

Mr. President : The question is :

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (a) of clause (2) of article 130, for the word ‘transfer’ to the Governor any functions conferred by any existing law on’ the words ‘authorise or empower the Governor to exercise any power or perform any function which by any existing law are exercisable or performable by’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 130 stand part of the Constitution.”

The amendment was negatived.

Article 130 was added to the Constitution.

Article 131

Mr. President : As regard this honourable Members will see that there are two alternatives suggested by the Drafting Committee. The amendments are relating to either the one or the other alternative. So I think the best way is to take an amendment in favour of one of the alternatives and if than is accepted, then all the other amendments relating to the other alternative drop automatically. We take 2006 and if this is carried, then we go to the second.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Sir, I suggest this. The amendments of course may be taken. But first we might form our opinion as to whether we want the first or second alternative so that if we want the first alternative, then the amendments to that alternative only will be considered and the other alternative will go away.

Mr. President : That is exactly what I suggested but it was felt that the best course will be to take the amendments.

The Honourable Shri Ghanshyam Singh Gupta : Supposing we take the other alternative and then the amendments, the first alternative will not be taken at all.

Mr. President : If 2006 is carried, all the amendments to the other alternative will drop.

Shri L. Krishnaswami Bharathi (Madras : General) : There is a third alternative.

Mr. President : That can come in as an amendment to one of the alternatives.

Shri Brajeshwar Prasad : Sir, I refer to 2015 stands in my name.

Mr. President : I shall take that up. That will come as an independent one. We will first dispose of 2006. Mr. Gautam.

An Honourable Member : What about appointment question?

Mr. President : We are taking up the article dealing with election. Then we shall take up the question of appointment. First we want to get rid of the question of election one way or the other.

Shri L. Krishnaswami Bharathi : Both may be negatived.

Mr. President : There are amendments to the second alternative.

Shri L. Krishnaswami Bharathi : If the amendment regarding appointment by President is carried, all other amendments will fall to the ground.

Mr. President : It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari : The choice of the alternative may be left to the mover. Dr. Ambedkar may say which he proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting Committee will be the person to make the choice. If you allow it to him, that will solve the problem. He might move one of the alternatives. This procedure is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President : Is Dr. Ambedkar prepared to accept one of the other alternatives?

The Honourable Dr. B. R. Ambedkar : Sir, I want to say a word regarding the procedure to be followed. Taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one thing in common *viz.*, that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendments here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House, to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupta, and then Mr. Kamath's and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the matter.

Mr. President : There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the president.

Shri Alladi Krishnaswami Ayyar (Madras : General) : If the question of appointment or not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's view in the matter.

Mr. President : There is bound to be discussion on this because there seems to be some difference of opinion. So we shall take up the second alternative of Mr. Gupta. Here also he brings in one element of consultation. I think we had better take up No. 2015.

Shri H.V. Kamath (C. P. & Berar : General) : I submit 2011 is substantially the same.

Mr. President : 2007 is also the same. Any of these may be moved and then we shall accept the wording. 2006 we leave out. 2007 will be the same. 2015 may be moved.

Shri K. M. Munshi (Bombay : General) : 2015 is more complete.

Shri H. V. Kamath : What about my amendment?

Mr. President : It is not as complete as 2015.

Shri Brajeshwar Prasad : Sir, I beg to move :

“That for article 131, the following be substituted :-

‘131 The Governor of a State shall be appointed by the President by warrant under his hand and seal.’”

The great merit of this amendment which stands in the name of five or six Members of this House is that it lays down a simpler procedure than that prescribed either in the article or in the alternatives suggested by the Drafting Committee.

I feel, Sir that in the interest of All-India unity, and with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained intact over the provinces. To say that the President may nominate from a panel of names really means restricting the choice of President. It gives power into the hands of the Legislature. It is necessary, Sir, that the President should be free from the influence of the Legislature. I feel that the Governor may be one from the province or from another province. Personally I feel that the man from a province should not be appointed in the same province, because it gives encouragement of fissiparous tendencies. So I say the choice of the President should be unrestricted and unfettered. Sir, I have nothing more to add. This is a simple proposition and I commend it for the acceptance of the House.

Mr. President : Then there are other amendments relating to election. I shall have them moved, and then we can have general discussion. There is the one by Mr. Naziruddin Ahmad, the other by Shri Mihir Lal Chattopadhyay. There is the first alternative by Mr. Gupta, and then there is amendment No. 2013 by Pandit L. K. Maitra and others. There are several others which all deal with election. So I shall take one of them. I think No. 2013 seems to be the most comprehensive of these. But which shall we take up? Those who are in favour of election may choose any one of these, and whichever they choose, I shall allow to be moved. Those who favour election may choose any one of these amendments, favouring election.

Mr. Mohd. Tahir : I have got my amendment No. 2019.

Mr. President : That is different, and it comes after election. We are now on the question of election.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, Amendment No. 2013 is the most comprehensive one, but I am not permitted by the party to move it.

The Honourable Shri Ghanshyam Singh Gupta : If you put the amendment just now moved, then the whole thing will be solved. If it is carried, then there will be no necessary for any other amendment. The discussion can now take place.

Mr. President : I take it there is no other amendment going to be moved.

The Honourable Shri Ghanshyam Singh Gupta : If this amendment is defeated, then the other amendments will come in.

Mr. President : Then let us dispose of this amendment first. Seeing that there is not much difference of opinion, I hope there will not be much discussion.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment-No. 2015-which has just been placed before the House by my honourable Friend Shri Brajeshwar Prasad. The amendment I gave notice of-No. 2011 is substantially the same as the one moved by him, except for the legal or constitutional terminology added to it. There is another point-a very minor one-which I would like to point out before I proceed to the substance of the motion.

Mr. Mohd. Tahir : Sir, on a point of order. During the discussion of this Draft Constitution the House on an earlier occasion unanimously passed that the Governor shall be elected. I would like to know, in view of this, whether any Member can be permitted to move any amendment against this decision of the House. The main principle was discussed and decided upon by this House, and this second alternative is only a creation of the Drafting Committee. So, can any Member be permitted to move any amendment which goes against election of the Governor?

Mr. President : It is open to this House to alter its own decision. This comes in as an alternation of a previous decision. It is open to the House to reject it. So there is no point of order.

Shri H. V. Kamath : The words “of a State” occurring in the amendment are more or less redundant. If we turn to the Chapter dealing with the President, we find that once mention has been made of the President, the subsequent article 43 regarding the election of the President, does not mention or use the words “of India”. On that analogy, I thought, the words “of State” here might have been usefully omitted in the interest of brevity. Anyway, I am not particular about it and I support the amendment as it has been brought before the House which is substantially the same as mine.

My friend Mr. Tahir raised an objection and said that the House had on an earlier occasion adopted another method of choosing the Governor of the State. It is quite true. During the August 1947 session of this Assembly-I am reading from the Reports of Committees, Second Series-the Assembly adopted an article to the effect that for each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage. But, Sir, as you rightly pointed out, this is a sovereign Body which can alter its own decisions, and to my mind there have been sound reasons why the decision should be altered today in the light of the circumstances that have arisen since the passing of that article in August 1947. As the House will recollect, the scheme envisaged in the July-August session, 1947, was more of a federal type than....

Shri Lakshminarayan Sahu : On a point of order, Sir. Rule 32 of Rules of Procedure says that :

“No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the members present and voting.”

Mr. President : And I have assumed that more than one-fourth of the Members present are in favour of it. If you want it, I can actually ascertain it. I think more than one-fourth are in favour of it.

Shri Biswanath Das : Sir, is it left for assumption or have you actually taken the sense of the House?

Mr. President : I have not actually taken the sense of the House, because I know it is so. If you want, I can take it now.

Shri T. T. Krishnamachari : A ruling has already been given. It is open to any Member to question it now?

Shri H. V. Kamath : During the August Session of 1947, the House will recollect that we adopted certain articles on the Executive where this State of India has been referred to in more than one place as a Federation. But in the Draft Constitution which we are considering today that word has to my mind deliberately and with sound reasons been deleted, and article I which we passed in the last session of this Assembly reads that India shall be a Union of States. Therefore, the emphasis today is more upon the Union pattern of our State than upon its Federal aspect. My Friend, Dr. Deshmukh, just an hour ago, spoke on his resolution favouring a strong unitary system of government for India. Much can be said in favour of his proposition of this particular junction in our country's affairs. But, Sir, there is one thing to be noted as regards this and it is this : the constitution which we are framing today is not intended merely for the state of transition, but is intended to last for many decades to come, for such periods or times when happily by the Grace of God we have settled down to the tasks of reconstruction. Our people in the provinces have already got used to the system of provincial autonomy. They have had a taste of it during the last ten years of more, and I suppose now it is not wise for us to do away with the system of provincial autonomy or water it down in any measure. If at all, subject to the strength and the stability of the country as a whole, it is essential for us to give in course of time, more powers to the people in every province. But, Sir, the crux of the matter here is this. What type of Government are we going to suggest or prescribe for these provinces, or the States in the new Constitution, which will be the units of administration or governance? If the object of the Constitution is to have a parliamentary or cabinet form of Government in every State, then it is patent, it is obvious that the method of choice by direct election is absolutely inappropriate and unacceptable. It is an admitted fact that one of the essentials of successful cabinet government in a province or in the country as a whole is the existence of a fairly impartial constitutional head, who is more or less a symbol or a constitutional figure-head. If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province—by the entire adult population of the province—he will think that he is a far superior man and a far more powerful man than the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State : one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have

been elected by the people of the whole province and as such I am *persona gratia* with the people and not the Chief Minister". Therefore there will be in the administration of the province at every turn—if not at every turn, then very often—points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor.

As regards the other system of election from a panel, there are several objections to that as well, so far as the choice of a Governor of a Province or a State is concerned. Suppose the Legislature of the State submits a panel of four or five names to the President for selection and suppose the President—because after all every one is guided ultimately by his own views or conscience or his own judgment in every matter—chooses not the first nominee but the second, or third or fourth or the 9th. Then the Legislature of the State will certainly have a grouse against the man chosen by the President because he has been chosen in preference to the first man. Therefore the relations that will ensue from this appointment of one from among the panel,—the relations between the Ministers or Legislature in the State and this new Governor—will not be very cordial and happy.

Another consideration as regards this matter is this : always in an election—whether it is a small electorate or a large one—there are, what I may call, factions coming into being—factions or groups jockeying each other for power. Even if there is a solid, cohesive party within a Legislature, it is very likely that when they know that a panel of names is going up to the President for the appointment of a Governor, there will be groups within the party, each group favouring one of their own favourites, and the group feelings and passions that would be roused during the election on the panel system are likely to persist during the following years, and will not make the working of the party or the cabinet in the province very happy or conducive to amicable relations between the people and the Ministry in the province.

I will therefore submit, Sir, that on the whole, considering the *pros* and *cons* of election *vis-a-vis* appointment, the latter is far preferable. I do not like the word nomination at all. I think it is a very unpleasant word to use in this regard, because it is really not nomination by the President but it is appointment. There was an amendment to that effect but, I see, it has not been moved and I just referred to it in passing.

Lastly, I would say that it may be argued against the amendment that has been moved by my friend Shri Brajeshwar Prasad, and which I am supporting, that the Governor is not absolutely a figure-head : he is not just a symbol. The objectors will point out to articles 188 and also 187, which have invested the Governor with powers in grave emergencies and with power to promulgate ordinances respectively. As regards the first, article 188, it will be seen that the maximum period during which the Governor will be invested with these extraordinary powers is two weeks. Of course you can work wonders or tyranny even within twenty-four hours. But the House will see that the Governor has to forthwith inform or communicate to the President the action that he has taken. Therefore, really speaking the Governor practically divests himself of responsibility as soon as possible in any situation that may arise in the state on account of the emergency, and the President takes all the powers in his own hands, and the whole country will be governed as under Part XI of the Constitution—article 275 to 278.

The ordinance-making power is distasteful to me and I moved some amendments in connection with these powers of the President a couple of days ago. But Dr. Ambedkar himself argued against the amendments of mine which

[Shri H. V. Kamath]

tried to limit the powers of ordinance-making by the President. He said that it was nothing extraordinary and that it was only a power given to the President at times when the Parliament was not in session, and visualising the possibility of Parliament sitting continuously, almost the whole year, he assured the House that the need for ordinance-making by the President will not arise. I hope the same argument will apply here too. In view of the fact that the legislative business will be very heavy in the States as well as in the Centre, I am sure that the state legislatures as well as the Parliament at the Centre will be almost continually in session, and the need for ordinance promulgation by the Governor in the States just as in the case of the President at the Centre, as pointed out by Dr. Ambedkar, will not arise. I therefore submit, taking all in all—no system is perfect—considering the constitution as a whole, considering the powers given to the State legislatures, so the State cabinet and the relations between the units and the Centre, I think that the lesser-most evil is this system of opportunities by the President of the Governors in the various States. I, therefore, support the amendment and commend it to the acceptance of the House.

Shri B. A. Mandloi (C. P. & Berar : General) : Sir, I crave your permission to move my amendment No. 2007 as it is more comprehensive, inasmuch it deals with the first alternative also.

Mr. President : Amendment No. 2007 is the same as No. 2015, which has just been moved.

Shri B. A. Mandloi : But the second part is not moved. My amendment deals with both the alternatives. The first alternative is to be deleted and in the second alternative some modification is suggested.

Mr. President : If the second is carried the first alternative goes automatically.

Sardar Hukam Singh (East Punjab Sikh) : Sir, I oppose the amendment moved. I am afraid those of us who have given notice of amendments have been placed somewhat at a disadvantage, because the House is to decide on a question without hearing us and without appreciating what we have to say on our respective amendments. I have also one amendment No. 2006 in my name in my opinion the second alternative suggested was the best course. It steered a middle course. On one side there is the election of a governor of a State. I agree with my honourable Friend Mr. Kamath that it would be expensive as well as troublesome to go to the polls too often. And there is the danger of a conflict between the Governor and the Premier as well. At the same time I think these should not be so much discretion left with a Governor. Also when he has to act on the advice of one party, it might be abused. There might be favouritism. In my opinion the second alternative suggests a course which provided some check against such favouritism. If there was a panel to be provided by the legislature of the State, certainly even then the ultimate power of appointment would lie with the ruling party or the Governor and they can choose whosoever suits them best. In that case the merits of those individuals who have been recommended in the panel would be before the public and if the right man is not chosen certainly the public shall have a right to criticise the selection and that would work as a wholesome check against my favouritism or abuse or power. So in my opinion the second alternative was the best between the two extremes of pure election and pure nomination. Therefore I oppose the present motion.

Shri Alladi Krishnaswami Ayyar : Sir, in view of the decision that was reached some two years ago and in view of the fact that I feel convinced that

the only right course, taking all the circumstances into consideration, is to accept the amendment of Mr. Brajeshwar Prasad, I should like to say a few words in support of the amendment. In the consideration of this question, the main points to be remembered are that this Assembly has accepted the introduction of responsible government in the different States, that the Governor is merely a constitutional Head of the province and that the real executive power has been vested in a ministry responsible to the Lower House in the different States. The question for consideration before this House is whether, under these circumstances, there is any point in going through an expensive and elaborate machinery of election based upon universal suffrage. After giving my best consideration to the various proposals put forward, (1) of a choice of the Governor on the basis of universal suffrage, (2) of election of the Governor by a majority of the Lower House or of both Houses whether on the principle of proportional representation or otherwise, (3) of a selection of a panel by the Lower House in the State from which the choice is to be made by the President of the Union or (4) of appointment by the President in consultation with the Cabinet, I feel that the wisest course to adopt is the last one. If the Governor is properly functioning as the constitutional Head, the expenses involved in going through the process of election is out of all proportion to the powers vested in the Governor under the Constitution. There is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier and the Cabinet responsible to the Legislature which itself has been elected on the basis of universal suffrage. Again, the election itself under modern conditions will have to be fought out on a party ticket. The fact is that even at or during the elections the party will have to rally round a leader who will presumably be the future Premier of the Province. Is the rallying to be round the Governor's name or the Premier's name? In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government. There is no correspondence between the Governor of a State in the United State of America and a Governor under our Constitution. In the case of a Governor of a State under the United States Constitution, the real and substantial executive power is vested in the Governor. There is a distinct separation between the executive and the legislature in the United States. A proper analogy has to be sought for in the Constitution of Canada where a responsible Governor obtains. In Canada, the Lieutenant-Governor of each of the provinces is appointed by the Governor-General, that is by the Governor-General on the advice of the Cabinet. There are many features of resemblance and similarity between the Canadian Constitution and our Constitution which, by some critics, has been considered to be quasi-federal. The system in the main we have accepted is the principle of responsible Government obtaining in the Dominions or in the different parts of the Commonwealth. Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution.

In the normal working of the Constitution I have no doubt that the convention will grow up of the Government of India consulting the provincial Cabinet, in the election of the Governor. If the choice is left to the President and his cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same time has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet government in the early stages. The central fact to be remembered is that the Governor is to be a constitutional head, a sagacious counselor and adviser to the Ministry

[Shri Alladi Krishnaswami Ayyar]

one who can throw oil over troubled waters. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the provincial Government, is likely to discharge his functions better than one who is elected on a party ticket by the province as a whole based upon universal suffrage or by the legislature on some principle of election.

One thing I may mention. The point has been raised in these discussions, whether it is wise at all to invest so much power in the Prime Minister or in the President of the Union acting on the advice of the Prime Minister. If you can confide the appointment of the Commander-in-Chief of all the Forces, the Ambassadors in different parts of the world, the Chief Justice and the Judges of the Supreme Court and the appointment of other high offices in a Cabinet responsible to the Legislature, and theoretically in the President, I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, of consulting the provincial Cabinet might easily grow up. Such a convention as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet.

I owe it to myself to say a few words about the panel, because the Drafting Committee of which I am a member felt the difficulty of an election process being gone through as per the original decision of the House. Tentatively, another suggestion was put forward by the Drafting Committee. On a fuller consideration I feel convinced that the panel system is likely to be fraught with great danger as experience shows in the case of the election of Vice-Chancellors in the several universities. Supposing three or four people are elected by the provincial legislature. What is the President to do? Is he to give his concurrence to the person who has obtained the largest number of votes or, go out of his way and select people who have lesser number of votes? Normally, he must support the candidate who has obtained the largest number of votes. If he goes out of his way and selects anyone of the other three, it is sure to lead to friction and continuous friction between the province and the Centre. That is another difficulty in the matter. In the net result, if the President is to get on smoothly with the province he has merely to say ditto and confirm the appointment of a person who obtained the largest number of votes in the provincial legislature. That would be the effect of that. There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result.

Then there is another point. It is said that the Governor may occasionally have to use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger. Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of

harmony, in the interest of good working, in the interest of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet. With these words I have great pleasure in supporting the amendment moved by Mr. Brajeshwar Prasad.

Dr. P. S. Deshmukh : Mr. President, Sir, I think that this is one of the article which should be discussed by this House at greater length than usual and for this reason, viz., that we are altering almost the whole idea about of the office of Governor of a State. It is quite right to say, that since we are giving adult franchise, and had provided for an elected Governor there may be innumerable people in this country who will be looking forward to the exercise of their vote for choosing the man who will be guiding the destinies of their own province. As I have said already, I am not in favour of the provinces as they exist today and so far as the appointment of the Governors is concerned, we have got to take a few fundamentals into consideration. Firstly, if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically that he should be a real executive authority. On the other hand if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President. Over this question there are sharp differences of opinion. Some people say that we are committing a breach of faith with the people of India if, after having told them once that the Governors will be elected we go back upon it and provide for their appointment by the President. I therefore want, Sir, that the people of India should understand what exactly we are doing and why we are doing it. Therefore I would like all the arguments which are in favour of our choice of appointed Governors should be stated on the floor of this House so that the nation outside will be convinced of the correctness of the decision that we are now taking. So long as the provinces are there and the structure of the Constitution remains as it is, I think we have, although somewhat late, corrected a mistake that otherwise would have been there. Our whole Constitution is based on the 1935 Act which in itself is based on the principles of responsible government. There is responsible government not only at the Centre but also in the provinces. Wherever there is responsible government, it necessarily means that the representatives of the people should have the authority to alter the executive any day or at any time. That being so, the head of the administration must be one who cannot interfere with the day to day administration. Therefore it necessarily follows that even if you have election for Governors, the Governor will have to be a figurehead and not a person who can interfere with the day-to-day administration. That being so, it would not be correct to ask the people to take the trouble of going through a huge election on a gigantic scale to elect a person who would be merely figure head. The decision embodied in this amendment is, I believe, a correct decision, because the Governor is merely a figurehead. He is a constitutional head without any authority to interfere with the actual administration. It is sometimes said that we are depriving people of the exercise of their votes. I do not think that is the case because the people will still have periodically to choose on the basis of adult franchise their own representatives in the provincial assemblies, a majority of whom will form the Provincial Ministry which will rule the Province and exercise all the powers which the Constitution provides for.

The other objection that is taken to the appointment of Governors by the President is that we are clothing the President and the Prime Minister with too

[Dr. P. S. Deshmukh]

much patronage. In a country like this, which is one of the greatest in the world, we will have willy-nilly to give lot of powers to the man who is selected by the people. After all the Prime Minister of India is going to be a popular Prime Minister. He can be there only so long as he has the support of the Parliament elected by the people at large. Therefore there should be no hesitation in giving powers of patronage to the Prime Minister or the President. After all, the representatives of the people will be there to call them to account. So, Sir I do not for a minute accept the argument that the Prime Minister will have too much patronage, that he will appoint the judges of the Supreme Court, he will appoint all ambassadors and then the Governors and so on and therefore, he will be a sort of a Moghul Emperor reigning at Delhi. I do not think these fears of the Prime Minister being clothed with too much patronage are justified.

An Honourable Member : Do you anticipate criticism?

Dr. P. S. Deshmukh : Yes; I am certainly anticipating criticism because criticism is bound to be there since we are taking such a drastic step as to alter a principle which we had agreed upon, and therefore, I am perfectly within my right to anticipate criticism and to say beforehand what is likely to be stated on the other side.

Then, Sir, we have also consider this; supposing we were to elect the Governor by adult franchise the relationship between the provincial Prime Minister and him in all probability would never be cordial, and supposing the exceptional happens, and he and the Prime Minister are completely at one. Since we have provided for a certain amount of autonomy for the provincial Governments; it is not unimaginable, Sir, that circumstances may arise when the Centre may be completely blacked out from that particular province. We must look at the whole thing, not only from the point of view whether the two most important persons in the province will always be able to get on or not, but we have also to consider the consequences, if they agree in everything, for instance, if they agree in defying the Centre altogether, what will be the position and what will be the situation that the Centre will find itself in? Will the Centre invade the province if it refuses flatly to carry out whatever suggestion or whatever direction comes from the Centre? So part from the unsuitability of having an elected Governor, with limited powers, an elected Governor is always bound to consider that he is the most liked person in the whole province, and therefore more competent to exercise authority with complete confidence of the people rather than the Premier. It is thus that a conflict between him and the Premier is bound to arise. But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position? That is also a matter which deserves serious consideration. So, Sir, I think so long as the provinces remains and the structure of our constitution is unaltered, there is no go and the wisest thing for us is to give the power of appointment to the President. I would also like, Sir, that at some suitable stage, the appointment should be made only during the pleasure of the President. It was only consistent with an elected Governor that we had provision for impeachment. If this amendment is accepted all that will have to go. I would, therefore, like that the appointment of the Governor should be during the pleasure of the President.

The Honourable Shri B.G. Kher (Bombay : General) : Mr. President, since the House intends to go back on a resolution which it had taken about this matter nearly two years ago, I think, I should say a few words about the very important principle involved in the amendment. I wish to support it

wholeheartedly. In the first place, conditions in the country have changed since we took our decision and in other matters than this we have gone back on the decision, which, at that time, we thought was proper. Experience also has taught that the system which we have adopted has worked fairly well in practice. The question, Sir, is this : when we are determined to have a governor for the provinces as we have decided to by passing article 129, should he be an elected Governor? Or should he be nominated or appointed by the President? Now it appears from the trend of the debate that election on adult suffrage is not advocated by anybody, because apart from the expense that it will involve, it will put at the head of the province a person who is elected by the whole people of the State and the whole power of the State because of the principle of responsible government, which we have adopted, will be vested in the Premier under the Constitution. It is bound to give rise a certain conflict, which it is desirable to avoid in the interest of smooth administration. Why do we want the Governor? Because, Sir, he represents the State; the Premier is there by virtue of his being the leader of the largest party in the House; he is to be held responsible for whatever happens in the administration. So far as the Governor is concerned, we have given him very few powers. But I do not agree with the comment that he is a mere figurehead; a figurehead is capable neither of good nor of bad. I want to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we propose to give him, and the functions that we assign to him are very few such as summoning and dissolving the Assembly, to give assent to the Bills passed by the State Assembly, to act as representative of the State, to nominate the Premier after the general election or the resignation of the ministry, to represent the province on ceremonial occasions and such power as we give to act in an emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by means of getting into touch with opponents of the party which is in power, reconcile them to a good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at head of the province a person who is supposed to be more representative than the Premier would be a mistake. If, therefore, the question of election on adult suffrage by the whole people is not to be thought of, then Sardar Hukam Singh referred to the other alternative, namely of having a panel of people elected by the House, and that may be thought of. After the very able argument of Shri Alladi Krishnaswami Ayyar, pointing out the defects of this system also, it is not necessary for me to say more than this, that if more than four or five persons are put up and aspire to the place of the Governor, in the course of an election even in the House there is bound to be some kind of canvassing, some kind of party faction, and whoever is appointed, you will have four or five or more disgruntled people in the House, which is not a very desirable state of affairs.

Sir, if, therefore, we wish to avoid the conflict that is bound to arise by adopting this method, what should be the guiding principle in making such an appointment? And the guiding principle is that no member of the executive should ever be elected by the popular vote. People might think it is a matter of going back to Mid-Victorian precedents, but I found, Sir, turning up pages of Mill's Representative Government this very important principle :

“The most important principle of good government in a popular constitution is that no executive functionaries should ever be appointed by popular election, neither by the votes of the people themselves nor by those of their representatives.”

[The Honourable Shri B.G. Kher]

That, Sir, I submit is a very sound principle. You want to hold the Leader of the Party in the province responsible; you want to hold the Prime Minister of India responsible. He must have the power to appoint people whether as his colleagues in the Central Cabinet or as a Governor with whatever limited or great powers you want to bestow upon him, in the province, one who will have his confidence and who will be the titular head of the Executive in the Province. The principle of appointing these people by election is very much open to doubt. I do not wish to comment on what is done in America. But, having deliberately chosen the British model of responsible Government and decided to give the Governor the position that we have decided to do, I submit Sir, that the only insurance for smooth government in the provinces is to allow the President of the country to nominate a person who enjoys his confidence, which certainly means, the confidence of his Cabinet as also the cabinet of the province, to be the Governor or the province. Any other mode, whether by election on adult suffrage or by election by the representatives of the people in the House will give rise to considerable friction. It is therefore, I submit, that the amendment that has been moved by Mr. Brajeshwar Prasad should be accepted.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, it is very difficult for us to say which is correct and which is not correct. Two years ago, in the month of June, we had, in the Provincial Constitution Committee, discussed this question for nearly three or four days. The Committee was presided over by no less a person than the Honourable Sardar Patel, and amongst the members, there were Premiers like the Honourable Shri Kher and there was also in that Committee the Honourable Dr. Ambedkar. The members of the Provincial Constitution Committee and the Union Constitution Committee sat together on one day. By a majority of votes this question was decided by coming to the conclusion that the post of Governor will be filled by election. Now, Sir, my honourable Friends who have spoken in support of the amendment of Mr. Kamath and Mr. Brajeshwar Prasad, have said that things have changed since then and there is therefore an alteration in the decision on the part of some of the Members. How have the changes affected the question at all? The fact that we have attained independence in the meantime, that is in August 1947, has that anything to do with the alteration of this decision? Are you to have nominated Governors when we are independent and should have been content with elected Governors when we were not independent? There has been partition of the country in the meantime; there has been bloodshed; there has been untold misery in the country. Is that the reason why we should have nominated Governors instead of elected Governors? The only reason that I can find is that there has been some change in the status of my honourable Friend Dr. Ambedkar. Possibly that is the reason why we are having a change in this decision today; otherwise.....

Mr. President : I would ask the honourable Member not to be personal.

Shri Rohini Kumar Chaudhuri : Not to refer to Dr. Ambedkar?

Mr. President : Not to be personal.

Shri Rohini Kumar Chaudhuri : I am sorry, Sir; I will not refer to Dr. Ambedkar.

I must however say that I fail to see any reason for the change in this decision.

My honourable Friend Mr. Brajeshwar Prasad who had moved the official amendment on this question, has not enlightened us very much in his speech.

The way in which he was supporting his own amendment or moving his amendment showed that his heart was not very much in it and the way in which he ran away from this place to his seat showed that he was rather swallowing a bitter pill than actively appreciating what he had said. Under the present proposal, the appointment will be made by the President. Who is the President? The President will be elected by the members of the legislatures. Certainly, he will have to be a person who will enjoy the confidence of the majority party. The desire which some honourable Members possess that he will be one who is absolutely detached from politics will not be raised. How will the President nominate the Governor? The President will nominate a Governor according to the advice of the Prime Minister. Who is the Prime Minister? The Prime Minister is very much a political man. He is the leader of some party and he will be guided by his party leanings. He cannot have a detached view altogether. If you are allowing a person who belongs to a particular party, who is the leader of a party to nominate the Governor, why are you not allowing the people to have a voice in the matter? After all, Sir, what is the pledge which the Governor has to take when he accepts office? He has to take this pledge :

“I.....solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of.....”

Here, a man, who does not know anything of that province, who does not understand the language of the province, can be nominated and that man will be expected to serve that province much better than a man who can be chosen by the people of that province! Are you going to accept that, Sir? A man who may be nominated may belong to any part of India : South India or North India or the Punjab; he may come from any corner of India and he is supposed to swear—I dare say he will have to forswear—that he will act in the best interest of the people of that province of whom he knows absolutely nothing. That is the position to which we are coming. In appointing him as Governor, the President has not to consult the people even of the province, or the representatives of the people of the province. He is merely nominated at the sweet will of the President or the Prime Minister of India. In selecting the Chief Justice of the Supreme Court, the President has to roam about all over India; he has to consult the Judges of the different High Courts; he has to consult the Chief Justices of the High Courts of the various provinces. But, in selecting the Governor, the people of the province of which he is going to be the Governor need not be consulted. Their opinion even need not be taken. That is a proposition which it is difficult for us to accept. It is said that if you have an elected Governor, there may be friction between the Governor and the Prime Minister and I suppose it is the fear of the present day Premiers of different provinces which is responsible for this decision of nomination of Governor. But I say, supposing (you can quite foresee such a state of things) you have a Prime Minister who is the Leader of a particular Party and you need a Governor in a province which is in the hands of a particular party which is not the same party as the party to which the Prime Minister of India belongs. What happens? The Prime Minister of India sends out a Governor to that Province. Is that Governor going to work harmoniously with the Government run by another party. Can you expect that the Governor who is selected by the Congress Party will act in harmony with the Ministry of the province the Premier of which belongs to another party? Will there not be more occasions for friction? This is quite obvious. Then how can you assume that for all time to come the Congress Party, or a particular party shall remain in power not only at the Centre but also in the different provinces? It is unthinkable. So

[Shri Rohini Kumar Chaudhuri]

I submit that under the present arrangement there is greater occasion for friction than if there was an election; and further, if you give him any power—and he will exercise certain very important powers under the present Constitution as the post of Governor is not a sinecure post in all the provinces—there is bound to be friction. In a particular province whether the Premier is all very powerful, he might be able to get things done in his own way but it may not be so in other provinces. For instance, in a province like Assam the Governor of the Province must exercise very important rights and he will have to work hard and if you send a Governor who does not know anything of the tribal people, who does not know their customs, their manners etc. and the miserable conditions in which they live, and he simply goes and looks at them in amazement, there will be terrible consequences. The Premier of a province like ours may not have anything to do with the tribal people. In order to become a Premier of the province, he need not care for their interest or enquire about them but if the Governor was elected, he would have to be a man who was known to be sympathetic even for the tribal people and the tribal people who have no vote in selecting the Premier will at least know who their Governor would be and will be able to give their votes accordingly. Why deprive these people of the right to have a voice in the appointment of the person who will control their destinies? So it would have been best to have election. Why go according to British precedent in this matter? The British precedent was that they had to have their Governor-General from outside India, and the Governor-General had the right to select Governors and they selected as Governors such persons who would safeguard their interest. Are you going to give powers to the President to select governors in that manner so that he may, contrary to the interests of the province, select a man who will look down upon the interests of the province and consider the question of the whole India? Do you want that you should have a man there who will closely watch the working of the Provincial Ministry so that they may not at any time go against the Centre? Is that the suspicion in the minds of those persons who want the nomination of Provincial Governors? I submit that it should not be the case. So I would have expected even if you do not go to the length of having an election—and I do not know what reasonable objection there can be in that—you must agree to have choice from a panel.

Then an objection has been put forward about additional expenses. If an election takes place on the same day as on the day of general election, there cannot be any question of additional expense. The question of expense does not at all arise. The question of greater efficiency cannot arise. You cannot perpetually go on nominating people from outside provinces and yet try to keep the people of the province contented; but even if you, for any reason, consider the election of a Governor a stupendous task, I suppose it might assuage the feelings to some extent if the province was consulted by some way. The other alternative which has been put forward by the Drafting Committee at least gives a chance to the local legislature to express an opinion, whether the man is from the province or from outside—or gets a chance to mention somebody from that province, and that would be some solace.

Pandit Hirday Nath Kunzru : Mr. President, two years ago I was one of the few unfortunate men in this House who tried in vain to persuade it not to resort to the system of electing Governors on the basis of adult franchise. I am glad to find that opinion in this House has changed and that even my honourable Friend Mr. Kher who was emphatically for the election of Governors two years ago stands now for a different system altogether. We should, however, examine some of the reasons that have been advanced in favour of the change. It was possible for the House while rejecting the principle of election

to accept the alternative method of choosing Governors recommended by the Drafting Committee; but the method that has been proposed today is that of pure and simple nomination by the President. The mover of the amendment I believe said in the course of his very brief speech that the Governors should be nominated by the President so that the Government of the Provinces might be carried on in conformity with the policies of the Central Executive. My honourable Friend Mr. Kher when speaking on this subject delivered himself of the opinion that it was right that the Governor of a Province should be the nominee of the Prime Minister of India Because the Prime Minister would be responsible for the good government of the Country. I find, Sir, that though Mr. Kher has changed his opinion since 1947, he still wants that the Provincial Ministers who will represent in majorities in the Provincial Legislatures would be controlled by some outside authority. The question formerly was that they should be controlled by an elected Governor, but now, Mr. Kher thinks that they should be controlled by a Governor nominated on the recommendation of the Prime Minister of India.

The Honourable Shri B. G. Kher : I did not say that.

Pandit Hirday Nath Kunzru : But it virtually comes to this. My honourable Friend said that as the Prime Minister of India would be responsible for the good government of India, it was desirable in principle that the Provincial Governors should be his nominees. If the Governors are not to be used to control the Ministries, how does their appointment on the recommendation of the Prime Minister of India enable him to fulfil his responsibility for the good government of the country? Nomination can enable him to discharge his duty only if it is understood to give him directly or indirectly the power of controlling the Provincial Governments through the nominated Governors.

Shri T. T. Krishnamachari : Control is no responsibility, whatsoever.

Pandit Hirday Nath Kunzru : My honourable Friend Shri T. T. Krishnamachari should then discuss the matter with my honourable Friend Mr. Kher and see whether the views of the two can be made to reconcile by any manner of means. I fully understand that my honourable Friend Mr. T. T. Krishnamachari does not want Provincial Governments to be controlled by the Prime Minister of India. But the opinion expressed by Mr. Kher, if pursued to its logical conclusion would have an effect contrary to that desired by Mr. Krishnamachari. I think that neither the House nor the Central Government should remain under the serious misconception that Mr. Kher is labouring under.

The Honourable Shri B. G. Kher : I am not labouring under any misconception. The honourable Member has not understood me correctly; I can assure him that I do not want to give any such power to the Prime Minister. He should understand there are ways in which things are done. You need not have it in the Constitution. It is always personalities, and not Constitution.

Pandit Hirday Nath Kunzru : I shall take it that my honourable Friend does not now desire that the Prime Minister of India should control Provincial Governments. But he should really then explain to us what he meant by saying that the Prime Minister of India would be able effectively to discharge his duties for the government of India, only if the Provincial Governors were nominated on his recommendation. However, if my honourable Friend Mr. Kher has changed his opinion in the course of a few minutes, I shall not twit him with it. But the important question raised by him, consciously or unconsciously, still deserves the consideration of the House. The Prime

[Pandit Hirday Nath Kunzru]

Minister of India and his Cabinet are responsible for the good government of the country, only in respect of certain matters, that is, in respect of matters that are under the control of the Central Parliament, or properly belong to the province of the Central Executive. Our Constitution, though it gives a great deal of power to the Central Legislature and Executive, does not provide for a unitary Constitution. It has not reduced the Provinces to the level of Municipalities and District Boards. They will, notwithstanding deductions made from their authority, still have the power exclusively to control certain subjects. The responsibility of the Prime Minister of India for the good government of the country cannot extend to the sphere that will be exclusively under the control of the Provincial Parliament and Executive. I think, Sir, that this should be clearly realised, least there should be serious conflicts between the Central Government on one side and the Provincial Governments on the other.

We have also to bear another very important consideration in mind. Our Constitution should be such as to permit of the free and full growth of democracy, and to prevent the establishment of a dictatorship in the country in any event. At the present time, it seems to many of us that greater confidence is reposed by the country in the judgment of the Central Executive than in that of the Provincial Executive. But in the first place, this can be no reason for reducing the Provincial Governments to a position of utter subordination to the Central Executive. In the second place, things may not always remain as they are now. It is easy to conceive of a time when the Central Government might not inspire as much confidence as some of the Provincial Governments might. If you entrust the Central Executive with power to exercise control over the Provinces in all important matters, and make them fall in line with the policy of the Centre, there is the serious danger of the country falling under a dictatorship. There are countries in which the federal system of government prevails, and there are differences of opinion there, from time to time, between the Federal and the State Governments. In Canada, a Provincial Government went so far as practically to change the prevailing system of currency. The Centre was able to deal with the situation, because in its opinion this was a matter exclusively under its control. It did not utilise the position of the Governor or any other method of asserting its power for this purpose. Similarly, when conflicts arise between the provinces and the Centre in this country it is very probable that if they are of a serious character they will relate to matters coming within the purview of the Centre and in that case the Centre, will, under the Constitution, have adequate means of dealing with such a situation. But let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive.

Now, Sir I think it would be pertinent to refer here to articles 175 and 188. Article 175 requires that a Bill passed by the Legislature of a province may be assented to by the Governor or reserved for the consideration of the President. My honourable Friend, Shri Alladi Krishnaswami Ayyar referred to the case of Canada where Lieutenant-Governors of provinces are appointed by the Governor-General of the Dominion. There in the early days of responsible Government the Lieutenant-Governors could reserve Bills for the consideration of the Governor-General, though the Governor-General, as the representative of the Crown, had the right and still has the right to disallow a provincial Bill. In course of time a system has grown up under which Lieutenant-Governors would not be called upon to reserve any Bills for the consideration of the Governor-General, because this is regarded as a deduction

from the authority of a fully responsible Government. The Governor-General can, however, disallow a Bill assented to by the Governor within a period prescribed by the Canadian Constitution Act. We in this Constitution, Sir, have given no such power to the President. A Bill can be reserved for his consideration by the Governor, but if the Governor does not do so, the President does not come into the picture at all. Now in this situation, Sir, it is clear that the President will instruct the Governors to reserve for his consideration Bills that the Centre does not approve of.

Shri T. T. Krishnamachari : May I respectfully point out that article 175 is yet to be passed by us and it is more than likely that that article will be reshaped in the light of amendment which will be tabled.

Pandit Hirday Nath Kunzru : I am very glad to hear that. This is exactly what I wanted to point out. It will be better if instead of using the Governor as an instrument of the President, the power of disallowing Provincial Bills within a certain period is given to the President. In that case, the responsibility both in form and in reality will be that of the Central Executive. In the other case, there is likely to be friction between the Governor and his Cabinet. The case of Canadian provinces shows that this fear is not imaginary.

Now, I shall come, Sir, to article 188. I do not know whether my honourable Friend Mr. Krishnamachari can tell me with regard to this article too, that it is proposed to delete it or to modify it in view of the change that has been made in the method of choosing a Governor. When the House resolved two years ago in favour of the election of Governors, the main argument put forward was that a situation of such a character may arise as to require that the Governor should have the power of acting decisively in grave emergencies. It was felt that responsible Ministries dependent upon popular support might not in a crisis be able to act with the strength required by the situation and that it would, therefore, be wise to entrust the elected supreme executive in a province with adequate powers to maintain the peace of the province, should it be confronted with a grave emergency. Opinion in this House on that subject has changed since 1947, as shown by the approval that the amendment of my honourable Friend Mr. Brajeshwar Prasad has received so far. I hope, therefore, Sir, that article 188 will be deleted. The President of the Republic can under another article be enable to take action where the peace of the country is threatened because of anything happening in a province, or where a province is face to face with a situation which if not firmly handled might lead to conflagration. I think, Sir, that this would be a better method of dealing with provincial emergencies than allowing the Provincial Governor to take the administration into his own hands. But though the ultimate power will rest with the President of the Republic, he will probably not take any action without consulting the Governor. The latter can well bring the position in his province to the notice of the President and leave him to decide what action should be taken.

I hope, Sir, in view of this article 188 should be deleted or amended so that it may be consistent with the establishment of responsible ministries in provinces and may not lead to bitter conflicts between the Governor and his Cabinet. Let such control as has to be exercised in emergencies under the Constitution be exercised by the President of the Republic directly and not through the Governor so that he and his Cabinet may not come into conflict with one another.

The Honourable Shri B. G. Kher : Does the honourable Member support or oppose the amendment?

The Assembly then adjourned till Eight of the Clock on Tuesday, the 31st May, 1949.