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.