

**Article 147**

**Mr. President :** The motion is:

“That article 147 form part of the Constitution.”

Amendment No. 2215, Mr. Kamath.

**Shri R. K. Sidhwa :** It is a negative one, Sir.

**Mr. President :** There is an alternative also. Mr. Kamath, which part do you like to move?

**Shri H. V. Kamath :** (C. P. & Berar: General): I would like to move the first part, Sir.

**Mr. President :** Then, it is a negative one.

**Shri H. V. Kamath :** I shall not move it; but I shall speak on the article, Sir.

(Amendment Nos. 2216, 2217, 2218, 2219 and 2220 were not moved.)

**Shri H. V. Kamath :** Mr. President, I fail to see any valid reason for the retention of this article. It may be argued that it is on the same lines as an article which we have already adopted with reference to the President. But, now that we have accepted nominated Governors in the States, this article, to my mind, requires to be recast, if not entirely deleted.

There are certain aspects in this article which are wholly incongruous with, at least not in conformity with, the principle of nominated Governors for the States. If the House will carefully consider clause (c) of this article, to take only one instance, the House will see that the nominate Governor has been given power to interfere in what may be called the day-to-day business of the Council of Ministers. I wonder why the Governor should call upon the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. I submit that this is entirely a matter for the Council to decide among themselves and the Governor has no *locus standi*, has no privilege or power or right whatever to step in here. The business of the Council of Ministers, is entirely a matter for them to arrange and discuss among themselves and to arrive at any particular procedure they like. If a matter has been considered by one of the Ministers, but has not been considered by the whole Council, the Governor cannot step in and tell the Chief Minister, ‘you must put it before the Council of Ministers’. The Chief Minister and his colleagues are competent enough to decide which matter should go before the Council and which it is not necessary to be put before the Council. This to my mind is in tune with the tenets of constitutional democracy that we propose to set up in the States. My Friend Mr. B. Das asks, where is democracy? I am inclined to agree with him that there is no true democracy any where in the whole world. But we are trying to arrive at an approximation. I hope, if all of us pull our weight together, if we all put our shoulders to the wheel, we may at no distant date arrive at some sort of an approximation to democracy.

Then, Sir, there is another aspect to clause (b) of this article, which in my humble judgment offends against the new set-up that we have accepted for the States. Under this clause, the Governor can call for any information relating to the administration of the State. This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the State to decide which matter he would like to put before the Governor and which not. If he and his colleagues in their collective wisdom arrive at the opinion

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that a particular matter may go to the Governor, certainly they may put it up to the Governor. But the Governor has no right to call for any information regarding the administration of the affairs of the State and proposals for legislation. This is another aspect of this article which to my mind violates the principle of constitutional democracy which we are going to set up in the States, and is repugnant to the principle of nomination that we have accepted for State Governorship. I would have been very happy if this article had been deleted. These are all matters of Government business for which I understand, I definitely know, there are manuals in every province and every State dealing with the conduct of Government business. These things could have been easily taken up later on and incorporated in the manual as to the procedure for the conduct of Government business. As it is, the whole article is out of tune with the new set-up that we have accepted after the adoption of article 131 in the changed form. I would therefore request the Honourable Dr. Ambedkar to hold this article over, if he has not considered it already, for further mature consideration by himself and his team of wise men. If it cannot be deleted, I hope it will be possible to recast it in the light of what has happened in the last few days, and, for that purpose, that it will be possible for us to hold it over for some time.

**Dr. P. S. Deshmukh :** (C. P. & Berar: General): Mr. President, Sir, I am afraid I am not able to agree with my honourable Friend Mr. Kamath in his suggestion that the article should be omitted. If he were to pay a little more attention to the provision made by article 146, which we have just passed he will. I think, admit the wisdom of incorporating this article in the Constitution. Now under article 146 every order which is issued by the Ministry or the Cabinet or even individual Ministers will be an order which will be published and proclaimed in the name of the Governor. If article 147 is not there, there is nothing which will empower the Governor to know the various actions taken from day to day, and the orders passed and issued in his name. My Friend has said that this would refer even to routine matter. I can tell him, Sir, that ordinary matters which are unimportant, and which are of a routine nature, I am sure, no Governor in his wisdom would like to question, or request the Chief Minister that they should go to the Cabinet for reconsideration.

**Shri H. V. Kamath :** What is the guarantee?

**Dr. P. S. Deshmukh :** The guarantee is the Governor's wisdom, and the wisdom of the authority that will appoint such a.....

**Shri H. V. Kamath :** What is the guarantee I asked?

**Dr. P. S. Deshmukh :** The guarantee I said is the Governor's wisdom and the wisdom of the authority that will appoint the Governor.

Sir, this article can never refer to unimportant, routine matters, but it can refer only to orders which the Governor thinks are likely to have larger repercussions, and are of such importance that it will be wise if all the Ministers in the Cabinet were to consider it. And apart from this direction that the question may be considered by the Cabinet, there is nothing. The Governor is not given the authority to over-rule the decision of the Cabinet. The article merely empowers the Governor whenever he considers that an individual Minister's decision should rather be given some more attention, that he would refer it for the consideration of the whole Cabinet.

My Friend Mr. Kamath has also attacked part (b) of the article. So far as this part is concerned I consider that this also is extremely necessary. For instance, suppose the Cabinet or certain Ministers are not pulling on well with the Governor; then they would be in a position to keep the Governor absolutely in the dark. On the other hand I feel confident that these powers given to

the Governor are not likely to be misused at any time, and that it is essential that he should have fullest information regarding the day-to-day administration so that he may be able to prevent pursuit of wrong policies and also communicate to the President and the Government of India the nature and course of the provincial Government. After all the Governor is essentially a link between provincial autonomy and the President and the Government of India, and that function he can discharge adequately only if he has the authority to ask the Cabinet to reconsider certain things and also to keep himself informed from day to day as to what orders have been issued and what sort of administration is being carried on.

Then, Sir, my friend also objected to proposals for legislation going up before the Governor; but this too is useful and desirable. The Governor must know beforehand any legislation that is proposed to be placed before the provincial assembly, what is the nature of that legislation and how it bears on the existing situation or compares with legislation in other parts of India. It is his duty also to see how it conforms with the policy of the Government of India. He is the one man who will be on the spot and who could advise the Chief Minister from a wider and a more impartial stand-point. Apart from giving advice, I do not think he is likely to go every much further. In any case this article does not confer upon him any grater powers. But this much authority he should and must have, i.e., of asking the Cabinet to consider the *pros* and *cons* of the proposed legislation so that the administration of the province does not suffer either to the detriment of the Ministers of the Province or of the Government of India as a whole.

**Shri H. V. Kamath :** May, I ask why we should not trust the wisdom of the Chief Minister? Is not the Chief Minister wise enough?

**Dr. P. S. Deshmukh :** If my learned Friend Mr. Kamath were to consider the whole thing coolly, he will find that in fact, everything is and has been left to the Chief Minister, and the Governor is not likely to interfere. He only claims the right to get the information he may consider necessary. He is not given under this article any power to say that such and such legislation shall not be passed. The article provides that all decisions relating to the State should merely communicated to the Governor.

**Shri H. V. Kamath :** Why should not the Governor ask for it? Why should the Chief Minister be required to do it?

**Dr. P. S. Deshmukh :** This is, Sir, only a mutual arrangement and I do not find anything objectionable in this arrangement. The article provides that the Chief Minister shall give the Governor certain information and other information the Governor is empowered to ask for. There is no question of dignity or of standing on ceremonies. I therefore strongly support the article, and suggest that it be passed as it stands.

**Shri B. Das (Orissa: General):** Sir, as we are finishing the articles (Part IV Chapter II) relating to the Governor's powers and conduct of business, I think it my duty to tell the House my reactions. I wish I had the robust optimism of my Friend Dr. Panjab Rao Deshmukh as to believe that the Governor is a useful functionary. What has been the experience in the provinces since Congressmen came into power under Independent India? How has the Governor functioned? It is common knowledge, and it has been repeated by responsible members of this House that the Governor was nothing but a cipher. If that be the case, how is it then that this Governor, this nominated Governor of the Central Government and the Ministers elected by the State Unions and the Provinces will be able to co-operate? The Governor, according to my Friend Dr. Deshmukh is full of wisdom. I question that, and I doubt it very much, particularly when the Governor is a nominated Governor, nominated by the President and the Central Government. I wish we ought not to have a Federal Constitution and a Union Government any

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more. We have now centralised all power in the hands of the President and the Cabinet, and it is not bad. It will save a lot of expenditure if we abolish all provincial Government, provincial Governors and provincial Ministers.

**Mr. President** : There is no use discussing that question; we have already passed that.

**Shri B. Das** : But my Friend Mr. Kamath referred this morning to the nominated Governors and their functions.

The point is, if we are going to centralise all power in the hands of the President and the Governors we should see if they are elected Governors or not. But the Drafting Committee has had no time to examine this point and the clauses if they fit in with nominated Governors. That is the mischief of this whole chapter. We know sections of constitutions remain dead letters. Certain sections of the American Constitution have gone to the winds. Some of the sections in this Constitution will also go to the winds. If however, there are some who have the illusion that the Governors will exercise their statutory powers against the elected Ministries, let them take note of the present practice under which the Governors know nothing absolutely of what is happening in their respective Province, where the provincial Cabinet is submitting no notes to the Governor as to what is happening.

There is a perpetual clash and perhaps the President and our beloved Premier may have to intervene at various stages to bring about harmony between the Governor and the provincial Cabinet. In spite of that I would make bold to utter a prophecy, *viz.*, that the provincial Cabinets will win and the Governors will remain the ciphers that they have been for the last two years.

**Shri B. M. Gupte** (Bombay: General): Sir, without going whole-hog with my honourable Friend Mr. Kamath I should like to support him as far as sub-clause (c) is concerned. In my opinion there are certain difficulties in the working of this sub-clause. The sub-clause says:

"If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council."

I do not understand how the Governor will know what particular decision has been taken by a minister in a particular matter, because according to sub-clause (a) the decision of the cabinet only are to go to him.

According to the working of the system of cabinet there are two sets of decisions. A minister in his own department and on his own responsibility, without the concurrence or even the knowledge of his colleagues, takes certain decisions on various matters that come before him from day to day. But there are other matters of greater importance which a minister is bound to submit for the collective decision of the Cabinet. Only the second set of decisions go to the Governor. As regards the first set of decisions there is no mention made at all in the article itself. I therefore do not understand how he is to know them. I may be told that the Governor might take advantage of sub-clause (b) and ask for information. I can understand that once he gets the information he can ask for more particulars but how is he initially to get the information regarding a certain decision taken by an individual minister? Without such a channel of information he is called upon to intervene and practically he might even stop the implementation of a decision taken by a minister. The point to be considered is how far this is consistent with his position as a constitutional head. Is it necessary to clothe the Governor with this authority or is it even desirable? I do not mean to suggest that the province should lose the benefit of the sage counsel of a Governor. He might be an elder statesman with ripe experience and wide knowledge. But the same purpose can be achieved even without giving him the statutory

right. He can make private suggestion to the Premier. We have got the example of the letters of Queen Victoria. We have there the evidence of how a sagacious monarch without any statutory or constitutional right could exert a profound influence on the decisions of the Cabinet by making various private suggestions to the Prime Minister. I therefore submit that it is not necessary to clothe the Governor with this statutory right.

It might be said that it may not be necessary but it is desirable. But there is the danger that it might lead to trouble. Suppose a Governor exercises his statutory right and objects to a decision made by a minister. Human nature being what it is, the minister concerned is bound to resent it. He might wonder how the Governor received the information. Is there any watch-dog on him or is there any tale-bearer? In the Government of India Act, 1935, there was the right of the Secretary to Government having direct access to the Governor. When that particular provision was debated in the House of Commons somebody described the secretaries as watch-dogs on the ministers. Very rightly the Drafting Committee has rejected this obnoxious right of access to the Governor on the part of the secretaries. In the absence of these watch-dogs the minister might wonder who told the Governor. Is there any tale-bearer? Today one minister might resent such interference and tomorrow another minister might become disgruntled. It is thus likely that bitterness may grow and in my opinion it might ultimately lead to a disturbance of the cordial relations which must subsist between the Cabinet and the Governor.

Moreover, if the statutory provision is there, perhaps an ambitious governor like President Milleraeu in France might be tempted to misuse or overuse it. I therefore, submit that it is unnecessary to keep that provision and at least it is worthwhile considering whether it is necessary to put it in the form in which it appears in the Draft Constitution.

**Prof. Shibban Lal Saksena** : Sir, I could not understand the opposition of my honourable Friend Mr. Kamath to this article on the ground that the Governors are nominated. He was the person who supported the proposition and now he says that because they are nominated therefore they should not have this power. If after the Governors are nominated this section is also removed, it is better to remove the Governors altogether.

According to the scheme which the House has approved, the Governor will be nominated by the President and we have given him power in his discretion. If the Governor as the Head of the State is not aware as to what is happening in the State, or what decisions his ministers have taken, how can he function as the head of the State at all?

**Shri H. V. Kamath** : Through the Chief Minister.

**Prof. Shibban Lal Saksena** : The Chief Minister may not tell him anything. So this section is necessary so that the Governor may at least know what is happening in his State.

Under the scheme of things which the Drafting Committee has proposed they contemplate a Governor who shall try to be a liaison officer between the President at the Centre and the provincial Governments. He will try to see that the provincial Governments' policies fit in with the scheme of the Central Government. He will try to give advice and guidance to the Ministry on account of his superior wisdom and experience. The President, I hope, will nominate only such persons who have ripe administrative experience and wisdom and have the necessary political and intellectual stature to be Governors, so that they can give proper guidance to the provincial Cabinets. The Governor will have to keep himself above party politics and in this way

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his position will be more important and effective. If, as suggested, he is not even entitled to obtain information from his ministers or know what is going on in the State in his name, I do not think it is worthwhile having him at all.

Mr. Gupte took objection to clause (c). He felt that if the Governor is entitled to get the decision of a minister reversed it might lead to heart burning. Personally I feel that the Governor under the new scheme of things will try to get the confidence of the whole Council of Ministers. The clause only says that if an individual minister takes some important decision on his own responsibility and it is not considered by the whole ministry then he will desire the matter to be considered by the council. Mr. Gupte complained that the minister might wonder how the Governor came to know about his decision. Under clause (b) he can call for the information from the Prime Minister himself. There is no reason to think that there are some backbiters, or somebody has been going to the Governor behind the back of the ministers. The Governor will also be touring and will come to know many things through his personal experience. Under the scheme of things the House has adopted, the Governor will have to be nominated in a manner that he can enjoy the respect of the council of ministers, by his superior intellectual calibre and sound administrative wisdom and advice. Then the ministers will trust the Governor and will devote themselves to the welfare and the promotion of the real interests of the province.

**Mr. President :** I think we have had enough discussion on this article and I would like honourable Members to cut short their speeches.

**Shri R. K. Sidhwa :** Sir, we are all clear in our minds as far as one point is concerned, *viz.*, that the Governor who will be appointed will be in his status the first citizen of the province though he will have no executive power as far as good government and the maintenance of law and order are concerned. Since that is a settled fact we must know what is the interpretation of this article. Undoubtedly clauses (a), (b) and (c) create some kind of confusion and I am prepared to accept that. Under clause (a) it shall be the duty of the Chief Minister, it is obligatory on the Chief Minister to supply any information that the Governor wants from him. It may be argued that if the Chief Minister feels that the Governor is not entitled to call for information he might refuse to supply it, because he is the executive head of the province. The result will be that there might be some conflict. To avoid that the Chief Minister has the freedom to complain to the President who might intervene.

As regards clause (c) it has been argued by those who are opposed to it that the Governor might require to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, which has not been considered by the Council. Mr. Gupte asked how is the Governor to know what a minister has done. Any file that goes to the Governor contains a full note as to whether the subject-matter has been handled by a minister or by the Council of Ministers.

**Shri B. M. Gupte :** Individual minister's file would not go to him.

**Shri R. K. Sidhwa :** It is the practice everywhere. Every file goes to the Governor for his signature. The Constitution says that all orders are to be made in the name of the Governor and therefore formally the whole file goes to him—not merely one paper. He has to see the whole file before he puts his signature.

**Shri H. V. Kamath :** A file should go to him only after the entire Council has decided a matter; not the decision of an individual minister.

**Shri Mahavir Tyagi** (United Provinces: General): That might be observed in Sind but not in the provinces here.

**Shri R. K. Sidhwa** : If the file does not go to him he can call for it. He might say “I would like to know what I have to say before I put my signature.” The head of the department might sign a cheque, which might be a formal one but he has to take the responsibility as far as his signature is concerned. You cannot say that he cannot call for the file and so that point does not arise. Supposing a minister takes a decision on which the Governor feels some doubt that the matter should be considered by the whole Cabinet, he would be justified in asking for its reconsideration by the Council of Ministers. I know of instances where a Minister has taken a decision, which the Council of Ministers reconsidered at the instance of the Governor and they had to revise it. There is nothing wrong in this. On the other hand the Council might tell him that the minister was perfectly right. Therefore clause (c) is more justified than clauses (a) and (b). Clause (c) is very necessary, for I have seen sometimes a minister in his individual judgment, issues certain orders and sends them to the Governor. It may be a contentious matter on which the Governor may honestly feel that it is in the interest of the province and its people that the matter should be considered by the Council. He would be perfectly justified in doing so. So while there is room for some improvement in language under clauses (a) and (b), clause (c) on which greater stress has been laid must be retained.

**Shri Biswanath Das** ( Orissa: General): Sir, I am sorry I have to come here despite your advice to hasten the decision on the article by minimising discussion. If I have come up to speak it was because I thought that a certain aspect of this article has to be clearly and fully realised before honourable Members are called upon to vote. It is better at this stage to know what powers and responsibilities we are going to invest a Governor of a province with. I quite see the difficulties of the Drafting Committee when they were faced with a situation wherein root and branch changes were brought before them at the eleventh hour. If that is the difficulty they could very well take time to consider.

My Friend Dr. Deshmukh stated that the Governor is to direct and advise. If that is the idea behind the Drafting Committee and also leaders of thought in the Assembly I think not only the powers contained in article 147 but something more is called for.

The question we have to consider in this House is whether the Governor is going to be a constitutional head or a Governor who has to play his role in advising the ministry and directing into proper channel ministerial thought and action. If it is the later, if he has to interfere in shaping the administration and raising the standard, then this power is not unnatural but is necessary. All that I want to know and the Assembly has a right to demand to know is the background behind this article. This article was drafted under different circumstances and conditions keeping in view certain essentials, viz., the Governor is to be elected on the basis of adult suffrage. Now the conditions have changed.

I would just invite the attention of honourable Members to clause (b) which says:

“to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for.”

I for myself do not see why a Governor who is wedded to the Constitution and who is to be a constitutional head should dabble in matters regarding

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administration. The question might be asked as to whether the Governor should not know the proposals for legislation. Here again, I state that provision has been made that the proceedings of the Council of Ministers should be communicated to the Governor. Further, all the legislation, that is approved or passed by the legislature is to be submitted to him for his assent. Therefore there is every opportunity given to the Governor to know what legislation is coming and the shape in which it is coming. That being so, clause (b) seems to be wholly unnecessary. But if it is the desire of the House that the Government should have also the Governor's say in matters of administration the provision is justified. While discussing this article it would be unfair on my part if I do not invite attention to the Fourth Schedule wherein Instrument of Instructions has been provided. The Instrument of Instructions to the Governors has no legal force or validity in law. Whatever it is, be it a Sermon on the Mount, or be it something real, it allows scope for certain executive activities by the Governor. I specially refer to Para 4 which says:

"That Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State....."

Is the House, after the change in the modus of selection or election of the Governor, going to invest him with these powers? If so, I could understand the background and would say that clause (b) is fully justified. I therefore feel that those that are responsible for giving a lead to this Assembly to pass the articles have also the responsibility of explaining to honourable Members as to what is there in their minds in regard to the relations that should exist between the Governor and the Government and how they propose to avoid clashes and compose differences between them.

For myself, let me tell you a bit of my experience. I still recollect the days when contentious matters came up; how the Governor always took scrupulous care to be a disinterested person and said that in matters of contentious legislation he had no opinion to offer in the Cabinet because of his power of assent. If this is the case, there is no meaning in intimating to him beforehand what the legislative programme of the leader of the party or the Cabinet is going to be. Especially I visualise, in course of time as the Constitution works, there may be possible scope for the emergence of parties with differing political programmes and ideologies in the Centre and in the States. In such cases the Governor nominated by the Prime Minister at the Centre may not in all cases be acceptable to a Cabinet in the State headed by a different political party. In such circumstances rub can never be avoided if the power to give administrative pin-pricks is vested in the Governor.

Lastly, I wish to place before the House the fact that under the Government of India Act of 1935 ample powers were vested in the Governor to interfere and to keep himself informed of things done by the provincial Government. He had in his hands the nose-strings of the bull so to say. But there is nothing in this Constitution to control the Governor once he is appointed by the President on the advice of the Prime Minister of India, till the Governor himself chooses to resign. Therefore I feel that you are appointing a Governor who is responsible morally to the Prime Minister of India and to the President of the Indian Republic. There is little now in law limiting him to be a symbol or subject him to the control of the Centre or by the President. Therefore it is a pertinent question for honourable Members to ask, whether you are going to vest powers, of a wider scope in the Governor, capable of creating mischief and at the same time provide no power of control over him vested in the President or the Prime Minister of the Republic.



**Shri K. M. Munshi** (Bombay: General): Mr. President, Sir, I cannot understand the objection that is raised to the powers of the Governor under article 147. The House has accepted and very rightly accepted, that there should be a Governor in the provinces. That Governor is not necessarily to be a cipher as some Members said, nor need he be only a super-host giving lunches and dinners to persons in society. He has a political function to perform and that political function is to be the Constitutional Head.

Some honourable Members who spoke are under the impression that a Constitutional Head has no functions at all and that he has to do nothing else than to endorse what the Premier or the Ministers do, without even giving them the benefit of his advice or giving them the impressions of a detached spectator on governmental actions. This I submit is entirely wrong. The Governmental set-up which we have envisaged is on the model of the British Constitution. Article 147 is a repetition of article 65 which we have already accepted with regard to the President in the Centre. The responsibility of Government, if at all, is much more comprehensive and stronger in the Centre under this Constitution than in the Provinces. In view of this, I cannot understand why these objections are taken again and again in respect of the same powers.

My Friend, Mr. Gupte, referred to sub-clause (c) and asked the question, where is the Governor to get the information from? If you read sub-clause (b) it says—

“It shall be the duty of the Chief Minister of each State to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;”

Under this clause it will be open for the Governor to ask the Chief Minister for information with regard to important questions and if he feels that certain decisions have been taken not by the Cabinet as a whole but by an individual Minister which requires reconsideration at the hands of the Cabinet as a whole, clause (c) will give him the power to get that done. What is wrong about it? When a Minister acts behind the back of his colleagues, behind the back of the Chief Minister who is responsible for all the actions of the Ministers, why cannot the Governor say, “Here is a particular order. I feel that it is a matter of great importance. I want that by virtue of collective responsibility all the Ministers must meet together and consider it”? If they accept it, he is bound to accept their advice. He has no right to over-rule them. It is merely a matter of caution that a decision, which in the opinion of the Constitutional head, is such as requires the *imprimatur* of the whole Cabinet and not of a single Minister, should so receive it. Therefore it is a safeguard which preserves the collective responsibility and the powers of the Prime Minister, and not a power which interferes with the Government. Therefore the fear that it would so interfere is entirely unfounded.

Then as regards my honourable Friend, Mr. Biswanath Das, I am reminded of the claim of the psycho-analyst that when an infant in the beginning of his life gets a certain complex that continues throughout life. My Friend, Mr. Biswanath Das, when he was Prime Minister of Orissa in 1938, had an extraordinarily bad Governor and the complex that he acquired then about the powers of the Governors continues even after ten years. He forgets that even in those days in 1938 there were several Governors who took up a strictly constitutional attitude, and who out of their experience of parliamentary life in England now and then asked the Ministers to reconsider certain points of view. This was extremely helpful. I am particularly referring to Sir Roger Lumley, the then Governor of Bombay. We need not import the old complex into the new regime. The new Governor has no power except as a constitutional head. He is going to be nominated by the Centre. He is going to be a detached spectator of what is going on in the province. His function is to maintain the dignity, the stability and the collective responsibility of his government. Now in that limited sphere he can exercise some influence.

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That influence he can exercise only if he is given these limited powers. I would mention to the House that since we are copying the British model, we have also to consider what are the duties and functions of the constitutional head there.

**Shri Biswanath Das :** Let me accept Mr. Munshi's comments on me, for I do not worry about them, but I would request him to reply to the points that I have raised.

**Shri K. M. Munshi :** I want to make it clear that the position of the Governor must be considered from the point of view of a constitutional head as in England. A constitutional head is not a cipher. I will read for the benefit of the House the position of the king in England as enunciated by the late Mr. Asquith who could not be considered a weak Prime Minister at any time of his life. This is his definition of the position of the constitutional head in England:—

“We have now a well-established tradition that in the last resort, the occupant of the Throne accepts and acts on the advice of his Ministers... He is entitled and bound to give his Ministers all relevant information which comes to him;”

Therefore it is not as though he cannot get any information apart from what he gets from his Ministers.

“to point out objections which seem to him valid against the course which they advice; to suggest, if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament.”

Therefore the constitutional head in England is not a dummy. He is not a cipher. He has got an important role of advising his Ministers.

**Shri H. V. Kamath :** On a point of information, Sir, may I ask Mr. Munshi whether in any written Constitution of the world any Constitutional head is invested with powers envisaged in article 147?

**Shri K. M. Munshi :** So far as this Constitution is concerned, as I have said, we have tried to adopt the British model as far as we can, consistently with the conditions in this country, and so the constitutional head to of the province—and the President—must be put on the same level as the constitutional head in England. Sir, there are going to be many minorities in the provinces and it is the duty of the Governor to see that there is a balance in the general policies followed by governments. It may happen in this way. The Prime Minister, being the head of the majority party, has certain policies to put through. He may find that the minorities are not able to accept those policies, but the Governor exercising influence over his Prime Minister might be able to bring about some harmony among the parties, ‘behind the Speaker’s chair’ as it is said in England. Therefore he must have the right to ask his Ministers to reconsider certain programmes. Of course, ultimately he must accept the advice of his Ministers. If the Prime Minister finally says, “this is my policy, this is my advice,” the Governor will have to accept them. But till that stage is reached, he has got considerable scope for influencing decisions.

**Shri Biswanath Das :** I am sorry for interrupting. Does Mr. Munshi honestly believe that the position of the Governor in a province has any connection with or any resemblance to the executive in England? That is No. 1. No. 2. is, does he not know that the king in England is not even in a position to use the Royal Seal, that it is being used by the Lord Privy Seal? Therefore how does he compare the position and power of the king of England and

the British Cabinet with these of a provincial Governor and his Council of Ministers?

**Shri K. M. Munshi :** I do not understand this objection which is being raised against this article. He wants to build up democracy in this country. We are going to have a government of a type which is more or less on the British model. That being so, nothing need prevent us from following the successful experiment in England. We are not going to have a new experiment. If the Governor has not even the function of influencing his Ministers or even asking them to reconsider their decision, the only alternative is the suggestion made two years ago but rejected that the Premier, once elected, should be the constitutional head, the complete master of the government in the province during his tenure of office for five years. There is no harm, but there is great advantage if the Governor exercise his influence over his Cabinet. As I said, we have single parties in the provinces now, but a time might come when there will be many parties, when the Premier might fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit that the powers that are given here are legitimate powers given to a constitutional head and they are essential for working out a smooth democracy and they will be most beneficial to the ministers themselves, because then they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessible to the other parties. From this point of view these powers, which we have accepted for the Governor, are essential and must be retained.

**Shri Rohini Kumar Chaudhuri :** (Assam : General): Mr. President, Sir, I consider this article 147 will be a blot on our future Constitution, if it is adopted. Sir, just as a piece of cow-dung may spoil the whole vessel of milk, this particular provision will spoil this whole Constitution of ours. I am speaking from personal experience and I consider that this is a most unwanted provision and this will lead to friction in the provincial administration. The first question that you ought to remember is whether in a province the Chief Minister is the most effective person or the Governor. Can you for a moment deny that the Chief Minister is certainly the person in authority in a province except in certain matters which will be under the Constitution in the discretion of the Governor? Now is it fair to say that it shall be the duty of the Chief Minister to do a certain thing or to furnish certain information to the Governor? Let me take, for instance, the first clause of this article. It says: "It shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation." This is a work which can be and is left to the Chief Secretary of the Government. Will the Chief Minister be guilty of breach of duty if for any reason, the Chief Secretary or the Secretary in charge does not forward the copy of the proceedings of the Council of Ministers to the Governor? This article should be worded in this way—"That all information relating to the administration of the State so far as it affects the exercise of the right, power and discretion of the Governor shall be communicated to the Governor". As for other things the Governor has absolutely nothing to do; it is only in those matters which may affect the exercise of his discretion information may be sent. The decision of the Council of Ministers may be forwarded to the Governor, but not any other matter and even in that, it should be left to the ordinary office channel for the proceedings to be sent to him. No Chief Minister should be considered as failing in his duty if for any reason copies of the Proceedings are not sent to the Governor. Then, Sir, clause (b) reads as follows:—

"To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;"

[Shri Rohini Kumar Chaudhuri]

What is his business to call for any information? What can he do after getting the information? He has no business to call for any information or any file or anything of that kind. Even in the present arrangement there is no such provision. All files go to the Chief Minister. It is no part of his duty to send certain things to the Governor. I think that the whole section is very badly worded and this clause should be worded in this way:—

“The Governor may call for any information relating to the administration of the affairs of the State and such information shall be furnished to him if in the opinion of the Chief Minister such information is necessary for a proper exercise of the duties of the Governor.”

In all other matters, the Governor has no duty. It is only that information which may help him in the exercise of his duty, which may be sent to him. I am afraid the clause has been unhappily worded. It seems as if to say that the Governor is the same Governor, a representative of the British monarch and as such the Chief Minister is subject to him and must carry out his orders; it is not so under the present Constitution as we are framing it. We are not placing anybody here either as a monarch or as any representative of the monarch. There is no question of monarchy; it is a question of democracy. The Governor has no business to poke his nose into the affairs of the State which is entirely the consideration of the Ministry. He can only butt in when such information is necessary for the exercise of his discretionary power, and in no other matter can he call upon the Chief Minister to give information and it cannot be a breach of duty of the Chief Minister not to give him that information which is entirely within his consideration. If the Governor can show some relevancy, then, of course, the information will be given to him and not otherwise.

The third clause, I submit Sir, is the most dangerous of all the clauses under this article. It says: “If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.” There are many things which are done by Ministry, of course by informal consultation; there are many things which a particular minister does and if he has any doubt he usually consults the Chief Minister. Who is the Governor to ask the Chief Minister to take that matter to the Council of Ministers? Why should he do it? I, as a Minister, have passed a certain order and when I find that I am in doubt, I ask the Chief Minister whether the order is proper or not. If the Chief Minister says it is all right, I pass the order; the order is urgent and action on that order should be taken immediately. What has the Governor to do with that? How can the Governor ask the Chief Minister to reconsider this matter? It may not be at all within his province of powers and why should it be reconsidered? Take for Instance, Sir, a Judicial Minister remits a death sentence; he does so after having taken into consideration all matters; he has also consulted the Chief Minister, but his decision is against the advice of the Secretary and what the Secretary does is, he goes to the Governor and says: “Here is a man whose sentence is being remitted and you ought to.....”.

**Mr. President** : Where is the provision in this Constitution which gives power to a Minister to grant pardon ?

**Shri Rohini Kumar Chaudhuri** : That is true, Sir, but I am only giving an illustration. After all the Minister passes the order.

**Mr. President** : Not from this Constitution.

**Shri Rohini Kumar Chaudhuri** : Let me give another instance. Take, for

instance, that a settlement has been made by the Ministry of certain shops, excise or something, in contravention of the wishes of the Secretary or of the head of the Department, and they do not agree with that order. Now they approach the Governor for a reconsideration of the matter; the order may have been passed after consultation with the Chief Minister and then the Governor says that this matter ought to be considered by the Council of Ministers and the time passes. Why should the Governor be allowed to interfere in such a matter, that is my question. I am only giving an illustration and there may be other illustrations. But why in those matters where the Governor has nothing to do, where the orders have been passed after consultation with the Chief Minister by a particular Minister, what authority has the Governor to ask the Chief Minister again to consider this matter by the Council of Minister? Why? That only delays the matter and makes the order infructuous. Under what circumstances can you imagine that he should be able to do it? You may say that the Chief Minister has made a mistake and therefore this is a matter which ought to be considered by the Council of Ministers. But, who is the governor to find out mistakes in a Minister in matters not affecting his special powers? That is the question I would like to ask. Who is the Governor to poke his nose and ask the Chief Minister or the Ministry to reconsider a matter because he does not agree with him or because his officers do not agree with the Ministers? This clause is a very dangerous clause; this is a very bad clause.

**Shri R.K. Sidhwa :** I may say, here, Sir, that in certain provinces, a Minister without consulting the Prime Minister or the Chief Minister sends papers to the Governor and he is allowed to do so.

**Shri Rohini Kumar Chaudhuri :** That is wrong. Why should the Governor interfere? The Chief Minister is always there and if he finds that a particular Minister is acting contrary to the policy of his Government, he can call for any papers, he can advise the Minister or he can himself pass orders. What business has the Governor to do here? I would request the Honourable Dr. Ambedkar to reconsider the whole position in view of what I have said. I am sure that whatever we may say about the other clauses, clause (c) is going to lead to friction and quarrel between the Ministry and the Governor.

**The Honourable Dr. B.R. Ambedkar :** Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

**Shri H. V. Kamath :** May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated....(*Interruption*).

**The Honourable Dr. B.R. Ambedkar :** As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry.

[The Honourable Dr. B. R. Ambedkar]

That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

**Shri H. V. Kamath :** Won't he be able to delay or obstruct.....?

**The Honourable Dr. B. R. Ambedkar :** My friend will not interrupt while I am going on. At the end, he may ask any question and if I am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all. He is the representative not of a party, he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all Cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of

the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform what I say not functions because he has none, but the duties which every good Governor ought to discharge. (*Cheers.*)

**Shri H. V. Kamath :** May I ask Dr. Ambedkar some questions?

**Mr. President :** What is the use of asking questions now? You had your chance.

**Shri H. V. Kamath :** Dr. Ambedkar said that I could put questions at the end of his speech.

**Mr. President :** I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

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

“That article 147 stand part of the Constitution.”

The motion was adopted.

Article 147 was added to the Constitution.

#### **New Article 147-A**

**Mr. President :** There is another article proposed to be added—147-A by Prof. Shah.

**Prof. K. T. Shah :** I do not wish to move it.

#### **Article 150**

**Mr. President :** Articles 148 and 149 have been passed. We go to article 150.

**Shri L. Krishnaswami Bharathi** (Madras: General): May I suggest that this article be held over?

**Mr. President :** Is it the wish of the House that the consideration of this article be held over.

**Honourable Members :** Yes.

#### **Article 151**

**Mr. President :** We go to 151.

(Amendment Nos. 2298 to 2304 were not moved.)

(No. 2305 was not moved.)

There is an amendment to this— 181 of Third List by Mr. Gupte but the original amendment is not moved.

**Shri Brajeshwar Prasad** (Bihar: General): Sir, I will move 2305.

I beg to move:

“That in clause (1) of article 151, The words ‘and the expiration of the said period of five years shall operate as a dissolution of the Assembly’ be deleted.”