

[The Honourable Dr. B. R. Ambedkar]

the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

**Shri H. V. Kamath :** Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article?

**The Honourable Dr. B. R. Ambedkar :** Of course there is because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

**Shri H. V. Kamath :** Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this?

**The Honourable Dr. B. R. Ambedkar :** I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding vesting of the discretionary powers in the Governor.

**Shri H. V. Kamath :** Why not hold it over?

**The Honourable Dr. B. R. Ambedkar :** We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

**Shri H. V. Kamath :** Why go backwards and forwards?

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

“That in clause (1) of article 143, the words ‘except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion’ be deleted.”

The amendment was negatived.

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

“That in clause (1) of article 143, after the word ‘head’ a comma be placed and the words ‘who shall be responsible to the Governor and shall’ be inserted and the word ‘to’ be deleted.”

The amendment was negatived.

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

“That article 143 stand part of the Constitution.”

The motion was adopted.

Article 143 was added to the Constitution.

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#### Article 144

(Amendments Nos. 2164 and 173 to amendment No. 2164 were not moved.)

**Mr. President :** Amendment No. 2165 stands in the name of Dr. Ambedkar. There are amendments to that also, but that amendment has to be moved before the amendments to the amendment can be moved.

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

“That for clause (1) of article 144, the following be substituted:—

‘144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council shall be collectively responsible to the Legislative Assembly of the State.’ ”

**Shri T. T. Krishnamachari :** May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (1a) of article 144 by the addition of the words “Of ministers” to the words “The Council” ?

**The Honourable Dr. B. R. Ambedkar :** That is all right. It will bring it into line with article 62. I move that amendment.

**Shri Mahavir Tyagi :** May I know what is the method for the appointment of that particular Minister for Bihar and other places? Whether the minister will be appointed by the Governor on the advice of the Chief Minister—that is clear certainly, because you say, “Provided” and this means that whatever we have said before will not apply in the case of these ministers.

**The Honourable Dr. B. R. Ambedkar :** What it says is among the ministers appointed under clause(1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

**Mr. President :** There are three amendments to this, amendments Nos. 134, 135 and 174.

**Shri Jaspat Roy Kapoor** (United Provinces: General): I do not propose to move any one of these two amendments. But, I hope that the Drafting Committee will be pleased to take the suggestions contained in these two amendments into consideration while giving final touches to the Draft Constitution.

(Amendment No. 174 was not moved.)

(Amendments Nos. 2166 to 2169 were not moved.)

**Mr. President :** Amendment No. 2170.

**Shri H. V. Kamath :** Sir, I have been forestalled by Dr. Ambedkar. I am not moving the amendment.

(Amendments Nos. 2171, 2172 and 2173 were not moved.)

**Mr. Mohd. Tahir :** Sir, I beg to move:

“That in clause (1) of article 144 for the word ‘appointed’ the word ‘chosen’ be substituted, and the following words be inserted after the words ‘his pleasure’:—

‘and till such time as the Council of Ministers maintains the confidence of the members of the Legislative Assembly.’ ”

Sir, I have moved this amendment because the stability of the Ministry mainly depends on the confidence of the members only and not in the pleasure of the Governor. In certain cases, it may happen that there may be some sort of a tug of war as between the pleasure of the Governor and the confidence of the members of the Legislative Assembly. It may happen that the members of the Legislative Assembly may not have confidence in the Ministers, but at the same time, through long association with the Governor, the ministers may enjoy the pleasure of the Governor quite all right. I want that the hand of the Governor should be made stronger so that if he finds that over and above the

[Mr. Mohd. Tahir]

question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Ministry should be dissolved. In many cases I have seen, for instance in the local bodies, although the members have no confidence in the Chairman of the District Board and pass a vote of no-confidence, the Chairman still continues in office because nowhere in the Constitution is it provided that if a no-confidence motion is passed, the Chairman has to resign his office. As time passes on, the Chairman tries to win over and convert many of the members who voted against him with the result that the members who have no confidence in the Chairman have got to turn themselves to the side of the Chairman. In this way, it is also possible in the case of the Ministers. Therefore, I submit that if the Governor finds that the Ministers do not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the Ministry dissolved.

Sir, with these few words, I move.

**Mr. Mohammed Ismail Sahib** (Madras: Muslim): Mr. President, Sir, before I move the amendment that stands in my name, I want to point out that the word 'long' has been omitted at the beginning between the words 'so' and 'as'. Perhaps, it is due to a printing mistake or something else: but the word 'long' should be there.

I beg to move:

"That in clause (1) of article 144, for the words 'during his pleasure', the words 'so long as they enjoy the confidence of the Legislative Assembly of the State' be substituted".

Sir, the meaning of my amendment is very obvious and I do not think I have to say many words in support of the proposition. There are no two opinions on the question whether the Council of Ministers should be responsible to the legislature or not. The amendment moved by the Honourable Dr. Ambedkar also envisages such a responsibility. It is contained in the new clause (1a) of the amendment moved by the Honourable Dr. Ambedkar. There are also other amendments which indicate that this responsibility of the Ministers to the legislature is an accepted fact. The question is when there is a variance between the pleasure of the Governor and the pleasure of the House, which is to prevail, whether it is the view of the Governor or the view of the legislature, that is the view of the majority of the legislature.

As I have already stated, it is an accepted fact that the Ministers must be responsible to the legislature and therefore my amendment proposes that it should be made clear and beyond doubt in this article with the addition of the words that I have proposed. Sir, it may be said that conventions might grow which will enforce such a procedure as is being proposed in my amendment. Conventions are resorted to at a time when we are not clear about any matter or any position and when we want to learn things by experience. But, this responsibility of the Ministers to the representatives of the people has now been accepted as a result of the experience that the world has had, beyond all doubt. Therefore, we need not in this matter wait for conventions to grow. Moreover, it is particularly necessary that the provision suggested by my amendment should be made in this article in view of the fact that the Constituent Assembly has decided that the Governor should be not an elected one, but an appointed one. Perhaps, the article as it stands in the Draft Constitution was drafted by the Drafting Committee when the same Committee envisaged the possibility of the Governor being elected in some form or other. But that position has now changed. The Governor is a nominee of the President. Therefore, I think it is particularly necessary that it should be made clear that the Council of Ministers should hold office only so long as they enjoy the confidence of the Legislative

Assembly. This is a very democratic and acceptable procedure and there need be no hesitation about this and we do not want to learn anything by experience. Therefore I think the House will see my meaning which is very obvious and accept the motion.

(The amendments Nos. 2176 to 2178 were not moved.)

**Mr. President** : There is an amendment which I left over by mistake and that is 109 of the printed list of amendments to amendments, of which notice was given by Mr. Gupte.

(The amendment was not moved.)

(Amendments Nos. 2179 to 2184 were not moved.)

**Mr. President** : No. 2185.

**Mr. Mohd. Tahir** : Sir, I beg to move:

“That for clause (3) of article 144, the following be substituted:—

‘(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State as the case may be.’ ”

The draft provides that—

“A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.”

This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of Imperialism and fortunately those days have gone. This was then provided because if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the backdoor as has been provided in the Constitution and in 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore, I do not find any reason why a man who till then was not elected by the people of the States and which means that, that man was not liked by the peoples of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister. I have greater respect to the voice of the people of the State, and in order to maintain that I will submit that this provision should not remain in the Constitution and the Ministers should be from among those members of the Assembly who have been elected by the people of the States as they are the true representatives of the States sent by the people of the States. I hope that this amendment will receive due consideration by the honourable Members and will be accepted by the House.

**Mr. President** : There is an amendment No. 176 to this.

(The amendment was not moved.)

**Prof K. T. Shah** : I do not want to move either 2186 or 2189 as the principle of these two has been rejected by the House.

**Prof. Shibban Lal Saksena** : Sir, I beg to move:

“That in clause (3) of article 144, for the words ‘Legislature of the State’ the words ‘Legislative Assembly of the State’ be substituted’.”

[Prof. Shibban Lal Saksena]

Sir, it is not a verbal amendment. I do not know whether it is by an oversight of Dr. Ambedkar that the word "Legislature" is used in the section, but I think it has been deliberately used. It means that any member who is not elected and is unable to get himself elected by adult suffrage can also become a Minister. The article says:—

"A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

That means that if a person is not a member of the Lower House but is made a Minister, and supposing that the man fails to get elected to the Lower House on the basis of adult suffrage in six months, then under this article we are providing that he can still continue to remain a Minister if he is nominated to the Upper House by the Governor. I think it is undemocratic that our Ministers should be persons who cannot even win an election by adult suffrage. I have therefore suggested that we should say 'Legislative Assembly' instead of 'Legislature' in this article. In the Assembly nobody is nominated and all Ministers shall therefore have to win an election by adult suffrage within six months of their appointment in order to continue to be ministers. Otherwise persons who are not representatives of the people but are favourites of the Premier may be nominated to the Upper House in the provincial Legislatures and they can continue to remain Ministers under this clause (3) of the article. I desire that only members who are able to get the confidence of the electorates in an election by adult suffrage should hold the post of a Minister. Anybody who is not able to get elected by direct adult suffrage and is not a member of the Lower House should no be a member of the Council of Ministers.

**Mr. President** : Is not the effect of your amendment to exclude a member of the Upper House even if he is an elected member?

**Prof. Shibban Lal Saksena** : That is the effect, Sir. I want that only members of the Lower House should be there which means that those who are elected by adult suffrage to the Lower House should alone be able to be Ministers. Unless a member can get the confidence of the electorate in an election to the Lower House by adult franchise, he should not be made a Minister. That is the essence of democracy, which means the Government of the people by the people. So I submit, Sir, that in this article, in place of the words "Legislature of the State", the words "Legislative Assembly of the State" should be substituted. I hope the Drafting Committee will accept this suggestion.

(Amendments Nos. 2188 to 2191 were not moved.)

**The Honourable Dr. B. R. Ambedkar** : Mr. President, I beg to move:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted."

Sir, this is nothing but a verbal amendment.

**Mr. President** : Amendment No. 2193.

**Mr. Mohd. Tahir** : Sir, I beg to move:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

I have moved this amendment, Sir, because if the clause is allowed to stand as it is then it will amount to a clear negation of the Instrument of Instructions

that has been provided for in the Fourth Schedule. In that Schedule some instructions have been given to the Governor and he is to act according to those instructions. But if the present clause is allowed to remain as it is, then it will mean that inspite of the fact that the Fourth Schedule provides these Instrument sof Instructions, the Governor might act otherwise. Thus it amounts to a clear negation of those instructions. Therefore, I think it will be better if the words I have indicated are deleted from this clause.

(Amendments Nos. 2194 to 2197 were not moved.)

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

“That clause (6) of article 144 be omitted.”

**Shri Brajeshwar Prasad :** Why?

**The Honourable Dr. B. R. Ambedkar :** Because we do not want to give more discretionary powers then has been defined in certain articles. We are trying to meet you.

**Mr. President :** There is an amendment to this, by Mr. Kamath.

**Shri H. V. Kamath :** Mr. President, I move, Sir, amendment No. 177, Third Week, List III. I move:

“That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, the following new clause be inserted:—

- ‘(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government, or in any way aided, protected or subsidised by Government; and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.’ ”

Sir, the object of my amendment is to ensure a high standard not merely of efficiency but also of purity in the administration of our country. I am sure we are all agreed that the Ministers of a State or of India as a whole, should promote such efficiency and purity in our administration. There is no disputing the view that every Minister in our country should be above suspicion. Unfortunately, Sir, this expectation has not always been fulfilled. Many of our leaders, including you Sir, have recently pointed out that there has been a certain deterioration in the standards of public life in this land. It is a very disquieting and very disconcerting trend which we have to counteract by every means at our disposal, and this, may I humbly submit, is one of those means by which we can try to promote and uphold a very high standard of purity in our public life and in our administration.

May I Sir, with your leave, reinforce my arguments by mentioning one or two instances which have occurred of late, in some parts of our country? In one of the States which has since merged in the adjoining province, it was openly alleged by an important journal of Bombay that a person who had been convicted of black-marketing, had been included in the Cabinet of that State. This statement went uncontradicted and unchallenged. Recently there has been a very sad instance, a very unfortunate instance of a Minister of one of the integrated States being arrested in the Constitution House on an alleged charge of corruption.

**Mr. President :** I think that is a matter which is still *sub-judice*.

**Shri H. V. Kamath :** That is why I said on an alleged charge of corruption.

[Shri H. V. Kamath]

I therefore seek by means of my amendment to ensure that as far as lies in human power, we shall be able to maintain purity in our administration and in public life.

May I, Sir, by your leave out to the House what Dr. Ambedkar himself remarked about this matter on a previous occasion? Dr. Ambedkar was all in favour of a similar amendment moved in connection with the Council of Ministers at the Centre. But he wanted it to be more effective, and I have, by expanding my former amendment and submitting a new one, tried to accommodate, Dr. Ambedkar as far as I can.

Dr. Ambedkar on that occasion observed that:

“If at all it is necessary (i.e. a provision of this type is necessary) it should be with regard to the Prime Minister and other Ministers of the State and not the President, because it is they who are in complete control of the administration.”

Expanding his argument further—clarifying his position further—he observed:

“I think all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency, but also of purity.” Continuing, he said :

“If you want to make this provision effective, there must be three provision to it.”

This is what he went on to say:

“One is a declaration at the outset (i.e. when he enters upon his office):

Secondly, a declaration at the time of quitting his office:

Thirdly, responsibility for explaining how the assets have come to be so abnormal: and

Fourthly, declaring that to be an offence followed up by a penalty or a fine.”

The second of the provisions that he mentioned at that time I have included in the amendment which I have brought forward today. I have included a new clause to the effect that every Minister shall make a similar declaration when he quits his office: and I find that Prof. Shah has gone a step further in an amendment he has suggested and in which he has tried to include the third provision which Dr. Ambedkar suggested to make this clause completely effective.

I have left the matter of dealing with such a declaration by the Minister to the Legislature. It is likely that he may have certain shares, or titles, or interests, but the Legislature may hold that the matter is innocuous; and he may continue to enjoy those rights and privileges. I have not stated here what exactly should be the course to be pursued in such a case, as Prof. Shah has sought to do in his amendment. I have left it to the Legislature to deal with it as it likes, and I hope, Sir, that by accepting this amendment, we would be guaranteeing, as far as lies in human power, the purity of our administrations and of Government in so far as those in control of both these are concerned.

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

“That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (7) of article 144—

(a) in the first para,—

- (i) in line 1, after the word ‘Every’ the words ‘Governor or’ be inserted,
- (ii) in line 3, for the word ‘disclosure’ the word ‘declaration’ be substituted;
- (iii) in line 6, after the words ‘controlled by’ the words ‘Central or State’ be inserted;

- (iv) for the words 'and the Legislative may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate', the following be substituted—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and, on vacation of office of such Governor or Minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned': and

(b) in the second para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and  
(ii) at the end the following be added:—

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as the Legislature may deem necessary to demand'."

My amended amendment which I shall, with your permission, read to the House is as follows:

"Every Governor or Minister, including the Chief Minister should, before he enters upon his office, make a full declaration to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade, or industry, either private or directly owned or controlled by the Central or State Government or in any way aided, protected, or subsidised by the Central or State Government, and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India, which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and on vacation of office of such Governor or Minister, all money so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned:

Every Governor or Minister, including the Chief Minister shall make a similar declaration at the time of quitting his office, and in the event of there being any material change in his holding, right, title, share or property, he shall give such explanation as the Legislature may deem necessary to demand."

**Shri B. Das** ( Orissa: General): Would gambling in share bazars come into it?

**Prof. K. T. Shah** : Well, gambling is a business for many people and also a trade!

As Mr. Kamath has tried to explain the genesis of this motion, may I be permitted to amplify a little bit all the same by pointing out that on a previous occasion, in connection with the President and the Prime Minister of the Union of India, I had tried to bring forward an amendment of this nature, and that amendment was rejected. At the time of rejecting that motion, however, the Chairman of the Drafting Committee was pleased to make certain observations which suggested the unworkability or futility of the amendment as it then stood, and indicated certain conditions or improvements whereby it could be made more workable. Mr. Kamath seems to have taken him at his word. I find myself now in that happy position of having to bring out these points also in a more substantial manner, perfectly in accordance with the apostolic observations of Dr. Ambedkar. The point simply is this. We are all interested in maintaining and promoting the efficiency as well as the purity of our administration. The Minister should be above any suspicion, and as such it is suggested here that if they have any chance of being tempted, if they have any concern, any interest in any business, trade or profession which is likely to be, or which is being owned or controlled, aided or subsidised in any way by the Central or Provincial, Government, then all that portion must be fully declared to the State Legislature. I have changed the word "disclosure"



[Prof. K. T. Shah]

to “declaration” because the word ‘disclosure’ might suggest some sort of previous concealment which is now to be unconcealed, and a ‘declaration’ is a simple statement of the holdings that the party concerned may have which are presented to the House.

Sir, it is a wholesome convention that even the Director of a Joint Stock company when he accepts office as a Director has to make a declaration, a disclosure, of his interest in any other company or concern wherein his company might be interested. We have a convention also in such a body like the Bombay Municipal Corporation wherein even a member has to make a declaration if any matter in which he is interested comes up for disposal before the body. If such conventions, if such precedents, are to be found in the ordinary law or practice of public bodies I put it to the House, Sir, that it is of still higher importance that provincial Ministers should be similarly required to make a declaration of their holdings, in any trade or profession, in any company or enterprise, before they become Ministers.

Sir, a story is known—very well known—of a former Prime Minister of the United Kingdom, Mr. Baldwin, who before he accepted his post as Prime Minister dissociated himself completely with Baldwins Limited, which was a great iron and steel, firm, and when he retired he actually had to declare that he was not worth perhaps as many hundreds as he was worth thousands when he took office. This is a part of sacrifice inherent in the public service of a country like England and the ideal or example set by people of the kind will, I hope, be followed in this country as well. We are trying by this amendment to insert a provision in the Constitution to see to it that no opportunity is left for anybody holding such high office in the State as that of Governor, Minister or Prime Minister, to use or abuse his authority, power or position for any purpose of personal aggrandizement. I have, therefore, suggested that not only should there be such a declaration, but that having so declared, the interest, share or title may be either disposed of in the public market in which case there would be nothing more to be said about it, or if that is not done, the property, right, or share may be held in trust by say, the Reserve Bank of India which may receive all the interest, dividend, profit or rent that may be accruing from such property and credit it to be the party concerned, so that when the party concerned leaves office the same may be returned to him. This is a requirement which would in no way hurt the individual economically, at the same time safeguarding the purity and excellence of their conduct while in office.

I am aware, Sir, that if people want to abuse and take undue advantage of their position as Minister or Governor, they will always be able to do so. If there is one way of observing a law, there may be hundred ways of evading the law. But at the same time, so far as in us may lie, and so far as we can openly guard against such mischances, I think an amendment of this kind is necessary, particularly in view of the very common and universal complaint of growing corruption and demoralisation that seems to have invaded all branches of public service and it is with that purpose in mind that I am placing this amendment and I trust this House will not reject it.

(Amendments Nos. 2200, 2201 and 2202 were not moved.)

**Mr. President :** There is one amendment of which I have just received notice from Mr. Jaipal Singh. It is late, but in view of the fact that it raises an important question which has been left out by sheer oversight, I allow him to move it.

**Shri Jaipal Singh (Bihar: General):** Sir, I move:

“That in article 144, clause (1), after the words ‘States of’ word ‘Bombay’ be inserted.”

Sir, I am very grateful to you for permitting this very late amendment of mine. The province of Assam has already been amply provided for by the directives given in the Schedule, but Bombay has been left out. At the time when the Tribal' Sub-Committee met, the question of the merger of States had not been finalised. By the merger of a number of States Bombay province gets an additional population of 44 lakhs and out of this a good number will be tribals and backward classes. I suggest that Bombay be included in the article so that in that province also there may be a Minister who may, in addition to his other duties, pay particular attention to the tribals and other backward classes.

My honourable Friend Mr. Sidhva wanted to know about Assam. I would refer him to page 185 of the Draft Constitution and therein he will find that Assam has been amply provided for, I need not say much about my amendment. The omission is due to oversight and I do hope that Dr. Ambedkar will accept my amendment.

**Dr. P. S. Deshmukh :** Mr. President, Sir, there are a large number of amendments that have been moved. Some of them are more or less of a consequential nature to which a mere reply that the proposal which they want to embody in the Constitution specifically would be covered by other provisions in the Constitution or by the way in which the Ministries have functioned so far would probably be sufficient. I would here just like to speak on one or two points.

I would like, first of all, to say that it would be better if this proviso is transposed either as an independent article or is embodied here in article 104 as an independent sub-clause. I refer to the proviso to para (1) of article 144 in regard to the States of Bihar, Central Provinces and Berar and Orissa and to the proposed addition suggested by Mr. Jaipal Singh in his amendment. I think this is a substantive provision which should stand independently and not as a proviso. I am glad to find that there is actually an amendment suggested by Mr. Gupte for the addition of an independent clause. I am in favour of it.

Then I may say a word about the proposal to include Bombay. I have my fullest sympathies with Mr. Jaipal Singh. For the reasons stated by him briefly, I think it would be proper to include Bombay in the list of States which have been mentioned in this article.

Then there is the amendment of Mr. Kamath which seeks to be amended by the one moved by Professor K. T. Shah. There can be no two opinions about our being very punctilious and about our making every effort to see that our public men are as scrupulous as possible. It is with this end in view that the amendment seeks to provide for a declaration of business interests of the Ministers. But the question is whether we should provide for this in the Constitution or whether there are not other means to achieve the desired end. My Friend Mr. Kamath has suggested that there should be declarations of financial and business interests of the Ministers. Professor Shah who usually goes into details in such matters wants to provide further that when certain interests are found to exist they should be dealt with in a particular way. In spite of all these exhaustive amendments, I do not think the chances of misbehaviour by public men and public officers have been completely eliminated. Besides business interests there may be a thousand other things which it is equally desirable to discourage or put a stop to extraordinary indulgence in, for instance receiving addresses from the public or in celebrating one's own birthdays or the marriages of one's sons or daughters of other relatives. All these things and a whole host of others will have to be included if we want to see that our Ministers do not derive any benefit other than their legitimate remuneration.

[Dr. P. S. Deshmukh]

To make out a complete list of these things and to provide for enquiries and adjudications is I think too much of a task to provide for in the Constitution. I have not a shadow of doubt in my mind that we must do everything possible to raise the moral status of our nation. I am not prepared to say that at the present moment it is very high. But the question is whether this is the right place or method to do it. I am sure the consciousness of our independence, of our nationhood, and of the responsibility that has devolved on our shoulders is increasing in India, and I for one hope that even in the absence of a provision of this kind the moral standards in our country will rise higher. At the present moment however the situation is disgraceful. There is no shadow of a doubt about it. Very few people, cultured people, highly educated people place any value on speaking the truth and there is a craze for deriving vicarious advantages and benefits in different ways. To enumerate all these occasions when men might be unscrupulous enough to transgress the moral code in the Constitution would be an impossible task for the draftsmen. I would therefore prefer to leave this matter entirely outside the Constitution and if necessary include them in the Instructions that may be issued by the President to the Governors to see that from day to day the Ministers and the Premiers who get so much power and authority under the scheme of provincial autonomy do not misbehave and to watch and communicate and such misbehaviour to the President. If those Instructions are followed, much good that we desire will be accomplished. That would be much better than contaminating the whole Constitution by frank admission that our public men are not capable of looking after their own morality and do not care for any moral principles.

I next want to refer to my sub-province of Berar. We have mentioned Central Provinces and Berar as a State which will have an additional Minister to look after the interests of Tribals and the Scheduled Classes. It is stated that that Minister could be given other work also. This reminds me of section 52 of the Government of India Act. There was a special responsibility placed on the Governor, so far as Berar was concerned, and this was "to see that a reasonable share of the revenues of the Province was expended in or for the benefit of Berar." I do not wish to take the time of the House by referring to the Constitutional position of Berar. But, so far as exploitation from the financial point of view is concerned, I may say that it has been a long-standing complaint of Berar that the larger revenues that it contributed are swallowed up by the other and poorer areas of the Province and that Berar does not get the benefit that is due to it. Of course it is too late in the day to ask for any direction or for the placing of any special responsibility for Berar on the Governor, I would, however, like the administrators to bear in mind that the needs of Berar still require attention and consideration.

One more point and that is with respect to the 25 lakhs of rupees paid as lease money to the Nizam. I think we can now conclude that the Nizam's nominal sovereignty has, at long last, been completely abolished and terminated and that hereafter there is no connection between the Nizam of Hyderabad with Berar. Therefore the question of paying this sum of Rs. 25 lakhs to the Nizam will not I expect arise hereafter.

**Mr. President :** We are not concerned with the contribution which is paid by Berar or the separate finances of Berar. We are here concerned only with the question of having Ministers to look after the welfare of the backward tribes in certain provinces.

**Dr. P. S. Deshmukh :** I only want to say one word more, Sir. I referred to this subject since the old provision of special responsibility is going finally to be abolished. Since the payment of Rs. 25 lakhs is not going to be made to the Nizam, this money should be utilised for the benefit of the territory of

Berar for educational and medical purposes. I have already made a representation to the Home Minister in this matter and I hope that since we are not going to repeat the provision existing in 1935 Act, this request of mine to utilise this sum of Rs. 25 lakhs for the people of Berar will be accepted.

**Pandit Thakur Das Bhargava :** Mr. President, Sir, the article under discussion, article 144, is a very important article and so I venture to take some time of the House in regard to some of the provisions in this article.

In the first place, clause (1) of article 144 is too wide. It says—

“The Governor’s ministers shall be appointed by him and shall hold office during his pleasure.”

We just discussed article 143 in which the question was whether the Governor must be invested with any discretion at all. Here his discretion is too wide. Now, the Governor, if he so chooses, can appoint his Ministers and the Premier may be called upon to form a Ministry from any party which is not the biggest party in the House. There is no bar against this. I would have liked a provision that the Governor shall only call for the leader of the biggest party in the Assembly to form the Ministry. Moreover, Sir, the words “during his pleasure” have been interpreted in different ways. A convention is to grow that the Governor is only entitled to dismiss a Ministry if the Ministry fails to retain the confidence of the Legislative Assembly. In regard to this, two amendments have been moved and I am sorry I cannot support any of them because the words used are “retains the confidence of the Legislative Assembly”. My humble submission is that unless the Ministry fails to command the confidence of the majority of members of the Legislative Assembly, the Ministry should not be dismissed. Now, it is true that the sole judge of this is the Governor himself and therefore he will have very great power in this regard. If the provision had been made that as long as the Ministry retains the confidence of the majority of the members of the Lower House, the matter would have been put beyond doubt and the Governor would not be within his rights if he dismisses a Ministry which is still in the enjoyment of the confidence of the House.

An amendment was moved by Mr. Saksena in regard to clause (3). He wanted that only members of the Lower House should be chosen as Ministers. In regard to this, my submission is that since in the Upper House we are having many members who will be elected by a large body of people, like Municipalities, District Boards, village panchayats, etc, there is no reason why we should restrict Ministership to the members of the Lower House only. My submission is that all those members who have been elected, whether they belong to the Upper House or the Lower House, should be eligible for Ministership.

In regard to the proviso, I would submit a word. I am very much against this backdoor reservation of ministership. So far as the question of the Scheduled Castes, the backward classes and the tribal people is concerned, we have got very specific provisions in this Constitution which aim at the amelioration of the condition of these classes and it will be the statutory duty of those in power to see that the interests of these classes are not ignored and there is no need for reservation of a separate minister. The backward classes have been divided under this Constitution into two classes, the Scheduled Castes for whom reservation have been made and backward classes for whom no reservation has been made. If we turn to article 301, we will find that backward classes have been protected under that article, where it has been made the duty of the President to see that the conditions of the backward classes including the Scheduled Castes are bettered and to have an investigation made into the conditions of these classes by a Commission and then after the Commission has reported, action has again to be taken so that they may be brought

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up to the normal level. In regard to the tribal people, there is a specific provision in article 300 which says—

“The President may at any time and shall, on the expiration of ten years after the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes in the States, etc.”

If you just see article 299, you like be pleased to see that special officers are to be appointed both by the President himself and by each State to study how these safeguards work, how these provisions work. Therefore, it is the bounden duty of the President and of the Union Legislature to whom the report of the Commission is to be presented to see that the condition of the backward classes is improved. I do not see why there should be overlapping of functions by different functionaries and why there should be reservation for them in the Ministries. So far as the report of the Minorities Advisory Committee is concerned, they have not recommended that for the backward classes and the Depressed Classes there should be a separate Minister. In regard to welfare there is no reason why Scheduled Castes should be differentiated or mentioned separately when there is equal responsibility on Government for both. My submission is that this distinction should be eliminated. As a matter of fact, in regard to article 301 there is no distinction. My point is that if the Scheduled Classes or the backward classes require any special protection, they require special protection in the whole of India, not only in C. P., Orissa and Bihar. I have to submit, Sir, that the Constitution has already protected them. Untouchability has been made an offence. In the Fundamental Rights there are so many provisions by virtue of which they have got equal access to all public places. In view of that, I am opposed to this kind of reservation. I am very much opposed to this provision because it stands for all times and may prove the thin end of the wedge for demanding such reservation in all the provinces. Moreover this provision is not only for the first ten years but for all times. This will be a blot on our Constitution and I therefore submit that this House should throw out this proviso.

The next point was made by Mr. Kamath and subsequently supported by Professor Shah in regard to the property of the Ministers. They said that the Ministers should be asked to disclose what they have at the time they are appointed as Ministers and also when they hand over the administration, that they should be made to disclose what they have amassed, what they have gathered during the time they were Ministers. This is an inquisition. I do not think that in regard to our Ministers we should resort to this kind of inquisition. We have already rejected such proposed provision for other dignitaries.

**Shri A. V. Thakkar** (Saurashtra): Mr. President, Sir, though no notice has been given of an amendment by Mr. Jaipal Singh, he has spoken and perhaps he has been allowed by you Sir, to put it as an amendment. I do not know what is the actual state of things. However, since three members of this House have spoken upon it, I wish to express my opinion on the subject. Separate Ministers are recommended in the three provinces of Bihar, Orissa and C. P. to take care and to protect the interests of the tribals, scheduled castes and all other backward classes. It was on the recommendation of the Tribal Sub-Committee of the Minorities Committee that I as the Chairman along with the other members suggested that such a provision may be made in the Draft Constitution to take care of the backward people residing in these three provinces only. It was for this reason that these three provinces were considered at the time when we made recommendations, that they were backward in the matter of giving special treatment to these people or protecting them. Things have moved much since then. All these three provinces of

Bihar, C.P. and Orissa have now very well organised departments for giving protection and do all kinds of welfare work for them. We did not include at that time the forward provinces like Bombay, Madras etc., because they were already moving in that matter for the last twenty or even thirty years and, therefore, they were not included. Somebody may say it is a stigma to these three provinces that they are being specially mentioned. However, I do not think that any addition should be made at this moment without any further consideration or without consulting the Bombay Ministry, which has been proposed in this amendment of Mr. Jaipal Singh. However, I leave it, Sir, at that.

**Shri H. V. Pataskar :** Sir, so far as the consideration of this article 144 is concerned, I only object to the manner in which it has been worded and I would make the following suggestion, if that will be acceptable to those who are responsible for this draft: "The Governor's ministers shall be appointed by him and shall hold office during his pleasure." This is preceded by article 143 and in that article a provision has been made that "there shall be a Council of Ministers". Naturally, therefore, we must mention as to who is to appoint this Council of Ministers. I think the better form would have been merely to mention that "the Council of Ministers shall be appointed by the Governor." At the same time to make a further provision that "they shall hold office during his pleasure," is undesirable. My opinion is it is not necessary and is derogatory to the position which we are going to give to the Prime Minister of the State and the Council of Ministers. Probably this provision is a remnant of the old idea that the Ministers hold office during the king's pleasure. Things have changed since then and it is not necessary that we should incorporate the same language, namely, "they shall hold office during his pleasure". I admit that if the Governor is the appointing authority, naturally he should have the power in certain circumstances for which provision may be made in this section that the Council of Ministers may be dissolved or some new ministers shall be appointed, but, Sir, when we are making a provision with regard to the appointment of a Council of Ministers in the year of grace, 1949. We need not say that "they shall hold office during the pleasure of the Governor." That "Governor" we have decided will be nominated by the President and I do not think it will be proper to say that the minister shall hold office during his pleasure. It may be asked, "What would happen if the ministers have to be changed"? The ministers should be changed only if they cease to command the confidence of majority of the members in the House and for that provision could be made in the Instrument of Instructions, but so far as article 144 reads now, I do not think it is proper that we should lay down that in the case of a Governor of the type which we have already decided upon the Council of Ministers shall be appointed by him and they shall hold office during his pleasure. This phraseology may have been taken out from some other constitutional books and as I said it is probably due to the fact that formerly as the powers of the ministers developed, they may have held office during the pleasure of the Crown, but now there is going to be no Crown and the wording of the article is not happy and proper and, therefore, I would appeal that this part of article 144 be taken out of the Constitution.

**Shri Krishna Chandra Sharma :** Sir, I do not think there is any necessity for the provision regarding Scheduled class and tribal people in this article. In article 37 we have already provided for the promotion of the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes, and again in article 301 the President is to appoint a Commission to look to the amelioration of the backward classes and the tribal people. In view of these two provisions in the Draft Constitution, a special mention of a portfolio with regard to the tribal areas and Scheduled classes is unnecessary. The whole matter should be left to the State Ministry; they will consider what is necessary and what is wanted with regard to their

[Shri Krishna Chandra Sharma]

amelioration and to incorporate details like this is going too far and I do not think this special provision will do anything not envisaged in the two articles. It does no good to a depressed class man to be told that because he is a depressed class man, therefore, such and such facilities are provided for him; it does create an inferiority complex in the man. It is not always the giving of facilities here and there that helps so much to raise a man up. It is more a matter of psychological make-up. If a man thinks "I am as good as A, B, C, or D", then he raises himself up; their moment you say "You are an inferior being and therefore, such and such a facility is granted to you and we raise you as against the interests of any other member", he goes down. He does not raise himself. Therefore, it is in my opinion, in the interests of the Scheduled Classes, in the interests of Tribal Classes not to be told again and again that because they are inferior people, because they are weaker people, therefore, such and such facilities are provided for them. It does not do them any good to make a fetish of the thing. It looks such a nasty thing to be told that A has to be given a scholarship because he belongs to the Scheduled Class, that B, a better boy, a more deserving boy from economic considerations, from his talents and personal capacity, is to be denied those facilities because he belongs to the Brahmin Class or the Kshatriya Class or some other class which is different from the Scheduled Classes. How can a State say that a boy simply because he belongs to a certain community or certain class is to be provided with better facilities, though they have better conditions in life than a boy who belongs to another class, simply because he belongs to a different community? Such a thing would be impossible from the point of view of justice and fair-play, and Sir, it would not be in the interests of the community as a whole. Therefore, looking into the two articles. I just cited and the general scheme in the Draft Constitution, I think that this special provision regarding portfolio for backward classes should be dropped.

**Shri R. K. Sidhwa** (C.P. and Berar: General): Mr. President, Sir, I wish to draw the attention of the House to one point as regards clause (3) or article 144. The clause says: "A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State, shall at the expiration of that period cease to be a Minister". I feel that this is merely a repetition or imitation of a clause which exists in the present Government of India Act of 1935. I do not think it is necessary now, because, under the new Constitution, the number of members in the provincial legislatures will be ranging from 300 to 600 and I do not think we will be wanting in people to fill even special posts. I am opposed to an outsider who is not a member of the Legislature, however highly qualified he may be, being called upon to hold the very responsible office of a Minister even for six months. From the experience we have gained, we find that in some cases where Ministers have been so appointed, eventually it has led to corruption. After the period of six months, somebody has to vacate a seat and it has so happened in one or two provinces that to make room for this Minister, that gentleman had to be provided with some job for which he was not qualified. Therefore, when we are going to have large Houses in which there will be members with vast experience, and experts in many respects, I feel that it is not proper, and it is not a very good principle to imitate what is existing in the Government of India Act, 1935, and say that if the Chief Minister feels that so and so who is not a member is required for expert advice, he should be taken as a Minister. Sometimes, the Chief Minister would like to favour somebody. In the name of the special qualifications that he may possess, he will be asked to become a Minister, and at the end of six months, he will have to be made a member of the legislature, because he cannot hold that office after six months. As I stated, Sir, some other member who will be asked to vacate will have to be offered something and this will lead to corrupt public life.

As regards the amendment of Mr. Jaipal Singh in which he wants to add Bombay also, I have to say that it is wrong in principle. A committee was appointed by the Advisory Committee of this House, and they went into the whole question. They went to all the provinces. They recommended that only these provinces should have a Minister for tribal welfare and any other work. It is most improper at this juncture to come and say that Bombay also should be included. As far as Scheduled Castes are concerned, there are large numbers in Madras. When a Committee had gone into the whole question, it will be wrong in principle that a member should come up and throw before the House a surprise amendment that another province should also be included. From that point of view, I oppose Mr. Jaipal Singh's amendment.

**Shri Rohini Kumar Chaudhuri :** Mr. President Sir, in most of my speeches in this House, I had made several appeals to the Honourable Dr. Ambedkar to oblige me by clarifying certain questions which I had raised. My former attempts in this direction have failed; but I have faith in the example of King Bruce and I hope that this attempt of mine to get clarification from that quarter will receive proper attention.

**Shri T. T. Krishnamachari :** May we have the pleasure of hearing the honourable Member properly by requesting him to come to the rostrum and address the House?

**Shri Rohini Kumar Chaudhuri :** (after coming to the Rostrum) I am very much gratified to learn that at least there is one Member in this House who is anxious to hear what I have to say. I cannot be sufficiently grateful to him. All that I can do in return is to give my fullest attention to what that honourable Member will speak in this House.

I wanted some clarification. I want to know why particularly these provinces have been selected for reservation of Tribal members in the Cabinet. If there are important minorities in these provinces, necessarily, under the provisions of the Constitution, they will find a place in the Cabinet. If there are no important minorities in these provinces, why are these particular provinces selected for the purpose of giving representation to the backward classes and Scheduled Castes in the Cabinet?

**Mr. President :** There is no question of representation of Scheduled Castes and backward tribes in the Ministry. A Minister has to be appointed to look after them; not that he should belong to that Tribe or backward community.

**Shri Rohini Kumar Chaudhuri :** Sorry, I have not followed the point.

**Mr. President :** There is no question in this proviso of a man from the Tribal people or from the backward classes being appointed a Minister, or reservation of a seat in the Ministry for any of these classes. The only point is that a Minister should be appointed who will look after their interests.

**Shri Rohini Kumar Chaudhuri :** I am much obliged to you, Sir, If this clause then means that any member, whether he belongs to the Scheduled Castes to Tribal classes or not, may be selected and appointed in charge of tribal welfare, that is to say, this clause only wants that a portfolio should be created for the purpose of looking after tribal affairs, I think this is not necessary. The general understanding of the tribal people is that by virtue of this proviso, the Tribal people or the Scheduled Castes will secure representation in the Cabinet. If it means that this proviso does not necessarily mean that a member of the Tribal people or the Scheduled Castes will be placed in charge of looking after the welfare of the Tribal people, then, I think this clause is a disappointment to them. If that is the interpretation that is to be put on this proviso, that any member Caste Hindu or even a Muslim or even a Christian



[Shri Rohini Kumar Chaudhuri]

can be placed in charge of the portfolio of looking tribal welfare, and that this does not necessarily mean that a tribal person should be taken in, I would only say that that object will not go half its way.

My point is this. If there is an important minority, automatically that important minority of Scheduled Castes will find representative in the Cabinet. If you do not think that there is any important minority or if you think that the Tribal people form an insignificant minority, then I do not understand why a particular portfolio should be created for the purpose. For instance, do you mean to say that the Minister in charge of Education, who does not belong to the tribal community, does not properly look after the education of the Tribal people, because he has not been placed in charge of tribal welfare? He may not be placed particularly in charge of tribal welfare; nevertheless, he will look after the education of the Tribal people. Any Education Minister would do that. Any Minister in charge of Public Works will look after the proper communications in the tribal areas. What is the use of having a particular portfolio for tribal welfare? You have to look after the law and order of the Tribal people; you have to look after the education of the Tribal people; you have to look after the local-self-government of the Tribal people. What can one Minister do? All the Ministers in the Cabinet will be expected to look after the interests of the Tribal people in every respect. If you have a non-tribal or a Scheduled Caste member in charge of tribal welfare, what does it mean? Is it the intention that he will poke his nose in every thing and say, "you have not made sufficient arrangements for education in my area or you have not given sufficient roads for me or you have not properly looked after the health of the Tribal people?" Is that the object of creating a Minister? For that purpose this not necessary to create a Minister specially because generally every Minister to whatever community he may belong, has to look after the interests of the Tribals so far as his Department is concerned.

**Shri R. K. Sidhva :** Just like the Labour Minister looks after the interests of labour, similarly a Tribal Minister can do.

**Shri Rohini Kumar Chaudhuri :** The interests of labour lie in a particular way but the interests of Tribal people are in every matter. Do you mean to say that this Tribal Minister will be there to look after the interest of tribal affairs only? It is considered the responsibility of all. Therefore I want clarification; as it is we have two Tribal Ministers in the Assam Cabinet now and there have been Tribal Minister since 1937 and there never was a Ministry without a Tribal Minister. This can very easily be left to the Chief Minister who will select his Ministers and he will certainly look after the interests of the Tribal people by selecting a Tribal Minister. Otherwise if you have a Minister only for tribal welfare, there will be frequent interruption in the work and there will be confusion and there will be rivalry and there will be unnecessary interference in the work of the other Ministries.

**Shri Jaspat Roy Kapoor :** Sir, may I have permission to move amendment No. 134 which stands in my name and with respect to which I said that I did not want to move I find it is a necessary amendment and I have consulted a large number of Members who feel that it should be moved.

**Mr. President :** The amendment is to this effect:—

"That in amendment No. 2165 of the List of Amendments, the proviso to the proposed clause (1) of article 144 be deleted, and the substance of it be included in the Instrument of Instructions set out in the Fourth Schedule."

**Dr. P. S. Deshmukh :** It should not be permitted to be moved at this late stage.

**Mr. President :** It seems there is some objection to this amendment being moved at this late stage and so in that view I would not like to permit it.

**Shri Jaspat Roy Kapoor :** If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the House to reject it.

**Mr. President :** Would that not open up discussion again?

**Dr. P. S. Deshmukh :** Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

**Mr. President :** Yes, that is a way out.

**The Honourable Dr. B. R. Ambedkar :** I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

**Pandit Thakur Das Bhargava :** May I propose that this article be held over?

**The Honourable Dr. B. R. Ambedkar :** Why, after having debated so long?

**Mr. President :** The question is whether it should stand here or it should be transferred to the Instrument of Instructions. That seems to be the effect of the amendment which is sought to be proposed. If there is any considerable body of Members who are opposed to the amendment being moved at this stage, I would not allow it but if it is only the technical objection, then I should be inclined to give the House a change to consider this amendment also. I would like to know if there are many Members who are opposed to it.

**Dr. P. S. Deshmukh :** So far as the transposition is concerned there will be ample opportunity for that. At this stage it does not arise because this is an independent amendment proposed by Mr. Gupta to be embodied as a separate clause.

**Mr. President :** If this amendment of Dr. Ambedkar is carried and the proviso is retained, what will be the position of Mr. Gupta's new article?

**Dr. P. S. Deshmukh :** If Dr. Ambedkar is prepared to say that the proviso may not be put now, the purpose of my friend's amendment would be served. Otherwise it will be a negation.....

**Mr. President :** It is not a negation. He wants the thing to be transferred from the body of the Act to the Schedule and the Instrument of Instructions. So it is not a negation; it is only a question of transposing the thing from one place to the other.

**Shri Jaspat Roy Kapoor :** May I submit, Sir, as a matter of general policy I think while dealing with the Constitution we should not take our stand too much on technicalities?

**Mr. President :** I appreciate that.

**Shri T. T. Krishnamachari :** Any transposition of this proviso will deprive it of the legal status which it would otherwise possess because the Governor is not bound to carry out the instructions that are given under the Instrument of Instructions and nobody can call him into question in any Court or before any other authority for not following it. I believe the basis for this proviso is a certain measure of agreement in the sub-Committee concerned and if we are going to make a change at this stage it might upset the scheme of the Constitution as envisaged to this sub-Committee.

**Mr. President :** I think there is some objection to it and so I cannot allow it to be moved at this stage. Dr. Ambedkar may reply to the general debate.

**Shri Jaspat Roy Kapoor :** May I now move that the final decision on this clause be held over till tomorrow?

**Mr. President :** After all this discussion I do not think that will improve matters. Even if it is held over till tomorrow, your amendment will not be moved tomorrow.

**Shri Jaspat Roy Kapoor :** In view of the long discussion we have had on the article it appears that a little further constitution is necessary. This long discussion suggests that there are different points of view and it is possible.....

**Mr. President :** That position will not be changed by tomorrow morning. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, in the course of this debate on the various amendments moved I have noticed that there are only four points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated in that fashion or in those terms in any of the Constitution which lay down a parliamentary system of government. 'During pleasure' is always understood to mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence or the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words "Lower House" I am afraid, cannot be accepted because under the provisions of the Constitution, it is open to the Prime Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from the Upper House. Consequently the provision that the Minister shall be appointed for six months, although he is not elected must be so extensive as to cover both cases, and for that reason I am unable to accept his amendment .

The third amendment which has been considerably debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. In that connection, what I would like to say is this, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

**Shri H. V. Kamath :** My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

**Mr. President :** You have already said all that.

**The Honourable Dr. B. R. Ambedkar :** The fourth point is the one which has been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced

in the Draft Constitution is to be found in the recommendation of the sub-committee on tribal people appointed by Minorities Committee of the Constituent Assembly. In the report made by the Committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular Committee. It is said, there, that in the Provinces of Bihar, Central Provinces & Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the Report of the Tribal Committee which was headed "Statutory Recommendation". It was the intention of this Committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

With regard to the suggestion of my Friend Mr. Jaipal Singh, that Bombay should be included on account of the fact that as a result of the mergers that have taken place into the Bombay Presidency, the number of Tribal people has increased I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necessary to consult the Ministry of Bombay, and unfortunately my Friend The Honourable Mr. Kher who was present in the Constituent Assembly during the last few days is not here now, and I am therefore not able to accept this amendment.

**Shri H. V. Kamath :** With reference to my amendment, may I know if Dr. Ambedkar had resiled from the view that he expressed previously—if he has recanted?

**Mr. President :** I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail, Nos. 2174 and 2175 which relate to this article 144, clause (1).

If Dr. Ambedkar's amendment No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

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

"That for clause (1) of article 144, the following be substituted:—

'144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor;

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council of Ministers, shall be collectively responsible to the Legislative Assembly of the State.' "

The amendment was adopted.

**Mr. President :** As I have said, the two amendments No. 2174 and No. 2175 do not arise.

Then there is No. 2185 by Mr. Tahir.

The question is:

"That for clause (3) of article 144, the following be substituted:—

'(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be.' "

The amendment was negatived.

**Mr. President** : Then there is Prof. Saksena's amendment No. 2187.

The question is:

"That in clause (3) of article 144, for the words 'Legislature of the State' the words 'Legislative Assembly of the State' be substituted."

The amendment was negatived.

**Mr. President** : There is then Dr. Ambedkar's amendment No. 2192.

The question is:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted.

The amendment was adopted.

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

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

The amendment was negatived.

**Mr. President** : Then we come to the amendment moved by Mr. Kamath to which another amendment was moved by Prof. Shah. I shall put Prof. Shah's amendment first.

**Shri T. T. Krishnamachari** : There is amendment No. 2198 moved by Dr. Ambedkar.

**Mr. President** : I will put that last. I will put Prof. Shah's amendment No. 185 to vote now.

The question is:

"That in amendment No. 177 of List III (Third Week) of Amendments to Amendments, dated the 30th May, 1949, in the proposed new clause (1) of article 144—

(a) in the first para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted;
- (ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;
- (iii) in line 6, after the words 'controlled by' the words 'Central or State' be inserted;
- (iv) for the words 'and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate' the following be substituted:—

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or minister concerned, and, on vacation of office of such Governor or minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned'; and

(b) in the second para,—

- (i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and
- (ii) at the end and following be added:

'and in the event of there being any material change in his holdings, right, title, interest, share or property he shall give such explanation as legislature may deem necessary to demand.' "

The amendment was negatived.

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

“That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, of following new clause be inserted:—

- ‘(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government or in any way aided, Protected or Subsidised by Government, and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.’ ”

The amendment was negatived.

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

“That clause (6) of article 144 be deleted.”

The amendment was adopted.

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

“That article 144, as amended, stand part of the Constitution.

The amendment was adopted.

Article 144, as amended, was added to the Constitution.

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#### **New Article 144-A**

**Mr. President :** Notice of an amendment has been received from Shri B. M. Gupte that a new article 144-A be put after article 144. It reads:

“That after article 144, the following new article be added:

- ‘144-A. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.’ ”

I think this is already included in the article accepted. Therefore this cannot be moved.

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#### **Article 145**

**Dr. P. K. Sen :** (Bihar: General): I do not wish to move the amendment No. 2205 but I would like to make a few observations.

**Mr. President :** When we come to the discussion of the article, you can do that. (Amendment Nos. 2204 and 2206 were not moved.)

(Amendment Nos. 136 and 178 of Lists III and IV were not moved.)

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I move:

“That after Clause (2) of article 145, the following new clause be added:

- ‘(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.’ ”

I want to enable the Advocate-General to have the right of audience in all Courts in the State for which he is the Advocate-General, without any special authority, and also when he appears for the State in other States, and also in the Federal Court when he appears in that capacity. My reason is based on