

**Article 142**

**Shri T. T. Krishnamachari** : Sir, I formally move amendment No. 2153 and in substitution of same, I move Amendment No. 184 (Third week—List IV):

“That for article 142, the following be substituted :—

‘142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.’ ”

Sir, this will simplify the wording of the article as it stands and also eliminate clause (b) which raises complications, as it refers to certain aspects of this Draft Constitution about which we have not made any decision for the time being, because it refers to States in Part III of the First Schedule and a decision will have to be taken later when the position of States in Part III of this Schedule is precisely defined. Therefore, Sir, this amendment is necessary and I hope the House will accept it.

(Amendment No. 2154 was not moved.)

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

“That for article 142, the following be substituted :—

‘142. Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.’ ”

The amendment was adopted.

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

“That article 142, as amended, stand part of the Constitution.”

The motion was adopted.

Article 142, as amended, was added to the Constitution.”

**Article 143**

(Amendment Nos. 2155 and 2156 were not moved.)

**Shri H. V. Kamath** (C.P. & Berar: General): Mr. President, Sir, I move:

“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.”

If this amendment were accepted by the House, this clause of article 143 would read thus :—

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise *vis-a-vis* his ministers, than has been given to the President in relation to his ministers. If we turn to article 61 (1), we find it reads as follows :—

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that

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even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to vest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

**Prof. K. T. Shah** (Bihar: General) : Mr. President, I beg to move:

“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.”

So, that the amended article would read:

“(1) There shall be a Council of Ministers with the Chief Minister at the head, who shall be responsible to the Governor and shall aid and advise the Governor in the exercise of his functions .....etc.”

Sir, this is a logical consequence of the general principle of this Draft Constitution, namely, that the Government is to be upon the collective responsibility of the entire Cabinet to the legislature. At the same time, in the Cabinet the Prime Minister or the Chief Minister or by whatever title he is described would be the Principal Adviser and I would like to fix the responsibility definitely by the Constitution on the Chief Minister, the individual Ministers not being in the same position. Whatever may be the procedure or convention within the Cabinet itself, however the decisions of the Cabinet may be taken, so far as the Governor is concerned, I take it that the responsibility would be of the Chief Minister who will advise also about the appointment of his colleagues or their removal if it should be necessary. It is but in the fitness of things that he should be made directly responsible for any advice tendered to the Constitutional head of the State, namely, the Governor. As it is, in my opinion, a clear corollary from the principles we have so far accepted, I hope there would be no objection to this amendment.

(Amendments Nos. 2159 to 2163 were not moved.)

**Mr. President** : There is no other amendment. The article and the amendments are open to discussion.

**Shri T. T. Krishnamachari** : Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of the article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appro-

prate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. If it is to be given in article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception of article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point I would like to draw the attention of the House to and I think the article and better be passed as it is.

**Dr. P. S. Deshmukh** (C. P. & Berar: General): Mr. President, Mr. T. T. Krishnamachari has clarified the position with regard to this exception which has been added to clause (1) of article 143. If the Governor is, in fact, going to have a discretionary power, then it is necessary that this clause which Mr. Kamath seeks to omit must remain.

Sir, besides this, I do not know if the Drafting Committee has deliberately omitted or they are going to provide it at a later stage, and I would like to ask Dr. Ambedkar whether it is not necessary to provide for the Governor to preside at the meetings of the Council of Ministers. I do not find any provision here to this effect. Since this article 143 is a mere reproduction of section 50 of the Government of India Act, 1935, where this provision does exist that the Governor in his discretion may preside at the meetings of the Council of Ministers, I think this power is very necessary. Otherwise, the Ministers may exclude the Governor from any meetings whatever and this power unless specifically provided for, would not be available to the Governor. I would like to draw the attention of the members of the Drafting Committee to this and to see if it is possible either to accept an amendment to article 143 by leaving it over or by making this provision in some other part. I think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

**Shri Brajeshwar Prasad** : Mr. President, Sir, the article provides—

“That there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Sir, I am not a constitutional lawyer but I feel that by the Provisions of this article the Governor is not bound to act according to the advice tendered to him by his Council of Ministers. It only means that the Ministers have the right so tender advice to Governor. The Governor is quite free to accept or to reject the advice so tendered. In another sphere of administration the Governor can act in the exercise of his functions in his discretion. In this

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sphere the Minister has not got the power to tender any advice. Of course it is left open to the Governor to seek the advice of the Ministers even in this sphere.

I feel that we have not taken into account the present facts of the situation. We have tried to copy and imitate the constitutions of the different countries of the world. The necessity of the hour requires that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgment. I feel that the Governor should be vested with the power of special responsibilities which the Governor under the British regime were vested in this country. I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on in the various provinces. Unless the Governor is vested with large powers it will be difficult to effect any improvement in the Provincial administration. Such a procedure may be undemocratic but such a procedure will be perfectly right in the interest of the country. I cannot allow democracy to jeopardize the vital interests of the country. I feel there is no creative energy left in the middle class intelligentsia of this country. They seem to have become bereft of initiative and enterprise. The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands. I feel that we are on the threshold of a revolution in this country. There will be revolution, bloodshed and anarchy in this country. I feel that at this juncture it is necessary that all powers should remain centralised in the hands of the Government of India. In certain provinces the machinery of law and order seems to have completely broken down. Dacoities, arson, loot, murder and inflationary conditions are rampant. I am opposed to this article, because I am convinced that federalism cannot succeed in a country which is passing through a transitory period. The national economy of America is fully developed. It can afford to have a federal form of Government. In a country where there is no room for expansion and for economic development, there is no necessity for a centralised economy. In India when our agriculture, industry, minerals etc. are in an incipient stage of development, it is necessary that power must be vested in the hands of the Government of India. Federalism was in vogue in the 19th century when the means of communications were undeveloped. The technical knowledge and resources at the disposal of Governments in ancient times were of a very meagre character. Today the situation has completely changed. Means of communications have developed rapidly. Technical knowledge and the necessary personal at the disposal of the Government of India are of such a wide character that it can undertake to perform all the functions which a modern Government is expected to perform. There is another reason why I am opposed to this article. In this country there is no scope for federalism. All governments have become more or less unitary in character. If we are to escape political debacles, economic strangulation and military defeats on all fronts, then our leaders and statesmen must learn to think in unorthodox terms: otherwise there is no future for this country.

**Pandit Hirday Nath Kunzru :** (United Provinces: General): Mr. President, I should like to ask Dr. Ambedkar whether it is necessary to retain after the words “that the Governor will be aided and advised by his Ministers”, the words “except in regard to certain matters in respect of which he is to exercise his discretion”. Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done? The functions of the Ministers legally will be only to aid and advice the Governor. The article in which these words occur does not lay down

that the Governor shall be guided by the advice of his Ministers but it is expected that in accordance with the Constitutional practice prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

My Friend Mr. T. T. Krishnamachari said that as article 188 of the Constitution empowered the Governor to disregard the advice of his Ministers and to take the administration of the province into his own hands, it was necessary that these words should be retained, *i.e.* the, discretionary power of the Governor should be retained. If however, he assured us, section 188 was deleted later, the wording of article 143 could be reconsidered. I fully understand this position and appreciate it, but I should like the words that have been objected to by my Friend Mr. Kamath to be deleted. I do not personally think that any harm will be done if they are not retained and we can then consider not merely article 188 but also article 175 on their merits; but in spite of the assurance of Mr. Krishnamachari the retention of the words objected to does psychologically create the impression that the House is being asked by the Drafting Committee to commit itself in a way to a principle that it might be found undesirable to accept later on. I shall say nothing with regard to the merits of article 188. I have already briefly expressed my own views regarding it and shall have an opportunity of discussing it fully later when that article is considered by the House. But why should we, to begin with, use a phraseology that is an unpleasant reminder of the old order and that makes us feel that though it may be possible later to reverse any decision that the House may come to know, it may for all practical purposes be regarded as an accomplished fact? I think Sir, for these reasons that it will be better to accept the amendment of my honourable Friend Mr. Kamath, and then to discuss article 175 and 188 on their merits.

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr. Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great Britain and the British Dominions, that the Governor or the Governor-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Minister the duty of informing the Governor of the decisions come to by the Council Ministers in regard to administrative matter and the legislative programme of the government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to say that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

**Prof. Shibban Lal Saksena** (United Provinces: General): Mr. President, Sir, I heard very carefully the speech of my honourable Friend, Mr. Krishnamachari, and his arguments for the retention of the words which Mr. Kamath wants to omit. If the Governor were an elected Governor, I could have understood that he should have these discretionary powers. But now we are having nominated Governors who will function during the pleasure of the

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President, and I do not think such persons should be given powers which are contemplated in section 188.

Then, if article 188 is yet to be discussed—and it may well be rejected—then it is not proper to give these powers in this article beforehand. If article 188 is passed, then we may reconsider this article and add this clause if it is necessary. We must not anticipate that we shall pass article 188, after all that has been said in the House about the powers of the Governor.

These words are a reminder of the humiliating past. I am afraid that if these words are retained, some Governor may try to imitate the Governors of the past and quote them as precedents, that this is how the Governor on such and such an occasion acted in his discretion. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; and no less a person than the honourable Pandit Govind Ballabh Pant had given notice of the amendment which Mr. Kamath has moved. I think the wisdom of Pandit Pant should be sufficient guarantee that this amendment be accepted. It is just possible that article 188 may not be passed by this House. If there is an emergency, the Premier of the province himself will come forward to request the Governor that an emergency should be declared, and the aid of the Centre should be obtained to meet the emergency. Why should the Governor declare an emergency over the head of the Premier of the Province? We should see that the Premier and the Governor of a Province are not at logger heads on such an occasion. A situation should not be allowed to arise when the Premier says that he must carry on the Government, and yet the Governor declares an emergency over his head and in spite of his protestations. This will make the Premier absolutely impotent. I think a mischievous Governor may even try to create such a situation if he so decides, or if the President wants him to do so in a province when a party opposite to that in power at the Centre is in power. I think article 188, even if it is retained should be so modified that the emergency should be declared by the Governor on the advice of the Premier of the province. I suggest to Dr. Ambedkar that these words should not find a place in this article, and as a consequential amendment, sub-section (ii) of this article should also be deleted.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, I beg to differ from my honourable radical Friends Mr. Kamath and Prof. Shibban Lal Saksena, and I think the more powers are given to the provinces, the stiffer must be the guardianship and control of the Central in the exercise of those powers. That is my view. We have now given up the old idea of creating autonomous States and are now keeping a reserve of powers in the Centre, and we are going to have nominated Governors. Those Governors are not to be there for nothing. After all, we have to see that the policy of the Centre is carried out. We have to keep the State linked together and the Governor is the Agent or rather he is the agency which will press for and guard the Central policy. In fact, our previous conception has now been changed altogether. The whole body politic of a country is affected and influenced by the policy of the Centre. Take for instance subjects like Defence involving questions of peace or war, of relationship with foreign countries; of our commercial relations, exports and imports. All these are subjects which affect the whole body politic, and the provinces cannot remain unaffected, they cannot be left free of the policy of the Centre. The policy which is evoked in the Centre should be followed by all the States, and if the Governors were to be in the hands of the provincial Ministries then there will be various policies in various provinces and the policy of each province shall be as unstable as the ministry. For there would be ministries of various

types having different party labels and different programmes to follow. Their policies must differ from one another; it will therefore be all the more necessary that there must be coordination of programmes and policies between the State and the Central Government. The Governor being the agency of the Centre is the only guarantee to integrate the various Provinces or States. The Central Government also expresses itself through the provincial States; along with their own administration, they have also to function on behalf of the Central Government. A Governor shall act as the agency of the Centre and will see that the Central policy is sincerely carried out. Therefore the Governor's discretionary powers should not be interfered with. Democratic trends are like a wild beast. Say what you will, democracy goes by the whims and fancies of parties and the masses. There must be some such machinery which will keep this wild beast under control. I do not deprecate democracy. Democracy must have its way. But do not let it degenerate into chaos. Moreover the State governments may not be quite consistent in their own policies. Governments may change after months or years; with them will change their policies. The Governors may change too, but the policy and instructions given by the Centre to the Governors will remain practically unchanged. The more the powers given to the States the more vigilant must be the control. The Governor must remain as the guardian of the Central policy on the one side, and the Constitution on the other. His powers therefore should not be interfered with.

**Shri B. M. Gupte** (Bombay: General): Sir, I think the explanation given by my honourable Friend Mr. T. T. Krishnamachari should be accepted by the House and the words concerning discretion of the Governor should be allowed to stand till we dispose of articles 175 and 188.

With regard to the suggestion made by the honourable Dr. Deshmukh about the power being given to the Governor to preside over the meetings of the cabinet I have to oppose it. He enquired whether the Drafting Committee intended to make that provision later on. I do not know the intentions of the Drafting Committee for the future but as far as the Draft before us is concerned I think the Drafting Committee has definitely rejected it.

I would invite the attention of the honourable House to article 147 under which the Governor shall be entitled only to information. If we allow him to preside over the meetings of the Cabinet we would be departing from the position we want to give him, namely that of a constitutional head. If he presides over the meeting of the Cabinet he shall have an effective voice in shaping the decisions of the Cabinet in the entire field of administration, even in fields which are not reserved for his discretionary power. If certain powers have to be given to him, our endeavour should be to restrict them as far as possible, so that the Governor's position as a constitutional head may be maintained. Therefore, Sir, I oppose the proposal of Dr. Deshmukh.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143 namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So long as there are article in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

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The only other question is whether first to make a provision in article 143 that the Governor shall act on ministerial responsibility and then to go on providing "Notwithstanding anything contained in article 143.....he can do this" or "Notwithstanding anything contained in article 143 he can act in his discretion." I should think it is a much better method of drafting to provide in article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If off course the House comes to the conclusion that in no case shall the Governor act in his discretion, that he shall in every case act only on ministerial responsibility, then there will be a consequential change in this article. That is, after those articles are considered and passed it will be quite open to the House to delete the latter part of article 143 as being consequential on the decision come to by the House on the later articles. But, as it is, this is perfectly, in order and I do not think any change is warranted in the language of article 143. It will be cumbrous to say at the opening of each article "Notwithstanding anything contained in article 143 the Governor can act on his own responsibility".

**Shri H. V. Kamath :** Sir, on a point of clarification, Sir, may I know why it is that though emergency powers have been conferred on the President by the Constitution no less than on Governors, perhaps more so, discretionary powers as such have not been vested in the President but only in Governors?

**Pandit Thakur Das Bhargava** (East Punjab: General): Sir, I beg to oppose the amendment of Mr. Kamath. Under article 143 the Governor shall be aided in the exercise of his functions by a Council of Ministers. It is clear so far. I gave notice of an amendment which appears on the order paper as 142-A which I have not moved. In that amendment I have suggested that the Governor will be bound to accept the advice of his ministers on all matters except those which are under this Constitution required to be exercised by him in his discretion. My submission is that it is wrong to say that the Governor shall be a dummy or an automaton. As a matter of fact according to me the Governor shall exercise very wide powers and very significant powers too. If we look at article 144 it says:

"The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

So he has the power to appoint his ministers. But when the ministers are not in existence who shall advise him in the discharge of his functions? When he dismisses his ministry then also he will exercise his functions under his own discretion.

Then again, when the Governor calls upon the leader of a party for the choice of ministers, after a previous ministry has been dissolved, in that case there will be no ministry in existence; and who will be there to advise him? Therefore he will be exercising his functions in his discretion. It is wrong to assume that the Governor will not be charged with any functions which he will exercise in his discretion. Articles 175 and 188 are the other articles which give him certain functions which he has to exercise in his discretion.

Under article 144 (4) there is a mention of the Instrument of Instructions which is given in the Fourth Schedule. The last paragraph of it runs thus:

"The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the state, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religions beliefs and sentiments."



My submission is that according to me the Governor shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitution. He will be a man above party and he will look at the Ministry and government from a detached standpoint. He will be able to influence the ministers and members of the legislature in such a manner that the administration will run smoothly. In fact to say that a person like him is merely a dummy, an automaton or a dignitary without powers is perfectly wrong. It is quite right that so far as our conception of a constitutional governor goes he will have to accept the advice of his ministers in many matters but there are many other matters in which the advice will neither be available nor will he be bound to accept that advice.

Under article 147 the Governor has power for calling for information and part (c) says: This will be the duty of the Chief Minister.

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

This is specifically a matter which is of great importance. The Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which one minister might have decided. When he calls for information he will be acting in the exercise of his discretion. He may call for any kind of information. With this power he will be able to control and restrain the ministry from doing irresponsible acts. In my opinion taking the Governor as he is conceived to be under the Constitution he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143.

**Shri H. V. Pataskar** (Bombay: General): Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised, whether the Governor is to be merely a figure-head, whether he is to be a constitutional head only or whether he is to have discretionary powers. To my mind the question should be looked at from an entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the powers and functions of a Governor. It only says:

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions.”

Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor? In my view article 188 is probably necessary and I do not mean to suggest for a moment that the Governor's powers to act in an emergency which powers are given under article 188, should not be there. My point is this, whether if this Provision, viz., “except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion”, is not there, is it going to affect the powers that are going to be given to him to act in his discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer. Mr. Alladi Krishnaswami Ayyer, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say “Notwithstanding anything contained in article 143.” In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision in article 188 by saying “notwithstanding anything contained in article 143”, it looks so obnoxious to keep these words here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the

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Governor and his functions, by telling them that they shall not give any aid or advice in so far as he, the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtesy and politeness. Therefore I think the question should be considered in that way. The question is not whether we are going to give discretionary powers to the Governors or not. The question is not whether he is to be merely a figure-head or otherwise. These are questions to be debated at their proper time and place. When we are considering article 143 which defines the functions of the Chief Minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite, nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

**Shri Krishna Chandra Sharma** (United Provinces: General): Sir, the position is that under article 41 the executive powers of the Union are vested in the President and these may be exercised by him in accordance with the Constitution and the law. Now, the President of the Union is responsible for the maintenance of law and order and for good Government. The Cabinet of the State is responsible to the people through the majority in the Legislature. Now, what is the link between the President and the State? The link is the Governor. Therefore through the Governor alone the President can discharge his functions for the good Government of the country. In abnormal circumstances it is the Governor who can have recourse to the emergency powers under article 188. Therefore the power to act in his discretion under article 143 *ipso facto* follows and article 188 is necessary and cannot be done away with. Therefore certain emergency powers such as under article 188 are necessary for the Governor to discharge his function of maintaining law and order and to carry on the orderly government of the State.

I wish to say one word more with regard to Professor Shah's amendment that the Minister shall be responsible to the Governor. The Minister has a majority in the legislature and as such, through the majority, he is responsible to the people. If he is responsible to the Governor, as distinguished from his responsibility to the Legislature and through the legislature to the people of the State, then he can be overthrown by the majority in the legislature and he cannot maintain his position. He cannot hold the office. Therefore it is an impossible proposition that a Minister could ever be responsible to the Governor as distinguished from his responsibility to the people through the majority in the legislature. He should therefore be responsible to the Legislature and the people and not to the President. That is the only way in which under the scheme in the Draft Constitution the government of the country can be carried on.

**Shri Rohini Kumar Chaudhari** : (Assam: General): I rise to speak more in quest of clarification and enlightenment than out of any ambition to make a valuable contribution to this debate.

Sir, one point which largely influenced this House in accepting the article which provided for having nominated Governors was that the Honourable Dr. Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the honourable Dr. Ambedkar now, whether any person who

has the right to act in his discretion can be said to be a mere symbol. I am told that this provision for nominated governorship was made on the model of the British Constitution. I would like to ask Dr. Ambedkar if His Majesty the king of England acts in his discretion in any matter. I am told—I may perhaps be wrong—that His Majesty has no discretion even in the matter of the selection of his bride. That is always done for him by the Prime Minister of England.

Sir, I know to my cost and to the cost of my Province what ‘acting by the Governor in the exercise of his discretion’ means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers—Mr. Allah Bux. Sir, if in spite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget.

We have always thought that it is better to be governed by the will of the people than to be governed by the will of a single person who nominates the Governor who could act in his discretion. If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork. Furthermore, as the article says, whenever the Governor thinks that he is acting in his discretion nowhere can he be questioned. There may be a dispute between the Ministers and the Governor about the competence of the former to advise the Governor; the Governor’s voice would prevail and the voice of the Ministers would count for nothing. Should we in this age countenance such a state of affairs? Should we take more than a minute to dismiss the idea of having a Governor acting in the exercise of his discretion? It may be said that this matter may be considered hereafter. But I feel that when once we agree to this provision, it would not take long for us to realise that we have made a mistake. Why should that be so? Is there any room for doubt in this matter? Is there any room for thinking that anyone in this country, not to speak of the members of the legislature, will ever countenance the idea of giving the power to the Governor nominated by a single person to act in the exercise of his discretion? I would submit, Sir, if my premise is correct, we should not waste a single moment in discarding the provisions which empower the Governor to act in his discretion.

I also find in the last clause of this article that the question as to what advice was given by a Minister should not be enquired into in any court. I only want to make myself clear on this point. There are two functions to be discharged by a Governor. In one case he has to act on the advice of the Ministers and in the other case he has to act in the exercise of his discretion. Will the Ministry be competent to advise the Governor in matters where he can exercise his discretion? If I remember a right, in 1937 when there was a controversy over this matter whether Ministers would be competent to advise the Governor in matters where the Governor could use his discretion, it was understood that Ministers would be competent to advise the Governor in the exercise of his discretion also and if the Governor did not accept their advice, the Ministers were at liberty to say what advice they gave. I do not know that is the intention at present. There may be cases where the Ministers are competent to give advice to the Governor but the Governor does not accept their advice and does something which is unpopular. A Governor who is nominated by the Centre can afford to be unpopular in the province where he is acting as Governor. He may be nervous about public opinion if he serves in his own province but he may not care about the public opinion in a province where he is only acting. Suppose a Governor, instead of acting on the advice of his

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Ministers, acts in a different way. If the Ministers are criticised for anything the Governor does on his own, and the Ministers want to prosecute a party for such criticism, would not the Ministers have the right to say that they advised the Governor to act in a certain way but that the Governor acted in a different way? Why should we not allow the Ministers the liberty to prosecute a paper, a scurrilous paper, a misinformed paper, which indulged in such criticism of the Ministers? Why should not the Ministers be allowed to say before a court what advice they gave to the Governor? I would say, Sir—and I may be excused for saying so—that the best that can be said in favour of this article is that it is a close imitation of a similar provision in the Government of India Act, 1935, which many Members of this House said, when it was published, that they would not touch even with a pair of tongs.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the constitution of Canada and the constitution of Australia. I do not think anybody in this house would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

*“Section 55.—Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen’s assent, he shall, according to his discretion, and subject to provisions of this Act, either assent thereto in the Queen’s name, or withhold the Queen’s assent or reserve the Bill for the signification of the Queen’s pleasure.”*

**Pandit Hirday Nath Kunzru :** May I ask Dr. Ambedkar when the British North America Act was passed?

**The Honourable Dr. B. R. Ambedkar :** That does not matter at all. The date of the Act does not matter.

**Shri H. V. Kamath :** Nearly a century ago.

**The Honourable Dr. B. R. Ambedkar :** This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision. They have not done so. Therefore in reply to Pandit Kunzru I can

very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

**Shri Lokanath Misra** (Orissa : General): On a point of order, Sir, are we going to have the status of Canada or Australia? Or are, we going to have a Republican Constitution?

**The Honourable Dr. B. R. Ambedkar** : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgment, necessary. The only question that arises is.....

**Pandit Hirday Nath Kunzru** : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

**The Honourable Dr. B. R. Ambedkar** : I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned—article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all

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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.