

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

“That article 60 stand part of the Constitution.”

The motion was adopted.

Article 60 was added to the Constitution.

### Article 61

**Mr. Vice President :** The motion before the House is:

“That article 61 form part of the Constitution.”

The first amendment, No. 1294, by Mr. Baig may be moved.

**Mahboob Ali Baig Sahib Bahadur** (Madras : Muslim) : Mr. Vice-President, I beg to move :

“That for the existing Clause (1) of article 61, the following be substituted:

- ‘1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,
- (b) The Council shall consist of fifteen ministers elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner.’ ”

Sir, the purpose of moving this amendment is firstly, to secure in the executive *i.e.*, the Cabinet, proper representatives and secondly, to secure representatives from all sections of the people. The method by which ministers are appointed to the cabinet as envisaged in the Draft Constitution and as has been the practice in the past under the Government of India Act, 1935, and previous thereto also, is that the leader of the party which has been returned in majority is called upon by the Governor or the Governor-General, as the case may be, and he is asked to form a government; and he chooses his colleagues in the Cabinet. That is the practice in the past and that is what is envisaged in this Draft, and that is in accordance with the form of government in what is called Parliamentary democracy. My conception of democracy is not the conception of democracy as can be considered, or as can be gauged from the system of government called Parliamentary democracy. According to me, Parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general. Now, let us see what actually happens, at the time of the formation of a cabinet. Take for instance, the case of a Parliament consisting of 200 members. If 105 members were returned by a particular party, one of the members who is elected as the leader out of the 105—and he may have been elected by a majority of only 60, he is called by the President and is asked to form the Government. That is, out of two hundred members, the man who gets 60 votes is called by the President to form the government and he becomes the Prime Minister and this Prime Minister chooses his own men without reference to the will and to the opinion of his own party, or of the members of the Parliament. He may choose his own men. He is really in great difficulty sometimes. If he chooses a certain member as his Minister, there are others who are up against him; but he has been given the choice. So the net result is.....

**Shri H. V. Kamath** (C.P. and Berar : General): Sir, on a point of order. The second part of the amendment moved by Mr. Baig relates to the appointment of Ministers which forms the subject matter of article 62. So it cannot be moved as an amendment to article 61.

**Mr. Vice-President :** There is an amendment, I understand, which will cover your objection.

**Mahboob Ali Baig Sahib Bahadur :** Therefore, Sir, according to the Draft Constitution, the person who is supported by 60 persons out of a membership of 200 persons belonging to the House.....

**Mr. Vice-President :** Mr. Kamath will please turn to amendment No. 1302 standing in the name of Mr. Baig, and he will get the requisite information to answer his objection.

**Mahboob Ali Baig Sahib Bahadur :** He is called upon to form the Cabinet. He might choose any person as his Minister, who, in the opinion of his own party, may not be suitable for a ministership, not even taking into consideration the opinion of the entire House. Therefore, my submission is that this kind of appointment of the Executive to rule over the country is anything but democratic. In the first place, as I said, they are not chosen by the entire House consisting of 200 persons, and even the Leader who is called the Prime Minister and who forms the Cabinet is not elected by a majority of the House, and in the case of other members of the Cabinet, they are not chosen at all by the people.

It may, however, be said that the party has been returned in a majority and therefore the Leader has got the right to choose his men. But I submit, Sir, that it is by a legal fiction that these members of the Cabinet are chosen. It may so happen that if election takes place in the case of individual ministers, they may not be elected at all. Shall we then call these Ministers—the Ministers of the people? Can we say that they have been elected in a democratic way, and appointed in a democratic way? Surely not. It is only by a legal fiction that they are there. Therefore, my submission is that it is not the democratic way.

Still, it is said that Parliamentary democracy has been a success in England and other places and so on and so forth. My submission is that I do not agree with the statement that is Parliamentary democracy at all. Sir, I am rather amused, though I am very much concerned also when people say that Parliamentary democracy based upon party politics is the best method. I must say that this kind of democracy obtaining in what is called Parliamentary democracy is far from being democratic, and all the ills and all the evils of the internal revolutions and internal changes in governments in Europe, specially, are due to these political parties, one political party coming into power and the other political party trying to put it down. That is what is happening there. Can we not have democracy without parties and without any political parties? My conception of the future politics is non-party politics.....

**An Honourable Member :** Communal parties.

**Mahboob Ali Baig Sahib Bahadur :** Certainly not, Sir. You are wrong. Do not be obsessed with that idea; the sooner you get rid of it the better.

**Mr. Vice-President :** Mr. Baig, please address the Chair.

**Mahboob Ali Baig Sahib Bahadur :** I am addressing you, Sir. It is the tendency amongst some of our Friends that whenever a man, belonging to a different religion than them, speaks he has to be heckled. That is unfortunate. But I am propounding the idea whether we cannot have non-party politics.

**Shri Algu Rai Shastri (United Provinces : General):** It is a narrow-minded party politics view that you are propounding.

**Mahboob Ali Baig Sahib Bahadur :** If my friend wants an instance, I can quote him the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members are

elected to the Parliament, they elect their own Ministers to the Cabinet. That is what has been happening there and for the last several centuries you have not had any revolutions in that country. There has been no such thing like one party coming into power and suppressing or oppressing another party and all that sort of thing.

What was the conception of democracy in the past? In those days it was not political parties that formed governments. Non-party politics prevailed and the best men were chosen from all sections of the people. They were sent to Parliament and these Members of Parliament themselves choose their rulers and executives.

Now, Sir, the reason why persons belonging to one political party are nervous about the party in power is that each political party is trying to retain power and when it is in power it exercises that power to oppress and suppress all other parties. Such things should not be. The only political party we should have is the party that works for the welfare of the country. If our representatives that are sent to the legislatures and to Parliament sit together and deliberate about which is the best method of democracy and promulgate laws which are beneficial to the people, be it for nationalization or for any other purpose, where is the necessity, I ask, then for political parties?

**Pandit Thakur Dass Bhargava** (East Punjab : General): How will you ensure collective responsibility?

**Shri Algu Rai Shastri** : How will you ensure collective responsibility? That is the question.

**Mahboob Ali Baig Sahib Bahadur** : When there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will co-operate with one another for that purpose. That is my conception. Therefore, as I submitted, the present method by which the Prime Minister and the members of the Cabinet are chosen is something which cannot be called democratic, because all the members do not have a hand in choosing the Premier. Their own party men have the right to choose and even in the party, if the leader gets one vote more than his opponent, he becomes the leader and it is he who chooses the other members of the Cabinet. Therefore, the appointment of these Ministers to the Cabinet is something which is undemocratic and cannot be called democratic at all. That is the first point I would like to urge.

In the second place I am visualizing to myself how to get rid of all the nervousness and troubles that countries have in this world on account of such political parties, such as, the Communist Party, the Socialist Party and the Democratic Socialist Party, all of which come into existence, each with its own programme, and when in power, in order to retain that power, suppress and oppress others. There is no necessity for all this. Every party or group will proclaim that its programme is the best for the country. But when the aim is the good and welfare of the country, is there any necessity for any division amongst the persons calling themselves as members of the Socialist Party, the Democratic Socialist Party, the Communist Party, and so on? So, from that point of view, I am visualizing a state of things in which the members who are sent by the people should choose their own men and elect them to the legislatures. That is the democratic method.

Therefore I move that due consideration may be paid to my point of view and I hope that Members will not be so uncharitable as to stigmatise this because I am a Mussalman and think I have something else in my mind. There is nothing ulterior in my mind at all. We are entitled to talk on general topics without being accused of ill motives.

**Shri R. V. Dhulekar** (United Provinces : General): May I know from you whether Switzerland is a country or a cosmopolitan hotel?

**Mr. Vice-President :** You need not answer that question. The next amendment is in the name of Prof. K. T. Shah—amendment No. 1295.

**The Honourable Shri K. Santhanam** (Madras : General) : There is a similar amendment in his name, amendment No. 1300, and that may be moved also.

**Mr. Vice-President :** I wish to inform the honourable Member that there are certain amendments to this amendment.

So will the honourable Member move the amendments as I call them out Prof. Shah—amendment No. 1295.

**Prof. K. T. Shah** (Bihar : General): Sir, I move:

“That in clause (1) of article 61, the words ‘with the Prime Minister at the head’ be deleted.”

The article as amended would read:

“There shall be a Council of Ministers to aid and advise the President in the exercise of his functions.”

In suggesting that the designation of the Prime Minister should be kept out of the Constitution, I am not specifically opposed to the institution of the Prime Minister. The Prime Minister as an institution has been well-known to the Constitution of England ever since Sir Robert Walpole was in charge of that office. And yet to the British Constitution even today he is not known. All the social status, official prestige, and other precedence he has got is by way of Orders in Council, than by a specific provision in the Constitution.

**Mr. Tajamul Husain** (Bihar: Muslim): May I know from Prof. Shah that, though he says that the Constitution of England does not know whether the Prime Minister exists, is it not a fact that the whole world knows that there is a Prime Minister of England?

**Prof. K. T. Shah :** I have not said that the Prime Minister as an institution should be abolished. But I am only suggesting that he should be kept out of the Constitution. That does not mean that he should not be known as Prime Minister, or he should not exist in fact. Nothing of the kind. It only means that, as far as the Constitution goes, the Ministers should be described as Ministers by themselves; and any separate importance or status or description should be kept out of the Constitution to permit a degree of flexibility, which may otherwise be lacking.

A Minister of Finance we do not describe here as a Minister of Finance likewise in the case of a Minister of Defence, though there may be Minister of Defence, we do not provide for one specifically in the Constitution. Similarly, there will be the Prime Minister, without the Constitution providing for that office in so many words or describing him as such, and making him an integral part of the Constitution. In fact, of course, we should always have a Prime Minister.

As I started by saying, Sir, the institution of the Prime Minister is a very useful one, and may serve as a machinery for holding together a party: a means to expedite business, regulate and distribute work and, in many other ways, be a useful help in working the Constitution.

But on the theoretical side of the Constitution, I submit it is not absolutely necessary—and I rather think it is not even desirable—that we should insist upon the retention of the Prime Minister *qua* Prime Minister, as the head of the Council of Ministers.

The second reason I have for suggesting this amendment is that I regard the Ministers to be not only equal amongst themselves, but because, if for any reason, the Prime Minister may be unwelcome or any of his colleagues becomes unwelcome, we should not be obliged to have a complete change of the entire Ministry. The power which this Constitution as a Constitution seeks to confer

upon the Prime Minister makes it inevitable that a degree of power will concentrate in his hands, which may very likely militate against the working of a real, responsible and democratic Government.

It may be,—it has often happened,—that only a particular Minister is unwelcome on a particular occasion; or that a particular policy of Government is unwelcome. Now, if only a particular Minister is unwelcome, I personally think it is undesirable to sacrifice the whole Cabinet under the doctrine of collective responsibility, which comes on later in this article. We should rather provide for the possibility of dropping one or another Minister, without the necessity of changing the entire Cabinet. It may be that with the authority that the Prime Minister will possess, he will still be able to drop out one Minister, and yet carry on the Government as a collective Cabinet substituting the entire Ministry by another.

I consider, however, that the danger becomes greater when the Prime Minister himself may be the object of such want of confidence or unpopularity. At such a moment the Prime Minister should have the right, against perhaps the majority of his own colleagues, to dissolve Parliament, or rather the House of the People; and at least have a chance of one more delay to vindicate himself if he so desires.

I hold the view, Sir, that this would not only be in the interests of real, responsible and democratic Government functioning; but also in the interests of the Ministry concerned, or its policy. Accordingly, I have put forward this amendment, which, however, I repeat, does not by convention make it impossible for the Prime Ministership continuing, nor exclude the powers and functions which we now associate with the Prime Minister being vested in one such Minister. I commend the amendment to the House.

**Mr. Vice-President :** Amendment No. 1296 standing in the name of Shri Ram Narayan Singh. The Member is absent.

(The amendment was not moved.)

Then, amendments Nos. 1297 and 1298 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam. They may be moved together.

**Mr. Mohd. Tahir** (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

“That at the end of clause (1) of article 61 the following be inserted:

‘Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.’ ”

If this amendment is accepted, then the article will read thus:

“There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

Now, my second amendment is as follows:—

“That the following new clause be inserted after clause (1) of article 61 and the existing clause (2) be renumbered as clause (3):

‘(2) If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of any thing done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.’ ”

In moving these amendments, I want that the President of India, although he is a ‘nominal President’ in the words of my honourable Friend Mr. Kamath, still I want that the President should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. In introducing this exception, I would submit that it is not a novel exception; if you will be pleased to look at article 143 of the Draft Constitution you will find that the same exception has been allowed in respect of the

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Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India.

I need not make any long speech in this connection. I close my speech with the hope that my honourable Friend Dr. Ambedkar will consider this question seriously and decide in favour of my amendments. With these few words, Sir, I move.

**Mr. Vice-President :** Then there are amendments Nos. 1299 and 1300 by Prof. K. T. Shah.

**Prof. K. T. Shah :** May I move both of them together? There is a further amendment to one of them.

**Mr. Vice-President :** Yes.

**Prof. K. T. Shah :** Sir, I beg to move:

“That at the end of clause (2) of article 61, the words ‘except by the High Court of Parliament when trying a President under section 50’ be inserted.”

As advised by you, I will also move my amendment No. 1300 now.

I beg to move:

“That after clause (2) of article 61, the following new clauses be inserted:—

- ‘(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People’s House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.
- (2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.
- (2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.
- (2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People’s House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.
- (2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years’ rigorous punishment.”—

**Mr. Vice-President :** The honourable Member may move amendment No. 47 in List IV of the Fifth Week.

**Prof. K. T. Shah :** I beg to move:

“That in amendment No. 1300, just moved by me, at the end of clause (2E), the following be added:—

‘Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.’ ”

Sir, with regard to amendment No. 1299, I would like it to be realised that, ordinarily, the advice that any Minister may have tendered to the President should be regarded as strictly confidential, and, therefore, not open to enquiry in any ordinary manner. But if and when it should happen that either the President or any Minister is on trial, particularly the President, and Parliament has ordered an enquiry either by itself in the process of impeachment, or caused any such enquiry to be made, it is necessary in the interests of justice, where particularly the very advice tendered is in question, whether or not the Constitution has been followed or violated, then it is but right and proper that the High Court or Parliament should be entitled to enquire into the question as to what advice was tendered.

The question would turn, in such an event, upon a question both of fact and of opinion; and the fact in that case would be the advice given to the President, who can, under the scheme of this Constitution, always plead that he acted in accordance with the advice of his Minister. If the advice is not to be enquired into by anybody, then I think it would go hard with the President, when and if he should be impeached, that he is not able to produce his best defence in the shape of the advice which his Minister gave him. On that ground, I think the amendment I have suggested would meet such a contingency, and as such ought to be accepted.

As regards the next amendment, I would like to point out that it deals with three or four important matters, which I do not find equally clearly provided in this Constitution and in this place. The Ministers being collectively responsible to the legislature, it is obvious that they must be members of that body. Later on in this Constitution, there are clauses dealing with the legislatures in which some provisions of that kind occur. To those clauses I have the honour of giving notice of some amendments. But here, I think, is the proper place where we should insert a definite provision, that the Ministers who are responsible to Parliament should have a seat at the time of the formation of the Ministry in the Parliament, in either House of Parliament; or that, if they have no such seat, then within six months of their appointment as Ministers, they should find seats. This is a very simple proposition, conformable to the practice prevailing in widely popular Constitutions, like that of England; and as such ought to find no opposition.

Sir, the other matter that I have suggested is not an absolute one. I have only suggested that not less than two-thirds of the members of the Council of Ministers should at any time be members of the House of the People. The House of the People should obviously have a greater importance, since a vote of confidence in that body alone would sustain the Ministry. That being so, the presence of a considerable majority of Ministers in that House is I think of the utmost importance. The other House, being an equal partner or concurrent in most of the functions of Parliament, it follows that that body should also have a certain number of Ministers present therein, who would be able to explain the Government point of view or the Ministry's point of view to that body. Therefore, I have suggested that not less than two-thirds should be present in the Lower House, and not more than one-third in the Upper House

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or the Council of States. This also corresponds roughly with the membership, under this Constitution, of the House of the People and of the Council of States respectively. I, therefore, think that that particular amendment also should not in any way be objected to.

The point further that Ministers, whatever they call themselves, should be entitled to assistance by way of Parliamentary Secretaries and Deputy Ministers is a matter of convenience in Parliamentary procedure. It is necessary that, by the mere absence or inability to attend for any Minister owing to overcrowded time with public business for the Chief or any other Ministers, it may not happen that the House has in it no one to explain the Ministry's point of view in regard to any matter that is coming before the House. The Constitution should accordingly provide for or facilitate the appointment of such Parliamentary assistance as is contemplated in this clause of my amendment in the shape of Deputy Ministers or Parliamentary Secretaries as they may be called.

Obviously these Ministers would not be Ministers of the same rank as the Chief or Cabinet Ministers. They should be expressly and clearly declared by the Constitution to be only aides, or assistants, to the Cabinet Ministers in charge of the various departments of State. But their appointment must be specifically provided for in the Constitution, and not be left to the exigency of the moment for a particular Ministry.

The number and the exact functions of these assistant Ministers may be determined by Parliament from time to time, so that these appointments would not be a mere matter of executive decree which Parliament need not confirm, or may not be required to confirm.

The doctrine of collective responsibility that this article is based upon would require, in my opinion, that the vote of confidence of the House should be available for each new appointment, and also for the collective Ministry as well when first appointed; and if the vote is not forthcoming, the Minister or the Ministry, should resign and a new one appointed in his or its place.

Lastly, Sir, is the question of rectitude of the Ministers concerned in their official duties. On an earlier occasion; while dealing with the President. I had the honour of making the suggestion that the President should declare all his right, title and interest in any business, property, trade or industry, that he may have held or carried on before election; and that such right, title, etc., should be either sold or be disposed of; or should be made over to be held in trust by the Government during the period that he holds the office of President. I was told, Sir, at that time that the President being more or less a figurehead or ornamental chief executive of the State, as he would have no powers which may at all injure the interests of the State, it would be unnecessary to compel him to disclose his right, title and interest, to require the same to be disposed of or to be made over to the Government to be held in trust for him during his term of office. At that time I was further told that if such a suggestion were made in regard to the executive authority proper, *viz.*, the Ministry, then perhaps it may be considered.

I am not so foolish as to believe that this very guarded statement,—I cannot call it an assurance,—would be strictly acted upon, particularly as I have the misfortune to put forward that idea. Taking, however, the Draftsman to be also the spokesman in this matter, may I venture to remind him of his very guarded and carefully worded assurance—I would hardly call it an assurance—or the observation that he had made, and ask him to consider this question favourably at least at this stage; and to see whether, if not in my words, at least in some other words, some such assurance may be given so that the Ministers, the real executive heads of the country, may be free from temptation,



and may devote themselves exclusively to the interests of the country, without thinking of themselves or of their families. I hope this amendment will be accepted.

**Mr. Vice-President :** There is an amendment to this amendment No. 46 in the name of Mr. Kamath.

**Shri H. V. Kamath:** Mr. Vice-President, Sir, I move:

“That in amendment No. 1300 of the List of amendments, in the proposed new clause (2E), all the words occurring after the words ‘moral turpitude’ be deleted.”

My Friend, Prof. Shah, has just moved amendment No. 1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words “moral turpitude” because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any Minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the \*\*\*\* Ministry. The relevant portion of the article runs thus :

“The Cabinet (the \* \* \* \* Cabinet) includes one person who is a convicted black marketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja.”

**Mr. Vice-President :** I did not hear you. Otherwise I would not have allowed you to quote any names.

**Shri H. V. Kamath :** I am only reading from a written article in a paper.

**Mr. Vice-President :** I am helpless now. I would not have allowed you to give the name of the State but I would have allowed you to read the extract.

**Shri H. V. Kamath :** “Although the disabilities were graciously removed by the Maharaja, how can the public forgive and forget his sin against society? How can a Government, having in their fold such elements, be called a popular Government? Inclusion of such elements, apart from being a mockery of democracy would blot out the prestige of Government, and would consequently fail at its very inception to create enthusiasm and confidence in the public mind. Will this anomaly be rectified before it is too late?”

I do not know if this was absolutely justified but then to give even a handle to newspapers writing in this fashion about any Ministry or any Government is certainly not creditable to the Government nor is it in the public interest. I do not know whether this anomaly was rectified later on. I hope that it will be a disqualification imposed on any prospective Minister of any State or in the Central Government of our country.

It may be argued that this particular amendment has no place here and we might as well prescribe this disqualification in article 83 which relates to the disqualifications of a member of the House of the People, because a Minister will be chosen from among the Members of the House of the People, but there is one difficulty in this matter, which I would request Dr. Ambedkar to clear in the course of his reply to this debate. Article 83 as it stands, includes no disqualification of this nature. There is an omnibus sub-clause in it which reads:

“(e) if he is so disqualified by or under any law made by Parliament.”

[Shri H. V. Kamath]

Certainly I visualise the possibility, nay, the certainty of Parliament prescribing various disqualifications, but certainly that Parliament will assemble after the elections under the New Constitution, after perhaps Ministries have been formed in the States and in the Centre, and therefore, if article 83 does not specifically lay down the disqualifications for the Members of the House of the People or the Ministers, we cannot be certain that certain persons who have been guilty or who have been suspected of certain offences will be excluded from the membership of a Cabinet in a State or at the Centre, because Parliament if it takes cognizance of this particular aspect of the matter, after Governments have been formed in the State and at the Centre, will certainly meet and pass a law, but that will be subsequent to the formation of the Government in the States and in the Centre. Therefore, at the very inception or initiation of this Constitution, we must have provision in this regard imposing disqualifications with regard to the Members of State or the Central Cabinets.

I, therefore, Sir, move this amendment to the effect supporting Prof. K. T. Shah's amendment, [the last part of it, (2E) of 1300] and I move that the words occurring after the words "moral turpitude" be deleted, because their import is comprised in the words "moral turpitude".

**Mr. Vice-President :** Before I call upon the next Member who has an amendment in his name, I would like to have the permission of the House to this effect that in our official proceedings when the extract from that paper occurs, the name of the State should be represented by stars. Is the necessary permission given? It would look more dignified. We have got to keep up the prestige of this House and that is one way of doing it.

**Shri H. V. Kamath :** I have no objection.

**Mr. Tajamul Husain :** No one has any objection.

**Mr. Vice-President :** Thank you.

(Amendment No. 1301 was not moved.)

**Mr. Vice-President :** The article is now open for general discussion.

(To Shri Mahavir Tyagi) There are a large number of Members who want to speak, and I therefore ask you to be as brief as possible.

**Shri Mahavir Tyagi** (United Provinces : General): Mr. Vice-President, Sir, I do not want to take more time of this House, but I would like to point out one thing. My honourable Friend, Mr. Mahboob Ali Baig has suggested that the Cabinet should be elected by the House on the basis of the single transferable vote system. It seems to be quite a good thing to use such high sounding words everywhere, but my friend forgets that it was to avoid the evil of two or three or, as my friend suggests, fifteen minds working separately in a Cabinet that we had to undertake such a tremendous sacrifice. The country had only recently the experience of a cabinet in which there were two parties working together. If the Cabinet were not so evilly composed by the British, we should not have partitioned India into two. We have given away the best and the most precious part of our land, and have separated willingly. We have obtained this unanimity in the Cabinet at a very great price indeed, and at a very great cost. Thousands of our friends and citizens of this country were killed and massacred on the other side, and thousands of equally good people, who were quite innocent, were killed on this side too. After all that has happened and after this bitter and bloody experience of ours, does my friend still insist on composing a cabinet in which there will be so many parties represented? An election, by the single transferable vote, means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; it decides upon budgets; it has so many treaties

and other important functions to perform. Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that they may never decide an issue or keep a secret? Are we going to throw ourselves into such a chaotic condition as to have a Cabinet which will not be of one mind? Sir, I do not want to dilate on it. The House understands that no Cabinet can live even for a day if all the members of the Cabinet are not of one mind.

Then again, my honourable Friend, Prof. K. T. Shah proposes that whenever a Minister is appointed by the Premier, he should seek the vote of confidence of the House. Although obviously this is true, like the Premier all other Ministers must also have the confidence of the House, but then again, there is one point slightly finer and that is if every member of the Cabinet is required to seek votes for himself or is put to trial on the first day he is appointed. It will mean that only such persons will be Ministers as will have their own followings and personal parties in the House. Such a minister will have a tendency to keep his personal party always alive and active and aloof. In fact when a Minister comes and joins a Cabinet, he merges his whole self, and all his influence into the Cabinet. He has no voice of his own; he speaks the voice of the Premier and acts according to the decisions of the Cabinet. In the Cabinet he has no personal entity left because he becomes absolutely one with the whole Cabinet. If there are 15 ministers, every one of them becomes an indivisible part of the whole Cabinet. The Premier speaks for himself and his Cabinet, and the Ministers for the Cabinet and the Premier. So under these conditions if the amendment of Prof. K. T. Shah is accepted it will virtually mean that the Premier will be on trial whenever another Minister is appointed. It is always a vote of confidence in the Premier. The House can appoint only one Premier. And once a Premier is appointed, he then takes into his Cabinet colleagues of his own choice with whom he can share all the secrets and responsibilities of the State.

How can he allow every Minister to keep a separate circle of his own personal influence in the House? If the Ministers will have such sort of relationships with the members, the Cabinet will be open to all sorts of corruption, because no one can keep a number of members always ready to back him as his pocket Borough, unless he tries to appease them. It is always unhealthy and undemocratic that Ministers should be allowed to retain their own small influences in the House. In a democracy, it is the majority party which is given the power to rule, to administer. The majority party decides upon a Premier, because the wish of the whole country is that such and such a party will rule. The Cabinet therefore has to be loyal to the majority party which has the mandate of the people to run the Government on their behalf. The administration shall be run on the lines of the manifesto which has been approved by the general electorate. Therefore, I submit that the Cabinet must be of one mind, and it could be of one mind only when all the members come through the Premier and look up to him and not to the House for their sanction. They must be popular in the House; but they must be popular to bring strength to the Premier, to bring strength to the party and not popular individually. Every Minister pools his personal strength, influence and following together with his colleagues completely, and thus enjoys the loyalty of and draws his strength from a much bigger group of members in the House. I therefore submit that both these amendments will stultify the whole fabric of democratic Constitution. This type of group-cabinet has nowhere been tried so far. I therefore press that both the amendments must be opposed on principle and I oppose the amendments.

**Mr. Vice-President :** Mr. Raj Bahadur from Matsya Union. I would request you to be brief because there are a number of Members who want to speak.

**Mr. Tajamul Husain :** Five minutes to each, Sir.

**Shri Raj Bahadur** (United States of Matsya): Mr. Vice-President, Sir, I join my honourable Friend Shri Mahavir Tyagi, in opposing the amendment that has been moved by Mr. Mahboob Ali Baig. Mr. Mahboob Ali Baig has put forward an amendment which unfortunately shows a tendency on the part of some of the Members in this House to get back somehow the spirit of separatism and division by one method or another. It is unfortunate that despite the generous attitude that the Congress party as the majority party has shown towards all the minority parties in general and the Muslim minority in particular, such like things should come in. I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separatism by the back-door method. (*Hear, hear*).

I submit that Mr. Mahboob Ali Baig has advanced three main arguments in favour of his amendment. Firstly, he says that Parliamentary democracy is an evil and it is no democracy at all. I am surprised to hear such a categorical statement made on the floor of this House. We know that Parliamentary democracy has been on the anvil of experience during the course of three hundred years in one country at least, and we also know that leaving certain notable exceptions almost all the countries of the world are today trying to achieve and progress towards the attainment of Parliamentary democracy. It is too late in the day therefore to curse Parliamentary democracy as an evil. He says that it would be unfortunate, if a majority of sixty per cent should be allowed to rule one hundred per cent of the population. I would submit that all acts in human society have got to be judged and decided on the principle of "*summum bonum*", greatest good of the greatest number, and that judgment of decision could be made by the electorate as such on the basis of majority of votes only. To say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history. We know how from top to bottom the virus of separatism and communalism permeated the rank and file of the services and the entire body politic. We know how difficult it became to make any progress. We know how we could not execute or implement any schemes of policies. The result of all this was that the country had to be partitioned. We are not going to repeat the same experiment again. I would submit in the end that it is only meet and proper that we should cast away our prejudices and bias, if any, against the unity or the unification of the country. With these words, I oppose the amendment that has been put forth by my honourable Friend Mr. Mahboob Ali Baig.

**Mr. Tajamul Husain** : Sir, I shall be very brief in my statement. I take up first amendment No. 1294 moved by my honourable Friend Mr. Mahboob Ali Baig. Now, article 61 says: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Mr. Mahboob Ali Baig's amendment is that there shall be fifteen Ministers and secondly, that they should be elected in accordance with the system of proportional representation by means of the single transferable vote. He does not mention that the Prime Minister will be the head of this Cabinet. These are his three main objections to this article. I do not agree with the amendment of my honourable Friend Mr. Mahboob Ali Baig. (*Hear, hear*). The first point is that he wants the number of Ministers to be fixed

in the Constitution. How can we fix the number? He wants fifteen Ministers. Suppose we require only ten, what are we to do with the other five? Suppose we require twenty, we cannot appoint them. Therefore, I say, Sir, that it is absurd to fix the number of Ministers in the Constitution. There is no Constitution in the whole world which fixes the number of Ministers. It is for the Parliament, it is for the Cabinet itself to find out how many Ministers are required for the work.

As regards proportional representation, Sir, what would be the result? Article 61 contemplates that after the general election, the party which is in a majority will elect its leader and that leader will be called upon by the President or the Governor-General, whoever he may be, to form the Ministry. He will be called the Chief Minister or the Prime Minister and he will submit the names to the President. If you have, Sir, election by means of the single transferable vote and proportional representation, a man may be elected who does not see eye to eye with the majority party. What will happen then? Every country wants a smooth working of the Constitution, (*Interruption*) in day to day working. I submit that it would be absurd. Then, you must have Coalition Government every time whether a particular party is in the majority or not.

In England you had a Coalition Ministry. Because at one time when the Labour Party came to power they had not an absolute majority on account of the existence of other parties—the Liberals and Conservatives—and they formed Coalition Ministry for the purposes of the First Great War and the Second Great World War. But to have Coalition Ministry everyday is absurd. Therefore I oppose this. The next amendment is of Prof. Shah who does not want that the Prime Minister should be the Head. Everywhere Prime Ministers are the Head. So I oppose this. The Article says—

“There shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.”

My friend says the Prime Minister shall not be at the Head. I don't agree, Sir. In England the Prime Minister is the Head. This is the English system and it has been working satisfactorily for a number of years. My friend says that there is no mention of it in their Constitution but I submit that they never had a Constituent Assembly. The Constitution evolved itself. They did not have a Prime Minister in those days. It gradually grew and they found that the office of the Prime Minister at the head of the Cabinet was absolutely essential and they have got him now and it is working quite satisfactorily and it is right to have it under our Constitution also. Therefore I oppose that amendment also.

Now I come to No. 1297 by Mr. Tahir. Sir, the article says that the Council of Ministers will advise the President. The amendment says:

“Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

Sir, I do not accept this.

**Kazi Syed Karimuddin** (C. P. and Berar : Muslim): Is he replying on behalf of Dr. Ambedkar?

**Mr. Tajamul Husain** : Sir, I am not replying on behalf of Dr. Ambedkar or anybody else. I am speaking what actually I feel should be done. I have supported many amendments moved by Dr. Ambedkar and I have opposed many amendments moved by him. My friend Mr. Karimuddin never opposed any amendment of Dr. Ambedkar, but I did. So it does not mean that I am supporting Dr. Ambedkar. I do not know which amendment Dr. Ambedkar is

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going to accept. If my friend Mr. Karimuddin knows before hand what is going to be accepted by Dr. Ambedkar, then he must be in the confidence of Dr. Ambedkar.

**Mr. Vice-President :** Order, order. Mr. Tajamul Husain, if I were there, I would not mind this kind of interruption. You go on with your speech and do not mind the observations of your friends.

**Mr. Tajamul Husain :** I will go on with my speech; but sometimes one has to reply to baseless allegations. I am sorry I am taking more time of the House that I ought to have. Now I come to No. 1297 by Mr. Tahir. He wants that when the President wants to exercise his individual discretion, then the Cabinet shall not give him advice. Sir, I oppose this one also. We do not want the President or the Governor to use his individual discretion at all. In those days when the British were here they wanted to safeguard their own interest under the Government of India Act, 1935. That was absolutely necessary under that Act to check the Congress Ministries in their opinion, but now every thing has changed. His Majesty the King of England does not exercise his individual discretion at all. He merely follows the advice tendered by the Cabinet. If he does not accept the advice, he must go and not the Cabinet. Ultimately he will have to go. Therefore we have been mostly following the British Constitution which has worked so well—and I am also an admirer of the British Constitution—I think that there should be no question of individual discretion at all. If advice is tendered by the Cabinet, the President must accept that. Now, amendment No. 1298.

**Mr. Vice-President :** That will be blocked if 1297 is rejected and so you need not touch upon it.

**Mr. Tajamul Husain :** I now come to Prof. Shah's amendment. His first amendment is that every time the Minister or the Prime Minister is appointed or elected as the case may be, he should seek a vote of confidence from the House. This is a novel procedure. I have not heard anywhere that such procedure is being adopted. A new man has come; you must give him a trial. If you find after a time that he is not working to your liking, remove him. But why, every time the Prime Minister is appointed, should he be brought before the House and ask for a vote of confidence? This should not be accepted. His amendment No. 2 is that every minister must be an elected member of either House and if he is not, he should seek election within six months. I accept this amendment. *(Interruption).*

Yesterday I used the words "I support my own amendment". There was a fling at me. Now I used the word 'I accept this amendment'. Because we all are one.

Even now in the Provincial Legislatures a nominated member of the Upper House may be appointed as Minister. We do not want that. We want him to be elected. This is reasonable.

The third amendment is that not less than two-thirds of the members of the Council of Ministers shall at any time be members of the House of the People and not more than one-third of the Council of Ministers shall at any time be members of the Council of States. I am not prepared to agree to this. I do not accept it and I do not support it; I oppose it. Supposing the majority party in the House of the People—we shall call it the Conservative Party, the Congress must go and the Congress will go and there will be Labour, Conservative and some other parties on economic basis—supposing there is a Conservative party in Lower House which is in majority and is asked to form the Ministry and the Leader of the Party is asked to form a Ministry by the President. This amendment says he must get one-third at least from the

Council of States. Supposing in the Upper Chamber you have not got one-third of that party, what will happen. That will mean having people who are not of the same view. That is also objectionable.

There should be no limit to the number. Let there be Ministers from the Lower House or from the Upper House, it does not matter. But they must all be of one party.

The next point is that Parliament may appoint Deputy Ministers and Parliamentary secretaries. That, I suppose, will be done and there is no objection to that, and I support that amendment.

Lastly, there is the statement that no one should be appointed if he is found guilty by a competent court of moral turpitude or any other offences, etc., etc., and I think that this provision is good and so I support him there.

Sir, with these words, I resume my seat.

**The Honourable Shri K. Santhanam :** Mr. Vice-President, Sir, the House should be a little careful in interpreting articles 61, 62, 63 and 64. They should not be interpreted literally, because they embody conventions of the cabinet system of government evolved in Great Britain as a result of a long struggle between the King and Parliament. At every stage of this struggle the King yielded some power, but was anxious to preserve his prestige. Therefore, at the end of the struggle, the King gave up all his power, but preserved all his forms. Therefore, it is said here that there shall be a Council of Ministers with the Prime Minister at the Head to aid and advise the President in the exercise of his functions. That does not mean that normally, the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite, or the reverse. It is the Prime Minister's business with the support of the Council of Ministers, to rule the country and the President may be permitted now and then, to aid and advise the Council of Ministers. Therefore, we should look at the substance and not at the mere phraseology, which is the result of conventions. Of course, it may be asked why we should adopt these conventions, and why we should not put them into precise legal language. It might have been desirable to do so, but I do admit that it would not be easy, because the Prime Minister and the Council of Ministers are entities depending upon the confidence of the House which may vary from day to day, and at any moment it may cease to have confidence in them. Therefore, to embody the position of the Prime Minister and the Council of Ministers in the Constitution may bring about a degree of rigidity which maybe inconsistent with the elasticity of the cabinet system of government. The greatest advantage of the British type is its elasticity. So long as the Prime Minister and the Council of Ministers have got the confidence of the House, they are absolutely sovereign and they can do anything, but the day they lose that confidence, they become weaker and weaker and no one can say what their position will be at any particular moment. It is to embody this fluid position that we have had to adopt the words of the British convention. Therefore, there is no use interpreting them literally and then finding fault with them. Take for instance, clause (2) "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

Now, my friend Prof. K. T. Shah has an amendment to this effect that there should be an exception, and that these matters can be enquired into, when there is an impeachment, by the High Court of Parliament. First of all, to speak of the High Court of Parliament is to obscure the language of the Constitution, because Parliament is something different, it is not a court at all. Normally no advice is tendered by the ministers to the President at all. They simply pass orders. They come to decisions and they execute the decisions. Therefore,

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there can be no question of impeachment of a President for any advice given by the Prime Minister or the Council of Ministers. Therefore there is no question of taking that advice into consideration in matters of impeachment.

Now, Sir, I wish to say one or two words regarding the amendments which have been moved. I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognised systems of government. The Swiss system, for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system. It is on that ground and not on any *mala-fide* motives that it should be rejected.

Sir, Prof. K. T. Shah has been fighting such a lonely battle that I hardly like to criticise him. But he has taken upon himself too much of a task and that too quite unnecessarily. If he had concentrated on specific points, he might have carried greater weight. As it is, he has allowed himself to table such long amendments which I believe he has not been able to scrutinise himself. Take for instance amendment No. 1300 (2C). He says:

"No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment."

Now, when is the minister to be appointed? When does the period of six months begin? Before he is appointed, he must be elected, and before he is elected, six months may pass. So it is an obvious absurdity. Apparently, he has not had time to look into it. When he tables many amendments on matters which should be the result of careful consideration of committees, naturally he lets himself down. Whenever we are considering a complicated constitution of this type, individual members will have to content themselves with pointing out particular points and stressing particular amendments, instead of trying to re-draft the entire constitution. It is merely taking up the time of the House without adding to its knowledge and I humbly make the suggestion to Prof. K. T. Shah to concentrate on points where it will be practicable to improve the Constitution without trying to put forward an alternative constitution.

Thank you, Sir.

**Mr. Vice-President :** Dr. Ambedkar.

**Shri Lakshminarayan Sahu** (Orissa : General): Sir, this is a very important article on which I would like to .....

**Mr. Vice-President :** I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

**Shri Lakshminarayan Sahu :** But, Sir.....

**Mr. Vice-President :** Kindly do not try to over-rule the Chair. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the points that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali Baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According



to him they should be fifteen. The second part of his proposition is that the Member of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation. I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage, I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so. I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the Cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend,

Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make of a schedule which is called Schedule 3-A. It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instructions will be this:

“In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collectively to command the confidence of Parliament.”

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baig has in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility and there is no

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use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adopted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a Parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

**Mr. Mohd. Tahir :** On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors?

**The Honourable Dr. B. R. Ambedkar :** The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was a *persona non-grata* with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the other view that notwithstanding the advice of the Prime

Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what is really the *summum bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statute. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance, Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Minister of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

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Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the Cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, *viz.*, that if a person who is appointed a member of the Cabinet is not a Member of the Legislature, he must become a member of the legislature within six months, I may point out that this has been provided for in article 62 (5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

**Shri H. V. Kamath :** I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the Fifth Week.

**Mr. Vice-President :** He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

**The Honourable Dr. B. R. Ambedkar :** That does not require any reply. All that has to be left to the Prime Minister.

**Mr. Vice-President :** I will now put the amendments, one by one, to vote.

The question is:

“That for the existing clause (1) of article 61, the following be substituted:

- ‘1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,
- (b) The Council shall consist of fifteen ministers selected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of the single transferable vote, and one of the ministers, shall be elected as Prime Minister in like manner.’ ”

The amendment was negatived.

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

“That in clause (1) of article 61, the words ‘with the Prime Minister at the head’ be deleted.”

The amendment was negatived.

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

“That at the end of clause (1) of article 61 the following be inserted:

‘Except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.’ ”

The amendment was negatived.

**Mr. Vice-President :** Amendment No. 1298 of Mr. Mohd. Tahir is blocked by the rejection of amendment No. 1297, I am not therefore putting it to vote.

I shall now put to the vote of the House amendment No.1299 of Prof. K. T. Shah. The question is:

“That at the end of clause (2) of article 61, the words ‘except by the High Court of Parliament when trying a President under section 50’ be inserted.”

The amendment was negatived.

**Mr. Vice-President :** I will now put amendment No. 1300 of Prof. Shah as amended by amendment No. 47 of List IV of the Fifth Week to vote.

The question is:

“That after clause (2) of article 61, the following new clauses be inserted:—

- ‘(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People’s House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.
- (2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.
- (2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he get elected to one or the other House of Parliament within six months of the date of his appointment.
- (2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People’s House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers of Parliamentary Secretaries as

[Mr. Vice-President]

Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

- (2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment.

Every minister shall, before entering upon the functions of the office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandizement of his family in any act he may do or appointment he may have to make.' ”

The amendment was negatived.

**Mr. Vice-President :** Amendment No. 46 of List IV is blocked. Mr. Kamath will understand why I am not putting it to vote. It is blocked by the rejection of amendment No. 1300 as amended.

Now I will put article 61 to the vote of the House.

The question is:

“That article 61 stand part of the Constitution.”

The motion was adopted.

Article 61 was added to the Constitution.

#### Article 62

**Mr. Vice-President :** The House will take up for consideration article 62. The motion is:

“That article 62 form part of the Constitution.”

Mr. Mahboob Ali Baig may move amendment No. 1302. No, I see that it is blocked by the decision in regard to the previous article.

**Mahboob Ali Baig Sahib Bahadur :** Yes, Sir. That is so.

**Mr. Vice-President :** Amendment No. 1303 standing in the name of Kazi Syed Karimuddin may now be moved.

I should tell the Mover that parts (1) and (2) are blocked. He may move part (3) only.

**Shri T. T. Krishnamachari :** May I point out that if parts (1) and (2) of this amendment are blocked as result of the rejection of a previous amendment, the rest of the amendment cannot be moved?

**Mr. Vice-President :** Part (3) of the amendment may be moved. It deals with the removal of a Member of the Cabinet.

**Kazi Syed Karimuddin :** Sir, in view of the ruling given by you that sub-clauses (1) and (2) of my amendment are barred, it has really become difficult for me to make a speech on parts (3) and (3A).

**The Honourable Shri K. Santhanam :** Is it not barred by the rejection of an earlier amendment? Unless the Ministers are elected, this will not follow at all. The thing is meaningless as it is.