

**Mr. President :** The question is :

“That in clause (1) of article 71, for the words ‘and inform Parliament of the cause of its summons’ the words ‘on the general state of the Union including financial proposals, and other particular issues of policy he deems suitable for such address’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is :

“That article 71 stand part of the Constitution.”

The motion was adopted.

Article 71 was added to the Constitution.

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## Article 72

**Mr. President :** The motion is :

“That Article 72 form part of the Constitution.”

(Amendment No. 1494 was not moved.)

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

“That in article 72, after the word ‘India’ the words ‘if elected member of Parliament’ be inserted.”

and the amended article would read as follows :—

“Every Minister and the Attorney-General of India, if elected member of Parliament, shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.”

My amendment, Sir, seeks to make only such ministers as are elected members of Parliament to have this right. I think it is a part of the theory on which this Constitution seems to be based that ministers should be responsible to the legislature. That responsibility could be exercised only if they are able to answer for themselves, so to say, as members of Parliament and sitting in Parliament.

The right extended to those who are not members of Parliament, and yet are allowed to speak or take part in the proceedings in either Houses of Parliament, or of any committee thereof, of which such a person may be named a member, appears to me to be an anomaly, if after allowing the right to speak, you do not grant him the right to vote. It is at the same time true that a person who is not a member of a body can have no right to vote in that body. The idea is that the Minister or the Attorney-General, who is in possession of material information and reasoning that may very well influence the judgment of the House, necessitates that such a party should be in a position to place his point of view before the body of which he is a member and where he is speaking. But if he is not a member of that body, the position becomes very difficult, in as much as those who are there are also aware that he has no right to vote and has no place, therefore, as one of them in the House.

The doctrine of ministerial responsibility requires in my opinion that all the principal Ministers should also be members of the legislature; and if they are members of the Legislature, then, as a matter of right they will be entitled to speak as well as vote in the House of which they are members. If you wish to extend this facility to Ministers to ‘either House’, even if one is not a member of that ‘either House’, then I think it would be better to word this a little differently. I suggest that if you are an elected member of either House, you may nevertheless be entitled to speak in the other House, just to make known your point of view and explain any particular problem that may be before the other House of which you are not a member when that other House comes to discuss it. But the position in this article as I see is this:

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A minister who is entitled to speak and take part in the proceedings, or be member of a committee, and who has the right to speak but has not the right to vote, is liable to feel the sense of responsibility much less. Apart from being an anomaly in the Constitution itself, of a Minister being allowed to speak, but not to vote, it would undermine the sense of Ministerial responsibility that is essential.

I therefore suggest that the right of speaking and taking part in the proceedings, as well as becoming members of any committee, should also go with the right to vote; provided that the party is an elected member of the House. I say definitely "elected member" because these experts, for instance, who are, under the provisions of the article adopted earlier by this House, permitted to be nominated by the President for any specific purpose as experts to advise and assist in the passage of any Bill or any other measure, they naturally not being elected, are not representatives of the people; and as such may rightly be confined to giving their expert opinion on the matters before the House, and advising on which they are specifically nominated, but not voting on the question. I can understand therefore that such people may be excluded from the right of voting. But, Ministers in a Constitution based on the principle of Ministerial responsibility should, I think, be not only entitled to take part in the proceedings of any House, but should be members of that House with right of voting as well. Accordingly I commend this amendment to the House.

(Amendment No. 1496 was not moved.)

**Mr. President** : Amendment No. 1497 is of a drafting nature.

The article and the amendment are now for consideration.

**Shri H. V. Kamath** : Mr. President, I regret I have not been able to follow the import of Professor K.T. Shah's amendment and therefore I rise to oppose it.

The article as it stands is to my mind quite clear. The article conveys the meaning that any Minister or Attorney-General shall have the right to participate in the debate, but by virtue of this article itself will not be entitled to vote. My friend Professor Shah wants to insert a provision that a Minister or Attorney-General if an elected member of Parliament shall have the right to speak etc., but shall not be, by virtue of this article, entitled to vote. Does he wish to tell the House that a Minister or the Attorney-General even after being an elected member of Parliament shall not have the right to vote? It comes to this : that he wants to provide that a Minister or the Attorney General even after being an elected member of Parliament shall have the right to speak in, or otherwise participate in the proceedings of the House, but shall not be entitled to vote. Then, I ask my learned Friend Professor Shah, who is entitled to vote? If you want to debar even elected members of Parliament from exercising their vote in Parliament, I fail to see to whom he wants to give the right of voting. Does he want to confer this right on those members of Parliament who are nominated. Who are not elected? I really fail to see what purpose is being served by the amendment which he has moved. The article as a matter of fact provides for two distinctive categories, as it stands, so far as I have been able to understand it. One is, Minister pending their election and the Attorney-General who may be nominated. Because a Minister under article 61 (5) may hold his office for six months without being an elected member of the House and under article 63 the Attorney-General need not be an elected member of the House. The President can appoint any person who

is qualified to be appointed as a Judge of the Supreme Court to be the Attorney-General. For either contingency we have to provide for. This, to my mind, is what this article does. Therefore, clear as I am in my mind that this article 72 debars only nominated members of Parliament from necessarily exercising their vote and does not take away that right of voting from elected members of the House whether a Minister or otherwise, I fail to see with what purpose Professor Shah has moved his amendment and I therefore appeal to the House to reject his amendment.

**Mr. Tajamul Hussain :** Sir, there are only five minutes at my disposal and I propose to finish my speech in those five minutes.

Now, Professor Shah has moved two amendments. His first amendment is to delete the words "Every Minister and". Therefore, he does not want a Minister to participate in the debate. The result would be this. Supposing in a Province or the Indian Union, there are....

**Mr. President :** That amendment has not been moved. You are referring to amendment No. 1494. Only amendment No. 1495 has been moved.

**Mr. Tajamul Hussain :** I am sorry I made a mistake. I am now dealing with amendment No. 1495 that has been moved by Professor Shah in which he says that the words "if elected member of Parliament" be inserted after the words "Attorney-General of India". He means that the Attorney-General of India shall be an elected member of Parliament. My objection to this is this. Suppose there is no qualified member of the Bar elected, you cannot guarantee that of the person elected, one must be a qualified member from the Bar-how are you going to have an elected member as the Attorney-General? My Friend Mr. Kamath has already dealt with article 63 which provides that the President can appoint as the Attorney-General for India from amongst the Judges of the Supreme Court. Therefore, I submit that the amendment moved by Professor Shah that the Attorney-General must be an elected member has no sense at all. I do not understand why he has moved that amendment. With these words, I oppose the amendment.

**The Honourable Dr. B. R. Ambedkar :** Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear, I might begin by stating some simple fundamental propositions. Every House is an autonomous House; that is to say, that it will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to take part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the Constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being enacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the

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right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through. It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House, he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person'. That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

**Mr. President :** I now put the amendment to vote.

The question is :

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

The motion was negatived.

**Mr. President :** I put the article to vote.

The question is :

"That Article 72 stand part of the Constitution."

The motion was adopted.

Article 72 was added to the Constitution.

**Mr. President :** The House stands adjourned till Eight O'clock tomorrow morning.

The House then adjourned till Eight of the Clock on Thursday the 19th May, 1949.

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