

**Article 311-B**

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

“That after article 311-A the following new article be inserted:—

‘311 B. Such persons as the provisional President may appoint in this behalf shall become members of Council of Ministers of the provisional President.	the Council of Ministers of the provisional President under this Constitution, and until appointments are made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under the Constitution.’ “
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**Dr. P. S. Deshmukh :** Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move:

“That in amendment No. 13 above, in the proposed new article 31 1B, the word ‘provisional’, wherever it occurs, be deleted.”

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

**Mr. President :** I take it that Dr. Ambedkar accepts the amendment.

**The Honourable Dr. B. R. Ambedkar :** Yes, Sir, I do.

**Prof. Shibban Lal Saksena :** Sir, I cannot understand this provision. On the day the new Constitution comes into force the present ministry ceases to exist and a new Council of Ministers should be sworn in. There should not be a provision as:

“all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under this Constitution.”

I think the first act of the new Constitution must be the swearing in of the new Council of Ministers. When the new Constitution comes into being it is but meet and proper that the President should call in the new Ministers to their office. If we want to provide for something, we should provide for a care-taker ministry. Let the old Ministry not be called the Ministry of the new President. I would therefore suggest that this article should be amended. You may say that until the President appoints the new Ministry the old ministry shall continue as a care-taker ministry. It looks odd that the old ministers should automatically become the Council of Ministers of the new President. There is some lacuna which should be remedied so that on the 26th January 1950 when the new Constitution comes into force the old Ministers become care-taker Ministers till the new Ministers take charge of the Government that same day.

**Shri H. V. Kamath (C.P. & Berar : General):** Sir, there is some force in Mr. Saksena’s contention. The point that lie has sought to make out is that on the day the new constitution comes into effect the whole Council of Ministers must formally cease too, exist, and they might be sworn in again. I think this is very desirable when we are promulgating the new Republic and inaugurating this new Constitution. It may be necessary that the same Ministers should be sworn In on that day.

**An Honourable Member :** Not necessary.

**Shri H. V. Kamath :** It may not be necessary, but it is very probable that the same Ministers who were Ministers before the commencement of the new

Constitution may be sworn in. But from the point of view of constitutional propriety and decorum I think we will be acting wisely if the Council of Ministers bodily, en bloc, resigned on that day. The Prime Minister should submit the resignation of the Council of Ministers to the President and the President should call upon the Leader of the House to form a new Cabinet under the appropriate article of the new Constitution.

There is another point in this connection. Our Constitution has adopted an oath of office which believe is slightly different from the old oath under which ministers were sworn in. We have now an invocation of God in the oath, but if a minister happens to be an agnostic or atheist he may make solemn affirmation. Considering this matter from these various aspects I think it would be wise on our part to provide for this contingency, and to lay down that on the day the Republic is proclaimed and the Constitution inaugurated the Council of Ministers should resign formally and the President calls upon the Leader of the House to form his own cabinet again.

There is one more point which I would like Dr. Ambedkar to consider. It is a verbal objection. Are Dr. Ambedkar and the Drafting Committee quite sure that this expression "Ministers for the Dominion of India" is quite correct? I do not like it myself. I object to the word "for". Is it not more correct to say "Ministers of the Dominion Government of India" or "Ministers of the Dominion of India"? "For" is not quite appropriate, but if Dr. Ambedkar and other linguistic experts hold that "for" is all right, I have nothing to say.

**Shri Brajeshwar Prasad :** Sir, I had no intention of speaking on this occasion but since my two friends Messers Shibban Lal Saksena and Kamath spoke on the subject I take this opportunity to express my own views on the amendment. It would have been better if this word "Dominion" had been eliminated from this article. Personally I feel that with the advent of a new age and with the establishment of a Republic in India we should have a new Cabinet. I know that there are three figures in the Cabinet which are more or less indispensable. I refer to our great leader Pandit Nehru, the valiant Sardar and the greatest scholar of Asia, the great Maulana Saheb. These three figures are indispensable in the Cabinet. Other members of the Cabinet are more or less in the nature of migratory birds . . . . .

**Mr. President :** I do not think the honourable Member is justified in making personal references to individual Ministers. We are not concerned with them. We are taking the ministry as a whole.

**Shri Brajeshwar Prasad :** I am sorry, Sir, if the word "migratory" means any reflection on our able Ministers. I thought that with the establishment of a real Republic in this country we should have men in the Cabinet who will command the enthusiastic support of young India as well. Therefore it is in the fitness of things that a wider range of choice is left in the President who may take new blood into the Cabinet which may be in accord with the needs of the hour. As far as the present members of the Cabinet are concerned I have nothing to speak against them personally, but I feel that with the new age new men are required. It is no use putting old wine in new bottles.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim): Mr. President, Sir, the point, though a very short one, raises a question of constitutional form, I think when the Governor-General ceases to function and a new President comes to take his place, the Ministers should vacate and should be reappointed. This seems to follow logically from first principles. The first reason is that the existing Ministers hold office "during the pleasure of the Governor-General". The "Governor-General" means the Governor-General who is now functioning. This Governor-General would be defunct at the inauguration of the Constitution and would be replaced by some other official,—the Provisional President. There will therefore be a break on the 26th of January next, or whatever date is ultimately agreed upon, on which the new Constitution comes into effect.

[Mr. Naziruddin Ahmad]

As the Ministers appointed by the Governor-General and as they are constitutionally to hold office “during his pleasure”, as soon as the office of the Governor-General becomes defunct, he ceases to be subject to any pleasure or pain and therefore the Ministers will no longer continue to hold office during his pleasure. Somebody else’s pleasure—his successor’s pleasure—comes to occupy the field. Pleasure is a personal factor and the successor’s pleasure will not necessarily agree with that of his predecessor. Therefore the new President should appoint or reappoint the Ministers to indicate his own pleasure. Till the appointment is made, the old Ministry may at the most function as a Care-taker Ministry.

This is no doubt a matter affecting constitutional form, but it seems to me of fundamental importance.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, this article 310 B. is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other articles which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have commented upon the provisions of this article 311 B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a, positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the-test of no confidence or confidence before the 26th of January, 1950- assuming that to be the date for the operation of the Constitution-this article 311 B does not, take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311B. probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the New Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

**Shri H. V. Kamath :** The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

**The Honourable Dr. B. R. Ambedkar :** That will be taken undoubtedly. “Appointment” means taking the oath office. Otherwise there is no appointment.

**Shri H.V. Kamath :** On that very day?

**The Honourable Dr. B. R. Ambedkar :** Yes, certainly. On that very day. “Appointment” includes oath of office.

**Mr. President :** I shall put Dr. Deshmukh’s amendment to vote-I take it that it has been accepted by the Mover.

The question is :

“That in amendment No. 13 above, in the proposed new article 311B, the word ‘provisional Wherever it occurs, be deleted.”

The amendment was adopted.

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

“That the proposed article 311B, as amended, stand part of the Constitution.”

The motion was adopted

Article 311B, as amended, was added to the Constitution.

## Article 312

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

“That for article 312, the following article be substituted :—

- ‘312. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.
- Provisions as to provisional Legislature in each State.
- (2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not come into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.
- (3) Any person holding office as Speaker of the Legislative Assembly or President or the Legislative Council of a Province immediately before the commencement of this constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.’

“ The provisions are quite clear and I do not think that they require any explanation.

**Mr. President :** Are there any amendments to this ? I do not see any.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, I do not think that sub-clause (3) is at all necessary. When we have already said above that the Legislative Assembly of a State or the Legislative Council of a State will remain as it is, it is not necessary that we should also say that the Speakers or the Presidents of the respective Houses will also remain as they are, for, they go with the Houses. Secondly, what I feel is but I do not know Dr. Ambedkar always might again come forward with the plea that I being a layman, he does not take any notice of me—but what I feel is that the wording