

Mr. President : Now article 165, as amended, is before the House.

The question is:

“That article 165, as amended, stand part of the Constitution.”

The motion was adopted.

Article 165, as amended, was added to the Constitution.

Shri H. V. Kamath : Sir, how does this article find a place under this Chapter which is headed “ Disqualifications of Members”? Article 165 deals not with disqualification but with a declaration.

Mr. President : That is a matter which may be looked into by Dr. Ambedkar.

Article 166

(Amendment No. 2401 was not moved.)

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

“That after clause (1) of article 166, the following new clause be inserted:—

‘(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of such period as may be specified in rules made by the President that person’s seat in the Legislature of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States’.”

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

Mr. President : There is the amendment of Mr. Naziruddin Ahmed, No. 2403, but that is covered by the one now moved. No. 2404.

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

“That clause (2) of article 166 be deleted.”

Mr. President : No. 2405 is covered by the previous one, I think.

(Amendment Nos. 2405 and 2406 were not moved.)

Mr. Mohd. Tahir : Sir, I move:

“That sub-clause (a) of clause (3) of article 166 be deleted.”

Sub-clause (a) says that if a member of a House becomes subject to any of the disqualifications mentioned in clause (1) of the next article, that is, article 167, his seat shall become vacant. But if a man is subject to the disqualifications mentioned under clause (1) of article 167, how can he become a member of the Legislature? It is not necessary to retain this clause because a Member cannot be a Member if he is disqualified under clause (1) of article 167.

(Amendment No. 2408 was not moved.)

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

“That in clause (3) of article 166, the following new sub-clause be inserted:

‘(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;
(d) or dies.’ ”

May I just mention one or two points about the second part of the amendment relating to the death of a Member? When I moved a similar amendment on an earlier occasion, my query remained unanswered. The point that

[Shri H. V. Kamath]

I raised then was whether a vacancy arises or not in the event of the death of a member. If we turn to articles 51 and 55 regarding the vacancy arising in the office of the President or Vice-President, it is explicitly laid down there that a vacancy will arise by reason of death, resignation or otherwise. Here clause (a) refers to "otherwise" and (b) of course refers to resignation. Here no mention is made about a provision in the event of death by which a seat becomes vacant. I do not see why for the President and the Vice-President such a thing is mentioned and we omit any such mention in the case of a Member of Parliament! We have such a provision in the Rules of Procedure in the Assembly which we adopted two years ago. The relevant portion of Rule 5 of those Rules reads:

"When a vacancy occurs by reason by death, resignation or otherwise."

I do not know whether it is sheer consideration of prestige that stands in the way of the Drafting Committee or Dr. Ambedkar accepting this amendment of mine. Speaking on my previous amendment, Mr. Sidhva said that if a member dies the "office" knows about it. I do not know which office he meant or which office will know it. Therefore, it is better to say in this article that a vacancy will arise also in the event of death of a member of the House.

Shri R. K. Sidhva: I said—who will intimate to the office after his death.

Shri H. V. Kamath: That is what the honourable Member said. But which office will know it? Where you have definitely stated that a vacancy will arise in the event of the death of the President or the Vice-President and it is also stated in the Rules of our Assembly, I do not understand why an omission should occur with respect to this article.

(Amendment Nos. 2410 to 2414 were not moved.)

Mr. President : I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. Kamath : Will not Dr. Ambedkar answer the point raised by me?

The Honourable Dr. B. R. Ambedkar : I do not consider it necessary.

Mr. President : The question is:

"That after clause (1) of article 166, the following new clause be inserted :—

'(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then, at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.' "

The amendment was adopted.

Mr. President : The question is:

"That clause (2) of article 166 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That sub-clause (a) of clause (3) of article 166 be deleted."

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of article 166, the following new sub-clauses be inserted:—

- ‘(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;
- (d) of dies.’ ”

The amendment was negatived.

Mr. President : The question is:

“That article 166, as amended, stand part of the Constitution.”

The motion was adopted.

Article 166, as amended, was added to the Constitution.

Article 167

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

“That in sub-clause (a) of clause (1) of article 167, after the word ‘profit’ the following be inserted :—

- ‘or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article.’ ”

The amendment portion would read :

“A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative council of State—

- (a) if he holds any office of profit or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article under the Government, etc.....”

The old-time disqualification, arising out of the possibility of conflict of interests between one’s own private interests and that of public service, had led to the insertion as a disqualification the holding of any office of profit. Under present conditions, however, the mere holding of an office of profit, that is to say, any post carrying some salary or allowance attached to it is scarcely a temptation to at least many likely candidates who have attained prominence in their business or profession, and whose other source of income may be much greater than Government salaries can possibly be.

This, however, does not make holding of a post of profit under Government the less a disqualification. I want, however, to add certain other things, which are, as we notice, far more likely to be sources of temptation to sacrifice public interest to private advantage, than mere holding of an office of profit. Whatever may have been the conditions in the days of Walpole, today a Government office as such hardly suffices to tempt a legislator or a candidate for the Legislature, who has a flourishing private profession, trade or business, wherein much greater prospects of gain can be had by contact with Government or membership of the House.

One of the most considerable sources of temptation or corruption in these days of great building activity is that of a building contract. The possibility of enormous profits being obtained through large building and development projects, in which the State is interested directly or indirectly—and every day the State becomes more interested in those projects—will be a source of gain to such an extent that those who have it in their power to grant, and those who have such contracts, can afford to subsidise to any extent, if only people can canvass for them sufficiently, or help to obtain such contracts for them on easy terms from Government. The same applies to supply of