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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 31st May, 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :—

Sardar Ranjit Singh [Patiala and East Punjab States Union.]

Seth Govind Das (C. P. & Berar : General) : *[Mr. President, Sir, I would like to draw your attention to a fact which, in my opinion, is of major importance. You are perhaps aware of the fact that some Members of the House have Hindi numerals on the number plates of their cars. Delhi police recently filed a case against one of the Members for using Hindi numerals on the number-plate of his car and he has been fined by the Court. I have come to know that some more similar cases against a few other Members are pending. This is a matter which relates to the privileges of the Members of the House. Indeed it is very surprising, rather a matter of shame, that even in independent India Members of this House are prosecuted for having numerals in the national language on the plates of their cars. I do not know if this matter was already before you. But at any rate I want to draw your attention to it and request that proper action should be taken in this matter.]

Shri Mohan Lal Gautam (United Provinces : General) : *[Mr. President, I have to convey a minor piece of information to the House. I have Hindi numerals on the number plate of my car registered in U. P. This car has been in Delhi for a long time. Shri Keskar and a few other Members also have Hindi numerals on the plates on their cars. Recently when going from the House in my car, the Delhi Police registered a case against me for using Hindi numerals on the plate of my car. The case is yet pending. I do not know what would be the outcome of this case. This is a fact and I have placed it before the House for information.]

Shri R. K. Sidhwa (C. P. & Berar : General) : I want to speak, Sir.

Mr. President : About the same matter?

Shri R. K. Sidhwa : No.

Mr. President : I shall dispose of this. As this is a matter which requires looking into. I shall ask the Secretary to consider what steps have to be taken.

I understand Pandit Kunzru wants to say something to complete what was said yesterday.

DRAFT CONSTITUTION—(Contd.)

Article 131—(Contd.)

Pandit Hirday Nath Kunzru (United Provinces : General) : I am grateful to you, Sir, for permitting me to answer the question Mr. Kher put to

*[] Translation of Hindustani speech.

[Pandit Hirday Nath Kunzru]

me yesterday. He wanted to know whether I was in favour of the amendment proposing nomination of Governors. I made it clear at the outset yesterday that I opposed the principle of election even two years ago. I consider nomination better than election; but I shall regard it as satisfactory only if article 175 is amended as suggested by me yesterday and as agreed to apparently by Mr. T. T. Krishnamachari, and article 188 is deleted. I ask for the deletion of article 188 because the Governor who will now be nominated should not be able to exercise the power of setting aside his Cabinet and taking the administration into his own hands which he was to have when he was to be elected. If these two amendments are made, I should consider the principle of nomination to be unobjectionable.

Shri T. T. Krishnamachari (Madras : General) : Pandit Kunzru has referred to some undertaking given by me. I am not in a position to give any undertaking, nor is any undertaking given by me of any use, so far as binding this House is concerned.

Pandit Hirday Nath Kunzru : I did not say that Mr. Krishnamachari spoke on behalf of the Drafting Committee or even on behalf of Dr. Ambedkar. I only expressed my pleasure that a careful student of constitutional affairs like my Friend, Mr. T. T. Krishnamachari, agreed to the suggestion that I made.

Mr. President : Before we start discussing this article, I might tell honourable Members that we should expedite the consideration of the Constitution. I have given great latitude to Members and I expect reciprocation from their side so that we might go through the Constitution as quickly as possible. In some cases I have allowed speeches which were not strictly relevant to the amendment under consideration, because I felt that some view-points were put forward which might deserve consideration if not exactly in connection with that particular article but in connection with some other article which might come at a later stage. Apart from that, I would ask honourable Members to bear in mind that we should not have repetition of arguments and no honourable Member need speak if he thinks that the point does not require any further clarification or that he is going to make any contribution which is not already before the House. With this appeal, I would now start the discussion, and I hope that Members will bear this in mind.

Dr. P. K. Sen (Bihar : General) : Mr. President, Sir, in this matter it is obvious that a great change has come over the honourable Members of this House since the last decision was taken and I must also confess that I am one of those Members who have changed their views. At that particular point of time, when the last decision was taken, I remember very well the consideration that weight with the Members, was as to the manner in which the Governor should be elected so as to be able to interfere with the government if party factions and cliques threatened to break it up or to paralyse its activities. At that time it was felt that the Governor, in order that he might have the strength so to interfere should be able to feel that he had the backing of the whole province behind him. It was for this reason that a great deal of emphasis was laid upon the form in which he was to be chosen, and it was decided that it should not be by appointment or selection but should be by election,—and not only election but election by adult suffrage. Since then on sober and serious reflection evidently the Members of the House are now persuaded that a general election of that kind whereby the Governor was to be elected by adult suffrage would impose a tremendous strain upon each province and would hardly subserve the purpose for which it was being held. What is the purpose? The upholding of democratic

ideas. The question is whether by interfering, the Governor would be upholding the democratic idea or subverting it. It would really be a surrender of democracy. We have decided that the Governor should be a constitutional head. The Premier with his Council of Ministers is really responsible for the good governance of the province. The whole of the executive power is vested in the Premier and his Council of Ministers. That being so, if there is another person who is able to feel that he has got the backing of the whole province behind him and therefore he can come forward and intervene in the governance of the province, it would really amount to a surrender or subversion of democracy. It would make it impossible for the Premier or his Council of Ministers to initiate measures which would be in the best interest of the province. Only in exceptional cases of emergency should he have the power or the function to step in and interfere with the actual governance of the province for a short time. Of course, the conditions and circumstances must be such as would justify the exercise of emergency powers and those conditions have been indicated elsewhere. Ordinarily, however, his function is not to interfere but to remain detached. Therefore in the best interest of democracy, in the best interest of parliamentary form of government which has been decided upon as the basis of the Draft Constitution, the election of the Governor by adult suffrage is uncalled for and inappropriate.

The next method of election that is suggested is election by the legislature. There too there would be mischief—only in another form—and a conflict would arise between the Premier and his Council of Ministers on the one hand and the Governor and certain other sections or factions which would be in his support. Therefore I believe that it would, instead of being in the interests of parliamentary government, be a thorn on the side of the Premier and the Council of Ministers and would prevent them from carrying out any measures which are in the best interest of the province. What then? We have now to look out for some other appropriate method. If we are satisfied that both the forms of election which form the substance of article 131—there are the two above-mentioned forms given there—would not subserve the purpose of democracy, what is the next alternative? The alternative that is placed before us is that the appointment of the Governor should be in the hands of the President who, by Convention, shall act upon the advice of the Prime Minister at the Centre. Now, it has been said by some of the honourable Members who have spoken on the subject that it would not really be in the interests of democracy to vest so much power in the hands of the President. The question then is where lies the balance of advantage. The two forms of election being out of the way, can we or can we not vest this power in the hands of the President who is to act on the advice of the Prime Minister? The President being detached from the province would be able to act in a manner perfectly in conformity with the interests of the province, whether his nominee be of the province or of any other part of the country. There is also a great advantage in having a person who is detached from the province—I do not say that necessarily the selection will be from outside the province—but supposing it were it would be an advantage because that person would come to the province with a free mind perfectly detached, perfectly unassociated with the different factions, or different sections of opinion, in the province.

The function that the Governor has to fulfil, as it is now borne in upon the Members of the House, is that of a lubricator, if I may use the expression. He is not to interfere, but he has just to smooth matters. If there are factions, if the different sections of the community are at loggerheads with each other, it is for him to act more or less as a lubricator, a cementing factor. He is to help the machinery of Government which is in the hands of the Prime

[Dr. P. K. Sen]

Minister and the Council of Ministers; he is not to come and interfere and cause confusion or chaos; he would be the person really to lubricate the machinery and to see to it that all the wheels are going well by reason not of his interference, but his friendly intervention. That being the conception of the Governor, as it is, I believe, Sir, that it would be in the interests of good government, if the House were to come unanimously to the opinion that the only possible method by which the Governor might be chosen was by the method of nomination by the President.

Shri Biswanath Das (Orissa : General) : Sir, in discussing article 131 regarding election of the Governor, I realize the difficulties of an election of a general nature in which every adult person in the province is called upon to vote. That is a difficult process and it is bound to create complications. I had therefore given notice of an amendment, that is No. 2023, not being satisfied with the alternative that was proposed by the Drafting Committee. Be the amendment what it is, we have to submit to the joint wisdom of honourable Members. Sir, in the course of discussion of this question, Mr. Alladi Krishnaswami Ayyar invited our attention to the British precedents. I request him to cite me a precedent from Britain wherein a British Governor is being nominated. The only precedent I could think of is the Lord Lieutenant of Ireland. The Lord Lieutenant of Ireland was always a non-official nominated by the cabinet. If the British precedent has any use for him, it is just the other way. Sir, the Canadian precedent has been quoted, but I would plead with him and tell him that the process that we propose to adopt will be more akin to the South African system, where you have very little of autonomy for the provinces. Sir, that being the position however great your anxiety may be to hasten the passage of the Constitution, the course of action taken by my honourable Members causes delay. Important propositions which were discussed and adopted in this House are being given the go-by; important changes are being proposed in the meanwhile. Therefore, it gives occasion for discussion, and discussion means delay. Therefore, I would plead with you that we on this side of the House have done nothing to earn your advice, or crave for your advice, for we have never desired to crave for consideration or indulgence. Sir, it has been stated that the Governor has very little functions. If he has very little functions under the set up that we have laid down in the new Constitution, then why have him. The Governor is getting a decent salary and he is getting allowances and if the functions prescribed for him are not very useful and necessary and not worth the money that we pay, I think it is time that we give the go-by to the Governor. I claim, that the new set-up, unless this House proposes to change the new set-up, invests the Governors with definite and important powers. The powers are the ordinances, powers, of course, in a modified way which you have under the Government of India act of 1935, to return Bills for consideration of the Assembly and dismissal of Ministers and calling for elections. I claim that these are very important powers under the new set-up. Therefore, a change in the Constitution that we have so far accepted means a change in all these items of responsibility that we have at present. If these powers continue to operate, I claim that the Governor under the new set-up has an important constitutional role to function. I have my bitter experiences in this regard. I was the Prime Minister of a province and I know how the Governor of my province was out to break my party. I know those days are gone and new days are coming ahead and I will plead with my honourable Friends to look at the future. If I were to have my leaders in office continuously, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely, no complaint. But I plead with my honourable Friends that human life is temporary, however long

and however much we desire; human life is temporary; the existence of parties, emergence of parties have to face elevation—ups and downs of parties are there, and world history has enough examples of such cases. That being the position. I want to plead with the honourable Members to look into the future and see how far the new set-up that they propose to have, will work and function properly and well.

What is the set-up that you are going to have? You are going to have the party system as the basis of democracy. It has been claimed in the newspapers that the present Constituent Assembly (Legislative) has no opposition and as such the Congress Party is having its own way. I do not at all agree and I join issue with people holding this opinion. However, whatever the criticism may be, the fact remains that democracy to make itself useful to the country and to the State must have a party system well organised and functioning properly. That being the accepted position, there is no knowing which party will be in power. It may be that a party absolutely different from that in the Centre may be functioning in office in a province. What then would be the position? The Governor, who is a Constitutional Governor under the Act has to be appointed on the advice of the Prime Minister of India, leader of another Party. My honourable Friend, Mr. Kher, made a distinct contribution to this discussion. His contribution is this, *viz.*, the Governor is being appointed in consultation with the Cabinet. If that were so,—I do not know what it is—the selection becomes less objectionable. But reference to the Legislative Assembly discussions shows that the Prime Minister appoints the Governor. The Prime Minister today is one of the tallest of the few men in the world. You may expect justice and you do expect justice in his hands. He has no axes to grind. But there may be a Prime Minister in the Centre who may have his own axes to grind. Is it anything serious to expect that a party functioning with its majority in the province may be interfered with if he proposes to play the role that was just now discussed by my honourable Friend the jurist member, Dr. Sen? Therefore, I feel and join issue with those friends who feel that the set-up that we propose under the new Constitution will be useful. I claim that you cannot have both ways. You cannot have democracy and autocracy functioning together. In the provinces you are going to have democracy from toe to neck and autocracy at the head. Both these are bound to fail; you are inviting friction. I know I will not vote against it because as I have stated I submit to the joint wisdom. But, I must clearly state here and place on record my views and what I see the future of it is going to be. I have experienced myself and I have no hesitation that this experience which I have had in my life will repeat itself. If the Honourable Sardar Patel were here, I would have cited how the Governor, who was an agent of British Imperialism, had all along been attempting to smash my party. What was being done by the Governor under British Imperialism may also be repeated by the party, though I have no hesitation in saying that my leaders would not stoop to or even think in the way in which things were being done.

We are told that this is one of the devices to bring harmony into the provinces. How could you bring harmony? It is impossible. You can never bring harmony by these acts. I could understand my honourable Friend Mr. Brajeshwar Prasad. He has been an undiluted paternal autocracy and he is for scrapping the entire Constitution; he does not have any faith in democracy. I do not agree but I respect his views. You cannot, as I have already stated, have it both ways; you cannot have democracy and autocracy together. My honourable Friend says, if the Prime Minister at the Centre

[Shri Biswanath Das]

who is responsible to the people of India nominates, it could not be autocracy. It will not be democracy either. It may be a nomination of the President under the advice of the Prime Minister; but it really is a nomination of the Prime Minister and in no event could it be democracy. We are giving powers to the villagers; we organise village panchayats. You authorise the Panchayat to elect its President. Would you in this Constitution deny the same right to the Assembly? My honourable Friend Mr. Ramalingam Chettiar had gone a step forward and he wanted to increase the size of the electorate in the province, by bringing in the District Boards, Municipalities in the arena of election. That is one aspect of the question which we may have to explore; but it was rejected. I am not sorry for its rejection; nor have I been pleading for it. What I say is this : you cannot refuse, nor could you justify this refusal to the Assembly to have its own elected Governor. There may be reasons to say, that an adult suffrage elected Governor and a responsible Premier functioning is nowhere in the world and as such not very desirable. That may be justifiable. In fact, when in the 1947 session this was debated, I pleaded with the Members that this would not be proper; but that was not accepted, and as I have stated I am always prepared to respect and follow the joint wisdom of the party and of this Assembly. In that view of the question, I had accepted it. It looks to me that constant change has been the fame and reputation of the honourable Members of this Assembly. We appointed a Committee; it had as its President a person no less than the Honourable Sardar Patel. The unanimous recommendation of the Committee was embodied in this Draft Constitution. Well, Sir, very question was discussed thoroughly in this House and then it was sent to the Drafting Committee. Now, we come forward for such an important and basic change in the set-up of the Constitution. If this is to go on, I think it is unfair to the Members who have absented themselves feeling probably that changes in the Constitution will not be root and branch.

Mr. President : No Member is entitled to absent himself in the hope that his vote will not be required. Every Member is expected to be in his place. Mr. Biswanath Das was saying that some Members were absent in the expectation that the draft would be accepted as it is and therefore I have said that no Member should take anything for granted and it is his duty to be here when the Assembly is sitting.

Shri Biswanath Das : I am thankful to the Chair and also to the Member who has protested against this but is it wrong to assume or at least far too wrong to assume that there will not be changes root and branch because it was once fully discussed in the Assembly?

Shri L. Krishnaswami Bharathi (Madras : General) : Absolutely wrong.

An Honourable Member : Then why have you come here?

Shri Biswanath Das : Another Friend says 'Why have I come here'? I know and he also knows why, Sir, I do not want to proceed with this interpretation. I feel that it is my duty and my responsibility to place on record my view in this matter. Also let me state that I have consulted all the Members of the delegation from Orissa and Orissa States and all of them agree with my feeling that this will not work properly.

Shrimati G. Durga Bai (Madras : General) : Mr. President, Sir, I stand here to support the amendment moved by my Friend Shri Brajeshwar Prasadji and supported by my Friend Mr. Kamath. Sir, I must frankly confess that I also for some time held the view that the system of election by direct vote

would be a better one compared to every other system. But I should say that I have changed my views in the matter because I am one of those who have given some thought to this question and come to the conclusion that the proposal of nomination or appointment as suggested in the amendment is a better one in the circumstances that we have today. Sir, I find that those friends who opposed this proposal of appointment by the President did it mainly on two grounds, that it would be inconsistent with the principle of democracy and also it would be giving too much power to the President. With regard to their fear that the ideal of democracy would suffer a good deal if people were deprived of their right of franchise in favour of Governor and that the ideology behind that—the freedom to exercise their vote—would be defeated if this power is given to the President, I may say that the usefulness or otherwise of any institution should be judged by the results that ultimately the institution would yield. Certain functions are expected to be discharged by the Governor. We wanted to introduce the Governor in our Constitution because we thought that an element of harmony would be there and that institution would bring about some sort of understanding and harmony between the conflicting groups of people, if really the Governor is conscious of his duties and he functions well. It is only for this purpose this is proposed, the governing idea is to place the Governor above party politics, above factions and not to subject him to the party affairs. Now, we find a section in the draft article 135 wherein it is said that he is not to be a member of either of the Legislatures or, even if he was a member at the time when the choice may fall on him, he is expected to resign before he is appointed or elected as Governor. The idea behind it is that he should be above party politics and party factions. May I ask those friends whether this idea would be realised if we make him dependent upon the mercy of the people and make him subject to party affairs? If he is to depend on the mercy of the people for votes, I am afraid the idea that he would be a harmonious element in the constitution of our country would not be realised. Therefore, I feel that the election system as proposed by some, as against the amendment, is very dangerous. The other point which my Friends who opposed nomination is that it would be giving too much power to the President. May I ask whether the President does not mean his Prime Minister, and the Prime Minister in his turn would not consult his colleagues before making the choice? Those in favour of this system of appointment said yesterday that a happy and healthy convention would grow of consulting the Provincial Prime Ministers. I think already the system has grown and is growing that whenever a Governor is appointed to a province, the Chief Minister of that Province is invariably consulted. Therefore I think the fear of my friends that the President would not discharge his responsibilities well and in the interest of the country is absolutely groundless. Therefore it would be quite safe to leave the entire responsibility to the President and I do not see any danger why we should not leave it if that could be discharged with great caution and I may tell my friends that the person who is to take the responsibility of such a magnitude would not easily take it and would take it after a great hesitation because he knows that he has got to face the criticism of my friends like Shri Rohini Kumar Chaudhary or Shri Biswanath Das or friends who oppose this idea and who are afraid of giving this power to the President. Therefore, I suggest that there is absolutely no danger and it is always open to those people to go and tell the President that whenever a man is not wanted why he is not wanted and therefore he is to be removed on certain grounds.

Therefore, I feel that there is absolutely no danger in that system of appointment and I urge on my friends to be convinced by this argument that this would be a safer method in the present circumstances. The Drafting

[Shrimati G. Durga Bai]

Committee itself has changed its view and has put forward an alternative proposal, *viz.*, to appoint one of the four candidates out of a panel of four candidates to be elected by the Houses. Sir, this is a proposal which has no counterpart or similarity in the whole world and also it is impossible to defend this panel business on its merits. I would say that this will not carry any responsibility but on the other hand carries all the disadvantages of a divided responsibility. It carries no responsibility of either the President or the Cabinet or the Provincial Cabinet because the responsibility here is very much divided. In this panel system there is this danger that if the votes recorded vary, as they are bound to vary, and if the President happens to pick up a man who has secured less number of votes, the person chosen will come into clash with the Provincial Legislature. Therefore he would be naturally unwilling to take up that responsibility. Ultimately, therefore, it would resolve itself into an election by the House itself. An election or appointment which rests on the House, I do not think, carries much importance.

I should also say that the system of proportional representation would not improve matters in any way. That will only produce the effect that it would divide the whole House into warring groups and it will also produce all the disadvantages and defects of the French system. This experiment of panels and appointment from the panel is already tried in some of our universities today and it cannot be said that this has worked well. Every appointment has resulted in a disappointment. Ultimately, the defeated candidate, transforming himself into the opposition, has brought about a lot of trouble to the Vice-Chancellor. Therefore, I do not see any reason why we should not have recourse to the simple and straight procedure of appointment by the President. Sir, with these words, I heartily support the amendment of Shri Brajeshwar Prasad.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President Sir, I consider this clause as one of the most important ones in the Constitution. We have modelled our Constitution on the British model, and in that model there is the King and in ours we have put our President in his place.

The King, in the Constitution, has almost no function, he is a cipher; but the cipher is on the right side of the digits, and it is very well known that the King exerts a powerful influence on the politics of England. I therefore say that if we are modelling our Constitution on the British model, we must give our President and Governors the dignity that the King enjoys in England. I feel that this dignity cannot be given to the Governor if he is a nominee of the President. If he is elected by the adult votes of the people, then alone can he get, can he acquire the dignity that the King enjoys in England. He has a dignity which surpasses that of all other persons. If we are trying to shape our Constitution on the British model, then we must not forget the fact that the Governor must not be a mere figure-head but should have the dignity and prestige of the King. At present the Centre has appointed Governors in all the provinces, but they have not the necessary prestige. I know many of them would not have been elected if they were to be chosen by election. I am not happy about the appointment in my own province, and I feel the people of my province would not have elected the Governor who has been appointed there. This practice if continued will defeat the purpose of the Constitution which is modelled on the British model.

Secondly, it has been said that if the Governor is elected, he will have greater prestige than the Premier of the Province, and then there will be clashes. I do not see why it should be so. Both these elected persons will be patriots and will love their province, and the country. They will try

to show, when they work, that they can work in the interest of the province. They will show that, when they both occupy these high offices, they can adjust their personal predilections, and work in the interest of the province. I see no reason why there should be any clash. Most probably the Premier and the Governor will be elected by the support of the majority party, and so probably they will both belong to the same party. Even if they are not of the same party as will happen only when parties are very evenly balanced, and if one party gives the Premier and the other the Governor then both the parties will have to co-operate and, this will ensure co-operation of all the voters, and so the province as a whole will have the benefits of the co-operation of both sections of the House. So no clash need be apprehended. These great men whom the people of the whole province will elect will be wise enough to devote all their abilities to the good of the province. They will never quarrel, and they will see that all quarrels are subordinated to the interests of the province.

Then it has been said that there need be no fear that the Centre will have too much power. Already we have invested the President with a lot of power, and it has been said that we do so because he is not a party man. He is to be elected by all the legislatures. Therefore he need not be a party man. But the President will act on the advice of the Prime Minister. So the party in power at the Centre will nominate all the Governors in all the provinces. It will also nominate all the Judges of the Supreme Court and other big officials. That is not a good thing. I cannot subscribe to the view that a single person should have the power to nominate all these high officers. We should remember that absolute power is not a good thing. It corrupts absolutely. If we clothe one single person, the Prime Minister, however good he may be, with all these powers—and all may not have the caliber of the present Prime Minister, and there might be some Prime Ministers who might misuse this power—it will be dangerous and it is not proper to give the President acting on the advice of the Prime Minister the power to nominate the Governors. We are also providing that the Governor will have the power to take over the affairs of his province in the event of an emergency. This he cannot do, unless he enjoys the confidence of the people of the province. He will not have the confidence of the people unless he is a man elected by the people, and they will not let him take over the powers in an emergency. So the Governor must be elected by the people.

It has been said that the Centre should have over-all powers over the provinces. If the idea is to have a single unitary constitution, I would have welcomed it. But now with the present Constitution as it is, we must leave it to the patriotism of the people of the provinces to try and to act in such a way that the Centre is powerful and that they are working in co-ordination with the Centre. And if the people are left to themselves, they will see that the Governor is such as will co-operate with the Centre and discharge his functions in the interests of the country. We must trust the people and their patriotism.

It has been said that election of the Governor by adult suffrage would be a very difficult task. But we all know that all the members of the Assemblies will be elected by adult suffrage. Along with the election of the members, the Governors can also be elected at the same time. I submit that the powers of the Governor should not be given to a person who does not enjoy the confidence of the whole people. The original suggestion of Dr. Ambedkar should be the one that should be accepted.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I would not have intervened in this debate at this late stage had it not been for the remarks that fell from my Friend Mr. Biswanath Das. I am afraid the remarks

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are likely to be understood in an unfortunate manner, if the whole position relating to the new amendment was not placed before the House at this stage.

It must be remembered that in 1947 when this question was discussed in the joint sitting of the Union Constitution Committee and the Provincial Constitution Committee there were two diametrically opposed views. That was in the beginning of the career of the Constituent Assembly. One view was that India as a whole should adopt the American model and the other, that it should adopt the British model. At one time the general opinion fluctuated from one to the other. Ultimately, however, so far as the general opinion was concerned, it veered round in favour of the British model both in the Centre and in the Provinces.

There was an intermediate position which some people favoured. It was felt that if at any time it was impossible to form a majority government either in the Centre or in the Provinces and there was fragmentation of political parties, a strong President and Governor elected on adult franchise and backed by the authority of the electorate would give stability to the Government.

When this proposal was mooted, a curious situation arose. With regard to the Centre that opinion was not upheld, it was decided that the President at the Centre should be a constitutional head and should not be directly elected by the adult franchise of the whole country. But the position of the Governor remained as it was in the old scheme. The co-ordinated scheme of both the President and the Governor being elected by adult franchise, so that they would have prestige in the country and power to stabilise Government, was this broken up. After we have adopted the British model, the election of the Governor by adult franchise in the province remained an anomaly, a completely out-of-date and absurd thing. Imagine a Governor being elected by adult franchise of all the citizens in a province. The persons who are at the top of the political life of the province would sooner prefer to be the Prime Minister and Ministers with effective power in their hands. Therefore, the party in power when it goes to the election will put up a person who is not as outstanding as the prospective ministers for that office of Governor, with the result that the best man in the party will not be available for it.

The expenditure and energy of a province under election would have been wasted in putting a second rate man in the party at the head of the Government. That would mean that he will be subsidiary in importance to the Prime Minister, as he would be his nominee. If that is going to be the case, there is no reason why the farce of a huge election has to be undergone.

In April last, both the Committees met again, considered this question and ultimately came to the conclusion that as the post of an elected Governor would be completely useless from the point of view of his having any controlling voice in the government, there was no need for going through the process. It was also felt and very rightly felt that if one member of a party was elected by the adult franchise of all the citizens, while the Prime Minister was there as only the leader of the majority party in the Legislative Assembly, in the event of a conflict between them, the position of the Governor may be superior to that of the Prime Minister. With the prestige of a general election by adult franchise he might seek in a given contingency to over-ride the powers of the Prime Minister. That would inevitably lead to a conflict. This possibility has to be obviated. The present scheme is that the Prime Minister who is the leader of the majority party should, like the Prime Minister of England, have the controlling voice in the affairs of the province or the government. Having two persons like that in a province might lead to an unfortunate

situation in the provinces. It was from that point of view that the Joint Committee ultimately decided that the best way would be to eliminate the election of the Governor.

The danger becomes clear, if you see the old scheme, part of which is given in article 144(6). It says "the functions of the Governor under this article with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion." So discretionary power was given to him to dismiss or appoint ministers. This is a very much wider power than could be exercised by a constitutional head of a province. Therefore this power is going to be removed. If that is so, the government in the province will be more in the nature of responsible government after the British model.

We have to consider the position only in this way. Would it ensure for the better government of the province to have a nominated governor or an elected governor? If there was a nominated governor, his power of dismissing ministers at his discretion naturally would go. He would remain a constitutional head. The Government would be practically run by the Premier and his party so long as the ministry is stable.

My Friend Mr. Alladi Krishnaswami Ayyar drew upon the analogy of Canada. With great respect for his profound learning I beg to differ. I do not think that the Governor that we envisage by this amendment, namely a nominated governor, is on the same lines as the Governor of Canada who is more or less an instrument of the Government of England, though a constitutional head. Here he will be nominated, no doubt, but his power, if the government is stable, will only be confined to what is contained in article 147, that is, he may submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council. Therefore there is nothing of importance that he has to do except to ask for a reconsideration of certain decisions. Consider this again. Would it not be better to have an independent person bringing a detached frame of mind on this question rather than have more or less a nominee or a follower of the Prime Minister himself, if he has to perform this function? Therefore from that point of view during a stable government it would be much better to have an independent person to advise the ministry.

The other advantage of a nominated Governor is this. Take the case where there is no majority party or the majority party is split into two or more sections and there is a rivalry for premiership. In that event a person who is completely detached from party politics of the province would be much better than a person who is wedded to the party. If for instance, as unfortunately it has happened in some provinces, the Congress party splits up into two groups and each puts up a prospective premier of its own what would be the position of an elected governor who will more or less be a follower of one or the other prospective premiers? It would lead to unnecessary complications in the affairs of the province. It would be much better that this person is nominated and thus cut away from the party politics of the province, so that the competition or the race between the rival groups is conducted in a fair, responsible and constitutional manner. All things considered, it would be better to have a Governor nominated by the Centre, who is free from the passions and jealousies of local party politics.

Then take the contingency under which article 188 comes into operation. That is a case of an emergency when the Governor has to exercise his discretion. He has to report to the President and act under that the section for a period of two weeks. In that event also if there is a real emergency

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in the province, a person who is not connected with the party politics of the province would be able to discharge that duty much better than when he is completely identified with one or the other group.

Article 188 implies that the conditions in the province are such that a stable government cannot possibly be carried on. If that is so, then it is advisable that a person who is connected with this or that party should not occupy this important position for he would, in that event, be responsible for the maintenance of public tranquility in that province.

Take the further stage envisaged in article 188. When the constitution of a province is suspended, a person who has the confidence of the Centre would be of much greater use in restoring the stability of the province than a person who is associated intimately with the politics of that province.

This view ultimately gathered strength from last April. It is not correct to say that this decision was placed before the party at the last minute or that there was no sufficient discussion upon it. A very large number of members have come to the conclusion both from the constitutional point of view as well as from the point of view of the country as a whole that the Governor should be nominated person.

From all these points of view I hope the House will accept the amendment unanimously.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, this debate has already elicited so many speeches that probably every conceivable argument for and against this proposal has been placed before the House. I do not know what I can add to it. I can well understand a certain amount of hesitation on the part of the House to reconsider something that it has already decided. That is right. Nevertheless it is pertinent to remember the time when we considered this first. It was in July 1947, when my honourable colleague, the Deputy Prime Minister brought this matter before the House and the House then passed it. Nearly two years have passed—two years which have made an enormous difference to the Indian scene. And if we seek to reconsider something that we have passed two years ago, before the 15th August and in view of all that happened after the 15th August 1947, it should not appear to be a strange thing to do, for we have had a great deal of experience, bitter experience during this period. I submit therefore that it is perfectly open to us not only, as of course it is in law, but in reason to reconsider this matter. In fact in the course of the last year on numerous occasions Committees of this House considered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. There was the Union Powers Committee: there was the Provincial Model Constitution Committee of which my colleague the Deputy Prime Minister was the Chairman. After all these considerations and discussions those committee felt that a certain change was desirable. Thus even those like Sardar Patel, who themselves put this forward in this House the other view, felt that change would be desirable.

Now the reasons for this have been stated before the House and I need not go into them, except to say that I myself originally was not very definite, if I may say so, in my mind as to which would be the preferable course. I preferred something but not to the extent of considering it as absolutely necessary. But the more I thought about it, the more I conferred with others and discussed with them, the more I felt that from almost every point of view this proposal that is moved of a nominated Governor, in the present context of the Constitution, was not only desirable from the practical point of view but from the democratic point of view too it was desirable and worthwhile.

Now, one of the things that we have been aiming at a great deal has been to avoid any separatist tendencies, the creation of groups, etc. We have decided that we will not encourage communalism: we have abolished separate electorates and reservation of seats, etc. We have yet to deal with many other separating factors. We cannot deal with them by law of course. We have to deal with minds and hearts. Nevertheless certain convention and practice helps or hinders the growth of separatist tendencies. I feel that If we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre. There would, normally speaking, almost inevitably I imagine, be a Governor from that particular province who stands for the governorship. As has been stated he might be some kind of a rival almost in that particular majority group, which for the moment controls that government of the province. Then there will be these enormous elections on the basis of adult suffrage. Apart from the tremendous burden of these elections for the provincial and central legislatures, to add another election on this major scale would mean not only spending a tremendous deal of the energy and time of the nation but also the money of the nation and divert it from far more worthwhile projects. Apart from this it would undoubtedly mean, I think, encouraging that rather narrow provincial way of thinking and functioning in each province. Obviously, the provinces have autonomy. Obviously, the provincial governments will function in a provincial way representing the people. But are you going to help that tendency by also making the provincial Governor much more of a provincial figure than he need be? I think it would be infinitely better if he was not so intimately connected with the local politics of the province, with the factions in the provinces. And, as has been stated by Mr. Munshi, would it not be better to have a more detached figure, obviously a figure that is acceptable to the province, otherwise he could not function there? He must be acceptable to the province, he must be acceptable to the Government of the province and yet he must not be known to be apart of the party machine of that province. He may be sometimes, possibly, a man from that province itself. We do not rule it out. But on the whole it probably would be desirable to have people from outside—eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally, while co-operating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that that policy might be carried out, he would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine. I do submit that that is really a more democratic procedure than the other procedure in the sense that the latter would not make the democratic machine work smoothly.

After all what is the test of a democracy? Carried to extremes it may be perfectly democratic in the sense of elections everywhere but this may produce conflicts, with the result that the machine begins to creak. Look round the world today. How many governmental machines are working smoothly: how many are creaking and how many are cracking up all the time for political or economic reasons. There are very few stable democratic machines anywhere. In providing for a stable democratic machine it is very important for us not to take any step which might tend towards loosening the fabric of India or loosening the governmental machinery and thus producing conflicts. We have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and I think we should always view thing from this context of preserving the unity, the

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stability and the security of India and not produce too many factors in our constitutional machinery which will tend to disrupt that unity by frequent recourse to vast elections which disturb people's minds and at the same time divert a great deal of our resources towards electoral machines rather than towards the reconstruction of the country.

We must base democracy on the electoral process. We have done it. But the point is whether we should duplicate it again and again. That seems to me unnecessary, apart from leading to conflict and waste of energy and money and also leading to a certain disruptive tendency in this big context of an elective governor *plus* parliamentary system of democracy. Therefore I should like to support fully the amendment proposed that the Governor should be a nominated Governor.

One word, more, Sir. I think that an elective governor is almost invariably not only likely to be of that province, but is likely hardly ever to represent any of the numerous minority groups that exist in the country. Normally, of course, the majority will probably have this for one of its members. But it is obviously desirable that eminent leaders of minorities—I use the word for the sake of simplicity; in future I hope we will not use the words 'majority' and 'minority'—eminent leaders of groups should have a chance. I think they will have a far better chance in the process of nomination than in election.

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. President, Sir, the intervention of our Prime Minister in this debate has loaded the dice and it is useless for me to speak against him. But yet, for the sake of being consistent in my principles, for the sake of the large population outside this House—I mean the entire population of India—this matter ought to be discussed thoroughly. The amendment which is being debated now goes to the very fundamentals of the frame of the Draft Constitution. The drafters of the Constitution, acting on the mandate that they received from the Constituent Assembly, drew up the principle of election for the governors of the provinces. The present amendment cuts at its very root and wants to lay down that the Governors should be appointed by the President. So this matter needs to be discussed very dispassionately, especially as the amendment wants to set aside the previous judgment of the Constituent Assembly. We should literally draw up a balance sheet of the advantages and the disadvantages of the principle of election and of the principle of appointment so far as the governors of the provinces are concerned. The supporters of the amendment lay stress on three different points on account of which they believe that "appointment" is the better arrangement. I will enumerate them one by one. Firstly, that an elected governor alongside an elected Premier of a province will go against the smooth working of the province and will be a negation of democracy. Sir, I contest every word of this objection. The country is now divided into different political parties or rather, the country is now governed by one political party.

Shri Mahavir Tyagi : Every country is governed by one party.

Syed Muhammad Sa'adulla : I refuse to be side-tracked by Mr. Tyagi. To continue, I challenge every word of the argument put forward. The country is now being ruled by one leading political party. In a province, it is more likely, under the principle of election, that the Governor as well as the Premier will come from the same ruling party. The result will be that the administration of the province will run smoothly, the Premier and the

Governor working harmoniously. Moreover, we want that India should be a secular democracy, a republic engendering the idea of the citizens, right to have a say in the administration of the country. The elective principle gives that right to the citizen to have a say in the appointment of even the ruler of his province. Again, we have nurtured our people in the expectation that the principle of election adopted two years ago will be left undisturbed. As against that we are told that an appointed governor will lead to democracy and better administration in the province.

Sir, it is said that in the provinces there are party factions and that passions will be roused and therefore the Governor as well as the Premier will be constantly at loggerheads. How can you assume that an appointed governor from another province will help smoothen the administration of a province? We were told yesterday, a leading politician from Western India may be sent by the President as governor of a distant and benighted province like Assam or Orissa. It is said that this political luminary will carry a detached mind. He will be unbiased. He will not be embroiled in the politics of the province. Therefore he will be able to bring a disinterested mind into consideration of the affairs of the province. I grant all that. But in addition we must look into this one potent factor that this gentleman will carry an empty mind so far as the conditions of the province are concerned. To many of the western politicians, the conditions of a distant province like Assam or Orissa are completely blank. I have talked with many politicians in my time and I am appalled at the ignorance of even the best informed so far as conditions in the east are concerned.

Therefore, Sir, it cannot be said that the mere appointment of a Western India politician to the Governorship will lead to better administration in the province.

The next point that I would place before you is this: How do we assume that the Cabinet in a province will be of the same political party as the Governor who is appointed to that province? Then conditions will be worse and worse confounded. The Governor under instructions from the Centre will try to run the administration in a certain way, while the Cabinet of a different political party would try to run it in their own way. Ultimately in this tussle, the Cabinet must prevail and for the purpose of good government, the Governor appointed by the President would have to be recalled. I think this is a contingency which is not far in the distant future. I submit, Sir, that good government is better than an ideal government. If good government is accompanied by self-government then it is better than even mere good government. Therefore, the principle of election is far more compatible with the good and efficient governance of a province, plus the right of self-government.

The second objection that was raised against election is the bogey of expenditure. I said bogey, for not a single pice more than will be necessary in a general election in a Province will have to be spent if a Governor is also to be elected. Sir, I have experience of elections from the year 1911, very nearly forty years. From what I have seen, in general elections, the elections for the provincial legislature as well as the Central legislature are held simultaneously. In the polling booths there is one box for the provincial election and another box for the Central election. There is no additional cost. The same Polling Officer is there; the same Returning Officer is there

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and all the polling staff is there. The voter has simply to put in his vote for the provincial legislature in one box and his vote for the Central legislature in another box.

The Honourable Shri Satyanarayan Sinha : (Bihar: General): If there is bye-election?

Syed Muhammad Sa'adulla : I am talking of a general election, which is the rule. In talking of a bye-election, you are talking of the exception. You cannot condemn a rule because of the exception. I therefore say, Sir, with all the emphasis at my command that in those circumstances there will be no additional expense in the election of a Governor.

Lastly, it has been said, and learned jurists have been brought in to support the idea, that elected Governors are really nowhere to be found; everywhere he is appointed, barring, of course, the U.S.A. We are told that the Canadian system ought to be followed. Well, the Canadian system may be good for conditions prevailing there. One jurist contradicted the other—I refer to my colleagues in the Drafting Committee, Shri Alladi Krishnaswami Ayyar on the one side and my friend Mr. K. M. Munshi on the other. Mr. Munshi said that the Canadian system cannot be ideal for India. Granting that we followed the Canadian system, we will have to put in a rider, a big proviso, that conventions should be established whereby the provincial Cabinet will have a say in the matter of appointment. This was suggested by Shri Alladi. Here comes the whole question, Sir. According to the Draft Constitution, the Governor has to be appointed first and the Governor would then ask the leader of the largest party in the legislature to form a Ministry in a Province. Now, where is the Ministry to be consulted before the Governor is appointed by the President? Take again the case, as I have already said, where the majority of the members of the provincial legislature is composed of a party different from the party in power at the Centre from which the President is bound to be chosen. Then the nominee of the President cannot but be of his own party, and he and the majority party in the provincial legislature will surely come to loggerheads.

Shri L. Krishnaswami Bharathi : Not necessarily.

Syed Muhammad Sa'adulla : We who have been condemning the British system of appointing Governors from the I. C. C., we who have used every kind of slogan, in order to remove that system of nomination or appointment by an outside body, we who are enamoured of the democracy of the U.S.A., cannot do better than follow the elective principle in the appointment of our Governors. I know that the advocates of the *status quo* in the Draft Constitution are up against a very strong stone wall. We cannot pit our strength against the on-coming tide. We have been told by speaker after speaker that originally they were all for the elective principle but they have now given deeper thought to this matter and they are now enamoured of the principle of appointment. Well, Sir, they are welcome to this change in their opinion, but those honourable Members have not the monopoly of the ability to concentrate their thoughts or of being better patriots. We too have thought over the matter with as much calmness and with as much consideration of the best interests of the country, and we are convinced that the elected Governor is far more in accord with our notions of democracy than an appointed Governor. Sir, the country is now being ruled by a certain party—I mean the great Congress Party. Although opinion among this great Party is divided and although this is an important fundamental matter in which each individual member ought to have been allowed a free vote, what do we

find Sir? A ukase has been issued, the fiat has gone forth and a party whip is being distributed to every Member whether he is a member of the Congress Party or not that every Congress member.....

Shri L. Krishnaswami Bharathi : On a point of order, Sir, is the honourable Member in order in bringing in the Party decision and all that?

Syed Muhammad Sa'adulla : The whip has been distributed on the floor of the House and in fact I have also been given a copy.

Mr. President : I am afraid some other honourable Members also have brought in the name of the Party. That way the discussion here becomes very unreal. When one of the members spoke, he said he was opposing the amendment, even though, when the time came for voting, he would vote in its favour. I thought that discussion might come to an end at that stage.

Syed Muhammad Sa'adulla : All I was going to say was about party strength in this Constituent Assembly. This august House has a total of 303 Members at present; if I remember aright, Sir, the Congress Party controls 275 votes and if members of the party are to follow the ukase, there is no chance for any other opinion to prevail. I simply take my stand, as I said, in all humility after the speech of the Honourable Pandit Jawaharlal Nehru only to record for future generation the other side of the issue.

Shri T.T. Krishnamachari : Mr. President, Sir, after the frank speech of the Honourable the Prime Minister, I do not think it is necessary to convince anybody of the need for a change or a reversal in the decision of this House in regard to the selection of the Governor of a province. But, Sir, there have been a number of speakers, very erudite lawyers, experienced administrators, and as it often happens when feelings run high, both the supporters of a proposition and those who oppose it over-pitched their arguments that they seek to put forward; and if anything, Sir, those people who have been opposing this amendment have raised this bogey of concentration of power in the Centre, of deprivation of the powers of the Provincial Government, of stifling the spirit of democracy and so on. On the other hand, those who supported this amendment, have drawn freely from analogies in other countries, analogies which, it must be admitted, have a very limited application to the circumstances of the case as it prevails in this country. Sir, I take it to be my duty only to dispel one or two misconceptions that arise from some of the previous speakers painting the picture rather in a highly coloured manner, and also to answer one or two arguments that have been put forward by my respected Friend, Syed Muhammad Sa'adulla, and which I think, had better be controverted at this stage,—because his arguments looked extremely plausible and extremely reasonable— but which on a careful examination reveal that they are neither plausible nor reasonable. I would like to refer to the arguments used by my respected Friend, Mr. Alladi Krishnaswami Ayyar yesterday, in a very eloquent speech in which he drew freely from the Canadian example, of the appointment of the Lieutenant Governor by the Governor-General of Canada. I will ask the House to examine the whole question for themselves, and they will then realise that my honourable Friend M. Alladi Krishnaswami Ayyar, had no intention of using that analogy as anything more than an analogy, and he had no intention of asking this House to accept the entire scheme that obtains in Canada in regard to the appointment of the Lieutenant Governor.

Sir, I would like to tell the House that when we borrow from the example of Dominions like Canada and Australia, we forget that what obtains in those countries today is something totally different from what they were in the beginning. For instance, in Australia the appointment of the Governors until the passing of the Statute of Westminster was done in the same way as it is

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done in any colony. The position of the Governor in an Australian province was that he was directly responsible to the Minister in charge of Commonwealth Relations or whatever it was called at that time in London. He had direct access to Whitehall: he could correspond direct and he often got instructions direct from the British Ministry concerned because it was only after the passing of the Statute of Westminster that Australia was recognized an undivided unit and the system of British Ministers directly corresponding with the Governors of the various provinces, was allowed to pass into desuetude. In regard to Canada where the constitutional position as it was some time back bore some analogy to conditions in this country, there is one particular principle that is in operation on which I would like to lay some emphasis which will have no application to this country at all. It is avowed by every writer on the Canadian Constitution that the whole scheme of the appointment of Lieutenant Governors and the control that the Dominion exercises over the provinces is such that the ultimate control is in the hands of the Dominion Government. Actually under the Canadian Constitution the Cabinet of the Dominion issues instructions to the Lieutenant Governors; in fact they have exercised their discretion in removing the Governor. Two instances are known in which the Governors have been removed. The Lieutenant Governor in a Canadian Constitution acts as an agent of the Dominion Government. I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future Governor who is to be nominated by the President to be in any sense an agent of the Central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of Government we envisage for the future. While considering the scheme of the distribution of powers which will ultimately be settled by this House, if it is found necessary that the Centre must have some powers reserved for itself in order to ensure good Government in the provinces, in order to enable it to interfere when the need for such interference arise we can adequately provide for that contingency in the distribution of powers. There is no need for us to adopt an outworn system, a system which has grown, because of historic traditions, because of that figment of imagination which was actually translated into practice by British Ministers, namely, the preservation of the prerogative of the Crown in the Dominions. We have no need to use that particular system not to impose the will of the Centre, if it is necessary and if circumstances make it necessary, on the provinces by means of making the Governor the agent for the purpose. Sir, I think much of the objection that has been raised to this idea of nomination would fall to the ground if this point is understood. We do not want either by this particular article or by any other article that will be passed by this House in future to make the Governor of a Province an agent of the Centre at all. The utility of a nominated Governor has been very fully dealt with by the Honourable the Prime Minister and I would like to tell Syed Muhammad Sa'adulla this: Notwithstanding his conviction, notwithstanding the fact of these years of struggle against British Imperialism which people have carried in various ways and which Syed Muhammad Sa'adulla has carried on within the cabinets functioning under the British Governors, we are fully convinced that we do not want to give up the system of election where it is necessary; at the same time we do not want to duplicate the system of elections.

I agree with one point made by my honourable Friend Mr. Sa'adulla that the argument that is being advanced, that the election of a Governor will be an expensive matter, is certainly beside the point. Democracy is an expensive affair. If this House wants a democracy, it has got to go through the expenses of an election, once, twice, thrice, as many times as it is necessary. I quite agree with him that he expenses, annoyance, and the work that has got to be done, that is being quoted as an insurmountable factor against the principle of election, is beside the point.

What is really material, and what, I think, will probably ultimately persuade the House to support the motion before the House is that we are really providing for there being no room for any conflict. This point has been made clear by many speakers, notably by the Prime Minister. Two persons, having more or less equal authority, one elected more directly with a certainty of tenure—mind you, he has a tenure of five years unless he could be in the meantime impeached,—and the other person, whose tenure cannot be guaranteed even for half an hour, these two people coming together, there undoubtedly will be conflict. If you want election of the Governor by adult suffrage, there is at least something to recommend it. The question of division of spoils in the case of a party which has got a hold over the province cannot be done to its fullest extent, because there is uncertainty about the election of the Governor and uncertainty about the election of the aspirant for Chief Ministership as the leader of the party. If, on the other hand, we adopt the alternative that the Drafting Committee has recommended, namely election by the legislature of a panel, then, it becomes a matter of mutual adjustment between two powerful persons in the majority party of that particular province, one saying to the other, “you shall be the Governor and I shall be the Chief Minister.” I do feel, Sir, that if I am given only these two alternatives, election by adult suffrage and election by the legislature, I would much rather vote for election by adult suffrage. It does not mean that I like the idea, for the reason that we do not want to create here and now the seeds of conflict in a province by duplicating election in regard to the two important offices in the provincial administration.

It has been said by my honourable Friend Mr. Sa’adulla that he fails to appreciate the reasons that several Members in this House have given for changing their point of view from what it was two years back to what it is today. (*Interruption*). My honourable Friend Mr. B. Das is not audible. I would only say this in explanation. I think the reasons that I am adducing are those which are still oppressing my honourable Friend Mr. Sa’adulla. He just now said how we are admirers of the United States Constitution. Yes; we are admirers of the United States Constitution. But, we have not adopted that Constitution. We have not adopted that Constitution because we believe and I believe very firmly that the genius of the Indian people is most suited to a Parliamentary democracy. If two years back we imported this principle of election for the Governor, it is due to the very fault under which my honourable friend is now labouring that was oppressing most of us. I was not one of them undoubtedly. We were trying to frame a constitution and in doing so tried to introduce various safeguards from various constitutions. Our mind was not very clear whether our future constitution was going to follow an entirely Parliamentary system or was going to be partly Parliamentary and partly Presidential. I think it is really a tribute to the leaders in this House that they kept an open mind right up to the end. They went on examining the question at various stages and finally came to the conclusion that we shall adopt an entirely Parliamentary system of Government completely free from any taint of the President system. Let me tell my honourable Friend Mr. Sa’adulla what the position of the legislature *vis-a-vis* the Governor is in the United States. The legislature is not summoned for a year in some States. I suppose in certain States the obligation to summon the legislature for passing the budget does not even exist. The meagre information that we have in regard to the working of the States in the United States Constitution, only makes us glean a little from side remarks here and there. I was reading recently a text book by Justice Roy Jackson, on the supremacy of the judiciary in America, wherein I found a categorical statement that in certain States, the legislature is not summoned for two years. The position is, either you make the legislature supreme or you make the Governor supreme. If you adopt the Presidential system, the Governor is supreme. Under the Parlia-

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mentary system, the legislature and the leader of the majority party in the legislature will be supreme. The choice is obvious; and that choice is logical. That is why we have come to this choice of a nominated Governor.

I would like to go back to the reference made to the Canadian example. Let not this House or the people outside be brought to think that we are borrowing anything from the Canadian example. Our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned, which particular person will have a veto,—and I think conventions have already grown in that direction,—and the person so selected will be a person who will hold the scales impartially as between the various factors in the politics of this State. The advantages of having a non-party man, a non-provincial man have been amply made out by the Honourable Prime Minister. I would only say this. My honourable Friend Mr. Sa'adulla was imagining a contingency which might perhaps exist in the initial stages, but which cannot exist for all time: How is the Chief Minister to be consulted? We are going to have new elections; there are already Governors appointed by the President or the Prime Minister of the Central Government. How could it be that the Chief Minister will be consulted in regard to the continuance or otherwise of the Governor. Will there be a re-appointment of the Governor after new Chief Minister takes charge? Hard cases do not always make bad law. In the transitory stages, certain incongruities of this nature are bound to occur. He has himself said that just because a particular thing is wrong, you cannot condemn the whole scheme. It is quite possible that the Governor of a Province who now functions would be quite willing to accept a re-nomination if necessary, or to go out if the provincial Chief Minister who will come into office does not like him. If they would like to have a man of their choice, if they would like to have a man whom they have selected, I have no doubt, that if we have a Prime Minister of the stature and outlook of the Honourable Pandit Nehru, he will be the first person to leave it to the provincial Chief Ministers to have their own way. I think that formidable contingency which was worrying my honourable Friend Mr. Sa'adulla will be met, provided the Prime Minister of India will be person who understands democratic principles and would always follow them.

One word more, Sir, in regard to some of the remarks of Pandit Hirday Nath Kunzru. I quite agree that the remarks made by him are out of genuine misgivings because, he felt doubts. I would only say this. In regard to the articles as they appear further down in this Draft Constitution, I have no doubt it is the intention of the House to change and shape all those articles to fit in within the changes made earlier on. If he wanted that the provisions of article 175 in regard to reservation of Bills should be specific, let us make it specific. If my honourable Friend wants that the views of the Central Government must be made very clear in regard to those subjects in which the Central Government has got an interest, and the responsibility for reserving the Bills should not be laid on the Governor, thereby creating an atmosphere of odium for him and creating bad blood between him and the Chief Minister, let us make it clear at the appropriate place. Let us say that in such circumstances, in regard to concurrent subjects, the Governor may ask for instructions from the President. We can make it clear beyond doubt.

In regard to article 188, I have a word to say. Article 188 has been viewed as something isolated altogether by itself, without reference to article 278 on which it is entirely based and it is said that that gives special powers to the Governor and makes his Chief Minister a puppet. Article 188 is merely intended to give the man on the spot an initiative for a very short period of fourteen days. Often times it may happen that it may be seven days or five

days. I shall ask my honourable friends in this House to read article 278 and amend it if necessary. Article 278 definitely says that the President who will come into the picture within a fortnight, will have the support of the Parliament. All that it seeks to do anyway is to transfer the responsibility in the case of a province where the administration is bad or where the conditions are such that strong action is needed, from the province to the Centre. In the Centre, we do not envisage having an irresponsible Government. We shall have a President who is controlled by his Prime Minister and the Prime Minister is in his turn controlled by Parliament ultimately. Article 278 clearly lays down that the President cannot act *suo motu*, of his own accord, and that he will have to take the Parliament into his confidence. If one-man rule or the rule of the Central Government by giving directions to the Governor is to continue, that will be done only by the authority and sanction of Parliament where the provincial representatives who will be in large numbers and will be able to represent the views of the province. I have no doubt that no Prime Minister of India of the future would ever completely disregard the views of the representatives of a particular province when taking such drastic action as is contemplated in article 188 in regard to a particular province.

Sir, I do not want to take up the time of the House further so much has been said on this aspect but I would be failing in my duty if I do not mention a word in regard to the possibility of voting on the motion before the House envisaged by my honourable Friend, Syed Muhammad Sa'adulla. It is unfortunate perhaps that the state of the country has been such that there is only one party that took the lead in the matter of the liberation of this country and the other party which could have co-operated effectively left this country bag and baggage and went away somewhere else, and it is not the fault of the Congress Party which happens to be the only party that fought for the freedom of the country and therefore has a large number of members returned here. But at the same time let me tell my honourable friend that the Congress Party is not a party governed by dictators, that the majority opinion in that party certainly obtains and nothing is done in order to twist the opinions of people into a particular strait-jacket and made it appear as though it is the opinion of the majority party of this House. If my honourable friend happens to be in a minority, am I to be blamed, or is the Prime Minister to be blamed or the Congress Party to be blamed? I can assure him that such of us individuals as are members of the Party always maintain the view that the Party has got a sacred trust to perform by reason of the fact that it is a majority here and the Party never does anything which would run contrary to the views of a large number of members in the party even though they may not be in a majority in respect of their views on a particular matter. There is hardly any necessity to import all these matters in a matter of this nature where ultimate issues that are at stake are not very considerable. Let me tell my honourable Friend Syed Muhammad Sa'adulla that the elected Governor is not going to be the champion of liberty of the province, that he is not going to be the champion of the minority interests, as against an elected Chief Minister. If we decide on an elected Governor we are only duplicating the process and provide room for conflict. The possibility is that we might not be able to find men who will perhaps fill the role that we want them to fill as Governors adequately by the election method or perhaps even by the alternative method. But at the same time, as I believe it has been said times without number, that a king who is a genius often goes to the scaffold. Oftentimes a Governor who has enormous abilities—intellectual and otherwise—will perhaps be a very unpopular person and very possibly a steady experienced person like Syed Muhammad Sa'adulla

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would perhaps make a better Governor than persons with genius who had been hand-picked. The future is not in our hands. All that we can do is to envisage the future with the limited capacity that God has given us. I do believe that wisdom lies in the direction that this amendment indicates and I hope the House will accept this.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I come from an Indian State. I have listened very carefully to the discussions which have been going on for these two days as to whether the Governors may be appointed by the President or may be elected by the people; and I was wondering all along whether the House has taken into consideration, or given sufficient attention, to the fact that this Constitution is being framed not only for what I may call non State area but for the whole of India including Indian States as well. I may point out that the Constitution which we are framing will be binding on these States as well, as they would be a part of the future Union of India.

Shri L. Krishnaswami Bharathi : Article 128 specifically mentions that this applies only to what are now called provinces and not to States.

Shri V. S. Sarwate : I may point out that since we are allowed to be here and take part in the discussions it is assumed.....

Shri L. Krishnaswami Bharathi : I did not say that he has no right. I was only making a correction.

Shri V. S. Sarwate : Then he should have waited for a little more time and seen how I proceeded. Now, the States would be bound by the Constitution which we are making. As matters originally stood an option was given to these States either to adopt the Constitution or to reject it; but in view of the recent covenants I believe that option no longer exists. But even assuming that it exists, there is no doubt that all the States would ultimately accept this Constitution. So the position is that the Constitution of the future Union of India which we are at present framing would apply to all areas included in the Indian States. Therefore the House would have to take into consideration the position of that person who in these States would be analogous to the Governor in the provinces. The House may be knowing that in the States which have acceded and which would be ultimately bound by this Constitution, either the States individually or their Unions, have at their head Rajpramukhs, whose position is if not hereditary, at least for their life-time. The Government of India have bound themselves that this position of theirs would continue for their life-time at least. If that be the position, then is it not a little amusing to see that the discussion here is centering round as to whether the appointments of Governors would be by election or not? The argument in favour of the appointment of Governors by the President is this that if there is no such appointment, the Prime Minister would not be able to discharge his responsibility to maintain peace. Now the Indian States form one-third of the whole of India. If the one-third is governed by Rajpramukhs who are not the President's nominees and if the Prime Minister would still be able to discharge his duty or responsibility to maintain peace, then it can be very well imagined that he can do the same with the Governors in the rest of India being his non-appointees. In fact here is an incongruity. Either the House would have ultimately to find out and make certain provisions by which these Rajpramukhs would be brought on level with the Governors and their powers made identical with Governor's or the other alternative is this. Two years back there was a Resolution adopted by this House, I am told, that the Governors should be elected. It was then urged that if the Governors be not

elected the principle of democracy would be stifled, that the autonomous character of the provinces would be lost. But the House has now veered to the view that Governors if appointed would be better in the interest of the country. If no provision in this Constitution is made to bring the Rajpramukhs on level with the Governors regarding their powers then the other alternative is to veer still further and when time comes for reconsideration of this constitution, then all the Governors who may be holding office at that time may be made hereditary or at least their tenure may be made to last for their life-time. These are the only two alternatives before this House. I urge that the House will have to consider provisions which may be necessary to bring the Rajpramukhs on level with Governors. I sound this note of warning with the object that the House may not lose sight of the importance of such provisions. All along I find in the Constitution no provisions are made so far for the States or their Unions. We assume and it must be assumed in the circumstances of the case that the States would form a part of the Union; But in spite of this assumption no provision is being thought of as to how to make the Unions of States or States on level with the provinces.

With this note of warning, I support the proposition that is before the House, namely that the appointment of the Governors be made by the President.

Mr. President : Mr. Sidhwa.

I hope this will be the last speech. We have had a very good discussion.

Shri Mahavir Tyagi : Sir, is that your ruling?

Mr. President : I have it in my mind, if you do not mind.

Shri R. K. Sidhwa : Mr. President, I am not one of those who are surprised at the attitude of those who voted last time for the election and now the same persons are voting for nomination. When this question was discussed nearly two years ago I held the view that the Governors of the provinces should be nominated by the President. If you refer to my amendment on page 204 there you will find the amendment which I sent in April last year. It reads as follow:—

“The Governor of a State shall be appointed by the President.”

Sir, there were some who felt along with me last time that the Governors should be appointed by the President; but my views and the views of friends like me, were a voice in the wilderness. But today the position is changed. My Friend Mr. Rohini Kumar Chaudhari asked yesterday, “What has happened since then that this change has taken place?” May I know, if a change has taken place in the interest of the country, is it a sin or a crime? If those who opposed this system, realised in time that the minority was right, if they now feel that the minority was in the right, it is not honourable for them to change their views? Is that anything wrong? On the contrary, I am grateful to them, that though small men advocated this view, the big men have realised at a later stage that this is the correct view, and therefore, I think they deserve greater credit. Many felt last year, that the Governor’s appointment should be by nomination. But it was by a mere fluke last time that this election wave that was in the minds of Members carried the day. Mr. Dass said that in the top there would be democracy and in the provinces autocracy. I fail however to understand how in the provinces there will be autocracy. In the provinces the Members will come to the legislatures through direct voting.

Shri Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, My honourable Friend is casting a reflection on the House when he says that last time it was by a mere fluke that the thing was carried.

Mr. President : I do not think any reflection is meant. It is only a question of language.

Shri R. K. Sidhwa : The President who is elected by the people makes the nomination. Do you call it autocracy? My Friends do not seem to realise the difference between nomination in the British regime and nomination done now. Does my Friend Mr. Das think that nomination by the Viceroy in the legislatures in the past, by the Governors in the provincial legislatures and by Commissioners and Collectors in the municipalities and District Boards, that those nominations are identical with the nomination that is going to be made now? If that is so, I am sorry for his intelligence. Our President will be elected. And we do not want all our offices to become elected. After all the fundamental position is that in the Legislature there will be election. And you do not expect every office to go by election, and create chaos in the country. That is the fundamental point that we have to bear in mind.

I do feel at the same time that the Governor's position is a non-entity. He has powers, and status; The Governor is the first citizen of the Province, I admit that. But in the matter of the executive, he is a non-entity, and from that point of view, nomination which does not mean nomination by someone who does not enjoy the confidence of the people...

Shri B. Das (Orissa: General) : If we import a few robots from America will that do?

Shri R. K. Sidhwa : If that is his argument, Sir, I cannot answer it.

Sir, another point in this policy which is at present adopted which I like is this, and it is a very praiseworthy policy, that a person from that very province should not be taken as the Governor of that Province. It is a very healthy thing, and I fully support that policy, apart from individual cases— there may be mistakes in the appointment of individuals. But as a matter of policy, if you adopt the policy of appointing a Governor from the same province, there will be so much bickering that you will bring the Governor into disrepute. I do not want to mention names; but I should be failing in my duty if I did not give one instance.

Mr. President : Please do not mention any names, or any instance which could be easily spotted out.

Shri R. K. Sidhwa : There is one whose character is beyond question, whose independence cannot be questioned today, and.....

Shri B. Das : I strongly protest that smaller provinces do not have the character or able men fit to be governors of other provinces. I say they have even better character than men from Bombay and other places.

Mr. President : Mr. Sidhwa is entitled to his own opinion.

Shri R. K. Sidhwa : A person from a province, whose character cannot be questioned, whose ability and whose integrity cannot be questioned, if he goes to his own province, his name will be brought into disrepute. I do not want to mention any names. If some have understood whom I mean, well and good.

Mr. Das says that his province has got competent persons to be Governors of provinces I said yesterday that all provinces have able men and there should be no grouse that a particular province has been ignored, for the purpose of appointing Governors; Mr. Das cheered what I said. But today he seems to have understood something different and he raises points of order

every time. I do feel, Sir, that whosoever may be Prime Minister in the future, whosoever may be the President, he should see that the question of all the provinces is borne in mind. It is not as if able men exist only in a few provinces. Able men exist today in all the provinces, and in making selections, the President should bear in mind this fact. He should not look with any narrow vision, and he should see that able men in the other provinces also get their chance. The view that a person from his province should not be appointed a Governor, I strongly hold, and I tell you if that policy is adopted we will simply bring the Governor into disrepute. With these words, Sir, I whole-heartedly support the amendment.

The Honourable Shri Satyanarayan Sinha: Sir, I move:

“That the question be now put.”

Shri B. Das : Sir, before the closure is moved, I would request that I may be given an opportunity of clarifying certain points, though I am bound to vote for the amendment.

Mr. President : Is it any use speaking against the amendment when you are going to vote for the amendment. I cannot allow that kind of thing.

Shri B. Das: We have been tied down.....

Mr. President : If you are tied down you have tied down yourself in this House everybody is free to vote as he likes.

The question is:

“That the question be now put.”

The motion was adopted.

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

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decide upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises: why is it that the Drafting Committee thought it fit to present an alternative? Now, the reason why the Draft Committee presented an alternative is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions—to use a familiar phraseology, “no functions which he is required to discharge either in his discretion or in his individual judgment.” According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers

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he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought the another alternative might be suggested.

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

The other argument is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the second alternative suggested by the Drafting Committee and this particular amendment. In my judgment there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the Provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this: that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the

Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is.....

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

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

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

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

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

The question is:

“That for article 131, the following be substituted:—

‘131. The Governor of a State shall be appointed by the President by warrant under his hand and seal.’ ”

The amendment was adopted.

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

Mr. President : The question is:

“That article 131, as amended, stand part of the Constitution.”

The motion was adopted.

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

Article 132

Mr. President : We have a number of amendments to this article. Now that we have decided in favour of one alternative, all the amendments favouring the other alternative naturally fall to the ground. So we shall take up only those amendments which are concerned with the article as now amended. The first amendment is No. 2033 in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : I am not moving it.

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

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

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

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

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

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

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

Now, Sir, this article.....

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

Mr. President : But that has not been moved.

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

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

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

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

Pandit Thakur Das Bhargava (East Punjab: General): The practice has been that all these amendments are taken as moved and a person is entitled to move any amendment.

Mr. President : We have not been following that practice.

Then you move your own amendment.

Shri Brajeshwar Prasad : Sir, I move:

“That for article 132, the following be substituted:—

‘132 The Governor shall hold office during the pleasure of the President.’ ”

I commend this amendment for acceptance by the House and I have no further comments to make.

Mr. President : If this amendment is carried, all other amendments fall to the ground. Therefore we shall take up this amendment as covering all the other amendments.

The amendment and the article are for discussion.

Prof. K. T. Shah (Bihar : General): Is my amendment No. 2034 not to be moved? It suggests that the Governor shall be irremovable and therefore cannot be included under the amendment moved.

Mr. President : If the five-year term is carried, that falls to the ground.

Shri T.T. Krishnamachari : The main point is whether as he is going to hold office during the pleasure of the President he cannot be removed by the President.

Mr. President : If the amendment of Dr. Ambedkar is carried, then 2034 falls to the ground. But Prof. Shah can speak upon it.

Prof. Shibban Lal Saksena : Sir, both may be moved and the House may then choose one of the two.

Mr. President : If Professor Shah wants it he may move it now.

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

“That in article 132, after the word ‘office’ where it occurs for the second time, the words ‘and shall during the term be irremovable from his office’ be inserted.”

The amended article would read:

“The Governor shall hold office for a term of five years from the date on which he enters upon his office and shall during that term be irremovable from his office.”

This is, as I conceive it, different fundamentally from the appointment during the pleasure of the President. The House, I am aware, has just passed a proposition by which the Governor is to be appointed by the President and it would be now impossible for any one to question that proposition. I would like, however, to point out, that having regard to the appointment as against the elective principle, we must not leave the Governor to be entirely at the mercy or the pleasure of the President. We should see to it, at any rate that if he is to be a constitutional head of the province, if he is to be acting in accordance with the advice of his ministers, if we desire to remove any objection that might possibly be there to the principle of nomination, we should see to it that at least while he is acting correctly, in accordance with the Constitution following the advice of his ministers, he should not be at the mercy of the President who is away from the Province and who is a national and not a local authority. This is all the more important pending the evolution of a convention, such as was suggested by one of the previous speakers, that the appointment, even if agreed to, should be on the advice of the local Ministry. I do not know if such a convention can grow up in India, but even if it grows up, and particularly if it grows up, it would be of the utmost importance that no non-provincial authority from the Centre should have the power to say that the Governor should be removable by that authority; So long as he acts in accordance with the advice of the constitutional advisers of the province, he should I think be irremovable during his term of office, that is, five years according to this article.

There is of course a certain provision with regard to resignation voluntarily or other contingencies occurring whereby the Governor may be removed. But, subject to that, and therefore to the entire Constitution, the period should be the whole period and not at the pleasure of the President.

Shri Brajeshwar Prasad : We have passed the provision that he should hold office during the pleasure of the President.

Prof. K. T. Shah : That has not yet been passed. Because you moved it, if it is to be treated as passed, I have no objection.

Mr. President : There is an amendment by Mr. Gupta which has to be moved. I see that he is not moving it. Then there are the amendments of Saiyid Jafar Imam and Mr. Naziruddin Ahmad. They are not moving them.

Professor Shah may now move his amendments Nos. 2048, 2049 and 2051.

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

“That in clause (b) of the proviso to article 132, after the word ‘Constitution’, in line 21, the words ‘or if found guilty of treason, or any offence against the safety, security or integrity of the Union’, be inserted.”

That would make, Sir, if accepted, the removal of the Governor possible by his own resignation or his being proved guilty of certain offences. This is by way of providing for possible contingencies, not that any one expects or even thinks that it is in the normal course likely that persons of that importance ‘would be guilty of such offences. I therefore commend this amendment.

I now move my amendment No. 2049 :

“That in article 132 after the existing proviso (b) the following new proviso be added:—

‘(b-1) A Governor may be removed from office by reason of physical or mental incapacity duly certified, or if found guilty of bribery or corruption, or as provided for in article 137.’ ”

These, again, are contingencies which may occur and therefore there must be constitutional authority for the removal of the Governor. I think it is nothing but rounding off of the occasions where this extraordinary power may have possibly to be exercised, namely the proving of the Governor as guilty of bribery or corruption or mental or physical incapacity duly certified, not merely suspected of such incapacity, but properly certified, and in that case automatically the Governor should be removable.

Sir, I now move my next amendment.

“That after article 132, the following new article 132-A be added:—

‘132 A. The office of the Governor shall fall vacant by his death before completion of the term of office, or by resignation duly offered and accepted, or as provided for other wise by this Constitution. In the event of the office of the Governor falling vacant at any time, the arrangements made for the discharge of the functions of the Governor during such vacancy shall hold good only pending the election of another Governor as provided for in this Constitution.’ ”

For this purpose, he will have to be not appointed but elected. This again is providing for a contingency, for an interregnum if I may say so, that is to say, the office of the Governor falling vacant by death, resignation or for any other reason specified in the Constitution, and his successor not being available for the time being. Provision must be made for the discharge of the functions belonging to the Governor during this interim period during which there is no Governor whether appointed or otherwise provided for. I trust that these simple provisions would prove acceptable to the House.

Prof. Shibban Lal Saksena : Sir, the amendment moved by Dr. Ambedkar makes a very great change in the provision originally made in article 132. I am sorry he has not given any reasons why he has suggested his fundamental change. Just now we have accepted a provision whereby the Governor

shall be nominated by the President. Already we feel that there democracy has been abandoned. Now, Sir, comes this provision whereby the Governor shall hold office only at the pleasure of the President. Even in the case of the Supreme Court, we have provided that once the Judges of the Supreme Court has been appointed, they will be removable only after an address presented by both the Houses of Parliament, and by two-thirds majority of the members present and voting. In the case of the Governor, you want to make a different provision. It seems to me, Sir, to be an extraordinary procedure and it completely takes away the independence of the Governor. He will be purely a creature of the President, that is to say, the Prime Minister and the party in power at the Centre. When once a Governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the President at his whim. It only means that he must look to the President for continuing in office and so continue to be subservient to him. He cannot be independent. He will then have no respect. Sir, Dr. Ambedkar has not given any reasons why he has made this change. Of course, the election of the Governors has been done away with, but why make him removable by the President at his pleasure? The original article says:—

“A Governor may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 137 of this Constitution.”

It means that a Governor can only be removed by impeachment by both the Houses. Now, he will be there only at the pleasure of the President. Such a Governor will have no independence and my point is that the Centre might try to do some mischief through that man. Even if he is nominated, he can at least be independent if after he is appointed he is irremovable. Now, by making him continue in office at the pleasure of the President, you are taking away his independence altogether. This is a serious deviation and I hope the House will consider it very carefully. Unless he is able to give strong reasons for making this change, I hope Dr. Ambedkar will withdraw his amendment.

Shri Lokanath Misra (Orissa : General): Mr. President, Sir, after having made the decision that Governors shall be appointed by the President, it naturally follows that the connected provisions in the Draft Constitution should accordingly be amended, and in that view, I accept the amendment that has now been moved by Dr. Ambedkar. That amendment suggests that the Governor shall be removable as the President pleases, that is, a Governor shall hold office during the pleasure of the President and that whenever he incurs the displeasure of the President, he will be out. When the President has appointed a man, in the fitness of things the President must have the right to remove him when he is displeased, but to remove the evil that has now crept in by doing away with election for the office of the Governor, it would have been much better if the State legislature too had been given the power to impeach him not only for violation of the Constitution but also for misbehaviour. I use the word ‘misbehaviour’ deliberately because, when a Governor who is not necessarily a man of that province is appointed to his office, it is but natural that the people of the province should have at least the power to watch him, to criticise him, through their chosen representatives. If that right had been given, in other words, if the provision for the impeachment of the Governors by the State legislatures had been there, it would have been a safeguard against improper appointment of Governors by the President. One of the main objections to the appointment of the Governor by the President has been that he will be a man who has no roots in the province and no stake, that he will be a man who will have no connection with the people, that he will be a man beyond

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their reach and therefore can go on merrily so long as he pleases the President, the Prime Minister of the Union and the Premier of the Province. But they are not all. It would have been much better if the Governor's removal had been made dependent not only on the displeasure of the President but on the displeasure of the State legislature also which represents the people and that would have been a safeguard against the evil that has been caused by the provision for the appointment of Governors by the President.

The Honourable Dr. B.R. Ambedkar : Sir, the position is this: this power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor. It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unnecessary to categorize the conditions under which the President may undertake the removal of the Governor.

Mr. President : The question is:

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

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

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

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

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

The amendment was adopted.

Mr. President : The question is:

“ That article 132, as amended, stand part of the Constitution.” The motion was adopted.

Article 132, as amended, was added to the Constitution.

Article 133

Mr. President : There are several amendments that this article should be deleted. Those are not amendments to be taken up. They are practically negative ones, and therefore, I take it that they need not be moved.

Shri T.T. Krishnamachari : I would like to say that they are unnecessary in the context of the previous article.

Mr. President : The question is:

“That article 133 stand part of the Constitution.”

The motion was negated.

Article 133 was deleted from the Constitution.

Article 134

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

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

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

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

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

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

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

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

'Qualification or appointment as Governor.—“No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years’.”

(Amendment Nos. 2062, 2065 to 2071, 2075 to 2080, 2082, 2084 to 2087, 2089 and 2090 were not moved.)

Mr. President : The question is:

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

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

The amendment was adopted.

Mr. President : The question is:

“That article 134, as amended, stand part of the Constitution.”

The motion was adopted.

Article 134, as amended, was added to the Constitution.

Mr. President : We may now go to article 135.

Shri A. Thanu Pillai (Travancore): May I know, Sir whether clause (2) of that article stands, or that also goes?

Mr. President : The whole article has been substituted by the amendment.

Shri A. Thanu Pillai : Sir, the amendment reads thus:

“That with reference to amendment No. 2061 of the list of amendments, for article 134, the following be substituted.” The original amendment reads thus; “That for the existing clause (1) of article 134, the following be substituted:—” The ultimate effect seems to be, that only sub-clause (1) has been amended and clause (2) will stand as it is.

Mr. President : The effect of the amendment which has been carried is to substitute the whole of article 134 by the amended article.

We may go to article 135.

Article 135

Mr. President : The motion is:

“That article 135 form part of the Constitution.”

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

“That in clause (1) of article 135, for the words ‘either of Parliament or’, ‘the words of either House of Parliament or of a House’ be substituted.”

This is a formal amendment.

Sir, I move:

“That in clause (1) of article 135—

(a) for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’ be substituted,

(b) for the words ‘in Parliament or such legislature as the case may be’ the words in that House’ be substituted.”

Sir, I move :

“That in clause (2) of article 135, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

(Amendments Nos. 2092 and 2095 were not moved.)

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

“That in clause (3) of article 135 the words ‘The Governor shall have an official residence, and’ be deleted.”

Mr. President : “There” also must be deleted.

Shri H. V. Kamath : “There” will remain. “There shall be paid to the Governor such emoluments, etc.,”. I wonder why our Constitution should be cumbered with minutiae such as this. This matter about the official residence of the Governor, is, in my estimation, not even a tremendous trifle. Our Constitution would not be less sound if we omitted therein any reference to or mention of the Governor’s official residence. Certainly, it stand to reason that the Governor shall have a residence. We do not contemplate that the Governor will be without an official residence. Don’t you visualise the Premier in the province having a residence? But have we made mention of such a thing in the Constitution? I do not know whether this was bodily lifted from some of the unimportant constitutions of the world. Because, I am sure, the American Constitution makes no mention of the official residence of the President or the State Governors. I do not know which Constitution has given the inspiration to Dr. Ambedkar and his colleagues of the Drafting Committee.

An Honourable Member : Irish Constitution.

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

Shri H.V. Kamath : I was coming to that point. I do not know why, simply because the President’s residence has been mentioned, the Governor’s residence should also be mentioned. Is it logical, is it rational, or does Dr. Ambedkar think that because we have committed one little mistake—I should not say that—we should repeat it?

This point was raised by me in the course of the discussion on article 48, Dr. Ambedkar, in his reply to the debate could not give the convincing reply. May I, Sir, for his benefit and to refresh his memory, read from what he said

on that occasion? Even with regard to the President's residence, his reply was far from convincing. We have now a nominated Governor. The President, of course, is a much higher dignitary than the Governor of a State. It certainly beats me why the Governor's official residence should be mentioned at all. In his reply to this debate about the official residence of the President, this is what Dr. Ambedkar said:

“But, the question I would like to ask Mr. Kamath is this. Does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of a wrong if the proposition was stated in the Constitution itself?”

I do not say that it is wrong at all. We are not perpetrating any wrong by mentioning it in the Constitution. But, where is the necessity for this thing to be brought into the Constitution? He went on to say: “This is merely a matter of logic”. (I wonder what strange logic it was that he had in mind) “I want to know if he does or does not support the proposition that the President should have an official residence.” I then interrupted him: “May I know whether the Prime Minister will or will not have an official residence?” He did not give any reply to that, but proceeded: If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down.” Simply because the Government of India Act has mentioned that, should we copy it blindly without deliberating at all any further about it? I think that the Constitution is, as I have said already, an elephantine one and it has been encumbered with much unnecessary detail. We are mentioning this here because we are following the Government of India Act, whether logically or illogically. It might have been usefully and reasonably omitted.

One last point. The Governor may have more than one official residence. He may have two residences. Suppose he is to be given two residences; but since the Constitution mentions only one residence, what will happen? I hope Dr. Ambedkar and his wise men will give some thought to this matter. I move, sir

(Amendment Nos. 2097 to 2102 were not moved.)

Mr. President : The amendments and the original article are open for discussion.

Shri B. Das : Mr. President, article 135 deals with Governors' perquisites, honorarium, and housing problem. It is presumed that the Governors should be Congressmen or should have Congress ideals. Although my honourable Friend Dr. Ambedkar did not move his amendment where he wanted to fix the salaries of Governor at Rs. 4,500 p.m. the problem of salaries of Governors, Governor-General or President had been agitating most of us for the last few months. If Governors are to be Congress-minded people, are to follow Congress ideals, the ideals that our worthy leader Rajagopalachari started that every Congressman should live up to Rs. 150 and nothing more—that problem Congressmen in this House at least must face once for all. Why should the Governor-General have at present Rs. 7,500 free of Income-tax? Why should the Drafting Committee or Dr. Ambedkar fix a Salary of Rs. 4,500 for the Governors? Of course it is presumed income-tax will be deducted from that money.

Prof. Shibban Lal Saksena : On a point of order. Are we passing the schedule also along with this article.

Mr. President : We are not.

Shri B. Das : I am discussing the principle.

Prof. Shibban Lal Saksena : We shall have an opportunity of discussing that later on.

Mr. President : Let him develop the argument and I shall see.

Shri B. Das : The moment we pass this article, we give the privilege to the Legislature to fix the salary and we know what is happening. The Parliament on the other side fixed the salary of the Governor-General of Rs. 7,500 free of Income-Tax.

Mr. President : Are you quite correct Mr. Das, about the figure? I understood it was 5,500.

Shri B. Das : No, Sir.

Some Honourable Members : It is Rs. 5,500.

Shri B. Das : I am sorry, Sir, I accept that correction. But to me, a Congressman who was fed with the idea of Rs. 150 for every Congress Minister it sounds a big sum and we know the Governor-General is drawing a sumptuary allowance of Rs. 63,000.

Mr. President : I think you had better not refer to the Governor-General.

Shri B. Das : The Governor in every province draw sumptuary allowances also. There is something like Rs. 6,000 in poorer provinces and more in rich provinces like Bombay and Madras and it is spent in paraphernalia and in imitation of British pomp and splendour. Is it necessary that this sovereign House would permit or approve the idea that Governors should spend huge sums of money in pomp and splendour and should draw big salaries? Why should a Congressman draw beyond Rs. 3,000 which is maximum limit that my Central Ministers are drawing? I hope Governors are patriots. I know there are certain benighted Knights who have been made Governors. Rs. 3,000 is pretty big sum for them but when everything is new and there is the honour of being called H. E. and being nominated by President, that should I think be sufficient. I am sorry I could not participate in the debate on the previous clauses: but the only thing emerges that these nominated Governors who are actually drones would now apply to the President or the Governor-General that they are candidates for Governors of Provinces: The Drafting Committee and the House has accepted article 133 whereby such nominated creatures will go on all their lives as Governors. The Draft article 133 was that he will hold office only once more.

In another article we discussed about the Supreme Court. We did not want the Judges to accept jobs and hang round in the corridors of Dr. Ambedkar or Sardar Patel. Now we find we create a class of drones in India who will hang round in the corridors of the Governor-General or the Prime Minister of India, and who would like to be perpetual Governors in spite of their being eighty-eight years old or until they fall down. These are things which agitate me most and I hope the House should be very careful in fixing emoluments of the Governors. The very fact that one is a nominated Governor is enough and if he is a Congressman he will be happy and serve the country and if he is a non-Congressman it is a high honour for him. The emoluments should be fixed either by this House or by the Provincial Legislatures on the Congress standard and I do expect the Governors to behave as Congressmen and not as some of the Governors behaved in the past.

Shri Rohini Kumar Chaudhari : Sir, I am glad that this section has been allowed partially to stand as it is. I only do not understand the position taken up by my honourable Friend Mr. Kamath. He was one who has been advocating nomination of the Governor; but it seems that after having nominated him, he wants to throw him away. He wants to leave him to his own resources. He perhaps forgets that this nominated Governor has to go to another Province where he has very few friends. It is different with the Ministers. Ministers in most provinces in India have their residences provided officially. Not only do they have their official quarters, they have also got their furniture, screens, motor-cars, and everything supplied to them.

Shri H. V. Kamath : May I know whether these are mentioned in the Constitution?

Shri Rohini Kumar Chaudhari : They are not in the Constitution, but I am coming to that. That is not in the Constitution because the Ministries are always in the hands of the majority party, and therefore they can have whatever they want. Look at the position of the poor Governor. He is sent out from one province to another province where probably he knows very few persons, where he has probably been foisted upon that province against the will and consent of the Ministry itself. In that case, the least that you can help him is with shelter. If he has a Government Official residence, he can straightaway drive into that place, at least he will have a shelter, and he can look for his food afterwards. But if this is not provided for, then he has to go to this friend and that friend, and ultimately he may fall into the hands of a commercial magnate who will give him shelter, and we know commercial magnates are known to give shelter to this kind of persons holding high positions. But the Governor will fall under the obligation of some merchant Prince of the place.

Dr. P. S. Deshmukh (C. P. & Berar: General): He may have even to go back to his own province for want of a House. (Laughter)

Shri Rohini Kumar Chaudhari : So I say that official residence will have to be provided for the Governor, otherwise it will be impossible for him to carry on in that Province.

The provision which enables the Provincial Legislature to fix the salary of the Governor is also a very sound proposition, because if the Ministry does not approve of a particular Governor, it may reduce his salary to Re. 1 and thus compel him to leave the Province. That is a very strong and good safeguard which has yet been left in this article, because if the majority of the members of the legislature who are bound to reflect the opinion of the province consider that the Governor is not a suitable person for their province, then they can reduce his salary to Rs. 2 or Re. 1 as was done during the days of dyarchy when the Ministers' salaries were reduced to Re. 1 or Rs. 2. This is a mighty weapon in the hands of the Provinces, and I am glad this weapon has been left in the hands of the people of the province.

Secondly, I am interested in the allowances of the Governor. Next to his salary. I like that the Governor should have his allowances. He should have sumptuary allowance. This sumptuary allowance is intended for giving parties, dinner parties, lunch parties and so on to different people. And I should think particularly they should be given and it should be laid down that preference in this matter should be given to the members of the legislature. There is no attempt to interface with this sumptuary allowance and therefore, the Governor enjoys this allowance. And if he gets this sumptuary allowance, he must have some official residence. It does not look well that the Governor should give his dinner parties and lunch parties and tea parties in different hotels. He must have a residence for these parties at least. Mr. Kamath is not against this sumptuary allowance, but he does not want the Governor to have a house where

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he can utilise this sumptuary allowance. What is the Governor to do with the allowance then? The first and foremost duty of a Governor today is to give parties,—dinner-parties, tea-parties and parties of various other kinds. He has got to do it in order to maintain his own popularity, and also to maintain the popularity of the Ministry. If he finds anything wrong anywhere, he has to go out there and deliver some lectures in support of the Ministry. Besides these, there are functions like Prize-distributions, important marriages in high life,—all these things the Governor has got to attend to keep up his popularity. Therefore, I submit that his having an official residence should not be interfered with and this clause should be passed as it stands.

Shri Brajeshwar Prasad : Mr. President, Sir, I think this is the proper place where I can suggest to the House, and to the members of the Drafting Committee in particular, that they should incorporate some provision to the effect, that the same person may be appointed Governor of two or three or more provinces at a time.

Mr. President : You did not move any such amendment.

Shri Brajeshwar Prasad : I am not moving any amendment, but I am only suggesting to the House, to change this article so as to accommodate the suggestion that I am making. I feel that my suggestion will effect a great deal of economy, if one Governor is made responsible as the Constitutional Head for the administration of more than one province. Formerly the provinces of Bihar, Bengal, Orissa and Assam were under one Governor. Ultimately these Provinces will become one once again. With this end in view I am suggesting that the same person may be appointed Governor of two or more Provinces at a time.

Dr. P. S. Deshmukh : Sir, on a point of order. This is contrary to the clause we have already passed that each province shall have a Governor. (Hear, Hear).

Mr. President : I am in entire agreement with Dr. Deshmukh. We have already passed an article that every province shall have a Governor.

Shri Brajeshwar Prasad : Then I have nothing more to add.

Prof. Shibban Lal Saksena : Sir, My Friend Mr. B. Das raised the question of emoluments of the Governors given in the Schedule mentioned in this article. The question of emoluments attached to our high offices is a very important question. I do not think that under this article we can properly discuss the emoluments given in the Schedule, but as you have ruled that these might be discussed. I would like to say a few words. We as Congressmen are pledged to certain scales and to certain standards of life. But I am sorry to have to say that we have forgotten all that we said before. In Karachi Congress we passed a resolution that the maximum salary of the highest official shall be only Rs. 500 and in view of the present increase in the cost of living it may now be fixed at Rs. 2,000. But here we are providing for a salary of Rs. 4,500 for the Governors. The Governor is merely a cipher, without any function and holding office only during the President's pleasure. I do not think this large amount is necessary for him. In addition to this salary he has his allowances also. When the proper Schedule comes up, I will say more. But here I will only say that by accepting this article, we are not accepting the amounts fixed in the Schedule.

Shri M. Thirumala Rao : Mr. President, Sir, I was under the impression that the Drafting Committee's amendment No. 2100—

“That the following proviso be added to clause (3) of article 135 :—

‘Provided that the emoluments of the Governor shall not be less than four thousand and five hundred rupees per month.’”

will be moved.

I think, Sir, that there should be a uniform policy adopted in regard to the emoluments and salaries of these Governors which I think now obtains. There is no use leaving the matter to the sweet will of the respective Legislatures, which may be swayed by so many considerations in fixing the salaries of the Governors. If necessary, Governorships may be divided into different categories, *e.g.*, first-rank, second-rank, etc., according to the income of the provinces. But the Governors' emoluments should not be so variable as to depend upon the respective influences of the legislatures. Governors are expected to enjoy a status, though not power, above the Legislatures and the Ministries and they have to uphold certain tradition and prestige in the eyes of the public. Therefore, their salaries should not be made the play-thing of legislative forms where different parties may have their own motives for reducing the emoluments of the Governors. I suggest, Sir, that both for the President as well as for the Governors the Constitution should fix a certain amount of salary as well as sumptuary and other allowances which should not be subject to the influence of the Legislatures. I wish the Drafting Committee will take up this matter and bring in suitable amendments in this behalf.

Shri Brajeshwar Prasad : Sir, I want your ruling as to how my amendment is not pertinent. Article 149 says that there shall be a Governor for each State. It only means that there cannot be a Province without a Governor. The article does not debar the same person from being appointed as Governor of two or more provinces at a time.

Mr. President : No occasion for a ruling arises, because the honourable Member did not move his amendment.

I shall now put the amendment to vote. The first amendment is that moved by Dr. Ambedkar.

The question is:

“That in clause (1) of article 135, for the words ‘either of Parliament or’ the words ‘of either House of Parliament or of a House’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (1) of article 135—

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

(b) For the words ‘in Parliament or such Legislature as the case may be’ the words ‘in that House’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (2) of article 135, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

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

The amendment was negatived.

Mr. President : The question is:

“That article 135, as amended, stand part of the Constitution.”

The motion was adopted.

Article 135, as amended, was added to the Constitution.

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

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

Mr. President: That is understood.

New Article 135-A

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

“That after article 135 the following new article 135-A, be added:—

‘135-A. Every Governor shall, on completion of his term of office and retirement, be given such pension or allowance during the rest of his life as the State Legislature may by law provide;’

‘Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him shall not be varied to his prejudice;’

‘Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.’”

Sir, I want by this amendment to secure to eminent public servants and distinguished sons of India who rise to such offices as the Governor of State a decent retirement allowance, so that they should not be exposed to any want or penury, or to any temptation which might lead them to use their influence acquired in the past by holding such offices in any undesirable manner.

The Constitution, Sir, does not provide any such consideration for people who rise to high offices in the State, except in regard to the Judiciary. In the Judiciary this has been provided by the Constitution. Speaking for myself, I do not see any reason why exalted public servants and officers, who have served the State and the country in such high capacities like that of the President, or the Governor, should not be provided for the rest of their lives, so that they should be free from any want or temptation to utilise their influence in any undesirable manner.

I have not deliberately indicated the scale of such pension. I have also suggested the condition that the pension is payable only if the person concerned retires. That is to say, he really devotes himself for the rest of his life to the honorary service of the country in whatever way may be open to him free from any want, and that he does not hold any other office of profit in the State in which he has been Governor or under the Government of India. If, of course, he holds any other office which carries its own emoluments, he will have to choose between either the pension or those emoluments. But subject to this, that he holds no other office, the pension should be available to him for the rest of his life in retirement.

The object of providing such security for the persons who have risen to this high level is the same as that which now secures to every workman in civilized nations an old-age pension, a pension or superannuation allowance, which would be calculated to suffice to maintain him in the standard of life to which he was accustomed while at work. A pension is deferred pay, not paid to the worker while at work; and the analogy will hold here also. This also is a type of work—perhaps the highest of its kind—which should not go unprovided for altogether by the State for the rest of the period on earth of the Parties who have served so eminently the State.

I take it, Sir, that no one would be appointed or elected Governor, who has not in the past, before being so appointed also rendered service, which has earned him the distinction, the eminence of public position that makes him fit for selection as a Governor. That being so, and his services being of that level culminating in his appointment as Governor should, I think in the fitness of things be recognized and rewarded in some such manner as I am suggesting. As I said before, it is not necessary in this Constitution to provide the actual scale of such allowances or pension. All that is necessary is that the principle should be recognised, and I would leave it to the State Legislature to make the necessary provision, on condition however, that the provision once made by law, shall not be varied to the prejudice of the holder of such pension while he enjoys it in retirement. This is a very simple and in my opinion a very fair proposition, provided the House will accept it.

Dr. P. S. Deshmukh : Sir, my Friend Prof. K. T. Shah wants that pensions should be provided for the Governors. I have considerable sympathy for the point of view that he has placed before the House, because as a rule, except under exceptional circumstances, we shall be appointing men from the public life of India to these offices and in Public life there are not many people who have large balances or considerable property. So I think there is everything to be said in favour of making some provision for a public man who, at the fog end of his life more or less, becomes a Governor and is so appointed by the President under the Constitution we are framing but when after the completion of his term of office he retires, has nothing to fall back on. But in spite of all our sympathies we will have also to admit that if we accept the amendment, there are many difficulties that will arise. First and foremost, what would be defined as his term of office? Suppose a person is appointed in a bye-vacancy and he also completes his term of office, whatever it may be. It might six-months, or one year or two years. Does he, Prof. Shah, propose that even such a person should have proportionate pension or whether he would propose something less? Secondly, I do not think this has been followed at any time anywhere so far and those who have had the good fortune of being appointed Governors I do not think, have claimed it or asked for it. On the whole, I think the advantage will remain in not giving any such pension. Of course my Professor friend has advanced the argument that this would be by way of a reward, and if he accepts any other office, then he should not be entitled to any pension. But I think a public man who offers himself for this appointment, will have to content himself with whatever salary that might be given to him during his tenure of office, and I do not think any one would be right in looking forward to a pension. If we provide pension for such people, we will have next to consider the cases of the Ambassadors and many other persons more or less of similar categories. A whole set of people will then be coming forward for these pensions and probably a very large portion of our revenues will have to be spent on these pensions alone. On principle, also, I do not think it is a good proposal and I therefore oppose it.

Sardar Hukam Singh (East Punjab: Sikh) : Sir, I come here to oppose this motion. I feel there is no justification for lending this additional lustre to our Governors. We have been told that they are figure-heads only and ornamental heads and that they shall have no authority or powers. Again in the way that we are proceeding, I think we are depriving them in the States and Provinces of every authority that they could have. All powers are being centralised. The residuary subjects are also with the Centre. Under such circumstances, when the Governors have to do nothing, when they are only constitutional heads, when they are only ornaments, we have given them sufficient lustre by the salary of Rs. 4,500, other emoluments, sumptuary allowances, official residences and such other things. On the other hand, the Professor wants to give those Governors even additional things, so that they might live princely lives even after they have retired.

[Sardar Hukam Singh]

I am opposed to it and I do not see any justification in giving these additional things to these Governors who would be merely titular heads and denuded of all authority in the provinces or States.

Mr. President : The question is:

“That after article 135 the following new article 135-A, be added :—

‘135-A. Every Governor shall, on completion of his term of office and retirement, be given such pension or allowance during the rest of his life as the State Legislature may by law Provide;’

‘Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him shall not be varied to his prejudice;’

‘Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.’ ”

The amendment was negatived.

Article 136

Mr. President : There is an amendment of which we have received notice, by Dr. Ambedkar. It is No. 2104. There are other amendments which are more or less of a similar nature.

Shri T. T. Krishnamachari : My amendment in List 2—No. 132—follows more or less the wording of article 49 which this House has passed.

Mr. President : Let the amendment be moved first: then we can take up amendment No. 132. Dr. Ambedkar, I take it that you have moved amendment No. 2104?

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

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

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

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

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

This does not need any explanation for the reason that it follows, as I said, the wording of article 49 which the House has adopted. At any rate it would not be proper in view of the different method of selection of the Governor now decided on that he should take the oath before the Legislature. It is only proper that the Chief Justice of the High Court, exercising jurisdiction in relation to the State, should perform the function the function, or in his absence the senior-most judge of the Court.

Sir, I move.

(Amendment Nos. 2105 and 2107 were not moved.)

Shri H. V. Kamath : Sir, I move:

“That for amendment No. 2106 of the List of Amendments the following be substituted:—”

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

“I, A.B, do _____
swear in the name of God”
solemnly affirm

This follows the amendment which was accepted unanimously by the House about the oath or affirmation to be made by the President under article 49 of the Draft Constitution. You, Sir, were unfortunately not in the Chair on that occasion. You were lying ill at Wardha from which illness happily by the grace of God you recovered rapidly and we are fortunate to have you again in this House to preside over its deliberations.

I do not propose to make any speech, because I have said what I had to say on that occasion. I would only say this that we would be true to our heritage and true to our spiritual genius if we adopt an amendment of this nature, with regard to the oath or affirmation to be made by the Governor of a State. I commend this amendment for the acceptance of the House.

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

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

Mr. President : The question is:

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

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

The amendment was adopted.

Mr. President : The question is:

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

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

“I, A.B., do _____
swear in the name of God”
solemnly affirm

The amendment was adopted.

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

Mr. President : No, no. The question is:

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

The motion was adopted.

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

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