is not an accountant *per se*. He has a number of other duties to perform and in so functioning he has got to have a knowledge of the entire administration and I think the present method of appointment of Auditors-General in India is perhaps the best. We had some very good Auditors-General who were administrators and who had been in the Finance Department and who have functioned as Accountants-General in various places and who had held other important responsible positions, so that it is not merely a question of arithmetic or accounting knowledge that is necessary but a comprehensive knowledge of

the entire administration. From that point of view I think the House will readily concede that the view taken by Professor Shah, however plausible, is extremely narrow. A person who has got the qualification of only Registered Accountant and nothing else, which will probably be the case if you rule out administrative experience, will not suit as an Auditor-General. Having some experience of Registered Accountants myself I do not think it is a type of work that is impossible for anybody else who has got a comprehensive knowledge of administration and accounting to get to know. All the knowledge of a Registered Accountant is certainly known to a person who holds the position of an Auditor-General in the Government of India or Accountant-General and I see no reason why I should support Mr. Shah's view and ask the House to accept his amendment which if anything will upset the arrangement that now exists and will make it very difficult for the future Government to choose an appropriate person to function as Auditor-General. Sir, I oppose the amendment.

Shri Lakshmi Narain Sahu (Orissa : General) :* [Mr. President, I support the amendment moved by Prof. K. T. Shah on this ground that if a man working as an Auditor-General does not know the work of auditing how can he appointed as an Auditor-General. We have passed the Chartered Accountants Bill. According to it, only that man shall be a registered Accountant who has carried out audit work for at least ten years, otherwise not. And those who have been doing the Government audit work for ten years or more (*sic*) will perhaps be left out; but those who are G.D.A.'s will have to work for one year to become registered accountant. We have placed so many limitations over them only with a view that our audit work may be carried out efficiently. Hence the man, who would be our topmost auditor, must have some degree and standard of auditing. I cannot understand how he can be appointed if he does not possess any degree. I, therefore, support the amendment of Prof. K.T. Shah and feel that it should be accepted.]

Mr. President : I do not think there is anybody else wishing to speak on the motion. I shall now put it to vote.

The question is :

“That the following new article be added :—

‘124-A. The Auditor General shall be appointed from among persons qualified as Registered Accountants or holding any other equivalent qualifications recognised as such, and having not less than ten years’ practice as such Auditors.’ ”

The amendment was negatived.

Article 125

Mr. President : Then we come to article 125, to which there is amendment No, 1984, standing in the name of Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I ask for your permission to omit all reference to local authorities in my amendment. If you permit me to do so, my amendment will read as follows :—

“That in article 125, for the words ‘and of the Government of any State’, the words ‘the Government of any State or any other authority’ be substituted.”

The object of my amendment is to provide that Parliament should have the power to confer additional duties on the Comptroller and Auditor-General. We are creating corporations now, and we have already created the Damodar Valley Corporation. We shall, doubtless, create more such corporations in future. So far as I remember, the Damodar Valley Corporation Act, while it allows the

*[] Translation of Hindustani speech.

[Pandit Hirday Nath Kunzru]

Corporation to get its accounts audited by auditors appointed by it, also permits Government to impose any duties on the Auditor-General in that connection that it likes. I want, Sir, that this position should be maintained, particularly as the number of such corporations is going to increase. The Indian Railway Enquiry Committee have recommended the establishment of a Railway Authority for the management of the Railways. If it comes into existence, this Authority will control property worth six or seven hundred crores, and expenditure running into about two hundred crores. Since all the property under the autonomous corporations will belong to the Government, it is necessary that Parliament should have the power, should it so desire, to assure itself of the soundness of the financial position of the authorities created by it, by asking the Auditor-General to perform such duties in connection with the examination of their accounts, as it thinks proper. It may not be necessary for Parliament to do so. But it should have the power to direct the Auditor-General to examine the accounts of the corporations created by it. The State has invested, or will invest crores upon crores of rupees in these corporations; and it should not, therefore, be compelled by law to depend upon the reports submitted by auditors appointed by these corporations. Now, this does not mean any distrust of these corporations. I do not wish to cast any reflection on the honesty of the members of these corporations or the auditors appointed by them; but as a general principle, I want that the power of the Auditor-General should be capable of expansion so that Parliament may have an independent authority at its disposal in order to satisfy itself of the soundness of the management of the authorities created by it.

I hope, Sir, that this amendment, which is in accordance with what has been done already in connection with the Damodar Valley Corporation Act, will be accepted by the House.

(Amendments No. 25-D and No. 1985 were not moved.)

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

Shri R. K. Sidhwa : Mr. President, Sir, this article relates to the duties and powers which will be prescribed by Parliament for the Auditor-General. Now, Sir, we have just passed an article conferring independent powers, to a great extent, on the Auditor-General. Now, this article leaves it to Parliament to make laws in connection with many other matters. While I welcome the independence of the Auditor-General—and I entirely agree with what Dr. Ambedkar said, and I give him credit for adding the word “Comptroller” to the Auditor-General, so that he may have all the powers as far as audits are concerned,—I fail to understand why for certain other important powers, Parliament has been asked to make laws. To give one illustration at present, the Auditor-General has no right to pass a bill beyond the Budget grant. There

is a law to that effect made by the Executive. Despite that, if a Ministry exceeds the budget grant and the Auditor-General brings it to the notice of the Minister concerned, the latter asks the Auditor-General to pass the bill, because the Minister believes that he enjoys the confidence of the House and if the item is brought as a supplementary grant before the Assembly it would be granted. At present despite the rule the Auditor-General is helpless. He simply puts the rubber stamp of audit objection and at the instance of the Minister concerned passes the bill. So the object of the rule made by the executive is frustrated by the Auditor-General over-riding the rule, because he also feels that the Minister enjoys the confidence of the House and therefore he feels why should he object to the item. Sir, if the Minister feels that because he enjoys the confidence of the House he could make the Auditor-General pass the bill, it would be a mockery of democracy. It will not be a government of the people, for the people and by the people. Because the Minister enjoys the confidence of the people it does not mean that he should flout the decision of Parliament. That is a very important point and I want it to be put into the Constitution that the Auditor-General shall not pass any amount which is beyond the budget grant. As I said the other day, from my experience, 130 crores of rupees, not a small amount, was passed as a supplementary grant on the 31st day of March and the House passed it helplessly; though every Member was opposed to it, they did not want to embarrass the Ministry. If such a provision was in the Constitution nobody would have dared, nor the Auditor-General, nor the Minister, nor the House to flout the Constitution. Laws may be flouted, rules or regulations may be flouted but the Constitution cannot be flouted. I therefore expect my Friend Dr. Ambedkar to consider this matter and give the Auditor-General the fullest power and not allow anybody to interfere with him. If you allow 130 crores to be passed on the ground of emergency (Rs. 130 crores is one third of the total amount of the budget). It would be very regrettable and undesirable.

I entirely agree with the amendment of my Friend Mr. Kunzru. I would go further and state not only local authorities but local bodies should also be included. From my experience of twenty-seven years I can state that the control over the accounts of local bodies is absolutely a failure. If any local body wants the assistance of the Auditor-General and his staff, it should be allowed. The local bodies are in a rotten state, and the loan of a staff by the Auditor-General, would improve matters.

With these words I hope that Dr. Ambedkar will consider the first point I have suggested.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, the amendment move by Mr. Kunzru wants to provide for the Auditor-General's powers to cover not only the accounts of the Governments but also of several independent corporations and other bodies. So far as the article is concerned there is a provision by way of an explanation which makes it possible for the Parliament to give authority to the Auditor-General over any particular organisation or body and make suitable provisions in the laws of Parliament promulgated from time to time. This Explanation has now been amended by an amendment proposed by Dr. Ambedkar and by this amended explanation not only any existing laws but also ordinances, bye-laws, rules and regulations passed before the commencement and for the time being in force are included.

Besides this we have the following words "as are or may be prescribed by or under any law made by Parliament", and they occur in the main body of the article. In view of this I do not think the amendment that has been proposed is necessary. After all the purpose is that not only the Government's accounts but the accounts of all these important bodies that will come into being from time to time shall be under proper audit and that aim will be fulfilled by the laws and unless any regulations that may be passed by the Parliament. It would

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be set up to the Parliament to see whether the authority of the Auditor-General is necessary and to make adequate provision for the same. Therefore it is not necessary to include in this article local bodies and all other miscellaneous corporations and organisations. I therefore submit that since the article has adequate provision for this purpose there is no need to accept the amendment moved by Pandit Kunzru.

My Friend Mr. Sidhva drew the attention of the House to the importance of the office of the Auditor-General and wanted a provision that at any time the Auditor-General shall not permit any expenditure over and above the budget provisions. I think that provision is also unnecessary. We have had the experience of last year when the budget estimates were not respected to the extent they should be. That was however an exceptional happening and I do not think any democratic Parliament will permit its recurrence. In any case the rule that no government or organisation or executive shall exceed the amount of expenditure provided in the budget is a well-understood one and it is not necessary to make provision regarding it in the Constitution. It is a most fundamental rule that the budget provision shall be respected and no expenditure in excess of the budget provision shall be made. I do not think it is necessary to include it in the Constitution. If at any time this salutary and fundamental principle is disregarded or violated by the executive the Parliament should be alert enough to punish it adequately.

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 the 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. 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.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The motion was adopted.

Mr. President : The question is :

“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, by-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 amendment was adopted.

Mr. President : The question is :

“That article 125, as amended, stand part of the Constitution.”

The motion was adopted.

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

Article 126

Mr. President : Article 126.

(Amendment No. 1987 was not moved.)

Mr. President : The question is :

“That article 126 stand part of the Constitution.”

The motion was adopted.

Article 126 was added to the Constitution.

Article 127

Mr. President : 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.

Mr. President : The question is :

“That in article 127, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 127, as amended, stand part of the Constitution.”

The motion was adopted.

Article 127, as amended, was added to the Constitution.

New Article 127-A

Mr. President : Then there is notice of an amendment for adding a new article, article 127-A—that is amendment No. 1989 by Professor Shah.

Prof K. T. Shah : Sir, the principle of this having been rejected by the House earlier, I do not want to move it.

Article 128

Mr. President : Article 128.

Mr. Naziruddin Ahmad has given notice of an amendment regarding the heading of the Chapter; that we shall leave out now.

Amendment No. 1991 is a negative one and cannot be moved.

1992 is of a drafting nature, I think.

Shri T. T. Krishnamachari : Sir, the word “State” has been current right through; so the amendment need not be accepted.

(Amendments Nos. 1993 and 1994 were not moved.)

Mr. President : So, there is no amendment to article 128.

The question is :

“That article 128 stand part of the Constitution.”

The motion was adopted.

Article 128 was added to the Constitution.

Article 129

Mr. President : There are a number of amendments. To begin with, there is an amendment by Mr. Naziruddin Ahmad relating to the heading of the Chapter. We shall leave it over.

(Amendments Nos. 1996 and 1997 were not moved.)

Shri Lakshmi Narain Sahu : *[Mr. President, I move :

“That the following be added at the end of article 129 :—

‘of whom there shall be at least one from each of the States of Part I of the First Schedule.’ ”

*[] Translation of Hindustani speech.

I mean to say that there should be one Governor from each of the States. It means that, in all the provinces constituted by us, each should have one of its men as Governor. Unless it is done the self-respect of each and every province could not be maintained. Therefore, I would like to introduce that every province should have at least one man as Governor. If the election is held it will take place there, otherwise he would be selected out of the panel. If he is not appointed as a Governor in his own province he can be appointed as such in some other province.

I come from Orissa and I find that in the present Central administration we have no representation in the services. All provinces are there in foreign services, but we have no share in it as yet. This makes us limited to such an extent that our provinces cannot make any progress. I, therefore, want that sufficient attention should be paid to this.

Shri R. K. Sidhwa : May I know whether the Mover wants that the Governor should be from that very province?

Mr. President : I understand what he means is this. There shall be one Governor from each State, though he may be posted to another province.

The next amendment stands in the name of Pandit Lakshmi Kanta Maitra. He is not moving it. So only one amendment has been moved to this article.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, I do not know how far it will be permissible for me to express the views I hold dear to my heart. I feel that there is no necessity for a Governor in any province of India. The Commissioner of a Division may be brought under the administrative superintendence, direction and control of the Centre. Vest more powers in the hands of the Divisional Commissioners. I feel that the existence of a legislature, a Ministry, and a Governor is harmful in the interest of all the provinces.

Sir, nobody knows more than you, how Provincial administrations are being run these days. I understand that what I am saying runs counter to the accepted principles of provincial autonomy, federalism and democracy. I plead for a change of attitude. When we accepted provincial autonomy, we were under British rule. We then raised that slogan in order to oust British power from India. We knew well that the British people were not prepared to give any concession or power at the Centre. The provinces were the weakest link in the chain. Even there they did not vest full autonomy. They had reserved powers in their own hands. Now the times have changed. Provincial autonomy means distrust of the Centre. This distrust was justified at that time because at the Centre there was foreign rule. Now we have got freedom. How is it possible or desirable or necessary now to vest powers in the hands of the Provinces and appoint a Governor who has got practically no power? He is a mere puppet. If so, why should we have these Governors?

One thing more, Sir, before I conclude. Now it is well recognised that the doctrine of separation of power has been exploded. This doctrine has got not only relevance to the question of separation of judiciary from the legislature and the executive, it has got a vital bearing upon the whole question of federalism. It means separation of powers. If the doctrine of separation of powers has been exploded, then the whole federal structure crashes, crumbles and goes down. I feel that by not hurrying through the Constitution since 1946, we have stood to gain. Now it has been stated that we must hurry up, because we have taken too much time. By taking too much time in passing the Constitution, we have managed to do certain things which we would have been unable to do if we had passed the Constitution in 1946 or 1947. Firstly, the States have been integrated. This would not have been possible if we had passed the Constitution in 1947. Such Constitutional changes it is not easy to make.

[Shri Brajeshwar Prasad]

The Constituent Assembly has the power to change or make any new law. Sardar Patel has been able to integrate the Indian States, form new States, dissolve certain units and merge the States with different provinces. Secondly, if we had passed the Constitution in 1947, the provision for the reservation of seats for the different minorities in India would have been incorporated in it. By waiting, we have achieved what in 1947 appeared to be impossible.

Sir, I feel that the whole Chapter, Part VI of the Constitution should not be hurried through. We are quite content with the present Government of India Act. We have got the power to amend it to suit our changing needs and conditions. Today within five minutes the Honourable Dr. Mookerjee was able to get a Bill passed here. If it had been in a different House, it would have probably taken a few hours to pass it. I do not see any reason why we are in such a great hurry to pass the Constitution. Probably we look more to international opinion and to the opinion of our Anglo-American friends, to the opinion of the capitalist press and to the opinion of those who have no sympathy with our national aspirations and hopes. I hope more emphasis is laid upon the existing conditions in India. What is today required is that there should be rapid improvement in the economic condition of the poor people and in the removal of illiteracy. Instead of doing these things we are trying to impose a new Constitution on the people and waste public money on elections. I, Sir, oppose article 129.

Dr. P. S. Deshmukh : Sir, I rise to support the point of view just placed before the House by my honourable Friend. It is known to many Members of the House that it was with this intention that I had given notice of a resolution. In that resolution I wanted that the basis of our Constitution should be altered from semi-unionistic and semi-federalistic to a proper unitary system. It was with that end in view that I had given notice of a resolution by which I wanted that the present condition of world politics made it imperative that India should be a well-knit, homogeneous and powerful nation so that she may play a prominent and decisive part for the maintenance of world peace. I then in my resolution stated the various causes that led me to that conclusion. Some people will say : 'Why was this not pressed when we were drafting the Constitution? Fortunately or unfortunately the present administration has made apparent the pitfalls and the dangers of the present basis of the Constitution far more than anybody could have or did anticipate or imagine. Actual experience has shown that the present Constitution has many dangers ahead and I think it will be for the good of India if we could avoid those dangers and take a somewhat revolutionary decision to do away with the present basis of the Constitution. And where was the present basis of the Constitution laid? It was not laid in Delhi. It was not laid anywhere in India. It was laid in Britain and it was intended to meet a far different situation than the one with which we are faced at the present day. The draft Constitution is a mere reproduction of the Government of India Act of 1935. The ever-increasing demands of Mr. Jinnah, separate electorates, reservations & weightages, the existence of tiny little States spread over the whole length and breadth of India, that was the problem that we were trying to meet and to solve by meeting several times in London in Round Table Conferences and it was for meeting the political exigencies of that situation in India that the framework of the Constitution which we are trying to copy at present was really shaped and hammered. I think that this Constitution and the principles underlying it are entirely foreign to the genius of our people and I have been all along urging that we must search our hearts and find out a political solution for the administration of our country in a way which will be more suited to the genius of people of this country. We do not now have the abstacle of the States in our way. We do not have the intransigence of the Muslim League in our way. Under

these circumstances why should we not take the only logical step and decide upon a unitary type of constitution by which we will have the fullest co-operation of our people, by which we will be able to harness the energies and intelligence of the Indian people as a whole and by which we will be able to build the Indian nation far more quicker and at the expense of much less energy than would be the case if we retain the fundamentals of this Constitution?

The main point, Sir, which I have urged in this Resolution is the apparent instability of the Ministries in the States, Unions and in the provinces. We read everyday in the papers, almost every morning, of some conflict or other between the various provinces and of lack of co-operation with the Centre. We have had the instance of the Agricultural Minister complaining bitterly, when we were meeting as the Legislative Assembly, that he was not receiving the co-operation of the provinces in regard to the increase in our food production. There is a similar complaint with regard to the rehabilitation of the refugees. There are also questions about the systems and methods of provincial taxation. Only this morning's paper told us about the incidence of the sales tax imposed by the various provinces. I am told on reliable authority that whatever article comes to the C.P. is charged sales tax in the province of Bombay because it has necessarily to go through that province, and the same article is again charged with a sales tax in the C.P. also. Apart from this, Sir, there are many financial issues over which we will talk for days and days before we can come to any decision. We get proposals from the provinces which are diametrically opposed one to the other. There are perpetual demands for greater subsidies from the Centre.

Then there is the question of linguistic provinces. We know that the whole country at the present time is agitated over this issue. We have had one or two Committees appointed to go into the question but unfortunately instead of making an improvement in the situation, the situation is worsening to the sorrow of many thinking people. Now, so long as we want provinces to be maintained, we cannot but grant linguistic provinces. We might with difficulty, after using all the influence that our leaders command, be able to stave off or postpone this issue of linguistic provinces for a short time but certainly and surely linguistic provinces will be there and even if my Friend, Mr. Munshi, does not want Bombay to be included in Samyukta Maharashtra, he will never be able to prevent it. So, my solution for all these difficulties,—and the greatest difficulty of them the demand for the creation of linguistic provinces over which people's minds are exercised to such an alarming extent,—is to take away the autonomy of the provinces. When once you do this, all quarrels and jealousies will disappear. The quarrels are there and the jealousies are there only because the provinces are there. When there is only one government at the Centre, there is only one legislature, one Ministry and one law, all these quarrels and jealousies will disappear and it would also be possible then to harmonise all these demands and claims in such a way that no difficulties will remain. So from all these points of view, I would very much request the honourable Members of this House to search their hearts and see if the unitary system is not the only logical, suitable and practicable system of government for this country. After all, federalism is consistent only with the desire of the people to have union and not unity. But in India everybody desires unity, not only union. That being the general feeling of people, I do not think it will be wise on our part to brush aside my resolution by saying that it is too late to adopt any fundamental change in our Constitution. When once the principle is accepted, the whole Constitution will become very simple. The whole Constitution can be hammered out with complete satisfaction to all within about two or three weeks. Even if we are not able to do so, there will not be any difficulty because so long as the unitary system is there, you will have all the subjects with the Centre and there will not be any necessity for discussing

[Dr. P. S. Deshmukh]

what should be concurrent, what should be provincial and what should be Central. I want all honourable Members to think seriously and say whether this is not for the good of India, for India emerging as a strong nation and not having to go through all the dangers and ultimately coming to the same thing. If we do not accept this proposal now, it will come fifteen years hence I have not a shadow of doubt about it. Then it will be rather too late. By that time there will be so much time lost; so many quarrels, enmities and antagonisms may arise in the whole of India that although you will come back to the unitary system but it will be too late. All these fruitless sacrifices and tribulations, will all be saved if you adopt the system now. Therefore I would urge all honourable Members of this House to give more thought to this proposal and see if it is not possible for them to accept it. It is not too late to mend even today.

Mr. President : I would ask honourable Members to confine themselves to the article which is under discussion. I have allowed Dr. Deshmukh to express his views on the larger question because I know he has held those views all along very strongly. I have given him an opportunity to express those views but beyond that we should confine ourselves to the article under discussion.

Shri R. K. Sidhwa : I am very glad that you have given the ruling because several times I wanted to stand on a point of order but I thought that I should not take the odium. After we have decided on the broad principle of this Constitution, both the speakers previous to me were out of order. That is my humble submission. You have now made the position very clear. Otherwise I would have taken fifteen minutes to refute those arguments. I hope, Sir, no other Member will be allowed to say anything on this matter. Dr. Deshmukh took the opportunity to express his views on his resolution which was ruled out by the Steering Committee.

Now, Sir, coming to Mr. Sahu's amendment, his amendment states that each province should be given an opportunity to send a Governor. I sympathise with the idea that every province should have the opportunity to send Governors to the various provinces. While I entirely agree with the present procedure of appointing Governors not from the same province but from some other province, I do feel that each province should have this right provided they possess persons of merit and qualifications to become Governors. That should not be ignored; otherwise Governors must not be sent from only one or two provinces. While I entirely agree with this argument, I do feel it is not proper to put an amendment in the Constitution and it should be left as it is. The subject will come hereafter when we take up the question of the appointment of Governors and then we might discuss the matter further. Sir, while I agree with the views expressed that each province has got able men to govern, it should be borne in mind when the appointments are made that the various provinces are not forgotten. Despite my views, I do not like this amendment to go into the Constitution.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, I want to make it perfectly clear to the honourable Members of my party as well as to the honourable the Chief Whip that I oppose this amendment which has been moved by Mr. Sidhva.

Mr. President : He has not moved any amendment.

Shri Rohini Kumar Chaudhuri : I am sorry; I refer to Mr. Sahu. Mr. Sidhva's name is in my mind because he made a very astounding proposition today. He goes to the length of saying that every province has able men. If he looks at the facts, he will find that he is completely mistaken. Is there any able man in Assam? If there was any able man, he would have found a place

either in the Ministry or in the State Ministry or Sub-State Ministry or in any governorship of a province. If there was any able man in the province of Assam, he might have found his way to place outside India, either in an Embassy or in some such post. There are no such able men in Assam. There are eminent judges in India and those judges have decided that there is not a single person in Assam who is able either to act as a Governor or be appointed in the Ministry or in the State Ministry or in an Embassy. Secondly, is there any able man in Orissa? Is there any one in Orissa any man from Orissa who has found a place in any important place either in the Ministry or in an embassy or holding the post of a Governor? You must admit that you cannot say. You cannot say that the persons who are responsible for choosing people for these appointments are not found responsible persons or who do not exercise sound judgment; you cannot say that, and therefore, the proposition which is laid down by my honourable Friend, Mr. Sidhva is absolutely incorrect. We must wait. Able men must be born; they must be qualified and they will in due time take their places in these provinces.

Then, Sir, I oppose my honourable Friend, Mr. Sahu, on the ground that his amendment is absolutely premature. If article 131 is accepted by this House, namely, that the Governor in every province shall be elected, in that case you can get your Governor from your own province. If in a province no man of the province is elected as a Governor, then it is the province which has to blame itself. The only possible way, as far as I can see, for getting a man of a province raised to a position to a Governor, will be to allow that post to be an elected one. If an election is held automatically, I suppose ten to one, you will get one of the men of the province elected to that post. Otherwise you will never get that position. I also oppose Mr. Sahu's amendment on the ground that his argument is absolutely wrong, for supposing the post, instead of being elected, is held by person nominated, then what will be the position? I can challenge him that instead of one for each province, if you say three for each province, you will not get it; so long as it remains to be a nominated office, there is very little chance.

Mr. President : May I point out that the question of election or appointment is not before the House yet? This article does not deal with the method of the appointment of the Governor.

Shri Rohini Kumar Chaudhuri : I most respectfully submit that Mr. Sahu's amendment is quite premature for if the post is an elected one, then the question of a man coming from some other province does not ordinarily arise, because, if he is elected, the men of that province will elect a man of the same province ordinarily and therefore, that question does not arise. The amendment of Mr. Sahu would only arise in case it is presumed that this office will not be an elected office; in that case only this arises and in that case we can say that in filling up the post by nomination care should be taken to see that each province gets a share in the position of Governor. So, I say on the ground, I oppose the amendment of Mr. Sahu, which is premature now.

Well, Sir, so long as you lay down that the office will be a nominated one you cannot expect every province to get a share. Let us look at actual facts at the present moment : The Bombay people have three posts as Governor, the U.P. and Delhi have three Governors whereas and important province like Bihar and Bengal have not any Governor of their own; and in Bengal there is none at present, even though there was, of course, Mrs. Sarojini Naidu, who was a Bengali and therefore, I submit that if you give it entirely to nomination, you must leave it to the pleasure of the person who nominates and you cannot lay down a condition that you must nominate from every province; and although I oppose the motion of Mr. Sahu, I am in entire sympathy with him and I

[Shri Rohini Kumar Chaudhuri]

think till we settle this policy regarding nomination, the claims of each province will be certainly satisfied.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : The question is :

“That the question be now put.”

The motion was adopted.

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

The question is :

“That the following be added at the end of article 129 :—

‘and of whom there shall be at least one from each of the States of Part I of the First Schedule.’ ”

The amendment was negatived.

Mr. President : The question is :

“That article 129 stand part of the Constitution.”

The motion was adopted.

Article 129 was added to the Constitution.

Article 130

Mr. President : Amendment No. 2000 is of a drafting nature.

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

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amended article would read thus :

“The Executive power of the State shall be vested in the Governor and shall be exercised by him accordance with the Constitution and the law.”

There is a considerable force in the substitution suggested by me in this amendment. The Constitution should make it imperative upon the Governor to use his powers in accordance with the Constitution and the law, that is to say, on the advice of his Ministers, as provided for in the subsequent clauses and in other parts of the Constitution. The Governor has a considerable number of powers, not necessarily those for which Ministers are responsible to the legislature, but other powers as well to be exercised in his discretion, so it is said. I suggest that, under the new system that we are inaugurating, in the democratic regime that we are establishing under this Constitution, it is but right and proper that the Executive head of a State shall use his powers in accordance with the law and the Constitution, that is to say, on the advice of his Ministers where such powers or actions in accordance with those powers are likely to involve any item of ministerial responsibility. It is not merely a verbal change I have suggested; it is an important change in principle and I hope it will command itself to the House.

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

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

Sir, if the amendment is accepted, the article would run thus :

“The executive power of the State shall be vested in the Governor and may on behalf of the people of the State be exercised by him in accordance with the Constitution and the law.”

The intention of moving this amendment is quite obvious and simple. I want that the Governor while exercising his powers in the province, must do so on behalf of somebody and that somebody is nobody but the people of the province. Therefore, I think it is necessary that this should be mentioned in the Constitution that the Governor ought to exercise the power on behalf of the people of the State.

With these words, I move.

(Amendment No. 2003 was not moved.)

Mr. President : Amendment No. 2004; is it not of a drafting nature?

Mr. Naziruddin Ahmed (West Bengal : Muslim) : No, Sir.

Mr. President : If you consider it to be substantial, you may move it.

Mr. Naziruddin Ahmed : Sir, I beg to move :

“That in sub-clause (a) of clause (2) of article 130, for the words ‘transfer’ to the Governor any functions conferred by any thing existing law on the words ‘authorise or empower the Governor to exercise any power of perform any functions which by any existing law are exercisable or performable by’ be substituted.”

Sir, the existing context says,

“Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law or any other authority;”

My objection is to the expression “*transfer to the Governor any functions*”. I submit that functions really adhere to certain offices and functions are never transferred. All that you can do is to empower certain other persons to exercise certain functions of powers attached to a particular office. ‘Function’ as has been defined in Murray’s Oxford English Dictionary is “a kind of action proper to a person.....being the holder of any office”. I think functions really are a part of the powers exercisable by a person in office. I have therefore attempted to suggest that nothing in this article shall authorise or empower a Governor to *exercise any power or perform any functions* which by any existing law are exercisable or performable by other authorities. The words “transfer of functions” would be improper. I cannot say that the amendment is not at all of a drafting nature; it partakes of an amendment of a drafting nature. But I think the word ‘transfer’ is not suitable with reference to ‘functions’ and that is why I have thought it fit to draw the attention of the House to this.

(Amendment No. 2005 was not moved.)

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

Mr. Naziruddin Ahmed : Sir, article 42 is in another context.

Mr. President : The question is :

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (a) of clause (2) of article 130, for the word ‘transfer’ to the Governor any functions conferred by any existing law on’ the words ‘authorise or empower the Governor to exercise any power or perform any function which by any existing law are exercisable or performable by’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 130 stand part of the Constitution.”

The amendment was negatived.

Article 130 was added to the Constitution.

Article 131

Mr. President : As regard this honourable Members will see that there are two alternatives suggested by the Drafting Committee. The amendments are relating to either the one or the other alternative. So I think the best way is to take an amendment in favour of one of the alternatives and if than is accepted, then all the other amendments relating to the other alternative drop automatically. We take 2006 and if this is carried, then we go to the second.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Sir, I suggest this. The amendments of course may be taken. But first we might form our opinion as to whether we want the first or second alternative so that if we want the first alternative, then the amendments to that alternative only will be considered and the other alternative will go away.

Mr. President : That is exactly what I suggested but it was felt that the best course will be to take the amendments.

The Honourable Shri Ghanshyam Singh Gupta : Supposing we take the other alternative and then the amendments, the first alternative will not be taken at all.

Mr. President : If 2006 is carried, all the amendments to the other alternative will drop.

Shri L. Krishnaswami Bharathi (Madras : General) : There is a third alternative.

Mr. President : That can come in as an amendment to one of the alternatives.

Shri Brajeshwar Prasad : Sir, I refer to 2015 stands in my name.

Mr. President : I shall take that up. That will come as an independent one. We will first dispose of 2006. Mr. Gautam.

An Honourable Member : What about appointment question?

Mr. President : We are taking up the article dealing with election. Then we shall take up the question of appointment. First we want to get rid of the question of election one way or the other.

Shri L. Krishnaswami Bharathi : Both may be negated.

Mr. President : There are amendments to the second alternative.

Shri L. Krishnaswami Bharathi : If the amendment regarding appointment by President is carried, all other amendments will fall to the ground.

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 the 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 thing 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. Gupta, and then Mr. Kamath's 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 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 of not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's view in the matter.

Mr. President : There is bound to be discussion on this because three seems to be some difference of opinion. So we shall take up the second alternative of Mr. Gupta. Here also he brings in one element of consultation. I think we had better take up No. 2015.

Shri H.V. Kamath (C. P. & Berar : General) : I submit 2011 is substantially the same.

Mr. President : 2007 is also the same. Any of these may be moved and then we shall accept the wording. 2006 we leave out. 2007 will be the same. 2015 may be moved.

Shri K. M. Munshi (Bombay : General) : 2015 is more complete.

Shri H. V. Kamath : What about my amendment?

Mr. President : It is not as complete as 2015.

Shri Brajeshwar Prasad : Sir, I beg to move :

“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 Great merit of this amendment which stands in the name of five or six Members of this House is that it lays down a simpler procedure than that prescribed either in the article or in the alternatives suggested by the Drafting Committee.

I feel, Sir that in the interest of All-India unity, and with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained intact over the provinces. To say that the President may nominate from a panel of names really means restricting the choice of President. It gives power into the hands of the Legislature. It is necessary, Sir, that the President should be free from the influence of the Legislator. I feel that the Governor may be one from the province or from another province. Personally I feel that the man from a province should not be appointed in the same province, because it gives encouragement of fissiparous tendencies. So I say the choice of the President should be unrestricted and unfettered. Sir, I have nothing more to add. This is a simple proposition and I commend it for the acceptance of the House.

Mr. President : Then there are other amendments relating to election. I shall have them moved, and then we can have general discussion. There is the one by Mr. Naziruddin Ahmad, the other by Shri Mihir Lal Chattopadhyay. There is the first alternative by Mr. Gupta, and then there is amendment No. 2013 by Pandit L. K. Maitra and others. There are several others which all deal with election. So I shall take one of them. I think No. 2013 seems to be the most comprehensive of these. But which shall we take up? Those who are in favour of election may choose any one of these, and whichever they choose, I shall allow to be moved. Those who favour election may choose any one of these amendments, favouring election.

Mr. Mohd. Tahir : I have got my amendment No. 2019.

Mr. President : That is different, and it comes after election. We are now on the question of election.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, Amendment No. 2013 is the most comprehensive one, but I am not permitted by the party to move it.

The Honourable Shri Ghanshyam Singh Gupta : If you put the amendment just now moved, then the whole thing will be solved. If it is carried, then there will be no necessary for any other amendment. The discussion can now take place.

Mr. President : I take it there is no other amendment going to be moved.

The Honourable Shri Ghanshyam Singh Gupta : If this amendment is defeated, then the other amendments will come in.

Mr. President : Then let us dispose of this amendment first. Seeing that there is not much difference of opinion, I hope there will not be much discussion.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment-No. 2015- which has just been placed before the House by my honourable Friend Shri Brajeshwar Prasad. The amendment I gave notice of-No. 2011 is substantially the same as the one moved by him, except for the legal or constitutional terminology added to it. There is another point-a very minor one-which I would like to point out before I proceed to the substance of the motion.

Mr. Mohd. Tahir : Sir, on a point of order. During the discussion of this Draft Constitution the House on an earlier occasion unanimously passed that the Governor shall be elected. I would like to know, in view of this, whether any Member can be permitted to move any amendment against this decision of the House. The main principle was discussed and decided upon by this House, and this second alternative is only a creation of the Drafting Committee. So, can any Member be permitted to move any amendment which goes against election of the Governor?

Mr. President : It is open to this House to alter its own decision. This comes in as an alternation of a previous decision. It is open to the House to reject it. So there is no point of order.

Shri H. V. Kamath : The words "of a State" occurring in the amendment are more or less redundant. If we turn to the Chapter dealing with the President, we find that once mention has been made of the President, the subsequent article 43 regarding the election of the President, does not mention or use the words "of India". On that analogy, I thought, the words "of State" here might have been usefully omitted in the interest of brevity. Anyway, I am not particular about it and I support the amendment as it has been brought before the House which is substantially the same as mine.

My friend Mr. Tahir raised an objection and said that the House had on an earlier occasion adopted another method of choosing the Governor of the State. It is quite true. During the August 1947 session of this Assembly-I am reading from the Reports of Committees, Second Series-the Assembly adopted an article to the effect that for each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage. But, Sir, as you rightly pointed out, this is a sovereign Body which can alter its own decisions, and to my mind there have been sound reasons why the decision should be altered today in the light of the circumstances that have arisen since the passing of that article in August 1947. As the House will recollect, the scheme envisaged in the July-August session, 1947, was more of a federal type than....

Shri Lakshminarayan Sahu : On a point of order, Sir. Rule 32 of Rules of Procedure says that :

"No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the members present and voting."

Mr. President : And I have assumed that more than one-fourth of the Members present are in favour of it. If you want it, I can actually ascertain it. I think more than one-fourth are in favour of it.

Shri Biswanath Das : Sir, is it left for assumption or have you actually taken the sense of the House?

Mr. President : I have not actually taken the sense of the House, because I know it is so. If you want, I can take it now.

Shri T. T. Krishnamachari : A ruling has already been given. It is open to any Member to question it now?

Shri H. V. Kamath : During the August Session of 1947, the House will recollect that we adopted certain articles on the Executive where this State of India has been referred to in more than one place as a Federation. But in the Draft Constitution which we are considering today that word has to my mind deliberately and with sound reasons been deleted, and article I which we passed in the last session of this Assembly reads that India shall be a Union of States. Therefore, the emphasis today is more upon the Union pattern of our State than upon its Federal aspect. My Friend, Dr. Deshmukh, just an hour ago, spoke on his resolution favouring a strong unitary system of government for India. Much can be said in favour of his proposition of this particular junction in our country's affairs. But, Sir, there is one thing to be noted as regards this and it is this : the constitution which we are framing today is not intended merely for the state of transition, but is intended to last for many decades to come, for such periods or times when happily by the Grace of God we have settled down to the tasks of reconstruction. Our people in the provinces have already got used to the system of provincial autonomy. They have had a taste of it during the last ten years or more, and I suppose now it is not wise for us to do away with the system of provincial autonomy or water it down in any measure. If at all, subject to the strength and the stability of the country as a whole, it is essential for us to give in course of time, more powers to the people in every province. But, Sir, the crux of the matter here is this. What type of Government are we going to suggest or prescribe for these provinces, or the States in the new Constitution, which will be the units of administration or governance? If the object of the Constitution is to have a parliamentary or cabinet form of Government in every State, then it is patent, it is obvious that the method of choice by direct election is absolutely inappropriate and unacceptable. It is an admitted fact that one of the essentials of successful cabinet government in a province or in the country as a whole is the existence of a fairly impartial constitutional head, who is more or less a symbol or a constitutional figure-head. If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province—by the entire adult population of the province—he will think that he is a far superior man and a far more powerful man than the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State : one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have

been elected by the people of the whole province and as such I am *persona gratia* with the people and not the Chief Minister". Therefore there will be in the administration of the province at every turn—if not at every turn, then very often—points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor.

As regards the other system of election from a panel, there are several objections to that as well, so far as the choice of a Governor of a Province or a State is concerned. Suppose the Legislature of the State submits a panel of four or five names to the President for selection and suppose the President—because after all every one is guided ultimately by his own views or conscience or his own judgment in every matter—chooses not the first nominee but the second, or third or fourth or the 9th. Then the Legislature of the State will certainly have a grouse against the man chosen by the President because he has been chosen in preference to the first man. Therefore the relations that will ensue from this appointment of one from among the panel,—the relations between the Ministers or Legislature in the State and this new Governor—will not be very cordial and happy.

Another consideration as regards this matter is this : always in an election—whether it is a small electorate or a large one—there are, what I may call, factions coming into being—factions or groups jockeying each other for power. Even if there is a solid, cohesive party within a Legislature, it is very likely that when they know that a panel of names is going up to the President for the appointment of a Governor, there will be groups within the party, each group favouring one of their own favourites, and the group feelings and passions that would be roused during the election on the panel system are likely to persist during the following years, and will not make the working of the party or the cabinet in the province very happy or conducive to amicable relations between the people and the Ministry in the province.

I will therefore submit, Sir, that on the whole, considering the *pros* and *cons* of election *vis-a-vis* appointment, the latter is far preferable. I do not like the word nomination at all. I think it is a very unpleasant word to use in this regard, because it is really not nomination by the President but it is appointment. There was an amendment to that effect but, I see, it has not been moved and I just referred to it in passing.

Lastly, I would say that it may be argued against the amendment that has been moved by my friend Shri Brajeshwar Prasad, and which I am supporting, that the Governor is not absolutely a figure-head : he is not just a symbol. The objectors will point out to articles 188 and also 187, which have invested the Governor with powers in grave emergencies and with power to promulgate ordinances respectively. As regards the first, article 188, it will be seen that the maximum period during which the Governor will be invested with these extraordinary powers is two weeks. Of course you can work wonders or tyranny even within twenty-four hours. But the House will see that the Governor has to forthwith inform or communicate to the President the action that he has taken. Therefore, really speaking the Governor practically divests himself of responsibility as soon as possible in any situation that may arise in the state on account of the emergency, and the President takes all the powers in his own hands, and the whole country will be governed as under Part XI of the Constitution—article 275 to 278.

The ordinance-making power is distasteful to me and I moved some amendments in connection with these powers of the President a couple of days ago. But Dr. Ambedkar himself argued against the amendments of mine which

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tried to limit the powers of ordinance-making by the President. He said that it was nothing extraordinary and that is was only a power given to the President at times when the Parliament was not in session, and visualising the possibility of Parliament sitting continuously, almost the whole year, he assured the House that the need for ordinance-making by the President will not arise. I hope the same argument will apply here too. In view of the fact that the legislative business will be very heavy in the States as well as in the Centre, I am sure that the state legislatures as well as the Parliament at the Centre will be almost continually in session, and the need for ordinance promulgation by the Governor in the States just as in the case of the President at the Centre, as pointed, out by Dr. Ambedkar, will not arise. I therefore submit, taking all in all—no system is perfect—considering the constitution as a whole, considering the powers given to the State legislatures, so the State cabinet and the relations between the units and the Centre, I think that the lesser-most evil is this system of opportunities by the President of the Governors in the various States. I, therefore, support the amendment and commend it to the acceptance of the House.

Shri B. A. Mandloi (C. P. & Berar : General) : Sir, I crave your permission to move my amendment No. 2007 as it is more comprehensive, inasmuch it deals with the first alternative also.

Mr. President : Amendment No. 2007 is the same as No. 2015, which has just been moved.

Shri B. A. Mandloi : But the second part is not moved. My amendment deals with both the alternatives. The first alternative is to be deleted and in the second alternative some modification is suggested.

Mr. President : If the second is carried the first alternative goes automatically.

Sardar Hukam Singh (East Punjab Sikh) : Sir, I oppose the amendment moved. I am afraid those of us who have given notice of amendments have been placed somewhat at a disadvantage, because the House is to decide on a question without hearing us and without appreciating what we have to say on our respective amendments. I have also one amendment No. 2006 in my name in my opinion the second alternative suggested was the best course. It steered a middle course. On one side there is the election of a governor of a State. I agree with my honourable Friend Mr. Kamath that it would be expensive as well as troublesome to go to the polls too often. And there is the danger of a conflict between the Governor and the Premier as well. At the same time I think these should not be so much discretion left with a Governor. Also when he has to act on the advice of one party, it might be abused. There might be favouritism. In my opinion the second alternative suggests a course which provided some check against favouritism. If there was a panel to be provided by the legislature of the State, certainly even then the ultimate power of appointment would lie with the ruling party or the Governor and they can choose whosoever suits them best. In that case the merits of those individuals who have been recommended in the panel would be before the public and if the right man is not chosen certainly the public shall have a right to criticise the selection and that would work as a wholesome check against my favouritism or abuse or power. So in my opinion the second alternative was the best between the two extremes of pure election and pure nomination. Therefore I oppose the present motion.

Shri Alladi Krishnaswami Ayyar : Sir, in view of the decision that was reached some two years ago and in view of the fact that I feel convinced that

the only right course, taking all the circumstances into consideration, is to accept the amendment of Mr. Brajeshwar Prasad, I should like to say a few words in support of the amendment. In the consideration of this question, the main points to be remembered are that this Assembly has accepted the introduction of responsible government in the different States, that the Governor is merely a constitutional Head of the province and that the real executive power has been vested in a ministry responsible to the Lower House in the different States. The question for consideration before this House is whether, under these circumstances, there is any point in going through an expensive and elaborate machinery of election based upon universal suffrage. After giving my best consideration to the various proposals put forward, (1) of a choice of the Governor on the basis of universal suffrage, (2) of election of the Governor by a majority of the Lower House or of both Houses whether on the principle of proportional representation or otherwise, (3) of a selection of a panel by the Lower House in the State from which the choice is to be made by the President of the Union or (4) of appointment by the President in consultation with the Cabinet, I feel that the wisest course to adopt is the last one. If the Governor is properly functioning as the constitutional Head, the expenses involved in going through the process of election is out of all proportion to the powers vested in the Governor under the Constitution. There is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier and the Cabinet responsible to the Legislature which itself has been elected on the basis of universal suffrage. Again, the election itself under modern conditions will have to be fought out on a party ticket. The fact is that even at or during the elections the party will have to rally round a leader who will presumably be the future Premier of the Province. Is the rallying to be round the Governor's name or the Premier's name? In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government. There is no correspondence between the Governor of a State in the United State of America and a Governor under our Constitution. In the case of a Governor of a State under the United States Constitution, the real and substantial executive power is vested in the Governor. There is a distinct separation between the executive and the legislature in the United States. A proper analogy has to be sought for in the Constitution of Canada where a responsible Governor obtains. In Canada, the Lieutenant-Governor of each of the provinces is appointed by the Governor-General, that is by the Governor-General on the advice of the Cabinet. There are many features of resemblance and similarity between the Canadian Constitution and our Constitution which, by some critics, has been considered to be quasi-federal. The system in the main we have accepted is the principle of responsible Government obtaining in the Dominions or in the different parts of the Commonwealth. Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution.

In the normal working of the Constitution I have no doubt that the convention will grow up of the Government of India consulting the provincial Cabinet, in the election of the Governor. If the choice is left to the President and his cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same time has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet government in the early stages. The central fact to be remembered is that the Governor is to be a constitutional head, a sagacious counselor and adviser to the Ministry

[Shri Alladi Krishnaswami Ayyar]

one who can throw oil over troubled waters. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the provincial Government, is likely to discharge his functions better than one who is elected on a party ticket by the province as a whole based upon universal suffrage or by the legislature on some principle of election.

One thing I may mention. The point has been raised in these discussions, whether it is wise at all to invest so much power in the Prime Minister or in the President of the Union acting on the advice of the Prime Minister. If you can confide the appointment of the Commander-in-Chief of all the Forces, the Ambassadors in different parts of the world, the Chief Justice and the Judges of the Supreme Court and the appointment of other high offices in a Cabinet responsible to the Legislature, and theoretically in the President, I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, of consulting the provincial Cabinet might easily grow up. Such a convention as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet.

I owe it to myself to say a few words about the panel, because the Drafting Committee of which I am a member felt the difficulty of an election process being gone through as per the original decision of the House. Tentatively, another suggestion was put forward by the Drafting Committee. On a fuller consideration I feel convinced that the panel system is likely to be fraught with great danger as experience shows in the case of the election of Vice-Chancellors in the several universities. Supposing three or four people are elected by the provincial legislature. What is the President to do? Is he to give his concurrence to the person who has obtained the largest number of votes or, go out of his way and select people who have lesser number of votes? Normally, he must support the candidate who has obtained the largest number of votes. If he goes out of his way and selects anyone of the other three, it is sure to lead to friction and continuous friction between the province and the Centre. That is another difficulty in the matter. In the net result, if the President is to get on smoothly with the province he has merely to say ditto and confirm the appointment of a person who obtained the largest number of votes in the provincial legislature. That would be the effect of that. There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result.

Then there is another point. It is said that the Governor may occasionally have to use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger. Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of

harmony, in the interest of good working, in the interest of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet. With these words I have great pleasure in supporting the amendment moved by Mr. Brajeshwar Prasad.

Dr. P. S. Deshmukh : Mr. President, Sir, I think that this is one of the article which should be discussed by this House at greater length than usual and for this reason, viz., that we are altering almost the whole idea about of the office of Governor of a State. It is quite right to say, that since we are giving adult franchise, and had provided for an elected Governor there may be innumerable people in this country who will be looking forward to the exercise of their vote for choosing the man who will be guiding the destinies of their own province. As I have said already, I am not in favour of the provinces as they exist today and so far as the appointment of the Governors is concerned, we have got to take a few fundamentals into consideration. Firstly, if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically that he should be a real executive authority. On the other hand if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President. Over this question there are sharp differences of opinion. Some people say that we are committing a breach of faith with the people of India if, after having told them once that the Governors will be elected we go back upon it and provide for their appointment by the President. I therefore want, Sir, that the people of India should understand what exactly we are doing and why we are doing it. Therefore I would like all the arguments which are in favour of our choice of appointed Governors should be stated on the floor of this House so that the nation outside will be convinced of the correctness of the decision that we are now taking. So long as the provinces are there and the structure of the Constitution remains as it is, I think we have, although somewhat late, corrected a mistake that otherwise would have been there. Our whole Constitution is based on the 1935 Act which in itself is based on the principles of responsible government. There is responsible government not only at the Centre but also in the provinces. Wherever there is responsible government, it necessarily means that the representatives of the people should have the authority to alter the executive any day or at any time. That being so, the head of the administration must be one who cannot interfere with the day to day administration. Therefore it necessarily follows that even if you have election for Governors, the Governor will have to be a figurehead and not a person who can interfere with the day-to-day administration. That being so, it would not be correct to ask the people to take the trouble of going through a huge election on a gigantic scale to elect a person who would be merely figure head. The decision embodied in this amendment is, I believe, a correct decision, because the Governor is merely a figurehead. He is a constitutional head without any authority to interfere with the actual administration. It is sometimes said that we are depriving people of the exercise of their votes. I do not think that is the case because the people will still have periodically to choose on the basis of adult franchise their own representatives in the provincial assemblies, a majority of whom will form the Provincial Ministry which will rule the Province and exercise all the powers which the Constitution provides for.

The other objection that is taken to the appointment of Governors by the President is that we are clothing the President and the Prime Minister with too

[Dr. P. S. Deshmukh]

much patronage. In a country like this, which is one of the greatest in the world, we will have willy-nilly to give lot of powers to the man who is selected by the people. After all the Prime Minister of India is going to be a popular Prime Minister. He can be there only so long as he has the support of the Parliament elected by the people at large. Therefore there should be no hesitation in giving powers of patronage to the Prime Minister or the President. After all, the representatives of the people will be there to call them to account. So, Sir I do not for a minute accept the argument that the Prime Minister will have too much patronage, that he will appoint the judges of the Supreme Court, he will appoint all ambassadors and then the Governors and so on and therefore, he will be a sort of a Moghul Emperor reigning at Delhi. I do not think these fears of the Prime Minister being clothed with too much patronage are justified.

An Honourable Member : Do you anticipate criticism?

Dr. P. S. Deshmukh : Yes; I am certainly anticipating criticism because criticism is bound to be there since we are taking such a drastic step as to alter a principle which we had agreed upon, and therefore, I am perfectly within my right to anticipate criticism and to say beforehand what is likely to be stated on the other side.

Then, Sir, we have also consider this; supposing we were to elect the Governor by adult franchise the relationship between the provincial Prime Minister and him in all probability would never be cordial, and supposing the exceptional happens, and he and the Prime Minister are completely at one. Since we have provided for a certain amount of autonomy for the provincial Governments; it is not unimaginable, Sir, that circumstances may arise when the Centre may be completely blacked out from that particular province. We must look at the whole thing, not only from the point of view whether the two most important persons in the province will always be able to get on or not, but we have also to consider the consequences, if they agree in everything, for instance, if they agree in defying the Centre altogether, what will be the position and what will be the situation that the Centre will find itself in? Will the Centre invade the province if it refuses flatly to carry out whatever suggestion or whatever direction comes from the Centre? So part from the unsuitability of having an elected Governor, with limited powers, an elected Governor is always bound to consider that he is the most liked person in the whole province, and therefore more competent to exercise authority with complete confidence of the people rather than the Premier. It is thus that a conflict between him and the Premier is bound to arise. But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position? That is also a matter which deserves serious consideration. So, Sir, I think so long as the provinces remains and the structure of our constitution is unaltered, there is no go and the wisest thing for us is to give the power of appointment to the President. I would also like, Sir, that at some suitable stage, the appointment should be made only during the pleasure of the President. It was only consistent with an elected Governor that we had provision for impeachment. If this amendment is accepted all that will have to go. I would, therefore, like that the appointment of the Governor should be during the pleasure of the President.

The Honourable Shri B.G. Kher (Bombay : General) : Mr. President, since the House intends to go back on a resolution which it had taken about this matter nearly two years ago, I think, I should say a few words about the very important principle involved in the amendment. I wish to support it

wholeheartedly. In the first place, conditions in the country have changed since we took our decision and in other matters than this we have gone back on the decision, which, at that time, we thought was proper. Experience also has taught that the system which we have adopted has worked fairly well in practice. The question, Sir, is this : when we are determined to have a governor for the provinces as we have decided to by passing article 129, should he be an elected Governor? Or should he be nominated or appointed by the President? Now it appears from the trend of the debate that election on adult suffrage is not advocated by anybody, because apart from the expense that it will involve, it will put at the head of the province a person who is elected by the whole people of the State and the whole power of the State because of the principle of responsible government, which we have adopted, will be vested in the Premier under the Constitution. It is bound to give rise a certain conflict, which it is desirable to avoid in the interest of smooth administration. Why do we want the Governor? Because, Sir, he represents the State; the Premier is there by virtue of his being the leader of the largest party in the House; he is to be held responsible for whatever happens in the administration. So far as the Governor is concerned, we have given him very few powers. But I do not agree with the comment that he is a mere figurehead; a figurehead is capable neither of good nor of bad. I want to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we propose to give him, and the functions that we assign to him are very few such as summoning and dissolving the Assembly, to give assent to the Bills passed by the State Assembly, to act as representative of the State, to nominate the Premier after the general election or the resignation of the ministry, to represent the province on ceremonial occasions and such power as we give to act in an emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by means of getting into touch with opponents of the party which is in power, reconcile them to a good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at head of the province a person who is supposed to be more representative than the Premier would be a mistake. If, therefore, the question of election on adult suffrage by the whole people is not to be thought of, then Sardar Hukam Singh referred to the other alternative, namely of having a panel of people elected by the House, and that may be thought of. After the very able argument of Shri Alladi Krishnaswami Ayyar, pointing out the defects of this system also, it is not necessary for me to say more than this, that if more than four or five persons are put up and aspire to the place of the Governor, in the course of an election even in the House there is bound to be some kind of canvassing, some kind of party faction, and whoever is appointed, you will have four or five or more disgruntled people in the House, which is not a very desirable state of affairs.

Sir, if, therefore, we wish to avoid the conflict that is bound to arise by adopting this method, what should be the guiding principle in making such an appointment? And the guiding principle is that no member of the executive should ever be elected by the popular vote. People might think it is a matter of going back to Mid-Victorian precedents, but I found, Sir, turning up pages of Mill's Representative Government this very important principle :

“The most important principle of good government in a popular constitution is that no executive functionaries should ever be appointed by popular election, neither by the votes of the people themselves nor by those of their representatives.”

[The Honourable Shri B.G. Kher]

That, Sir, I submit is a very sound principle. You want to hold the Leader of the Party in the province responsible; you want to hold the Prime Minister of India responsible. He must have the power to appoint people whether as his colleagues in the Central Cabinet or as a Governor with whatever limited or great powers you want to bestow upon him, in the province, one who will have his confidence and who will be the titular head of the Executive in the Province. The principle of appointing these people by election is very much open to doubt. I do not wish to comment on what is done in America. But, having deliberately chosen the British model of responsible Government and decided to give the Governor the position that we have decided to do, I submit Sir, that the only insurance for smooth government in the provinces is to allow the President of the country to nominate a person who enjoys his confidence, which certainly means, the confidence of his Cabinet as also the cabinet of the province, to be the Governor or the province. Any other mode, whether by election on adult suffrage or by election by the representatives of the people in the House will give rise to considerable friction. It is therefore, I submit, that the amendment that has been moved by Mr. Brajeshwar Prasad should be accepted.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, it is very difficult for us to say which is correct and which is not correct. Two years ago, in the month of June, we had, in the Provincial Constitution Committee, discussed this question for nearly three or four days. The Committee was presided over by no less a person than the Honourable Sardar Patel, and amongst the members, there were Premiers like the Honourable Shri Kher and there was also in that Committee the Honourable Dr. Ambedkar. The members of the Provincial Constitution Committee and the Union Constitution Committee sat together on one day. By a majority of votes this question was decided by coming to the conclusion that the post of Governor will be filled by election. Now, Sir, my honourable Friends who have spoken in support of the amendment of Mr. Kamath and Mr. Brajeshwar Prasad, have said that things have changed since then and there is therefore an alteration in the decision on the part of some of the Members. How have the changes affected the question at all? The fact that we have attained independence in the meantime, that is in August 1947, has that anything to do with the alteration of this decision? Are you to have nominated Governors when we are independent and should have been content with elected Governors when we were not independent? There has been partition of the country in the meantime; there has been bloodshed; there has been untold misery in the country. Is that the reason why we should have nominated Governors instead of elected Governors? The only reason that I can find is that there has been some change in the status of my honourable Friend Dr. Ambedkar. Possibly that is the reason why we are having a change in this decision today; otherwise.....

Mr. President : I would ask the honourable Member not to be personal.

Shri Rohini Kumar Chaudhuri : Not to refer to Dr. Ambedkar?

Mr. President : Not to be personal.

Shri Rohini Kumar Chaudhuri : I am sorry, Sir; I will not refer to Dr. Ambedkar.

I must however say that I fail to see any reason for the change in this decision.

My honourable Friend Mr. Brajeshwar Prasad who had moved the official amendment on this question, has not enlightened us very much in his speech.

The way in which he was supporting his own amendment or moving his amendment showed that his heart was not very much in it and the way in which he ran away from this place to his seat showed that he was rather swallowing a bitter pill than actively appreciating what he had said. Under the present proposal, the appointment will be made by the President. Who is the President? The President will be elected by the members of the legislatures. Certainly, he will have to be a person who will enjoy the confidence of the majority party. The desire which some honourable Members possess that he will be one who is absolutely detached from politics will not be raised. How will the President nominate the Governor? The President will nominate a Governor according to the advice of the Prime Minister. Who is the Prime Minister? The Prime Minister is very much a political man. He is the leader of some party and he will be guided by his party leanings. He cannot have a detached view altogether. If you are allowing a person who belongs to a particular party, who is the leader of a party to nominate the Governor, why are you not allowing the people to have a voice in the matter? After all, Sir, what is the pledge which the Governor has to take when he accepts office? He has to take this pledge :

“I.....solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of.....”

Here, a man, who does not know anything of that province, who does not understand the language of the province, can be nominated and that man will be expected to serve that province much better than a man who can be chosen by the people of that province! Are you going to accept that, Sir? A man who may be nominated may belong to any part of India : South India or North India or the Punjab; he may come from any corner of India and he is supposed to swear—I dare say he will have to forswear—that he will act in the best interest of the people of that province of whom he knows absolutely nothing. That is the position to which we are coming. In appointing him as Governor, the President has not to consult the people even of the province, or the representatives of the people of the province. He is merely nominated at the sweet will of the President or the Prime Minister of India. In selecting the Chief Justice of the Supreme Court, the President has to roam about all over India; he has to consult the Judges of the different High Courts; he has to consult the Chief Justices of the High Courts of the various provinces. But, in selecting the Governor, the people of the province of which he is going to be the Governor need not be consulted. Their opinion even need not be taken. That is a proposition which it is difficult for us to accept. It is said that if you have an elected Governor, there may be friction between the Governor and the Prime Minister and I suppose it is the fear of the present day Premiers of different provinces which is responsible for this decision of nomination of Governor. But I say, supposing (you can quite foresee such a state of things) you have a Prime Minister who is the Leader of a particular Party and you need a Governor in a province which is in the hands of a particular party which is not the same party as the party to which the Prime Minister of India belongs. What happens? The Prime Minister of India sends out a Governor to that Province. Is that Governor going to work harmoniously with the Government run by another party. Can you expect that the Governor who is selected by the Congress Party will act in harmony with the Ministry of the province the Premier of which belongs to another party? Will there not be more occasions for friction? This is quite obvious. Then how can you assume that for all time to come the Congress Party, or a particular party shall remain in power not only at the Centre but also in the different provinces? It is unthinkable. So

[Shri Rohini Kumar Chaudhuri]

I submit that under the present arrangement there is greater occasion for friction than if there was an election; and further, if you give him any power—and he will exercise certain very important powers under the present Constitution as the post of Governor is not a sinecure post in all the provinces—there is bound to be friction. In a particular province whether the Premier is all very powerful, he might be able to get things done in his own way but it may not be so in other provinces. For instance, in a province like Assam the Governor of the Province must exercise very important rights and he will have to work hard and if you send a Governor who does not know anything of the tribal people, who does not know their customs, their manners etc. and the miserable conditions in which they live, and he simply goes and looks at them in amazement, there will be terrible consequences. The Premier of a province like ours may not have anything to do with the tribal people. In order to become a Premier of the province, he need not care for their interest or enquire about them but if the Governor was elected, he would have to be a man who was known to be sympathetic even for the tribal people and the tribal people who have no vote in selecting the Premier will at least know who their Governor would be and will be able to give their votes accordingly. Why deprive these people of the right to have a voice in the appointment of the person who will control their destinies? So it would have been best to have election. Why go according to British precedent in this matter? The British precedent was that they had to have their Governor-General from outside India, and the Governor-General had the right to select Governors and they selected as Governors such persons who would safeguard their interest. Are you going to give powers to the President to select governors in that manner so that he may, contrary to the interests of the province, select a man who will look down upon the interests of the province and consider the question of the whole India? Do you want that you should have a man there who will closely watch the working of the Provincial Ministry so that they may not at any time go against the Centre? Is that the suspicion in the minds of those persons who want the nomination of Provincial Governors? I submit that it should not be the case. So I would have expected even if you do not go to the length of having an election—and I do not know what reasonable objection there can be in that—you must agree to have choice from a panel.

Then an objection has been put forward about additional expenses. If an election takes place on the same day as on the day of general election, there cannot be any question of additional expense. The question of expense does not at all arise. The question of greater efficiency cannot arise. You cannot perpetually go on nominating people from outside provinces and yet try to keep the people of the province contented; but even if you, for any reason, consider the election of a Governor a stupendous task, I suppose it might assuage the feelings to some extent if the province was consulted by some way. The other alternative which has been put forward by the Drafting Committee at least gives a chance to the local legislature to express an opinion, whether the man is from the province or from outside—or gets a chance to mention somebody from that province, and that would be some solace.

Pandit Hirday Nath Kunzru : Mr. President, two years ago I was one of the few unfortunate men in this House who tried in vain to persuade it not to resort to the system of electing Governors on the basis of adult franchise. I am glad to find that opinion in this House has changed and that even my honourable Friend Mr. Kher who was emphatically for the election of Governors two years ago stands now for a different system altogether. We should, however, examine some of the reasons that have been advanced in favour of the change. It was possible for the House while rejecting the principle of election

to accept the alternative method of choosing Governors recommended by the Drafting Committee; but the method that has been proposed today is that of pure and simple nomination by the President. The mover of the amendment I believe said in the course of his very brief speech that the Governors should be nominated by the President so that the Government of the Provinces might be carried on in conformity with the policies of the Central Executive. My honourable Friend Mr. Kher when speaking on this subject delivered himself of the opinion that it was right that the Governor of a Province should be the nominee of the Prime Minister of India Because the Prime Minister would be responsible for the good government of the Country. I find, Sir, that though Mr. Kher has changed his opinion since 1947, he still wants that the Provincial Ministers who will represent in majorities in the Provincial Legislatures would be controlled by some outside authority. The question formerly was that they should be controlled by an elected Governor, but now, Mr. Kher thinks that they should be controlled by a Governor nominated on the recommendation of the Prime Minister of India.

The Honourable Shri B. G. Kher : I did not say that.

Pandit Hirday Nath Kunzru : But it virtually comes to this. My honourable Friend said that as the Prime Minister of India would be responsible for the good government of India, it was desirable in principle that the Provincial Governors should be his nominees. If the Governors are not to be used to control the Ministries, how does their appointment on the recommendation of the Prime Minister of India enable him to fulfil his responsibility for the good government of the country? Nomination can enable him to discharge his duty only if it is understood to give him directly or indirectly the power of controlling the Provincial Governments through the nominated Governors.

Shri T. T. Krishnamachari : Control is no responsibility, whatsoever.

Pandit Hirday Nath Kunzru : My honourable Friend Shri T. T. Krishnamachari should then discuss the matter with my honourable Friend Mr. Kher and see whether the views of the two can be made to reconcile by any manner of means. I fully understand that my honourable Friend Mr. T. T. Krishnamachari does not want Provincial Governments to be controlled by the Prime Minister of India. But the opinion expressed by Mr. Kher, if pursued to its logical conclusion would have an effect contrary to that desired by Mr. Krishnamachari. I think that neither the House nor the Central Government should remain under the serious misconception that Mr. Kher is labouring under.

The Honourable Shri B. G. Kher : I am not labouring under any misconception. The honourable Member has not understood me correctly; I can assure him that I do not want to give any such power to the Prime Minister. He should understand there are ways in which things are done. You need not have it in the Constitution. It is always personalities, and not Constitution.

Pandit Hirday Nath Kunzru : I shall take it that my honourable Friend does not now desire that the Prime Minister of India should control Provincial Governments. But he should really then explain to us what he meant by saying that the Prime Minister of India would be able effectively to discharge his duties for the government of India, only if the Provincial Governors were nominated on his recommendation. However, if my honourable Friend Mr. Kher has changed his opinion in the course of a few minutes, I shall not twit him with it. But the important question raised by him, consciously or unconsciously, still deserves the consideration of the House. The Prime

[Pandit Hirday Nath Kunzru]

Minister of India and his Cabinet are responsible for the good government of the country, only in respect of certain matters, that is, in respect of matters that are under the control of the Central Parliament, or properly belong to the province of the Central Executive. Our Constitution, though it gives a great deal of power to the Central Legislature and Executive, does not provide for a unitary Constitution. It has not reduced the Provinces to the level of Municipalities and District Boards. They will, notwithstanding deductions made from their authority, still have the power exclusively to control certain subjects. The responsibility of the Prime Minister of India for the good government of the country cannot extend to the sphere that will be exclusively under the control of the Provincial Parliament and Executive. I think, Sir, that this should be clearly realised, least there should be serious conflicts between the Central Government on one side and the Provincial Governments on the other.

We have also to bear another very important consideration in mind. Our Constitution should be such as to permit of the free and full growth of democracy, and to prevent the establishment of a dictatorship in the country in any event. At the present time, it seems to many of us that greater confidence is reposed by the country in the judgment of the Central Executive than in that of the Provincial Executive. But in the first place, this can be no reason for reducing the Provincial Governments to a position of utter subordination to the Central Executive. In the second place, things may not always remain as they are now. It is easy to conceive of a time when the Central Government might not inspire as much confidence as some of the Provincial Governments might. If you entrust the Central Executive with power to exercise control over the Provinces in all important matters, and make them fall in line with the policy of the Centre, there is the serious danger of the country falling under a dictatorship. There are countries in which the federal system of government prevails, and there are differences of opinion there, from time to time, between the Federal and the State Governments. In Canada, a Provincial Government went so far as practically to change the prevailing system of currency. The Centre was able to deal with the situation, because in its opinion this was a matter exclusively under its control. It did not utilise the position of the Governor or any other method of asserting its power for this purpose. Similarly, when conflicts arise between the provinces and the Centre in this country it is very probable that if they are of a serious character they will relate to matters coming within the purview of the Centre and in that case the Centre, will, under the Constitution, have adequate means of dealing with such a situation. But let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive.

Now, Sir I think it would be pertinent to refer here to articles 175 and 188. Article 175 requires that a Bill passed by the Legislature of a province may be assented to by the Governor or reserved for the consideration of the President. My honourable Friend, Shri Alladi Krishnaswami Ayyar referred to the case of Canada where Lieutenant-Governors of provinces are appointed by the Governor-General of the Dominion. There in the early days of responsible Government the Lieutenant-Governors could reserve Bills for the consideration of the Governor-General, though the Governor-General, as the representative of the Crown, had the right and still has the right to disallow a provincial Bill. In course of time a system has grown up under which Lieutenant-Governors would not be called upon to reserve any Bills for the consideration of the Governor-General, because this is regarded as a deduction

from the authority of a fully responsible Government. The Governor-General can, however, disallow a Bill assented to by the Governor within a period prescribed by the Canadian Constitution Act. We in this Constitution, Sir, have given no such power to the President. A Bill can be reserved for his consideration by the Governor, but if the Governor does not do so, the President does not come into the picture at all. Now in this situation, Sir, it is clear that the President will instruct the Governors to reserve for his consideration Bills that the Centre does not approve of.

Shri T. T. Krishnamachari : May I respectfully point out that article 175 is yet to be passed by us and it is more than likely that that article will be reshaped in the light of amendment which will be tabled.

Pandit Hirday Nath Kunzru : I am very glad to hear that. This is exactly what I wanted to point out. It will be better if instead of using the Governor as an instrument of the President, the power of disallowing Provincial Bills within a certain period is given to the President. In that case, the responsibility both in form and in reality will be that of the Central Executive. In the other case, there is likely to be friction between the Governor and his Cabinet. The case of Canadian provinces shows that this fear is not imaginary.

Now, I shall come, Sir, to article 188. I do not know whether my honourable Friend Mr. Krishnamachari can tell me with regard to this article too, that it is proposed to delete it or to modify it in view of the change that has been made in the method of choosing a Governor. When the House resolved two years ago in favour of the election of Governors, the main argument put forward was that a situation of such a character may arise as to require that the Governor should have the power of acting decisively in grave emergencies. It was felt that responsible Ministries dependent upon popular support might not in a crisis be able to act with the strength required by the situation and that it would, therefore, be wise to entrust the elected supreme executive in a province with adequate powers to maintain the peace of the province, should it be confronted with a grave emergency. Opinion in this House on that subject has changed since 1947, as shown by the approval that the amendment of my honourable Friend Mr. Brajeshwar Prasad has received so far. I hope, therefore, Sir, that article 188 will be deleted. The President of the Republic can under another article be enable to take action where the peace of the country is threatened because of anything happening in a province, or where a province is face to face with a situation which if not firmly handled might lead to conflagration. I think, Sir, that this would be a better method of dealing with provincial emergencies than allowing the Provincial Governor to take the administration into his own hands. But though the ultimate power will rest with the President of the Republic, he will probably not take any action without consulting the Governor. The latter can well bring the position in his province to the notice of the President and leave him to decide what action should be taken.

I hope, Sir, in view of this article 188 should be deleted or amended so that it may be consistent with the establishment of responsible ministries in provinces and may not lead to bitter conflicts between the Governor and his Cabinet. Let such control as has to be exercised in emergencies under the Constitution be exercised by the President of the Republic directly and not through the Governor so that he and his Cabinet may not come into conflict with one another.

The Honourable Shri B. G. Kher : Does the honourable Member support or oppose the amendment?

The Assembly then adjourned till Eight of the Clock on Tuesday, the 31st May, 1949.