

Shri H. V. Kamath : Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have some doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the President, without payment of rent. We should, proceeding logically, provide rent-free accommodation to Ministers also.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be riot proper to remove the Ministers from the purview and jurisdiction of Parliament.

Mr. President : I would like to put it to vote.

The question is:

“That in clause (3) of article 48, for the Words ‘The President shall have an official residence, the words ‘The President shall be entitled to the use of the Government House ,without payment of rent’ be substituted.”

The amendment was negatived.

Mr. President : Then I put the amendment moved by Shri T. T. Krishnamachari. The question is:

“That in clause (3) of article 48, for the words ‘The President shall have an official residence’ the words ‘The President shall be entitled without payment of rent to the use of his official residences’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move amendment No. 360.

“That clause (5a) of article 62 be omitted.”

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule III A and also the Schedule which deals with Instructions to Governors. The clause in question reads thus: “ (5a) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule III A.” Actually, since Schedule III A is not moved, this clause becomes superfluous. Therefore I have moved for its omission.

Shri H. V. Kamath: Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear.

That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified I hope Dr. Ambedkar will do so, and not leave it vague as at present.

The Honourable Dr. B. R. Ambedkar : Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question.' I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliament democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench Division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Shri H V. Kamath : If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tantamount to a violation of the Constitution and will he be liable to impeachment ?

The Honourable Dr. B. R. Ambedkar : There is not the slightest doubt about it.

The Honourable Shri K. Santhanam (Madras: General): I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers.

[The Honourable Shri K. Santhanam]

When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

The Honourable Dr. B. R. Ambedkar : I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or whether he was free to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

Shri H. V. Kamath : Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision?

The Honourable Dr. B. R. Ambedkar : We cannot discuss this question in this way.

Mr. Naziruddin Ahmad : We have now opened up a very debatable proposition, namely, whether the Ministry and the President would be bound to follow the decision of Parliament. The ruling on the British Constitution on this point will not really be relevant. The British Constitution has long-established conventions. There is no statutory enactment. The powers of the King and of the Executive are well-known through the centuries. But ours is going to be a statutory constitution. So I think we should have some provision to make the point clear. Otherwise it may one day lead to an impasse. The precedent of the British Parliament in the King's Bench Division will not at all help us. So far as the Canadian precedent is concerned, that is also based upon conventions and understandings established for a long services of years. So far we have established no precedent at all to fall back upon. But as this is reopening a dead subject I do not think we need proceed further with this discussion. But we cannot take the opinion of Dr. Ambedkar as binding.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, I did not want to interpose in the debate, but I find that the point raised as to the necessity of a provision is entirely without substance. We have provided in article 61(3) that the Council of Ministers shall be collectively responsible to the House of the People. If a President stands in the way of the Council of Ministers discharging that responsibility to the House he will be guilty of violation of the Constitution and he will be even liable to impeachment. Therefore it is merely a euphemistic way of saying that the President shall be guided by the advice of his Ministers in the exercise of his functions. This Council of Ministers will be collectively responsible to the House of the People, and the House of the People must meet all situations in regard to the budget, in regard to legislation, in regard to every matter connected with the administration of the country. Therefore, if the Council of Ministers is to discharge their responsibility, it will be the duty of the President to see that the Constitution is obeyed and therefore article 61 along with clause (3) of article 62 make quite clear all the incidence of responsible government. Otherwise we will have a detailed list of all the incidence of responsibility; that the Prime Minister is responsible when dissolution of the Parliament is to be effected, what exactly the advice or the occasions when the advice tendered by the Council should be followed by the President, etc. Some such attempt was made in Ireland on account of the distrust of the Crown in those days. In the earlier Irish Constitution, some

provisions were inserted stating in detail what are the incidence of responsibility. Now, if you just look at Canada, or Australia, or any other Constitution in which responsible government obtains or some semblance of responsible government obtains, there are no detailed provisions. The German pandits who framed the German Constitution attempted some kind of definition but that resulted in failure as we know as soon as a conflict between the powers of the President and of the Ministry arose, and that led to the collapse of the German Reich. Therefore, under those circumstances, I venture to submit that there is absolutely no necessity for setting out in detail what are the functions and the incidence of responsible government in an article of the Constitution.

Prof. Shibban Lal Saksena : Mr. President, Sir, we have framed a Constitution in which we have provided- for even very small details. Our Constitution differs from the Constitution of England in that the English Constitution is based on conventions. Here in a vital matter like this, we have not stated anywhere that the President is bound to call the Leader of the majority party to form the Cabinet and that he is bound to accept the advice of the Ministry. The Schedule providing for an Instrument of Instructions has also been taken away. Dr. Ambedkar has just now explained to us that conventions on this question have developed in other countries. I had hoped when Schedule IV was being deleted, provisions will be made in the Constitution to cover these points. In fact, at one time Dr. Ambedkar told me that we should frame all these details because we were just commencing a big experiment in democracy. Now that we are providing even for small details in the Constitution, I do feel that these fundamental things, that the President shall be bound to call the leader of the majority party to form the Cabinet, and that he will be bound to accept the advice of the Cabinet, should be incorporated in some instrument of instructions or in some articles of the Constitutional.

Mr. President : I think we have discussed this matter enough. Mr. Krishnamachari, do you want to say anything ?

Shri T. T. Krishnamachari : No. Sir, Dr. Ambedkar has replied.

Shri H. V. Kamath : What is your own reaction to the debate. Sir ? The issue was originally raised by you.

Mr. President : It is not a question of my reaction. It is for the House to decide.

Mr. Naziruddin Ahmad : Permission may be given to reopen the matter.

The Honourable Shri K. Santhanam : This is purely consequential.

Mr. President : I have to put this amendment to the vote. That is all my reaction.

The question is

“That clause (5a) of article 62 be omitted.”

The amendment was adopted.

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

“That clause (6) of article 67 be omitted.”

This is a very important clause and I can appreciate the vigilance of my honourable Friend Mr. Shibban Lal Saksena in moving a negative amendment to this amendment. I would at once tell the House that this important clause