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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Volume VII—4th November 1948 to 8th January 1949

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 30*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 60—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received notice of an adjournment motion signed by Shri Mahavir Tyagi. It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India. Does the House want to know the contents of this adjournment motion?

Honourable Members : Yes, yes.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, on a point of order. Is an adjournment motion in this House permissible?

Mr. Vice-President : I shall read out the adjournment motion:

"I beg to move that the House do adjourn to discuss the attitude of the Government of India in respect of the recent attacks on Indonesia."

It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India.

We can now resume discussion on article 60. Is Pocker Sahib Bahadur in the House?

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, this clause as it stands is sure to convert the Federation into an entirely unitary form of Government. This is a matter of very grave importance. Sir, we have been going on under the idea, and it is professed, that the character of the Constitution which we are framing is a federal one. I submit, Sir, if this article, which gives even executive powers with reference to the subjects in the Concurrent List to the Central Government, is to be passed as it is, then there will be no justification at all in calling this Constitution a federal one. It will be a misnomer to call it so. It will be simply a camouflage to call this Constitution a federal one with provisions like this. It is said that it is necessary to give legislative powers to the Centre with regard to certain subjects mentioned in the Concurrent List, but it is quite another thing, Sir, to give even the executive powers with reference to them to the Centre. These provisions will have the effect of practically leaving the provinces with absolutely nothing. Even in the Concurrent List there is a large number of subjects which ought not to have found place in it. We shall have to deal with them when the time comes. But this clause gives even executive powers to the Centre with reference to the subjects which are detailed in the Concurrent List. In this connection, since the question has been expounded with great lucidity and ability by the Honourable Pandit Kunzru, I do not want to take up the time of the House in dealing with those aspects.

Now I would just like to point out one aspect of the matter and it is this. In such a big sub-continent as India, it will be very difficult for the authorities in the Centre to appreciate correctly the requirements of the people in the

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remotest parts of this country, and this disability is there even with regard to legislation. But even if executive power, with reference to those laws dealing with subjects in the Concurrent List, is given to the Centre, the result will be that if any person is aggrieved by the way in which the law is executed in a very remote part of the country, he has to resort to the Centre which may be thousands of miles away, and it is not all people that can fly from one part of the country to the other in a few hours. I submit, Sir, that if we just look into the Concurrent List as it is, we shall find that there are very many subjects which ought not to have found a place in it. Anyhow, if those subjects are to be dealt with by an executive which is under the Centre, it will be a very great hardship, and I do submit that the machinery itself will be very inefficient and will be a blot on the administration.

If with reference to such subjects as are mentioned in the Concurrent List, the people suffer by the bad way in which the executive carries on the administration, then the result will be that the persons who have got a grievance will have to go a very great distance to have matters redressed, and even then it will be very difficult for the authorities in the Centre to realize the difficulties. It has been pointed out that as matters stand now as regards the subjects in the Concurrent List, the executive authority is in the provinces, and to do away with that practice and to centralise even the executive powers in the Centre with regard to all these subjects in the Concurrent List is a very backward step. Even from 1919 onwards when the Britishers were ruling, Provincial Autonomy was considered to be one of the objects of the Reforms. Now after we have won freedom, to do away with Provincial Autonomy and to concentrate all the powers in the Centre really is tantamount to totalitarianism, which certainly ought to be condemned. It has become the order of the day to call a dog by a bad name and hang it. Well, if some group of persons agitate for protecting their rights as a group, it is called communalism and it is condemned. If Provinces want Provincial Autonomy to be secured to allow matters peculiar to them to be dealt with by themselves, well, that is called provincialism, and that is also condemned. If people press for separation of linguistic Provinces it is called separatism and it is condemned. But I only wish that these gentlemen who condemn these 'isms' just take into consideration what the trend of events is. It is leading to totalitarianism; they ought to condemn that in stronger language. But I am afraid that the result of the condemnation of these various 'isms', namely communalism, provincialism and separatism, is that it leads to totalitarianism or even fascism. If there are separate organisations for particular groups of people who think in a particular way, well, that is condemned as communalism or as some other 'ism'. If all kinds of opposition are to be got rid of in this sort of way, well, the result is that there is totalitarianism of the worst type, and that is what we are coming to having regard to the provisions in this Draft Constitution as they stand.

Therefore, it is high time that we take note of this tendency and see that we avoid it and that we do not come to grief. I submit that at least as regards this provision, the amendment only seeks to make a very moderate demand, namely that with reference to matters in the Concurrent List, even though the Centre may have legislative power, the executive power with reference to those subjects should be left to the Provinces. This is a very moderate demand, and as has already been pointed out, honourable Members from various Provinces do feel that these executive powers should be left to the Provinces. But as we all know, they are not able to give effect to their views for obvious reasons, and I do not want to raise questions which may create a controversy. But I would submit that those honourable Members who do really feel that this amendment is one which is for the good of the people and that according to their conscience it ought to be carried, ought not to hesitate from giving effect to their views according to their

conscience. I would remind honourable Members that the duty we have to perform here is a very sacred one and that we are answerable to God for every act we are doing here, and if the defence is that we did not act according to our conscience on account of the whip that is issued, I submit, Sir, the honourable Members will realise that it is no defence at all.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, is it necessary to make all these references?

B. Pocker Sahib Bahadur : I am making all these references on account of facts which cannot be denied.

Mr. Vice-President : I am afraid Mr. Pocker Sahib is raising a controversy.

B. Pocker Sahib Bahadur : Mr. Vice-President, Sir, I have already stated that I do not want to enter into this controversy, but I have got every right to appeal to each and every honourable Member.

Mr. Vice-President : Nobody is preventing the honourable Member from doing it.

B. Pocker Sahib Bahadur : I have got a right of appeal to every individual Member to exercise his right of vote according to his conscience. That is why I am making these submissions. I have to make this appeal on account of obvious reasons on which I do not want to dwell. The honourable Members know, I know, and the Honourable the Vice-President knows it. Therefore, I do not want to dwell on those aspects of the case.

Mr. Vice-President : The Honourable the Vice-President, has absolutely no knowledge of this.

B. Pocker Sahib Bahadur : Well, Sir, I hope the Honourable the Vice-President, will not compel me to dilate more on this topic. Anyhow, I take in that the Honourable the Vice-President knows that Party Whips are issued and Members are being guided by these Whips, to put it in a nutshell. That is a fact well-known and cannot be denied, and therefore, it is, that I make this special appeal to the honourable Members that if they are satisfied in their conscience that this is a matter in which they should support the amendment, they ought not to hesitate from doing so, and if they so require they ought to seek the permission of the Party to which they are affiliated.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I feel it my duty to oppose the two amendments that are before the House, to article 60. Sir, the two amendments fall into two distinct categories. The amendment that was proposed by my honourable Friend Mr. K.T. M. Ahmed Ibrahim merely sought to cut out the proviso to sub-clause (1) of article 60. That was the original state of the amendment. If the amendments were carried in that particular form, it would mean that the Federal executive power will be co-extensive with the legislative power that the Union has, namely, not only will it extend to List I but it will also extend to List III.

Subsequently apparently my honourable Friend found out his mistake and has sought to amend the body of sub-clause (1) of article 60, which limits the power of the Federation in regard to executive matters and completely prevents it from exercising it in the field of Concurrent legislation. Well, that, Sir, the House is aware, will mean going back on the present provisions of the Government of India Act. The position was remedied by my honourable Friend Pandit Hirday Nath Kunzru. With his characteristic precision he framed an amendment which will exactly fit in with the position that was envisaged in the Government of India Act of 1935. It does not concede any more executive power to the Centre than what it has under the Government of India Act, 1935. Sir,

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there is also a considerable amount of difference in the approach of the Movers of the two amendments. The three speakers who supported the amendment of Mr. Ibrahim, including the mover, objected to the proviso to article 60(1) on political grounds. My honourable Friend Pandit Hirday Nath Kunzru objected to it on theoretical grounds. Let me first deal with my honourable Friend Pandit Kunzru's objections. He said that Federation or Federalism in in the Draft Constitution before the House will become a farce if the position that is taken up by the Government of India Act in regard to the sphere of executive action that could be exercised by the Central Government in the concurrent field is changed, if the i's are dotted or the t's are crossed. Pandit Kunzru is a person who is well known for his wide reading. His experience is profound and I shall not seek to controvert his right to lay down the law. But, nevertheless, he made a fundamental mistake in saying that there is a particular type of federalism or constitution which alone can be called federal and that the word 'Federal' or 'Federalism' had a complete connotation of its own, excluding every possible inroad into it. I must also point out that Pandit Kunzru made a big blunder in characterising our Draft Constitution as being something which would not be federal if the proviso of the article is retained.

Sir, in regard to what is a Federal Constitution, there are various interpretations. It varies widely. For instance, the Canadian Constitution which is one of the four prominent Federal Constitutions in the world is characterised by some as not being wholly federal. On the other hand it does happen that in the actual working of the Constitution, it is more federal than the Australian Constitution which, from the strictly constitutional point of view, is undoubtedly fully federal. It is said often times that a Constitution becomes Federal because of the fact that the component units are first formed and then the Centre is created. That is the opinion expressed by Lord Haldane in 1913 as an obiter in a matter that was referred to him arising out of an Australian litigation wherein he mentioned that the Canadian Constitution was not Federal in so far as, while the British North American Act was passed by Parliament, the Centre and the Provinces were created at the same time.

Similarly there are other views in regard to what makes a Federation. Another view is that the residuary power must lie with the units and not with the Centre. Where and how this fact exactly detracts from the concept of Federalism nobody knows. This particular aspect is emphasised by reference to the United States Federation. If that is so, undoubtedly the Draft Constitution before the House is not federal, for one reason that the residuary power is not vested in the units; for another reason that it (the Draft Constitution) creates both the Centre and the Provinces at the same time.

Sir, If we are to accept this view, we would be merely theorising in regard to Federation. I hold the view that we have no reason to take a theoretical view of the Draft Constitution at this stage. The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage. But I will repeat once more the fact that in actual practice it has happened that in Canada the provinces have greater amount of liberty of action under a Constitution which is not avowedly fully Federal, than in Australia where the interference by the Centre into the affairs of the units has been considerable.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I interrupt my honourable Friend to ask whether he is aware that in Canada the power of the provinces is greater than it is supposed to be because of the decisions of the Privy Council?

Shri T. T. Krishnamachari : It only supports my statement of fact that the Indian Constitution, when it is passed, will either become fully federal or partially federal in actual practice over a period of time. It may be that if we are going to leave the field of authority for the Centre and the units completely undefined, the courts may interpret it one way or the other. It is conceivable that if we say nothing about the exercise of the executive powers in the Concurrent List, the courts may interpret it one way or the other and the Constitution may become more federal or less federal as circumstances arise and the views of the judges in this regard and the decisions they arrive at. So, I think the interruption of my honourable Friend is without any force and I see no reason why I should answer it at greater length.

Sir, in regard to this question of executive action in regard to concurrent powers on which actually the objection is being taken, the position is that the Government of India Act has been framed with a certain amount of attention for precision. Professor K. C. Wheare, in a short but exhaustive work on Federal Government, has pointed out this particular fact—though he does not concede that the Government of India Act establishes a full federation—that that Act is one of the most notable examples of Federation where the powers of the Centre and the units are clearly defined and the three Lists are more or less exhaustive.

Sir, in regard to the provisions of this Concurrent List, the Draft Constitution or the 1935 Act are by no means unique. The fact is that the Australian Constitution practically leaves the entire field of legislative action in the Concurrent List save for a few that are enumerated in Section 52 of the Australian Constitution. Section 61 which is the corresponding section in the Australian Constitution to article 60 of our Draft Constitution says that the executive power extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. And an attempt by a State to interfere with the free exercise of the executive power by the Commonwealth was declared invalid in 1903 in a case D'Emden vs. Pedden. The position in regard to the distribution of powers in the Australian Constitution is however nebulous and assuredly the framers of the Government of India Act were conscious of that fact and that is why they have framed the three lists which are far more precise.

Sir, if you look back to what happened in Canada where passage of time has more or less delimited the precise scope of Federal and Provincial executive power, we find that there has been room for friction in various important matters. And in the Rowell-Sirois Report on Dominion-Provincial Relations, certain changes have been recommended. They have recommended that in the field of labour legislation particularly, and in the field of social services like Unemployment Insurance, etc., the power should be given to the Federation not only for the purpose of legislation which it possesses to some extent, but also in the field of executive action. With this background let me, Sir, now examine the position in the Government of India Act in regard to the allocation of powers under the Concurrent List in view of our experience of the last twelve years.

Sir, the Joint Select Committee in dealing with this particular aspect of the

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separation of powers and also in investing the Central and Provincial Governments with executive powers in respect thereof have been rather careful.

Sir, they say—

"We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter from the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subject consists mainly of the regulation of mines, factories, employer's liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity..... In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question."

Sir, that was the plan envisaged in the Government of India Act. That was the reason why a sub-clause was added to Section 126, *i.e.,* sub-clause (2), which gives power to the Centre to give executive directions in so far as the subjects covered by Part II of the Concurrent List is concerned. Sir, I want to tell my honourable Friends in this House that in actual practice we found that so far as Part II is concerned executive directions were not adequate to achieve the objects of the legislation undertaken by the Centre. Sir, it raised a very important problem. Who is to be ultimately responsible for carrying out the objects of such legislation in a responsible government? The provincial governments are responsible to the provincial legislatures and it has happened so far that the provincial executive has often said, "Oh, the Centre has given its directions, we have no funds, we have no administrative machinery, we do not know what to do and it is unfair that it should be our business to do the actual work in these matters when somebody else lays down the law." The present scheme in the Government of India Act is defective by reason of the fact that the field of executive responsibility blurs. We do not know where it begins and where it ends, and one of the reasons why this proviso has been put in which has been carefully worded, is that, where the Government of India want to lay the executive responsibility squarely on the shoulders of the provinces or the units, it can do so by not mentioning in their legislation that they are possessed of any executive power in regard to any particular legislation. This is a variation of the provision contemplated in Section 126 (2) and it is a wise variation in so far as the lines of demarcation are clearly laid down. The Government of India where it is possible or necessary, perhaps in the field of social legislation, in social insurance, unemployment and perhaps labour, will take over the executive responsibility by laying down in the related Acts that the executive authority shall be that of the Government of India, Where there is no specific provision the executive responsibility will be that of the provinces and the provincial ministries cannot shirk their responsibility for carrying out the objects of the legislation. Sir, I wish that my honourable Friend, Mr. Jagjivan Ram, who has been in charge of some pieces of welfare legislation, would speak on this subject, because times without number we have found that we have had to sail very close to colourable legislation in such matters. That, Sir. I think is a very valid reason, a reason which is dictated by experience, for us to put a provision of the nature of the proviso in clause (1) of this article which I can assure you, does not detract an iota from the federal character of this Draft Constitution. After all, what is a federal constitution? It is one that lays down precisely the field where the units are supreme and another field where the Centre is supreme. Where it is not possible to demarcate this clearly it has got to be done in some other manner where the responsibility will

be precisely indicated, and this proviso to article 60 makes the constitution more federal than it would otherwise be. Therefore I think the objection of my honourable Friend, Pandit Hirday Nath Kunzru, is without any point; it is without any reference to the experience of the 1935 Act which has been gained during these twelve years; it is without reference to the theory and practice of federalism; it is without reference to the experience of Australia and Canada and therefore has got to be rejected.

Sir, I shall turn my attention to the other amendment, the originally imperfect amendment, which seeks to give greater powers to the provinces in regard to concurrent subjects, and practically limits the powers of the Centre in the executive field to nothing, which was moved by my honourable Friend, Mr. K. T. M. Ahmad Ibrahim and ably supported by Mr. Muhammad Ismail and Mr. Pocker. Sir, the House will be aware that these honourable Members are fairly important people, particularly Mr. Muhammad Ismail who happens to be the President of the Muslim League in India and the virtual successor to Mr. Jinnah. When he makes a political statement, it cannot be dismissed as being something which is of no value. One of the reasons why the Government of India Act is so elaborate, one of the reasons why such great emphasis on provincial autonomy was laid in the past, one of the reasons why we in this country agreed to the Cabinet Statement of May 16, 1946, was the fact that the Muslim League wanted complete freedom of action in the provinces which it controlled. Sir, that circumstance no longer exists owing to the dissection of the country into two. That circumstance has now faded into obscurity, and therefore it seems to me that my honourable Friend is simply starting the trouble from the beginning *viz.*, the agitation that provinces should have greater powers when actually there is no attempt to fetter the powers of the provinces. If there is any opposition to this Draft Constitution, it is a political opposition, rather than an opposition to any particular feature of this Draft Constitution. My honourable Friends have warned us that we have a conscience, that we have to act according to that conscience. I may tell the honourable Members of this House that their conscience will not be affected in any way if they approve of article 60, as it stands, that they may rest assured that there will be no inroads into the freedom of action of the provinces and that really no real limitation of the executive power of the provinces is contemplated. Provincial opinion will be adequately represented in the Parliament to be: the *pros* and *cons* of each particular piece of legislation contemplated in this article will be adequately canvassed before the Centre is granted executive power in regard to any subject which falls in the Concurrent List. I might again draw the attention of the House to what was mentioned in the Joint Select Committee's report in respect of the 1935 Act that they did not contemplate that even in the matter of giving executive directions under Section 126 (2), it would be done right over the wishes of the provinces, because after all the Centre was not something apart from the provinces. Even in the future the Central Legislature will only consist of representatives of the units. In one House it will be representative of the unit legislatures. In the other House it will be representative of the people of the units. The Centre can have no existence in the future apart from the provinces or units and why therefore suspect the *bona fides* of that legislature and say that that legislature will grant powers to the Centre in such a manner as would fetter the freedom of action of the units?

Sir, on the other hand, as I said once before, this proviso precisely delimits the functions of the Centre and the units. There will be no more ambiguity, no more blurring of responsibility. I feel that intrinsically the article is sound and the House will not, I have no doubt, be guided by the threats uttered by these appeals to conscience, the threat of the totalitarian state of things to come which my honourable Friends from Madras of the Muslim League think is going to come to pass. Sir, this article.....

B. Pocker Sahib Bahadur : It is not a fact that whips are being issued over such questions?

Shri T. T. Krishnamachari : I have no desire to answer my honourable Friend. Whips may be issued. We know what is being done. It is a matter of convenience. If some of us do not congregate together and get through the work that is to come before the House by mutual agreement, I am afraid this House will have to sit for three or four years. By acting together some of us, not exactly the members of one Party but a number of people who act together are only expediting the framing of this Constitution for our country. Well, I can conceive that my honourable Friend does not want a constitution for this country. If that is his idea, well, he might object to the method by which we are carrying on the work. Sir, I think these allegations are without any point. The basis of the opposition is political. It has its origin in the fact that the Muslim League never wanted India to be a strong country, with a strong government. Therefore, Sir, I hope the House will dismiss all these vague threats and all these allegations and support the article before it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands, it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent filed the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre to issue directions, with regard to matters falling within Items 25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my honourable Friend, Pandit Kunzru wishes to restore the position back to what is now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar: Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....

B. Pocker Sahib Bahadur : I have not said that, Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar : By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. *(Laughter.)*

B. Pocker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my honourable Friend, Pandit Kunzru forgot altogether that history; I have no doubt about it that he is familiar with that history as I am myself.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government so far as legislation in the concurrent field was concerned was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the Concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority such as for instance in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State had to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent filed. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to

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the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

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

Coming to the proviso,.....

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

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them. (*Interruption*.)

Mr. Vice-President : Order, order.

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

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

and Executive Power in Australia" by a great lawyer Mr. Wynes. This is what he says:

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

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

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bharagava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India cases after cases in which it was reported that no Provincial Government or at

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least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the Central Government should be mere paper legislations with no effect given to them? How can effect be given to them unless the Centre has got some authority to make good the administration of laws which it makes? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the Centre makes in the concurrent filed remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

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

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

The question is:

"That with reference to amendment No. 1289 of the List of Amendments, in sub-clause (a) of clause (1) of article 60, between the words 'Parliament has' and the word 'power', the word 'exclusive' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60 the following clause be inserted.

'(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That the proviso to clause (1) of article 60 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That article 60 stand part of the Constitution."

The motion was adopted.

Article 60 was added to the Constitution.

Article 61

Mr. Vice President : The motion before the House is:

"That article 61 form part of the Constitution."

The first amendment, No. 1294, by Mr. Baig may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, I beg to move :

"That for the existing Clause (1) of article 61, the following be substituted:

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner.' "

Sir, the purpose of moving this amendment is firstly, to secure in the executive *i.e.,* the Cabinet, proper representatives and secondly, to secure representatives from all sections of the people. The method by which ministers are appointed to the cabinet as envisaged in the Draft Constitution and as has been the practice in the past under the Government of India Act, 1935, and previous thereto also, is that the leader of the party which has been returned in majority is called upon by the Governor or the Governor-General, as the case may be, and he is asked to form a government; and he chooses his colleagues in the Cabinet. That is the practice in the past and that is what is envisaged in this Draft, and that is in accordance with the form of government in what is called Parliamentary democracy. My conception of democracy is not the conception of democracy as can be considered, or as can be gauged from the system of government called Parliamentary democracy. According to me, Parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general. Now, let us see what actually happens, at the time of the formation of a cabinet. Take for instance, the case of a Parliament consisting of 200 members. If 105 members were returned by a particular party, one of the members who is elected as the leader out of the 105—and he may have been elected by a majority of only 60, he is called by the President and is asked to form the Government. That is, out of two hundred members, the man who gets 60 votes is called by the President to form the government and he becomes the Prime Minister and this Prime Minister chooses his own men without reference to the will and to the opinion of his own party, or of the members of the Parliament. He may choose his own men. He is really in great difficulty sometimes. If he chooses a certain member as his Minister, there are others who are up against him; but he has been given the choice. So the net result is.....

Shri H. V. Kamath (C.P. and Berar : General): Sir, on a point of order. The second part of the amendment moved by Mr. Baig relates to the appointment of Ministers which forms the subject matter of article 62. So it cannot be moved as an amendment to article 61.

Mr. Vice-President : There is an amendment, I understand, which will cover your objection.

Mahboob Ali Baig Sahib Bahadur : Therefore, Sir, according to the Draft Constitution, the person who is supported by 60 persons out of a membership of 200 persons belonging to the House.....

Mr. Vice-President : Mr. Kamath will please turn to amendment No. 1302 standing in the name of Mr. Baig, and he will get the requisite information to answer his objection.

Mahboob Ali Baig Sahib Bahadur : He is called upon to form the Cabinet. He might choose any person as his Minister, who, in the opinion of his own party, may not be suitable for a ministership, not even taking into consideration the opinion of the entire House. Therefore, my submission is that this kind of appointment of the Executive to rule over the country is anything but democratic. In the first place, as I said, they are not chosen by the entire House consisting of 200 persons, and even the Leader who is called the Prime Minister and who forms the Cabinet is not elected by a majority of the House, and in the case of other members of the Cabinet, they are not chosen at all by the people.

It may, however, be said that the party has been returned in a majority and therefore the Leader has got the right to choose his men. But I submit, Sir, that it is by a legal fiction that these members of the Cabinet are chosen. It may so happen that if election takes place in the case of individual ministers, they may not be elected at all. Shall we then call these Ministers—the Ministers of the people? Can we say that they have been elected in a democratic way, and appointed in a democratic way? Surely not. It is only by a legal fiction that they are there. Therefore, my submission is that it is not the democratic way.

Still, it is said that Parliamentary democracy has been a success in England and other places and so on and so forth. My submission is that I do not agree with the statement that is Parliamentary democracy at all. Sir, I am rather amused, though I am very much concerned also when people say that Parliamentary democracy based upon party politics is the best method. I must say that this kind of democracy obtaining in what is called Parliamentary democracy is far from being democratic, and all the ills and all the evils of the internal revolutions and internal changes in governments in Europe, specially, are due to these political parties, one political party coming into power and the other political party trying to put it down. That is what is happening there. Can we not have democracy without parties and without any political parties? My conception of the future politics is non-party politics.....

An Honourable Member : Communal parties.

Mahboob Ali Baig Sahib Bahadur : Certainly not, Sir. You are wrong. Do not be obsessed with that idea; the sooner you get rid of it the better.

Mr. Vice-President : Mr. Baig, please address the Chair.

Mahboob Ali Baig Sahib Bahadur : I am addressing you, Sir. It is the tendency amongst some of our Friends that whenever a man, belonging to a different religion than them, speaks he has to be heckled. That is unfortunate. But I am propounding the idea whether we cannot have non-party politics.

Shri Algu Rai Shastri (United Provinces : General): It is a narrow-minded party politics view that you are propounding.

Mahboob Ali Baig Sahib Bahadur : If my friend wants an instance, I can quote him the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members are

elected to the Parliament, they elect their own Ministers to the Cabinet. That is what has been happening there and for the last several centuries you have not had any revolutions in that country. There has been no such thing like one party coming into power and suppressing or oppressing another party and all that sort of thing.

What was the conception of democracy in the past? In those days it was not political parties that formed governments. Non-party politics prevailed and the best men were chosen from all sections of the people. They were sent to Parliament and these Members of Parliament themselves choose their rulers and executives.

Now, Sir, the reason why persons belonging to one political party are nervous about the party in power is that each political party is trying to retain power and when it is in power it exercises that power to oppress and suppress all other parties. Such things should not be. The only political party we should have is the party that works for the welfare of the country. If our representatives that are sent to the legislatures and to Parliament sit together and deliberate about which is the best method of democracy and promulgate laws which are beneficial to the people, be it for nationalization or for any other purpose, where is the necessity, I ask, then for political parties?

Pandit Thakur Dass Bhargava (East Punjab : General): How will you ensure collective responsibility?

Shri Algu Rai Shastri : How will you ensure collective responsibility? That is the question.

Mahboob Ali Baig Sahib Bahadur : When there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will co-operate with one another for that purpose. That is my conception. Therefore, as I submitted, the present method by which the Prime Minister and the members of the Cabinet are chosen is something which cannot be called democratic, because all the members do not have a hand in choosing the Premier. Their own party men have the right to choose and even in the party, if the leader gets one vote more than his opponent, he becomes the leader and it is he who chooses the other members of the Cabinet. Therefore, the appointment of these Ministers to the Cabinet is something which is undemocratic and cannot be called democratic at all. That is the first point I would like to urge.

In the second place I am visualizing to myself how to get rid of all the nervousness and troubles that countries have in this world on account of such political parties, such as, the Communist Party, the Socialist Party and the Democratic Socialist Party, all of which come into existence, each with its own programme, and when in power, in order to retain that power, suppress and oppress others. There is no necessity for all this. Every party or group will proclaim that its programme is the best for the country. But when the aim is the good and welfare of the country, is there any necessity for any division amongst the persons calling themselves as members of the Socialist Party, the Democratic Socialist Party, the Communist Party, and so on? So, from that point of view, I am visualizing a state of things in which the members who are sent by the people should choose their own men and elect them to the legislatures. That is the democratic method.

Therefore I move that due consideration may be paid to my point of view and I hope that Members will not be so uncharitable as to stigmatise this because I am a Mussalman and think I have something else in my mind. There is nothing ulterior in my mind at all. We are entitled to talk on general topics without being accused of ill motives.

Shri R. V. Dhulekar (United Provinces : General): May I know from you whether Switzerland is a country or a cosmopolitan hotel?

Mr. Vice-President : You need not answer that question. The next amendment is in the name of Prof. K. T. Shah—amendment No. 1295.

The Honourable Shri K. Santhanam (Madras : General) : There is a similar amendment in his name, amendment No. 1300, and that may be moved also.

Mr. Vice-President : I wish to inform the honourable Member that there are certain amendments to this amendment.

So will the honourable Member move the amendments as I call them out Prof. Shah—amendment No. 1295.

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

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The article as amended would read:

"There shall be a Council of Ministers to aid and advise the President in the exercise of his functions."

In suggesting that the designation of the Prime Minister should be kept out of the Constitution, I am not specifically opposed to the institution of the Prime Minister. The Prime Minister as an institution has been well-known to the Constitution of England ever since Sir Robert Walpole was in charge of that office. And yet to the British Constitution even today he is not known. All the social status, official prestige, and other precedence he has got is by way of Orders in Council, than by a specific provision in the Constitution.

Mr. Tajamul Husain (Bihar: Muslim): May I know from Prof. Shah that, though he says that the Constitution of England does not know whether the Prime Minister exists, is it not a fact that the whole world knows that there is a Prime Minister of England?

Prof. K. T. Shah : I have not said that the Prime Minister as an institution should be abolished. But I am only suggesting that he should be kept out of the Constitution. That does not mean that he should not be known as Prime Minister, or he should not exist in fact. Nothing of the kind. It only means that, as far as the Constitution goes, the Ministers should be described as Ministers by themselves; and any separate importance or status or description should be kept out of the Constitution to permit a degree of flexibility, which may otherwise be lacking.

A Minister of Finance we do not describe here as a Minister of Finance likewise in the case of a Minister of Defence, though there may be Minister of Defence, we do not provide for one specifically in the Constitution. Similarly, there will be the Prime Minister, without the Constitution providing for that office in so many words or describing him as such, and making him at integral part of the Constitution. In fact, of course, we should always have a Prime Minister.

As I started by saying, Sir, the institution of the Prime Minister is a very useful one, and may serve as a machinery for holding together a party: a means to expedite business, regulate and distribute work and, in many other ways, be a useful help in working the Constitution.

But on the theoretical side of the Constitution, I submit it is not absolutely necessary—and I rather think it is not even desirable—that we should insist upon the retention of the Prime Minister *qua* Prime Minister, as the head of the Council of Ministers.

The second reason I have for suggesting this amendment is that I regard the Ministers to be not only equal amongst themselves, but because, if for any reason, the Prime Minister may be unwelcome or any of his colleagues becomes unwelcome, we should not be obliged to have a complete change of the entire Ministry. The power which this Constitution as a Constitution seeks to confer

upon the Prime Minister makes it inevitable that a degree of power will concentrate in his hands, which may very likely militate against the working of a real, responsible and democratic Government.

It may be,—it has often happened,—that only a particular Minister is unwelcome on a particular occasion; or that a particular policy of Government is unwelcome. Now, if only a particular Minister is unwelcome, I personally think it is undesirable to sacrifice the whole Cabinet under the doctrine of collective responsibility, which comes on later in this article. We should rather provide for the possibility of dropping one or another Minister, without the necessity of changing the entire Cabinet. It may be that with the authority that the Prime Minister will possess, he will still be able to drop out one Minister, and yet carry on the Government as a collective Cabinet substituting the entire Ministry by another.

I consider, however, that the danger becomes greater when the Prime Minister himself may be the object of such want of confidence or unpopularity. At such a moment the Prime Minister should have the right, against perhaps the majority of his own colleagues, to dissolve Parliament, or rather the House of the People; and at least have a chance of one more delay to vindicate himself if he so desires.

I hold the view, Sir, that this would not only be in the interests of real, responsible and democratic Government functioning; but also in the interests of the Ministry concerned, or its policy. Accordingly, I have put forward this amendment, which, however, I repeat, does not by convention make it impossible for the Prime Ministership continuing, nor exclude the powers and functions which we now associate with the Prime Minister being vested in one such Minister. I commend the amendment to the House.

Mr. Vice-President : Amendment No. 1296 standing in the name of Shri Ram Narayan Singh. The Member is absent.

(The amendment was not moved.)

Then, amendments Nos. 1297 and 1298 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam. They may be moved together.

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

"That at the end of clause (1) of article 61 the following be inserted:

'Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.' "

If this amendment is accepted, then the article will read thus:

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Now, my second amendment is as follows:—

"That the following new clause be inserted after clause (1) of article 61 and the existing clause (2) be renumbered as clause (3):

'(2) If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of any thing done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.' "

In moving these amendments, I want that the President of India, although he is a 'nominal President' in the words of my honourable Friend Mr. Kamath, still I want that the President should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. In introducing this exception, I would submit that it is not a novel exception; if you will be pleased to look at article 143 of the Draft Constitution you will find that the same exception has been allowed in respect of the

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Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India.

I need not make any long speech in this connection. I close my speech with the hope that my honourable Friend Dr. Ambedkar will consider this question seriously and decide in favour of my amendments. With these few words, Sir, I move.

Mr. Vice-President : Then there are amendments Nos. 1299 and 1300 by Prof. K. T. Shah.

Prof. K. T. Shah : May I move both of them together? There is a further amendment to one of them.

Mr. Vice-President : Yes.

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

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

As advised by you, I will also move my amendment No. 1300 now.

I beg to move:

"That after clause (2) of article 61, the following new clauses be inserted:—

'(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment."—

Mr. Vice-President : The honourable Member may move amendment No. 47 in List IV of the Fifth Week.

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

"That in amendment No. 1300, just moved by me, at the end of clause (2E), the following be added:—

> 'Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.' "

Sir, with regard to amendment No. 1299, I would like it to be realised that, ordinarily, the advice that any Minister may have tendered to the President should be regarded as strictly confidential, and, therefore, not open to enquiry in any ordinary manner. But if and when it should happen that either the President or any Minister is on trial, particularly the President, and Parliament has ordered an enquiry either by itself in the process of impeachment, or caused any such enquiry to be made, it is necessary in the interests of justice, where particularly the very advice tendered is in question, whether or not the Constitution has been followed or violated, then it is but right and proper that the High Court or Parliament should been titled to enquire into the question as to what advice was tendered.

The question would turn, in such an event, upon a question both of fact and of opinion; and the fact in that case would be the advice given to the President, who can, under the scheme of this Constitution, always plead that he acted in accordance with the advice of his Minister. If the advice is not to be enquired into by anybody, then I think it would go hard with the President, when and if he should be impeached, that he is not able to produce his best defence in the shape of the advice which his Minister gave him. On that ground, I think the amendment I have suggested would meet such a contingency, and as such ought to be accepted.

As regards the next amendment, I would like to point out that it deals with three or four important matters, which I do not find equally clearly provided in this Constitution and in this place. The Ministers being collectively responsible to the legislature, it is obvious that they must be members of that body. Later on in this Constitution, there are clauses dealing with the legislatures in which some provisions of that kind occur. To those clauses I have the honour of giving notice of some amendments. But here, I think, is the proper place where we should insert a definite provision, that the Ministers who are responsible to Parliament should have a seat at the time of the formation of the Ministry in the Parliament, in either House of Parliament; or that, if they have no such seat, then within six months of their appointment as Ministers, they should find seats. This is a very simple proposition, conformable to the practice prevailing in widely popular Constitutions, like that of England; and as such ought to find no opposition.

Sir, the other matter that I have suggested is not an absolute one. I have only suggested that not less than two-thirds of the members of the Council of Ministers should at any time be members of the House of the People. The House of the People should obviously have a greater importance, since a vote of confidence in that body alone would sustain the Ministry. That being so, the presence of a considerable majority of Ministers in that House is I think of the utmost importance. The other House, being an equal partner or concurrent in most of the functions of Parliament, it follows that that body should also have a certain number of Ministers present therein, who would be able to explain the Government point of view or the Ministry's point of view to that body. Therefore, I have suggested that not less than two-thirds should be present in the Lower House, and not more than one-third in the Upper House

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or the Council of States. This also corresponds roughly with the membership, under this Constitution, of the House of the People and of the Council of States respectively. I, therefore, think that that particular amendment also should not in any way be objected to.

The point further that Ministers, whatever they call themselves, should be entitled to assistance by way of Parliamentary Secretaries and Deputy Ministers is a matter of convenience in Parliamentary procedure. It is necessary that, by the mere absence or inability to attend for any Minister owing to overcrowded time with public business for the Chief or any other Ministers, it may not happen that the House has in it no one to explain the Ministry's point of view in regard to any matter that is coming before the House. The Constitution should accordingly provide for or facilitate the appointment of such Parliamentary assistance as is contemplated in this clause of my amendment in the shape of Deputy Ministers or Parliamentary Secretaries as they may be called.

Obviously these Ministers would not be Ministers of the same rank as the Chief or Cabinet Ministers. They should be expressly and clearly declared by the Constitution to be only aides, or assistants, to the Cabinet Ministers in charge of the various departments of State. But their appointment must be specifically provided for in the Constitution, and not be left to the exigency of the moment for a particular Ministry.

The number and the exact functions of these assistant Ministers may be determined by Parliament from time to time, so that these appointments would not be a mere matter of executive decree which Parliament need not confirm, or may not be required to confirm.

The doctrine of collective responsibility that this article is based upon would require, in my opinion, that the vote of confidence of the House should be available for each new appointment, and also for the collective Ministry as well when first appointed; and if the vote is not forthcoming, the Minister or the Ministry, should resign and a new one appointed in his or its place.

Lastly, Sir, is the question of rectitude of the Ministers concerned in their official duties. On an earlier occasion; while dealing with the President. I had the honour of making the suggestion that the President should declare all his right, title and interest in any business, property, trade or industry, that he may have held or carried on before election; and that such right, title, etc., should be either sold or be disposed of; or should be made over to be held in trust by the Government during the period that he holds the office of President. I was told, Sir, at that time that the President being more or less a figurehead or ornamental chief executive of the State, as he would have no powers which may at all injure the interests of the State, it would be unnecessary to compel him to disclose his right, title and interest, to require the same to be disposed or to be made over to the Government to be held in trust for him during his term of office. At that time I was further told that if such a suggestion were made in regard to the executive authority proper, *viz.,* the Ministry, then perhaps it may be considered.

I am not so foolish as to believe that this very guarded statement,—I cannot call it an assurance,—would be strictly acted upon, particularly as I have the misfortune to put forward that idea. Taking, however, the Draftsman to be also the spokesman in this matter, may I venture to remind him of his very guarded and carefully worded assurance—I would hardly call it an assurance—or the observation that he had made, and ask him to consider this question favourably at least at this stage; and to see whether, if not in my words, at least in some other words, some such assurance may be given so that the Ministers, the real executive heads of the country, may be free from temptation,

and may devote themselves exclusively to the interests of the country, without thinking of themselves or of their families. I hope this amendment will be accepted.

Mr. Vice-President : There is an amendment to this amendment No. 46 in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, I move:

"That in amendment No. 1300 of the List of amendments, in the proposed new clause (2E), all the words occurring after the words 'moral turpitude' be deleted."

My Friend, Prof. Shah, has just moved amendment No. 1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words "moral turpitude" because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any Minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the **** Ministry. The relevant portion of the article runs thus :

"The Cabinet (the * * * * Cabinet) includes one person who is a convicted black marketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja."

Mr. Vice-President : I did not hear you. Otherwise I would not have allowed you to quote any names.

Shri H. V. Kamath : I am only reading from a written article in a paper.

Mr. Vice-President : I am helpless now. I would not have allowed you to give the name of the State but I would have allowed you to read the extract.

Shri H. V. Kamath : "Although the disabilities were graciously removed by the Maharaja, how can the public forgive and forget his sin against society? How can a Government, having in their fold such elements, be called a popular Government? Inclusion of such elements, apart from being a mockery of democracy would blot out the prestige of Government, and would consequently fail at its very inception to create enthusiasm and confidence in the public mind. Will this anomaly be rectified before it is too late?'

I do not know if this was absolutely justified but then to give even a handle to newspapers writing in this fashion about any Ministry or any Government is certainly not creditable to the Government nor is it in the public interest. I do not know whether this anomaly was rectified later on. I hope that it will be a disqualification imposed on any prospective Minister of any State or in the Central Government of our country.

It may be argued that this particular amendment has no place here and we might as well prescribe this disqualification in article 83 which relates to the disqualifications of a member of the House of the People, because a Minister will be chosen from among the Members of the House of the People, but there is one difficulty in this matter, which I would request Dr. Ambedkar to clear in the course of his reply to this debate. Article 83 as it stands, includes no disqualification of this nature. There is an omnibus sub-clause in it which reads:

"(e) if he is so disqualified by or under any law made by Parliament."

[Shri H. V. Kamath]

Certainly I visualise the possibility, nay, the certainty of Parliament prescribing various disqualifications, but certainly that Parliament will assemble after the elections under the New Constitution, after perhaps Ministries have been formed in the States and in the Centre, and therefore, if article 83 does not specifically lay down the disqualifications for the Members of the House of the People or the Ministers, we cannot be certain that certain persons who have been guilty or who have been suspected of certain offences will be excluded from the membership of a Cabinet in a State or at the Centre, because Parliament if it takes cognizance of this particular aspect of the matter, after Governments have been formed in the State and at the Centre, will certainly meet and pass a law, but that will be subsequent to the formation of the Government in the States and in the Centre. Therefore, at the very inception or initiation of this Constitution, we must have provision in this regard imposing disqualifications with regard to the Members of State or the Central Cabinets.

I, therefore, Sir, move this amendment to the effect supporting Prof. K. T. Shah's amendment, [the last part of it, (2E) of 1300] and I move that the words occurring after the words "moral turpitude" be deleted, because their import is comprised in the words "moral turpitude".

Mr. Vice-President : Before I call upon the next Member who has an amendment in his name, I would like to have the permission of the House to this effect that in our official proceedings when the extract from that paper occurs, the name of the State should be represented by stars. Is the necessary permission given? It would look more dignified. We have got to keep up the prestige of this House and that is one way of doing it.

Shri H. V. Kamath : I have no objection.

Mr. Tajamul Husain : No one has any objection.

Mr. Vice-President : Thank you.

(Amendment No. 1301 was not moved.)

Mr. Vice-President : The article is now open for general discussion.

(To Shri Mahavir Tyagi) There are a large number of Members who want to speak, and I therefore ask you to be as brief as possible.

Shri Mahavir Tyagi (United Provinces : General): Mr. Vice-President, Sir, I do not want to take more time of this House, but I would like to point out one thing. My honourable Friend, Mr. Mahboob Ali Baig has suggested that the Cabinet should be elected by the House on the basis of the single transferable vote system. It seems to be quite a good thing to use such high sounding words everywhere, but my friend forgets that it was to avoid the evil of two or three or, as my friend suggests, fifteen minds working separately in a Cabinet that we had to undertake such a tremendous sacrifice. The country had only recently the experience of a cabinet in which there were two parties working together. If the Cabinet were not so evilly composed by the British, we should not have partitioned India into two. We have given away the best and the most precious part of our land, and have separated willingly. We have obtained this unanimity in the Cabinet at a very great price indeed, and at a very great cost. Thousands of our friends and citizens of this country were killed and massacred on the other side, and thousands of equally good people, who were quite innocent, were killed on this side too. After all that has happened and after this bitter and bloody experience of ours, does my friend still insist on composing a cabinet in which there will be so many parties represented? An election, by the single transferable vote, means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; it decides upon budgets; it has so many treaties

and other important functions to perform. Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that they may never decide an issue or keep a secret? Are we going to throw ourselves into such a chaotic condition as to have a Cabinet which will not be of one mind? Sir, I do not want to dilate on it. The House understands that no Cabinet can live even for a day if all the members of the Cabinet are not of one mind.

Then again, my honourable Friend, Prof. K. T. Shah proposes that whenever a Minister is appointed by the Premier, he should seek the vote of confidence of the House. Although obviously this is true, like the Premier all other Ministers must also have the confidence of the House, but then again, there is one point slightly finer and that is if every member of the Cabinet is required to seek votes for himself or is put to trial on the first day he is appointed. It will mean that only such persons will be Ministers as will have their own followings and personal parties in the House. Such a minister will have a tendency to keep his personal party always alive and active and aloof. In fact when a Minister comes and joins a Cabinet, he merges his whole self, and all his influence into the Cabinet. He has no voice of his own; he speaks the voice of the Premier and acts according to the decisions of the Cabinet. In the Cabinet he has no personal entity left because he becomes absolutely one with the whole Cabinet. If there are 15 ministers, every one of them becomes an indivisible part of the whole Cabinet. The Premier speaks for himself and his Cabinet, and the Ministers for the Cabinet and the Premier. So under these conditions if the amendment of Prof. K. T. Shah is accepted it will virtually mean that the Premier will be on trial whenever another Minister is appointed. It is always a vote of confidence in the Premier. The House can appoint only one Premier. And once a Premier is appointed, he then takes into his Cabinet colleagues of his own choice with whom he can share all the secrets and responsibilities of the State.

How can he allow every Minister to keep a separate circle of his own personal influence in the House? If the Ministers will have such sort of relationships with the members, the Cabinet will be open to all sorts of corruption, because no one can keep a number of members always ready to back him as his pocket Borough, unless he tries to appease them. It is always unhealthy and undemocratic that Ministers should be allowed to retain their own small influences in the House. In a democracy, it is the majority party which is given the power to rule, to administer. The majority party decides upon a Premier, because the wish of the whole country is that such and such a party will rule. The Cabinet therefore has to be loyal to the majority party which has the mandate of the people to run the Government on their behalf. The administration shall be run on the lines of the manifesto which has been approved by the general electorate. Therefore, I submit that the Cabinet must be of one mind, and it could be of one mind only when all the members come through the Premier and look up to him and not to the House for their sanction. They must be popular in the House; but they must be popular to bring strength to the Premier, to bring strength to the party and not popular individually. Every Minister pools his personal strength, influence and following together with his colleagues completely, and thus enjoys the loyalty of and draws his strength from a much bigger group of members in the House. I therefore submit that both these amendments will stultify the whole fabric of democratic Constitution. This type of group-cabinet has nowhere been tried so far. I therefore press that both the amendments must be opposed on principle and I oppose the amendments.

Mr. Vice-President : Mr. Raj Bahadur from Matsya Union. I would request you to be brief because there are a number of Members who want to speak.

Mr. Tajamul Husain : Five minutes to each, Sir.

Shri Raj Bahadur (United States of Matsya): Mr. Vice-President, Sir, I join my honourable Friend Shri Mahavir Tyagi, in opposing the amendment that has been moved by Mr. Mahboob Ali Baig. Mr. Mahboob Ali Baig has put forward an amendment which unfortunately shows a tendency on the part of some of the Members in this House to get back somehow the spirit of separatism and division by one method or another. It is unfortunate that despite the generous attitude that the Congress party as the majority party has shown towards all the minority parties in general and the Muslim minority in particular, such like things should come in. I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separatism by the back-door method. *(Hear, hear).*

I submit that Mr. Mahboob Ali Baig has advanced three main arguments in favour of his amendment. Firstly, he says that Parliamentary democracy is an evil and it is no democracy at all. I am surprised to hear such a categorical statement made on the floor of this House. We know that Parliamentary democracy has been on the anvil of experience during the course of three hundred years in one country at least, and we also know that leaving certain notable exceptions almost all the countries of the world are today trying to achieve and progress towards the attainment of Parliamentary democracy. It is too late in the day therefore to curse Parliamentary democracy as an evil. He says that it would be unfortunate, if a majority of sixty per cent should be allowed to rule one hundred per cent of the population. I would submit that all acts in human society have got to be judged and decided on the principle of "*summum bonum*", greatest good of the greatest number, and that judgment of decision could be made by the electorate as such on the basis of majority of votes only. To say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history. We know how from top to bottom the virus of separatism and communalism permeated the rank and file of the services and the entire body politic. We know how difficult it became to make any progress. We know how we could not execute or implement any schemes of policies. The result of all this was that the country had to be partitioned. We are not going to repeat the same experiment again. I would submit in the end that it is only meet and proper that we should cast away our prejudices and bias, if any, against the unity or the unification of the country. With these words, I oppose the amendment that has been put forth by my honourable Friend Mr. Mahboob Ali Baig.

Mr. Tajamul Husain : Sir, I shall be very brief in my statement. I take up first amendment No. 1294 moved by my honourable Friend Mr. Mahboob Ali Baig. Now, article 61 says: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Mr. Mahboob Ali Baig's amendment is that there shall be fifteen Ministers and secondly, that they should be elected in accordance with the system of proportional representation by means of the single transferable vote. He does not mention that the Prime Minister will be the head of this Cabinet. These are his three main objections to this article. I do not agree with the amendment of my honourable Friend Mr. Mahboob Ali Baig. *(Hear, hear)*. The first point is that he wants the number of Ministers to be fixed

in the Constitution. How can we fix the number? He wants fifteen Ministers. Suppose we require only ten, what are we to do with the other five? Suppose we require twenty, we cannot appoint them. Therefore, I say, Sir, that it is absurd to fix the number of Ministers in the Consitution. There is no Constitution in the whole world which fixes the number of Ministers. It is for the Parliament, it is for the Cabinet itself to find out how many Ministers are required for the work.

As regards proportional representation, Sir, what would be the result? Article 61 contemplates that after the general election, the party which is in a majority will elect its leader and that leader will be called upon by the President or the Governor-General, whoever he may be, to form the Ministry. He will be called the Chief Minister or the Prime Minister and he will submit the names to the President. If you have, Sir, election by means of the single transferable vote and proportional representation, a man may be elected who does not see eye to eye with the majority party. What will happen then? Every country wants a smooth working of the Constitution, (*Interruption*) in day to day working. I submit that it would be absurd. Then, you must have Coalition Government every time whether a particular party is in the majority or not.

In England you had a Coalition Ministry. Because at one time when the Labour Party came to power they had not an absolute majority on account of the existence of other parties—the Liberals and Conservatives—and they formed Coalition Ministry for the purposes of the First Great War and the Second Great World War. But to have Coalition Ministry everyday is absurd. Therefore I oppose this. The next amendment is of Prof. Shah who does not want that the Prime Minister should be the Head. Everywhere Prime Ministers are the Head. So I oppose this. The Article says—

"There shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

My friend says the Prime Minster shall not be at the Head. I don't agree, Sir. In England the Prime Minister is the Head. This is the English system and it has been working satisfactorily for a number of years. My friend says that there is no mention of it in their Constitution but I submit that they never had a Constituent Assembly. The Constitution evolved itself. They did not have a Prime Minister in those days. It gradually grew and they found that the office of the Prime Minister at the head of the Cabinet was absolutely essential and they have got him now and it is working quite satisfactorily and it is right to have it under our Constitution also. Therefore I oppose that amendment also.

Now I come to No. 1297 by Mr. Tahir. Sir, the article says that the Council of Ministers will advise the President. The amendment says:

"Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Sir, I do not accept this.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Is he replying on behalf of Dr. Ambedkar?

Mr. Tajamul Husain : Sir, I am not replying on behalf of Dr. Ambedkar or anybody else. I am speaking what actually I feel should be done. I have supported many amendments moved by Dr. Ambedkar and I have opposed many amendments moved by him. My friend Mr. Karimuddin never opposed any amendment of Dr. Ambedkar, but I did. So it does not mean that I am supporting Dr. Ambedkar. I do not know which amendment Dr. Ambedkar is

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going to accept. If my friend Mr. Karimuddin knows before hand what is going to be accepted by Dr. Ambedkar, then he must be in the confidence of Dr. Ambedkar.

Mr. Vice-President : Order, order. Mr. Tajamul Husain, if I were there, I would not mind this kind of interruption. You go on with your speech and do not mind the observations of your friends.

Mr. Tajamul Husain : I will go on with my speech; but sometimes one has to reply to baseless allegations. I am sorry I am taking more time of the House that I ought to have. Now I come to No. 1297 by Mr. Tahir. He wants that when the President wants to exercise his individual discretion, then the Cabinet shall not give him advice. Sir, I oppose this one also. We do not want the President or the Governor to use his individual discretion at all. In those days when the British were here they wanted to safeguard their own interest under the Government of India Act, 1935. That was absolutely necessary under that Act to check the Congress Ministries in their opinion, but now every thing has changed. His Majesty the King of England does not exercise his individual discretion at all. He merely follows the advice tendered by the Cabinet. If he does not accept the advice, he must go and not the Cabinet. Ultimately he will have to go. Therefore we have been mostly following the British Constitution which has worked so well—and I am also an admirer of the British Constitution—I think that there should be no question of individual discretion at all. If advice is tendered by the Cabinet, the President must accept that. Now, amendment No. 1298.

Mr. Vice-President : That will be blocked if 1297 is rejected and so you need not touch upon it.

Mr. Tajamul Husain : I now come to Prof. Shah's amendment. His first amendment is that every time the Minister or the Prime Minister is appointed or elected as the case may be, he should seek a vote of confidence from the House. This is a novel procedure. I have not heard anywhere that such procedure is being adopted. A new man has come; you must give him a trial. If you find after a time that he is not working to your liking, remove him. But why, every time the Prime Minister is appointed, should he be brought before the House and ask for a vote of confidence? This should not be accepted. His amendment No. 2 is that every minister must be an elected member of either House and if he is not, he should seek election within six months. I accept this amendment. *(Interruption).*

Yesterday I used the words "I support my own amendment". There was a fling at me. Now I used the word 'I accept this amendment'. Because we all are one.

Even now in the Provincial Legislatures a nominated member of the Upper House may be appointed as Minister. We do not want that. We want him to be elected. This is reasonable.

The third amendment is that not less than two-thirds of the members of the Council of Ministers shall at any time be members of the House of the People and not more than one-third of the Council of Ministers shall at any time be members of the Council of States. I am not prepared to agree to this. I do not accept it and I do not support it; I oppose it. Supposing the majority party in the House of the People—we shall call it the Conservative Party, the Congress must go and the Congress will go and there will be Labour, Conservative and some other parties on economic basis—supposing there is a Conservative party in Lower House which is in majority and is asked to form the Ministry and the Leader of the Party is asked to form a Ministry by the President. This amendment says he must get one-third at least from the

Council of States. Supposing in the Upper Chamber you have not got one-third of that party, what will happen. That will mean having people who are not of the same view. That is also objectionable.

There should be no limit to the number. Let there be Ministers from the Lower House or from the Upper House, it does not matter. But they must all be of one party.

The next point is that Parliament may appoint Deputy Ministers and Parliamentary secretaries. That, I suppose, will be done and there is no objection to that, and I support that amendment.

Lastly, there is the statement that no one should be appointed if he is found guilty by a competent court of moral turpitude or any other offences, etc., etc., and I think that this provision is good and so I support him there.

Sir, with these words, I resume my seat.

The Honourable Shri K. Santhanam : Mr. Vice-President, Sir, the House should be a little careful in interpreting articles 61, 62, 63 and 64. They should not be interpreted literally, because they embody conventions of the cabinet system of government evolved in Great Britain as a result of a long struggle between the King and Parliament. At every stage of this struggle the King yielded some power, but was anxious to preserve his prestige. Therefore, at the end of the struggle, the King gave up all his power, but preserved all his forms. Therefore, it is said here that there shall be a Council of Ministers with the Prime Minister at the Head to aid and advise the President in the exercise of his functions. That does not mean that normally, the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite, or the reverse. It is the Prime Minister's business with the support of the Council of Ministers, to rule the country and the President may be permitted now and then, to aid and advise the Council of Ministers. Therefore, we should look at the substance and not at the mere phraseology, which is the result of conventions. Of course, it may be asked why we should adopt these conventions, and why we should not put them into precise legal language. It might have been desirable to do so, but I do admit that it would not be easy, because the Prime Minister and the Council of Ministers are entities depending upon the confidence of the House which may vary from day to day, and at any moment it may cease to have confidence in them. Therefore, to embody the position of the Prime Minister and the Council of Ministers in the Constitution may bring about a degree of rigidity which maybe inconsistent with the elasticity of the cabinet system of government. The greatest advantage of the British type is its elasticity. So long as the Prime Minister and the Council of Ministers have got the confidence of the House, they are absolutely sovereign and they can do anything, but the day they lose that confidence, they become weaker and weaker and no one can say what their position will be at any particular moment. It is to embody this fluid position that we have had to adopt the words of the British convention. Therefore, there is no use interpreting them literally and then finding fault with them. Take for instance, clause (2) "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

Now, my friend Prof. K. T. Shah has an amendment to this effect that there should be an exception, and that these matters can be enquired into, when there is an impeachment, by the High Court of Parliament. First of all, to speak of the High Court of Parliament is to obscure the language of the Constitution, because Parliament is something different, it is not a court at all. Normally no advice is tendered by the ministers to the President at all. They simply pass orders. They come to decisions and they execute the decisions. Therefore,

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there can be no question of impeachment of a President for any advice given by the Prime Minister or the Council of Ministers. Therefore there is no question of taking that advice into consideration in matters of impeachment.

Now, Sir, I wish to say one or two words regarding the amendments which have been moved. I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognised systems of government. The Swiss system, for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system. It is on that ground and not on any *mala-fide* motives that it should be rejected.

Sir, Prof. K. T. Shah has been fighting such a lonely battle that I hardly like to criticise him. But he has taken upon himself too much of a task and that too quite unnecessarily. If he had concentrated on specific points, he might have carried greater weight. As it is, he has allowed himself to table such long amendments which I believe he has not been able to scrutinise himself. Take for instance amendment No. 1300 (2C). He says:

> "No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment."

Now, when is the minister to be appointed? When does the period of six months begin? Before he is appointed, he must be elected, and before he is elected, six months may pass. So it is an obvious absurdity. Apparently, he has not had time to look into it. When he tables many amendments on matters which should be the result of careful consideration of committees, naturally he lets himself down. Whenever we are considering a complicated constitution of this type, individual members will have to content themselves with pointing out particular points and stressing particular amendments, instead of trying to re-draft the entire constitution. It is merely taking up the time of the House without adding to its knowledge and I humbly make the suggestion to Prof. K. T. Shah to concentrate on points where it will be practicable to improve the Constitution without trying to put forward an alternative constitution.

Thank you, Sir.

Mr. Vice-President : Dr. Ambedkar.

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

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

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

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

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

Mr. Mahboob Ali Baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According

to him they should be fifteen. The second part of his proposition is that the Member of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

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

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

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

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baigh as in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility and there is no

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use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

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

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

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

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

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the other view that notwithstanding the advice of the Prime

Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

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

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

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

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

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

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

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

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

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

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

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

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

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

The question is:

"That for the existing clause (1) of article 61, the following be substituted:

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers selected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of the single transferable vote, and one of the ministers, shall be elected as Prime Minister in like manner.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of clause (1) of article 61 the following be inserted:

'Except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1298 of Mr. Mohd. Tahir is blocked by the rejection of amendment No. 1297, I am not therefore putting it to vote.

I shall now put to the vote of the House amendment No.1299 of Prof. K. T. Shah. The question is:

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

The amendment was negatived.

Mr. Vice-President : I will now put amendment No. 1300 of Prof. Shah as amended by amendment No. 47 of List IV of the Fifth Week to vote.

The question is:

"That after clause (2) of article 61, the following new clauses be inserted:—

'(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he get elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers of Parliamentary Secretaries as

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Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment.

Every minister shall, before entering upon the functions of the office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandizement of his family in any act he may do or appointment he may have to make.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 46 of List IV is blocked. Mr. Kamath will understand why I am not putting it to vote. It is blocked by the rejection of amendment No. 1300 as amended.

Now I will put article 61 to the vote of the House.

The question is:

"That article 61 stand part of the Constitution."

The motion was adopted.

Article 61 was added to the Constitution.

Article 62

Mr. Vice-President : The House will take up for consideration article 62. The motion is:

"That article 62 form part of the Constitution."

Mr. Mahboob Ali Baig may move amendment No. 1302. No, I see that it is blocked by the decision in regard to the previous article.

Mahboob Ali Baig Sahib Bahadur : Yes, Sir. That is so.

Mr. Vice-President : Amendment No. 1303 standing in the name of Kazi Syed Karimuddin may now be moved.

I should tell the Mover that parts (1) and (2) are blocked. He may move part (3) only.

Shri T. T. Krishnamachari : May I point out that if parts (1) and (2) of this amendment are blocked as result of the rejection of a previous amendment, the rest of the amendment cannot be moved?

Mr. Vice-President : Part (3) of the amendment may be moved. It deals with the removal of a Member of the Cabinet.

Kazi Syed Karimuddin : Sir, in view of the ruling given by you that sub-clauses (1) and (2) of my amendment are barred, it has really become difficult for me to make a speech on parts (3) and (3A).

The Honourable Shri K. Santhanam : Is it not barred by the rejection of an earlier amendment? Unless the Ministers are elected, this will not follow at all. The thing is meaningless as it is.

Kazi Syed Karimuddin : It is not meaningless.

Mr. Vice-President : Kindly let Mr. Santhanam speak.

The Honourable Shri K. Santhanam : Part (3) is consequential upon part (2). Only if (2) is accepted, part (3) can be considered. It will have no meaning otherwise. It is only if Ministers are to be elected this will arise. Here the Ministers are merely appointed by the President. Then the amendment will make them irremovable. His point is that if they are elected they should not be removed.

Kazi Syed Karimuddin : My amendment is regarding the removal of Ministers.

Shri T. T. Krishnamachari : May I point out, Sir, that if sub-clause (2) of article 62 remains and is not being omitted, part (3) of amendment No. 1303 cannot be moved. Sub-clause (2) of article 62 says: "Ministers shall hold office....., etc." If that remains, part (3) of the honourable Member's amendment, cannot have any place in it.

Mr. Vice-President : Mr. Karimuddin wants a special provision for the removal of Members of the Cabinet. Is that not so?

Kazi Syed Karimuddin : Yes.

Mr. Vice-President : Mr. Krishnamachari's contention is that this is barred. Why?

Shri T. T. Krishnamachari : If the Honourable Member wants to achieve his object, sub-clause (2) has to be omitted first. If parts (1) and (2) of his amendment are not moved, the third part would not fit in at all.

Kazi Syed Karimuddin : Parts (1) and (2) have nothing to do with part (3) of my amendment.

Mr. Vice-President : This may be interpreted as a substitute for (2) and (3). At any rate I allow him to make his point.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move amendment for the inclusion of sub-clause of (3) and (3A):

"(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.

(3A) The procedure for such impeachment will be the same as provided in article 50."

Sir, my submission is that at present the executive machinery of the Government in the country is deteriorating very fast because the legislators and all those who belong to the majority parties in the assemblies exercise very great influence on the Ministers. If the Ministers do not listen to the legislators and their supporters, the result is that they are likely to be removed. Under these circumstances it is clear that even the Congress High Command have felt that a procedure should be evolved by which the Ministers should not be compelled to accede to the requests of the legislators and their supporters. In C.P. the Honourable Pandit Misra has issued clear instructions that government servants should not allow any interference by Congressmen and their supporters. This means that in this country the executive is being influenced by those who are supporters of the party. Until the Ministers feel secure in their seats, it is possible that there will be interference in the day to day administration of the country. Therefore my submission is that, in order to have a stable and a formidable government, which would not be influenced by the People in the street or by their supporters, it is very necessary that it should not be removable by the House. I have laid down in (3) "except on

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impeachment on the ground of corruption or treason or contravention of the laws of the country or deliberate adoption of policy detrimental to the interests of the State," they shall not be removed.

Shri Mahavir Tyagi : What about a no-confidence motion? Can it be moved or not?

Kazi Syed Karimuddin : No.

(Amendments Nos. 1304, 1305, 1306, 1307 and 1308 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 62, before the words 'and the other ministers' the words 'from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amended clause would read:

"The Prime Minister shall be appointed by the President from among the Party commanding a majority of votes in the Peoples' House of Parliament, and the other Ministers etc."

Sir, this is just to clarify the idea that the Ministry is not only collectively responsible to the legislature, but also that it is homogeneously selected and that therefore it is guaranteed the confidence of the House. That is, I think, necessary to clarify in the Constitution itself in order to secure that the Ministry is not only stable, but is commanding the confidence of the House. Those who accept the principle of collective responsibility of the Ministry to the chosen representatives of the people, should not find any fault with this suggestion as it is only clarifying what is no doubt the intention of the whole clause, and in fact of the whole Constitution.

I realise that I making myself somewhat unpopular with those who do not like the number or nature of the amendments that I have put forward, or are unable to follow in the multiplicity of the clauses that I have suggested the essence of those clauses. I very much regret that I cannot help doing so, because I do not judge that my function is merely to get anything accepted by those who will not accept. None so blind as will not see, nor none so deaf as will not hear. My function, Sir, is not to get those amendments successfully through. My function is, I hold, to place my view on each point before the House; and it is for the House as a whole to accept or reject after hearing my arguments. Prophets are never honoured in their own time. I do not look upon the task that I have assigned to myself as merely to get my views successfully adopted. I am deeply grateful to my friend Mr. Santhanam, who was pleased to commisserate with me on that heavy burden I have placed on myself which he considers unnecessary. But, I repeat, Sir, I do not view my work here merely in the light of the successful acceptance of the proposals that I have been putting forward in the House. I have, under the procedure of this House to propose, not an alternative Constitution, but only amendments to each particular clause as it comes up. Accordingly, without going out of the rules, it would be impossible for me to convey to the House the ideas that I have before me. It may be very well for those who once stood for the separation of powers between the executive, the legislature and the judiciary, to change places, to think different about it now that they may have changed their chair. I have no objection to that. But, for my part, I have never believed in the doctrine that consistency is not a virtue in politics. Consistency may not be a virtue among politicians. Unfortunately, not being able to accept that doctrine, I continue to present my ideas to the House regardless altogether of the fate with which the House might accept them. Every time I have attempted to put forward particular principles, the House is unwilling to see

eye to eye with me; but I assure you that unless I am barred altogether by a specific motion of the House that all amendments tabled by me shall be rejected even before they are moved. I will present every one of my amendments, speak on them, and abide by whatever fate they may have in the House.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the Clock on Friday, the 31st December 1948.