

Mr. President : Yes; That is what I have said.

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

“That in clause (1) of article 164 for the words ‘Save as provided’ the words ‘Save as otherwise provided’ be substituted”.

(Amendment Nos. 2390 to 2396 were not moved.)

Shri Jaspat Roy Kapoor : Sir, I beg to move:

“That with reference to amendment No. 2389 of the List of Amendments, in clause (1) of article 164, for the words ‘in a House’ the words ‘at any sitting of a House’ be substituted.”

To this there is another amendment;

Sir, I move:

“That with reference to amendment No. 61 above, in clause (1) of article 164 for the words ‘in a House or a’ the words ‘at any sitting of a House or’ be substituted.”

The object of this amendment is obviously to make a necessary improvement in the drafting of this article and I hope it will be appreciated by Dr. Ambedkar and that he will readily accept it.

Mr. President : The question is:

“That in clause (1) of article 164 for the words ‘Save as provided’ the words ‘Save as otherwise provided’ be substituted.”

The amendment was adopted.

Mr. President : Then, I shall put amendment 62 which will cover the other amendment also.

The question is:

“That in clause (1) of article 164, for the words ‘in a House or a’ the words ‘at any sitting of a House or’ be substituted”.

The amendment was adopted.

Mr. President : The question is:

“That article 164, as amended, stand part of the Constitution.”

The motion was adopted.

Article 164, as amended, was added to the Constitution.

New Article 167-A

Mr. President : We now take article 167-A, amendment No. 65. This arises out of amendment No. 2441 and this is for the addition of another article after article 167.

Shri B. A. Mandloi (C.P. & Berar: General): Mr. President, I beg to move amendment No. 2441 on page 247 of Volume I.—

“That after article 168, the following new article 168-A be inserted:—

‘168-A. On a question being raised or having arisen whether a member has incurred the penalty for the breach or breaches mentioned in article 168, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be, shall refer the matter to the Committee of Privileges or to a sub-committee appointed by him for its report. The Chairman or the Speaker shall give his decision after the report has been discussed in the House-Council and the decision of the Chairman or Speaker, shall be final’.”

Sir, the House has passed article 167 and 168 regarding the disqualification for membership, and the penalty for sitting and voting before making the declaration prescribed in article 165 or when not qualified, or when disqualified.

Having accepted these articles, naturally, the question arises as to who is the person to decide the question whether a particular member has incurred a disqualification or not. Therefore, the necessity to incorporate a new article to empower a particular person or authority to give decision on these questions arises.

Now, if we agree to this course, two important things have to be borne in mind: that the decision of the person or authority so empowered should be final, *viz.*, the decision of the person or authority duly empowered should not be challenged in a court of law, which would necessarily prolong the litigation and defeat the very object of the articles. Therefore, whatever authority is empowered to give a decision, its decision should be final. The other important thing to be borne in mind is that the matter should be decided as early as possible, because, under article 168, there is a penalty of Rs. 500 a day for a member who is under a disqualification and who sits or takes part in the proceedings, or votes on a particular motion. As soon as the question is raised that a particular member is under a disability, that particular member would naturally like the decision to be given as early as possible. Where he takes part in the proceedings and ultimately the decision goes against him, then, he would be liable to a penalty and if, as a prudent man, he does not take part in the proceedings and ultimately the decision goes in his favour, then, he loses his valuable right of participating in the deliberations. Therefore two important factors have to be borne in mind, *viz.*, that the decision should be final and that it should be given as early as possible. My submission is that the Speaker or the Chairman of the Assembly or the Legislative Council are quite competent persons who should be empowered to give decisions on such questions. We know, Sir, that the Chairman and the Speaker are required to give important rulings on questions raised in the House on the spur of the moment, and they are very competent persons to give the decision whether a particular person has incurred the disability or not. I have in my amendment suggested that the matter should be referred to a Sub-Committee or to a Committee of Privileges and as soon as the matter is shifted by that Committee, the report would be placed before the House when it will be discussed and ultimately the Speaker or Chairman would be in a position to give its decision on such matters and therefore I submit that this amendment of mine should be accepted by the House.

Mr. President : You may move your amendment No. 65 also.

Shri B. A. Mandloi : I have moved my original amendment No. 2441. Amendment No. 65 is an amendment to my amendment. I am not moving amendment No. 65. My honourable Friend Shri T.T. Krishnamachari may move amendment No. 65.

Shri T. T. Krishnamachari : If he is not moving, I shall move No. 65. Sir, I beg to move:

“That in place of No. 2441, the following new article be inserted:—

‘167-A. (2) If any question arises as to whether a member of a House of the Legislature of a State has	become subject to any of the disqualification mentioned in clause (1) of the
Decisions on questions as to disqualification of members.	last preceding article the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion’.”

Sir, I would ask the House to accept this amended version of the amendment moved by the Honourable Mr. Mandloi for this reason, that there are certain difficulties in the matter of practical application if amendment No. 2441 is accepted, *viz.*, that there will undoubtedly be a time, even if we are

[Shri T. T. Krishnamachari]

to endow the Speaker of a House with all the powers to put into operation the disqualifications under 167, when the Speaker will not have been elected and for another even the member who is elected as Speaker might be subject to some of the disqualifications and, as the scheme now stands, the permanent Head of the State will be the person who can take action. The doubt can be raised that once the Speaker is elected, his powers should not be infringed upon. I do believe on a previous occasion also in connection with the articles relating to Parliament this difficulty was felt but we got over it by the provision that in regard to all that has to be done in a House, if the President has powers, they will be delegated to the appropriate authority who might happen to be the Speaker. It is not likely that in this instance the Governor will act in this entirely unilaterally; he will act on the advice of his Ministers and naturally they will not do anything without consulting the Speaker. The second clause presupposes the bringing into being of an Election Commission which finds mention here for the first time and it relates to the Chapter on Elections articles 289 onwards, and the Drafting Committee have proposed by appropriate amendments to bring into being an Election Commission which will have the final say in all election matters. Therefore in order to prevent the Governor from acting himself or even acting on the advice of his Ministers from motives which might not be proper, the second clause lays the responsibility on the Governor and his advisers to obtain the opinion of the Election Commissioner or whoever decides the matter on behalf on the Election Commissioner. I believe this amendment covers the lacuna which my honourable Friend Mr. Mandloi wanted to fill in by his amendment No. 2441. The prestige of the Speaker is not involved in this because we are not taking away any power from the Speaker but we are only contemplating what is to happen when the Speaker may not have come into being. I do hope the House will accept this amended version of Mr. Mandloi's amendment No. 2441.

Kazi Syed Karimuddin (C.P. & Berar. Muslim): Sir, I would like to move No. 66 which stands also in my name. Mr. President, I beg to move:

“That in amendment No. 65 above, in the proposed new article 167-A—

- (i) in clause (1), for the words ‘Governor and his’ the words ‘Election Commission and its’ be substituted; and
- (ii) clause (2) and the figure ‘(1)’ occurring at the beginning of clause (1) be deleted.”

Sir, I have heard Mr. Mandloi. According to him the Speaker will be the proper authority and on the report of the Committee to be appointed by him this decision should be finally made by the Speaker. I have two objections to his amendment, first that the point about the disqualifications of a member is very important and it has to be enquired into in great detail. Of course the members of the Committee that would be appointed must belong to a political party and the decision in regard to disqualification of members should not be entrusted to members of a political party. Therefore, it is better that this matter is entrusted to the Election Commission. But in the amendment moved by Mr. T. T. Krishnamachari it is said in clause (2) that before giving any decision on any such question the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion. According to this sub-clause (2) the Governor becomes only the Post Office, because when once it is said that the opinion of the Governor shall be final and the same breath it is stated that he will be bound by the opinion of the Election Commissioner, then why not accept the decision of the Election Commission and say its decision will be final and it will be pronounced by the Election Commissioner? Therefore I have moved this amendment and I commend it to the House.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, I find Mr. Mandloi's amendment quite specific and distinct from the one moved by Mr. Krishnamachari. Mr. Mandloi's amendment relates only to article 168, and he wants the subject matter of breaches of the article to be decided by the Chairman or the Speaker, whereas Mr. Krishnamachari's amendment is a general one relating to disqualifications. Election malpractices or corruption should certainly go to an Election Commission. Article 168 reads:

"If a person sits or votes.....before he has complied with the requirements of article 165 etc."

Article 165 relates to oath of a member, and if he refuses to take the oath it would not be proper to send it to an Election Commission. In the past the Speaker has refused to allow such a member to speak and Mr. Mandloi wants to give the Speaker this right, while Mr. Krishnamachari's amendment is a general one relating to disqualification.

Mr. President : It does not relate to article 165 only; in the subsequent portion it relates to other things also.

Shri R. K. Sidhva : My point is about refusal to take oath. Then there are also matters like insanity. If a member is insane it is for the Speaker to decide.

Mr. President : What is he take an office of profit after election or becomes insolvent? These are covered by article 167.

Shri R. K. Sidhva : These cases should go for inquiry. But if he does not take the oath would you allow him to sit in the Assembly? I submit the thing is confused and should be made clear.

Prof. Shibban Lal Saxena : Sir, I agree with Mr. Sidhva that there is some confusion in the amendment moved by my Friend Mr. Krishnamachari. Mr. Mandloi pointed out a lacuna in article 168 he said the Speaker should decide whether a person has incurred the prescribed penalty or not. There are two things involved in this matter; (i) whether the person is disqualified to sit in the chamber or not, (ii) whether he has incurred a penalty or not. The conditions of becoming disqualified are contained in article 167, on the basis of which it should be decided whether a disqualification has been incurred or not. This obviously the Election Commission alone can decide properly. As regards not taking the oath, etc., the Speaker should be the person to decide straightaway. So there should be two new clauses, 167-A and 168-A. It should be mentioned in 167-A that question whether a member has become subject to any of the disqualifications should go to the Election Commission; and in 168-A it should be mentioned that the Speaker should decide whether a member has incurred the penalty or not. Bringing in the Governor will nor improve matters and he should have nothing to do with it. The Election Commission will say whether there is a disqualification or not and the Speaker will decide whether the penalty has been incurred or note. There is some inconsistency and it should therefore be divided into two parts as I have suggested, viz., 167-A and 168-A, relating to disqualification, to be decided by the Election Commission, and penalty, to be decided by the Speaker.

The Honourable Shri K. Santhanam : Sir, I think the objection to asking the Governor to decide is mistaken because the whole new clause refers to disqualifications mentioned in 167(1). Not taking the oath of office is not a disqualification. Until the person takes the oath he is not entitled to act and after some time his seat will become vacant automatically. It is no disqualification and my honourable Friend Mr. Sidhva may be assured that in this matter the Election Commissioner or the Governor does not come into the picture. But many of the disqualifications will require detailed investigations,

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e.g., whether a person owns allegiance to a foreign power, etc. Here records and evidence will have to be called for and surely the Speaker should not be made a judicial officer for this purpose and correspond with officials, etc. Another fundamental principle is that the Speaker should not come into a position of conflict with a member. No one knows what the result of the investigation is going to be, but during the process of investigation, if the Speaker conducts it, the relations between him and the member are bound to be strained. It is not therefore right to invest the Speaker with any such functions. In some Parliaments the Parliament itself sets up a Credential Committee or some such machinery to investigate such matters and pronounce judgment. We can certainly adopt such a procedure, but having set up an Election Commission which will be competent to deal with such matters it is not necessary to devise such a procedure. So far as the Governor is concerned, he is brought in merely because he is the executive head and the convenient instrumentality by which the thing can be done. He himself has no discretion in the matter and his decision will be bound by the opinion of the Election Commission. One amendment suggests: why not bring in the Election Commission direct? It is simply because the matter has to go through the executive head of the State. It is only on an understanding of the correct procedure that it has been put in. As a matter of fact it is the Election Commission which will be invested with jurisdiction to go into all these matters and pronounce whether a Member is qualified or disqualified.

Another point has been raised that under article 168 when a decision on disqualification of membership is pending for a long time a member who attends the House may be put to very heavy penalties. It is quite true. But there is nothing which compels a Member who is charged with disqualification to attend the House. He attends at his own risk. If he is absolutely certain that he is not disqualified he is certainly entitled to take the risk and attend. But if he does attend while a charge of disqualification is pending and if finally it is proved that he is actually disqualified, then he has taken a deliberate and calculated risk and he must pay the penalty. I do not think he deserves so much sympathy. I think the clause as it has been moved by my honourable Friend Mr. T.T. Krishnamachari ought to be supported.

Mr. Tajamul Husain (Bihar: Muslim): Sir, a person cannot be a member of a provincial legislature if he is a government servant or is of unsound mind or is an undischarged insolvent or is a foreigner or is disqualified by law. This is a very sound principle. The question now before us is who is to declare the members disqualified. We have got amendments here. One amendment says that the Speaker should refer the matter to the Committee of Privileges—the Speaker of the Legislative Assembly or the Chairman of the Legislative Council—the matter will be discussed by the Committee and then the Speaker or Chairman will decide it. The other amendment suggests that the Governor should decide it after consulting the Election Commission.

There is one flaw as regards the former amendment and it is this. Suppose there is no Committee of Privileges. So far we have not got any Committee of Privileges in the Draft Constitution. Then what are we to do? Another point is that the House may not be sitting. When the House is called and the matter is discussed it will mean considerable delay. There should be a quick decision and for this the Governor is the best person. The only objection in leaving it to the Governor is that he will be guided by the Cabinet by the Prime Minister. But in this matter the Prime Minister will have nothing to do and the Governor will not consult the Prime Minister. He will consult

the Election Commission which is the sole authority. And whatever the Election Commission report, that will be final and binding on the Governor. Therefore, out of these two amendments I think the second amendment seems more reasonable and it should be accepted.

Pandit Thakur Das Bhargava : Sir, a perusal of amendment Nos. 65 and 2441 leaves no doubt in my mind that they envisage different sets of facts. Amendment No. 65 is clear that so far as the question relates to part (1) of article 167 it is a matter within the jurisdiction of the Election Commission and on the advice of the Election Commission the Governor shall decide the question. In regard to article 168, an amendment has been moved that the Speaker should be given power. May I humbly submit that so far as article 168 is concerned it describes the offence, which will be governed by the law of the land. Let us examine what the offence is. The offence lies in this, that a member who is fully cognizant of the fact that he is committing a crime yet persists in attending the House. A member who has not taken the oath has no right to attend the House. He knows he has not taken the oath, yet he persists in sitting in the House. Similarly when he knows that he is not qualified or disqualified.....

Mr. President : Can he sit in the House at all if he has not taken the oath?

Shri R. K. Sidhwa : He can sit in the House but cannot participate in the debate unless he takes the oath. He cannot vote.

Mr. President : But does he become a member before he takes the oath?

Shri R. K. Sidhwa : Yes, that has been held by previous Speakers.

Mr. President : I find article 165 is clear. It says:

“Every member shall, before taking this seat, make and subscribe before the Governor.....a declaration according to the form set out for the purpose in the Third Schedule.”

So he has to take the oath before he sits.

Pandit Thakur Das Bhargava : So a person who has not taken the oath fully knows that he is committing a crime and therefore he is a person who should be dealt with under the ordinary law of the land and the Speaker does not come in at all. We are here considering the case of a person who is to his own knowledge committing an offence. He should be dealt with under the ordinary law of the land and he will be fined and the fine will be recovered as a debt due to the State. I do not therefore think that the House should accept the amendment moved by Mr. Mandloi. I support the amendment moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Sir, various points have been raised in the course of this debate and I should like to deal with them only one by one. If I heard my Friend Mr. Sidhwa correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhwa : Why should it go to the Election Commission?

The Honourable Dr. B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused: there is only disability of taking part in the proceedings of the House.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the main amendment moved by my honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not expressly stated it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned. I find no difficulty in accepting it.

Now I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If Members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgement or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e) I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167. I would therefore with your permission propose to amend clause (2) thus: "Before giving any decision on any question relating to disqualifications arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar: What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the Course of the election, after the election has taken place and the member has taken his seat.

Mr. President : Is not the election Commission entitled to deal with such cases?

The Honourable Dr. B. R. Ambedkar: Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of court that he has committed offences under the Election Act. That would also come under (e) After a man has taken his seat.....

Mr. President : It seems to me that there are two kinds of disqualifications. A Member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar: That would depend upon what sort of procedure we lay down at a later stage.

Mr. President : But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar: That is what (e) provides for.

Mr. President : Then other disqualifications may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

The Honourable Dr. B.R. Ambedkar: Those are dealt with Here. They are all about sitting members.

Shri L. Krishnaswami Bharathi : Please read the amendment.

The Honourable Dr. B. R. Ambedkar: There are two sorts of disqualifications: disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are chosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam : Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar: That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provisions permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things jumped together.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, there are now different disqualifications set out against becoming a member and against continuing to a member. Both are covered by article 167 (1). To make it clearer it is necessary to say that a person shall be disqualified for being chosen as, or for continuing to be a member of the legislature. If it is necessary to make it clearer we may do so.

Pandit Hirday Nath Kunzru (United Provinces: General): A closure motion was moved and you accepted it. I should have thought therefore that Dr. Ambedkar's reply to the debate would put an end to the discussion on the subject.

Mr. President : I am sorry I missed the point.

Shri M. Ananthasayanam Ayyangar : May I make one submission to you. I am not going to speak. I bow to your ruling. Dr. Ambedkar has tried to move an amendment in his final reply. Otherwise if the motion moved by Mr. T.T. Krishnamachari is put to the vote, I have no objection. I have come here to suggest that Dr. Ambedkar should withdraw his amendment which he tried to move in his reply.

Mr. President : You have now done that. I am sorry I had forgotten that closure has been adopted.

Shri R. K. Sidhva : What about Dr. Ambedkar's amendment? We cannot accept it as an amendment at this stage.

Mr. President : If it had been accepted by the mover, it could have been a different matter. The question is:

"That in amendment No. 65 of List I in the proposed new article 167-A

- (i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its' be substituted; and
- (ii) clause (2) and the brackets and figure '(1)' occurring at the beginning of the article be deleted."

The amendment was negatived.

Mr. President : Then Mr. T.T. Krishnamachari's amendment.

Some Honourable Members: With or without Dr. Ambedkar's amendment?

Mr. President : Without. The question is:

"That for amendment No. 2441 of the List of Amendments, the following be substituted:—

"That after article 167, the following new article be inserted:—

167-A. (1) If any question arises as to whether a member of a house of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of last preceding article, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.' "

The amendment was adopted.

Mr. President : Since this amendment is passed, Mr. Mandloi's amendment falls through. The question is:

"That new article 167-A stand part of the Constitution."

The motion was adopted.

New article 167-A was added to the Constitution.

Article 171

Mr. President : There is only one amendment to this article, No. 67.

Shri Satish Chandra (United Provinces: General): I do not wish to move the amendment, but I would like to have clarification that the ruling you have given just now in respect of article 164 will also apply to this article, and if the principle of joint sittings of the two Houses of the state legislature is not accepted later on, all the consequential amendments to this article will be made by the Drafting Committee.