

## **Chapter- IV**

# **Constituent Assembly Debates Regarding Powers of Governor**

### **4.1 Introduction:**

The Constitution of India was prepared by the Constituent Assembly under the chairmanship of Dr. Rajender Prasad. For the preparation of the Draft Constitution, a Draft Committee was constituted with 8 members under the chairmanship of Dr. B.R. Ambedkar on 29 August 1947. Draft Constitution was prepared and published in February 1948. The Constituent Assembly sat to consider the Draft Constitution on November 1948. The Assembly moved, discussed and disposed off 2473 amendments out of total of 7635 tabled. Discussion on the discretionary powers of the Governor in the Constituent Assembly is as under:

### **4.2 Governor:**

Article 130 of the Draft Constitution describes that the executive powers of the State shall be vested in the Governor. These powers may be exercised by him. Shri T. T. Krishnamachari moved the amendment "That in clause (1) of Article 130, for the words 'may be exercised by him, the words shall be exercised by him either directly or through officers, subordinate to him' be substituted" and the amendment was adopted.

### 4.3 Discretionary Powers of the Governor:

Article 143 of the Draft Constitution is related to the powers of the Governor. Shri H. V. Kamath<sup>1</sup> was not in favour of giving discretionary powers to the Governor, so, he moved his amendment for this Article:

"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."<sup>2</sup>

If this amendment was accepted by the House, this clause of Article 143 would read as:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions."<sup>3</sup>

Shri H. V. Kamath said that there is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise vis-à-vis his ministers, than has been given to the President in relation to his ministers.

Dr. Ambedkar said that Article 143 vests certain discretionary powers in the Governor, and to me it seems that 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

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<sup>1</sup> Honorable member of the Constituent Assembly.

<sup>2</sup> Vol. III, CAD, dated 1<sup>st</sup> June 1949, p. 489.

<sup>3</sup> Ibid.

in this country. It would be wrong to invest a Governor with these additional powers, namely, discretionary powers.

Prof. K. T. Shah moved the amendment to Article 143 "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" and the amended Article would read as:

“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.”<sup>4</sup>

Then the discussion started on the proposed amendments. Shri T. T. Krishnamachari opposed the amendment moved by Mr. Kamath and said that he has not understood the scope of this 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.

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

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<sup>4</sup> Id. at. 490.

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 Honorable Friend Mr. Kamath has no objection. I 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.<sup>5</sup>

Dr. P. S. Deshmukh said 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 emitted 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 Minister, 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 think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

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<sup>5</sup> Id. at 490- 491.

Shri Brajeshwar Prasad said 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 to tender advice to Governor. The Governor is quite free to accept or to reject the advice so tendered. In another sphere to administration the Governor can act in the exercise of his functions in his discretion. In this 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 was 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 feel there is no creative energy left in the middle class intelligentsia of this country. 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 centralized 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. In a country where there is no room for expansion and for economic development, there is no necessity for a centralized 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.

Pandit Hirday Kunzru asked to Dr. Ambedkar<sup>6</sup> 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 matter 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 guide by the advice of his ministers but it is expected that in accordance with the Constitution 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

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<sup>6</sup> Id. at 492.

action in regard to specified matters may be taken by him on his own authority; this Article 143 will stand in his way.

Mr. T. T. Krishnamachari said that I 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. 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.

Prof. Shibban Lal Saksena said 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 President and I do not think such persons should be given powers. 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. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; 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 loggerheads 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 inspite 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. I suggest to Dr. Ambedkar that these words should not find a place in this Article and as a consequential amendment, subsection (ii) of this Article should also be deleted.<sup>7</sup>

Shri Mahavir Tyagi<sup>8</sup> was in favour of giving more powers to the Governor. He said 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 defense, involving questions of peace or war, of relationship with foreign countries; of our commercial relations, exports and imports. All these are subjects, who 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

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<sup>7</sup> Id. at 493-494.

<sup>8</sup> Id. at 494.

to be in the hands of the Provincial Ministers then there will be various policies in various Provinces and the policy of each Province shall be as unstable as the ministry. There would be ministers 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 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 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. Gupta said 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.<sup>9</sup>

Shri Alladi Krishnaswami Ayyar said that 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 Articles in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to override 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.

Pandit Thakur Das Bhargava opposed the amendment of Mr. Kamath. He said, 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

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<sup>9</sup> Id. at 495.

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. Under Article 144 (4) there is 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 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."<sup>10</sup>

He said 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 Constitutions. He will be a man above party and he will look at the minister 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

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<sup>10</sup> Ibid.

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. Therefore, it is very necessary to retain the words relating to his discretion in article 143.

Shri H. V. Pataskar said Article 143 is merely related to the functions of the ministers. It does not primarily relate to the power and functions of a Governor. 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 Ayyar 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 on 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.

Shri Krishna Chandra Sharma said 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 which are necessary for the Governor to discharge his function of maintaining law and order and to carry on the orderly government of the State.

Shri Rohini Kumar Chaudhari said Dr. Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the 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, is His Majesty the king of English acts in his discretions in any matter. 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 minister, 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.<sup>11</sup>

There are two functions to be discharged by a Governor. In one case he has to act on the advice of the minister 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, 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.

Dr. B. R. Ambedkar said as my friend, Pandit Kunzru pointedly asked me the question and demanded a reply; I thought that out of courtesy, I

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<sup>11</sup> Id. at 498-499.

should say a few words. Sir, the main and the crucial question is; should the Governor have discretionary powers? The other question is; whether the words used in the last part of clause (1) of Article 143 should be retained or should be transferred somewhere else. 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 or the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government.<sup>12</sup>

Pandit Hirday Nath Kunzru said the criticism is against vesting the Governor with certain discretionary powers of a general nature in the Article under discussion. In reply Dr. B. R. Ambedkar said 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",<sup>13</sup> 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

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<sup>12</sup> Id. at 500-501.

<sup>13</sup> Ibid.

which he finds he ought to disregard. There, I think, lies the fallacy of the argument of Pandit Kunzru.

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 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 remains as they are.

After voting both the proposed amendments to Article 143 were negatived and Article 143 was added to the Constitution.<sup>14</sup>

#### **4.4 Appointment of the Chief Minister:**

Article 144 of the Draft Constitution is related to the appointment of the Chief Minister. Dr. B. R. Ambedkar moved his amendment 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

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<sup>14</sup> Id. at 502.

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. Article 144 (1a) The Council shall be collectively responsible to the Legislative Assembly of the State.”

Shri T. T. Krishnamachari suggested that 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"<sup>15</sup>

Another amendment to Article 144 was moved by Mr. Mohd. Tahir "That the 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.'"

Mr. Mohd. Tahir said 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 minister, 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 land of the Governor should be made stronger so that if he finds that over and above the

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<sup>15</sup> Id. at 503.

question of his pleasure, if the ministers have not got the confidence of the Assembly, the minister 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 non-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 minister does not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the ministry dissolved.

Mr. Mohammed Ismail Sahib moved the amendment "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". He said 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 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<sup>16</sup>. As I have already stated, it is an accepted fact that the minister 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.

Mr. Mohd. Tahir moved the amendment "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 Instruction' be deleted." I have moved this amendment because if the clause is allowed to stand as it is; then it will amount to a clear negative 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 in spite of the fact that the Fourth Schedule provides this Instrument of Instruction, the Governor might act otherwise. Thus, it is an amount 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.

Pandit Thakur Das Bhargava said Sir, the Article under discussion, 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."<sup>17</sup>

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<sup>16</sup> Id. at 504.

<sup>17</sup> Id. at 513.

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, he so chooses, can appoint his ministers and the Premier may be called upon to form a minister 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 minister, 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 right if he dismisses a ministry which is still in the enjoyment of the confidence of the House.

Shri H.V. Pataskar made the following suggestions to Article 144 that 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 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.<sup>18</sup>

Shri T. T. Krishnamachari said that 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.

Dr. B. R. Ambedkar replied on the points raised during discussion. 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, the Constitution will work. 'During pleasure' is always understood to mean that the pleasure shall not continue notwithstanding the

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<sup>18</sup> Id. at 515.

fact that the ministry has lost the confidence of the majority.<sup>19</sup> 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.

Dr. Ambedkar's amendment "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 advise of the Chief Minister and the ministers shall hold office during the pleasure of the Governor; (1a) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State." put to vote and the amendment was adopted.

The amendment of Mr. Mohd. Tahir "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" was not adopted. Article 144(6) says "the functions of the Governor under this article with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion." So discretionary power was given to him to dismiss or appoint ministers. Dr. B.R. Ambedkar moved the amendment that Article 144(6) be omitted and amendment was adopted.

#### **4.5 Information Given by the Chief Minister:**

Article 147 gave the power to the Governor to call upon the Chief Minister for any information relating to the administration of the State and to

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<sup>19</sup> Id. at 520.

submit for the consideration of the Council of Ministers any matter on which, a decision has been taken by a minister. Shri H. V. Kamath said about this Article that it violates the principle of constitutional democracy, which we are going to set up in the States. He said we have accepted nominated Governors in the State and this Article is repugnant to the principle of nomination that we have accepted for State Governorship, this Article, to my mind, requires to be recast, of not entirely deleted. There are certain aspects in this Article, which are wholly incongruous with, at least not in conformity with, the principle of nominated Governors for the States. If the House will carefully consider clause (c) of this Article, to take only one instance, the House will see that the nominate Governor has been given power to interfere in what may be called the day-to-day business of the Council of Ministers.

I wonder why, the Governor should call upon the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council. I submit that this is entirely a matter for the Council to decide among them and the Governor has no locus standi, has no privilege or power of right whatever to step in here. The business of the Council of Ministers is entirely a matter for them to arrange and discuss among themselves and to arrive at any particular they like.<sup>20</sup>

Then, Sir, there is another aspect to clause (b) of this Article, under this clause; the Governor can call for any information relating to the administration of the State. This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the

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<sup>20</sup> Vol. III, CAD, 2<sup>nd</sup> June 1949, p. 533.

State to decide which matter he would like to put before the Governor and which not. If he and his colleagues in their collective wisdom arrive at the opinion that a particular matter may go to the Governor, certainly they may put it up to the Governor. But the Governor has no right to call any information regarding the administration of the affairs of the State and proposals for legislation.

Dr. P. S. Deshmukh was not agree with Shri H. V. Kamath. he said under Article 146, every order, which is issued by the ministry or the Cabinet or even individual ministers will be an order, which will be published and proclaimed in the name of the Governor. If Article 147 is not there, there is nothing, which will empower the Governor to know the various actions taken from day to day and the orders passed and issued in his name. Sir, this Article can never refer to unimportant, routine matters, but it can refer only to orders which the Governor thinks are likely to have larger repercussions and are of such importance that it will be wise, if all the ministers in the Cabinet were to consider it. And apart from this direction that the question may be considered by the Cabinet, there is nothing. The Governor is not given the authority to over-rule the decision of the Cabinet. The Article merely empowers the Governor whenever he considers that an individual minister's decision should rather be given some more attention, that he would refer it for the consideration of the whole Cabinet.<sup>21</sup>

He said that part (b) of this Article is extremely necessary. For instance, suppose the Cabinet or certain ministers are not pulling on with the Governor; then they would be in a position to keep the Governor absolutely in the

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<sup>21</sup> Id. at 534.

dark. On the other hand, I feel confident that these powers given to the Governor are not likely to be misused at any time and that it is essential that he should have fullest information regarding the day-to-day administration so that he may be able to prevent pursuit of wrong policies and also communicate to the President and the Government of India the nature and course of the Provincial Government. After all, Governor is essentially a link between Provincial Autonomy and the President and the Government of India.

Shri B. Das said that since congressmen came into power under Independent India. How has the Governor functioned? It is common knowledge and it has been repeated by responsible members of this House that the Governor was nothing but a cipher. If that be the case, how is it then that this Governor, this nominated Governor of the Central Government and the ministers elected by the State and the Provinces will be able to co-operate? The Governor, according to my Friend Dr. Deshmukh is full of wisdom. I question that and I doubt it very much, particularly when the Governor is a nominated Governor, nominated by the President and the Central Government. There are some, who have the illusion that the Governors will exercise their statutory powers against the elected ministers, let them take note of the present practice, under which, the Governors know nothing absolutely of what is happening in their respective Province, where the provincial Cabinet is submitting no notes to the Governor as to what is happening.

Shri B. M. Gupte was in favour of Mr. Kamath. He said, I do not understand, how the Governor will know, what particular decision has been taken by a minister in a particular matter, because according to sub-clause (a) the decision

of the cabinet only are to go to him.<sup>22</sup> According to the working of the system of cabinet there are two sets of decisions. A minister in his own department and on his own responsibility, without the concurrence or even the knowledge of his colleagues, takes certain decisions on various matters that come before him from day to day. But there are other matters of greater importance which a minister is bound to submit for the collective decision of the Cabinet. Only the second set of decisions goes to the Governor. As regards the first set of decisions there is no mention made at all in the Article itself. I, therefore, do not understand how he is to know them. I do not mean to suggest that the Province should lose the benefit of the sage counsel of a Governor. He might be an elder statesman with ripe experience and wide knowledge.

Prof. Shibban Lal Saksena was not in favour of Shri H. V. Kamath. He said if the Governor as the Head of the State is not aware as to what is happening in the State or what decisions his ministers have taken, how can he function as the head of the State at all? Shri H. V. Kamath said through the Chief Minister. Prof. Shibban Lal Saksena said the Chief Minister may not tell him anything. So this section is necessary, so that the Governor may at least know what is happening in his State. Under the scheme of things, which the Drafting Committee has proposed, they contemplate a Governor, who shall try to be a liaison officer between the President at the Centre and the Provincial Government. He will try to see that the Provincial Governments policies fit in with the scheme of the Central Government. He will try to give advice and guidance to the ministry on

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<sup>22</sup> Id. at 536.

account of his superior wisdom and experience. The President, I hope, will nominate only such persons who have ripe administrative experience and wisdom and have the necessary political and intellectual stature to be Governors, so that they can give proper guidance to the Provincial Cabinets.<sup>23</sup> Mr. Gupte took objection to clause (c). He felt that the Governor in entitled to get the decision of a minister reversed it might lead to heartburning. Personally I feel the Governor under the new scheme of things will try to get the confidence of the whole Council of Minister. The clause only says that if an individual minister taken some important decision on his own responsibility and it is not considered by the whole ministry, then he will desire the matter to be considered by the Council. Mr. Gupte complained that the minister might wonder how the Governor came to know about his decision. Under clause (b) he can call for the information from the Chief Minister himself.

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

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<sup>23</sup> Id. at 537.

of the Province. The result will be that there might be some conflict. To avoid that the Chief Minister has the freedom to complain to the President who might intervene. As regard clause (c) it has been argued by those who are opposed to it that the Governor might require to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, which has not been considered by the Council. Mr. Gupte asked how is the Governor to know what a minister has done. Any file that goes to the Governor contains a full note as to whether the subject matter has been handled by a minister or by the Council of Ministers.

Shri B. M. Gupte said individual minister's file would not go to him. Shri R. K. Sidhva said it is the practice everywhere.<sup>24</sup> Every file goes to the Governor for his signature. The Constitution says that all orders are to be made in the name of the Governor and therefore, formally the whole file goes to him, not merely one paper. He has to see the whole file before he puts his signature. I know of instances where a minister has taken a decision, which the Council of Ministers reconsidered at the instance of the Governor and they had to revise it. There is nothing wrong in this. I have seen, sometimes a minister in his individual judgment issues certain orders and sends them to the Governor. It may be a contentious matter on which the Governor may honestly feel that it is in the Council. He would be perfectly justified in doing so.

Shri Biswanath Das said that the question we have to consider in this House is whether the Governor is going to be a constitutional head or a Governor who has to play his role in advising the ministry and directing into proper channel

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<sup>24</sup> Id. at 538.

ministerial thought and action. If it is the later, if he has to interfere in shaping the administration and raising the standard, then this power is not unnatural but is necessary. All that I want to know and the Assembly has a right to demand to know is the background behind this Article. This Article was drafted under different circumstances and conditions keeping in view certain essentials viz. the Governor is to be elected on the basis off adult suffrage. Now the conditions have changed. I would just invite the attention of Honourable Members to clause (b), which says: “to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for.”<sup>25</sup> I for myself do not see why a Governor who is wedded to the Constitution and who is to be a constitutional head should dabble in matters regarding administration. The question might be asked as to whether the Governor should not know the proposals for legislation. Here again, I state that provision has been made that the proceedings of the Council of Ministers should be communicated to the Governor. Further, all the legislation that is approved or passed by the Legislature is to be submitted to him for his assent. Therefore, there is every opportunity given to the Governor to know what legislation is coming. That being so clause (b) seems to be wholly unnecessary. But if it is the desire of the House that the government should have also the Governor's say in matters of administration, the provision is justified. While discussing this Article it would be unfair on my part if I do not invite attention to the Fourth Schedule wherein Instrument of Instructions has been provided. The Instrument of Instructions to the Governors has no legal force or validity in law. Whatever it is, be

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<sup>25</sup> Id. at 539.

it a Sermon on the Mount or be it something real, it allows scope for certain executive activities by the Governor. I specially refer to Para 4<sup>26</sup>, which says:

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

Is the House, after the change in the modus of selection or election of the Governor, going to invest him with these powers? If so, I could understand the background and would say that clause (b) is fully justified. I, therefore, feel that those that are responsible for giving a lead to this Assembly to pass the Articles have also the responsibility of explaining to Honourable Members as to what is there in their minds in regard to the relations that should exist between the Governor and the government and how they propose to avoid clashes and compose difference between them. I feel that you are appointing a Governor who is responsible morally to the Prime Minister of India and to the President to the India Republic. There is little now in law limiting him to be a symbol or subject him to the control of the Centre or by the President. Therefore, it is a pertinent question for Honourable Members to ask, whether you are going to vest powers, of a wider scope in the Governor, capable of creating mischief and at the same time provide no power of control over him vested in President or the Prime Minister of the Republic.

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<sup>26</sup> Id. at 540.

Shri K. M. Munshi was in favour of this Article. He said the House has accepted and very rightly accepted that there should be a Governor in the Provinces. That Governor is not necessarily to be a cipher as some Members said, nor need he be only a super-host giving lunched and dinners to persons in society. He has a political function to perform and that political function is to be the Constitution Head. Some Honourable Members who spoke are under the impression that a Constitutional Head has no function at all and that he has to do nothing else than to endorse what the Premier or the ministers do, without even giving them the benefit of his advice or giving them the impressions of a detached spectator on governmental actions. The Governmental set-up, which we have envisaged, is on the model of the British Constitution. I cannot understand why these objections are taken again and again in respect of the same powers. My friend, Mr. Gupte referred to sub-clause (c) and asked the question, where is the Governor to get the information from? Under this clause it will be open for the Governor to ask the Chief Minister for information with regard important question. What is wrong about it? Shri K. M. Munshi wanted that the position of the Governor must be considered from the point of view of a constitutional head as in England.<sup>27</sup> A constitutional head is not a cipher. The constitutional head in England is not a dummy.

Shri Rohini Kumar Chaudhuri said that the Article 147 will be a blot on our future Constitution, if it is adopted. Sir, just as a piece of cow-dung may spoil the whole vessel of milk; this particular provision will spoil this whole Constitution of ours. I am speaking from personal experience and I consider that

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<sup>27</sup> Id. at 542.

this is a most unwanted provision and this will lead to friction in the provincial administration.

The first question that you ought to remember is whether in a Province, the Chief Minister is the most effective person or the Governor. Can you for a moment deny that the Chief Minister is certainly the person in authority in a Province except in certain matters, which will be under the Constitution in the discretion of the Governor? Now is it fair to say that it shall be the duty of the Chief Minister to do a certain thing or to furnish certain information to the Governor? Governor has absolutely nothing to do; it is only in those matters, which may affect the exercise of his discretion; information may be sent. The decision of the Council of Ministers may be forwarded to the Governor, but not any other matter and even in that, it should be left to the ordinary office channel for the proceedings to be sent to him. No Chief Minister should be considered as failing in his duty, if for any reason copies of the Proceedings are not sent to the Governor. Then what is his business to call for any information? What can he do after getting the information? He has no business to call any information or any file or anything of that kind. Even in the present arrangement there is no such provision. All files go to the Chief Minister. It is no part of his duty to send certain things to the Governor. I think that the whole section is very badly worded and this clause should be worded in this way:-

"The Governor may call for any information relating to the administration of the affairs of the State and such information shall be furnish to

him if in the opinion of the Chief Minister such information is necessary for a proper for a exercise of the duties of the Governor." <sup>28</sup>

In all other matters, the Governor has no duty. It is only that information which may help him in the exercise of his duty, which may be sent to him. The third clause, I submit sir, is the most dangerous clause, there are many things which a particular minister does and if he has any doubt he usually consults the Chief Minister. Who is the Governor to ask the Chief Minister to take that matter to the Council of Ministers? Why should he do it? I, as a Minister, have passed a certain order and when I find that I am in doubt, I ask the Chief Minister whether the order is proper or not. If the Chief Minister says it is all right, I pass the order; the order is urgent and action on that order should be taken immediately. What has the Governor to do with that? How can the Governor ask the Chief Minister to reconsider this matter? This clause is a very dangerous clause; this is a very bad clause. Shri R. K. Sidhva raised an objection and said that in certain Provinces, a minister without consulting the Prime Minister or the Chief Minister sends papers to the Governor and he is allowed to do so. In reply Shri Rohini Kumar Chaudhuri said that is wrong.<sup>29</sup> Why should the Governor interfere? The Chief Minister is always there and if he finds that a particular Minister is acting contrary to the policy of his government, he can call for any papers, he can advise the Minister or he can himself pass orders. What business has the Governor to do here?

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<sup>28</sup> Id. at 544.

<sup>29</sup> Id. at 545.

Dr. B. R. Ambedkar tried to clear the doubts of the members. He said the first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform and I think the House will do well to bear in mind this distinction. This Article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the ministry on any particular matter. Even under this Article, the Governor is bound to accept the advice of the ministry. That, I think, ought not to be forgotten. This Article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the ministry. Therefore, the criticism that has been made that this Article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point and completely mistaken. Shri H. V. Kamath said won't he be able to delay or obstruct? Dr. B. R. Ambedkar said my friend will not interrupt, while I am going on. At the end, he may ask any question and if I am in a position to answer, I shall answer. A distinction has been made between the functions of the Governor and the duties, which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts.

One is that he has to retain the ministry in office. Because the ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the ministry. The second duty which the

Governor has, and must have, is to advise the ministry, to warn the ministry, to suggest to the ministry an alternative and to ask for reconsideration.

I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely not of a party, he is representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level, which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties, which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider. I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information?<sup>30</sup> I submit that he cannot discharge the constitutional functions of a Governor, which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the ministers pass a resolution and I know this has happened in many cases, in many provinces today, that no paper need be sent to the Governor, how is the Governor to discharge his functions? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all Cabinet papers are sent to the Governor-General. Similarly, there is what is called weekly summaries, which are prepared by every ministry of the decisions

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<sup>30</sup> Id. at 546.

taken in each ministry on important subjects relating to public affairs. These summaries, which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual minister without consulting the rest of the ministers should be reconsidered by the Cabinet? I cannot see what harm there can be; I cannot see what sort of interference that would constitute in the administration of the affairs of the government. I therefore, submit that the criticisms leveled against this Article are based upon either a misreading of this Article or upon some misconception. With these words Dr. Ambedkar put the Article 147 to vote and Article 147 stand part of the Constitution.<sup>31</sup>

#### **4.6 Power to Dissolve the Assembly:**

Article 153(2) (c) gives the power to the Governor to dissolve the Assembly. Mr. Mohd. Tahir moved his amendment for this Article; “That at the end of sub-clause (c) of clause (2) of Article 153, the words ‘if the Governor is satisfied that the administration is failing and the ministry has become unstable’ be inserted.”

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In this clause certain powers have been given to the Governor to summon, prorogue or dissolve the Legislative Assembly. Now I want that some

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<sup>31</sup> Id. at 547.

<sup>32</sup> Id. at 555.

reasons may be enumerated, which necessitate the dissolution of a House, I find that to clause (3) of Article 153, there is an amendment of Dr. Ambedkar in which he wants to omit the clause which runs thus: "(3) the functions of the Governor under sub-clause (a) and (c) of clause (2) of this Article shall be exercised by him in his discretion." I, on the other hand, want that some reasons should be given for the dissolution. Nowhere in the Constitution are we enumerating the conditions and circumstances under which the House can be dissolved. If we do not put any condition, there might be difficulties. To avoid difficulties, I think it is necessary that some conditions and circumstances should be enumerated in the Constitution under which alone the Governor can dissolve the House. There should be no other reason for dissolution of the House except maladministration or instability of the ministry and its unfitness to work. Therefore, this matter should be considered and we should provide for certain conditions and circumstances under which the Governor can dissolve the House. But his amendment was not adopted by the assembly.

Dr. Ambedkar moved the amendment "That clause (3) of Article 153 be omitted." Article 153(3) says the functions of the Governor under sub-clause (a) and (c) of clause (2) of this Article shall be exercised by him in his discretion. He said this clause is apparently inconsistent with the scheme for a Constitutional Governor.

Shri H.V. Kamath said if this amendment is accepted by the House, it would do away with the discretionary powers given to the Governor. Power is being conferred upon him under this article to dissolve the Legislative Assembly.

This is a fairly serious matter in all democracies. There have been instances in various democracies, even in our own provinces sometimes, when a Cabinet seeking to gain time against a motion of censure being brought against them, have sought the Governor's aid, in getting the Assembly prorogued. This of course is not as serious as dissolution of the Legislative Assembly. Clause (2) of this Article is important because it deals with the dissolution of the Assembly by the Governor of a State and in view of the fact that there is no specific provision of course it may be understood and reading between the lines Dr. Ambedkar might say that the substance of it is there, but we have not yet decided even to do away with the discretionary powers of the Governor to accept the advice tendered to him by his Council of Ministers, there is a lacuna in the Constitution. Notwithstanding this, we are conferring upon him the power to dissolve the Legislative Assembly, without even mentioning that he should consult or be guided by the advice of his ministers in this regard. I am constrained to say that this power, which we are conferring upon the Governor, will be out of tune with the new set-up that we are going to create in the country, unless we bind the Governor to accept the advice tendered to him by his minister.<sup>33</sup> Dr. B.R. Ambedkar put the Article to vote and assembly adopted the amendment and Article 153 as amended, stand part of the constitution.<sup>34</sup>

#### **4.7 Governor's Assent to Bills:**

Article 175 was about the discretionary power of the Governor to return the bill, after its presentation to him for assent, to the Legislature for

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<sup>33</sup> Id. at 556.

<sup>34</sup> Id. at 557.

reconsideration. Dr. B. R. Ambedkar moved his amendment that for the proviso to Article 175, the following proviso be substituted;

‘Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions as he may recommend in his message and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom’.<sup>35</sup>

This proviso is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right of return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly the right was given to the Governor to return the Bill only in those cases where the Legislature of a Province was unicameral. It was felt then that in a responsible government there could be no room for the Governor acting in discretion. Therefore, the new proviso deletes the words ‘In his discretion’.

Similarly, it is felt that this right to return the Bill should not be extended to a money Bill and consequently the words 'if it is not a money Bill' are

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<sup>35</sup> Vol. IX, CAD at 41.

introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the Province is unicameral. It is a salutary provision and may be made use in all cases even where the Legislature of a Province is bicameral. It is to make provision for these three changes that the new proviso is sought to be substituted for the old one and I hope the House will accept it.

Shri Brajeshwar Prasad said I am not whole heartedly in favour of Article 175.<sup>36</sup> Under this Article the Governor has no power to veto a Bill in his own discretion or initiative, but can do so, only if he is so advised by his ministry. He cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President.

There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain Article of this Constitution and also if the Governor is advised by his ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the Legislature, whether passed once or twice by it. Secondly, I am in favour of the President having power to reserve a Bill for his consideration, on his own initiative and authority. He should have power to issue an order to the Governor directing that a Bill passed by the Legislature should be reserved for his consideration or that a Bill should be disallowed whether the Governor reserves it or not. I know that this proposition will not be in consonance with what is supposed to be the democratic tendencies of the age. I want power to be vested in the hands of the Governor of

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<sup>36</sup> Id. at 59.

vetoing unjust and unsound legislation. This provision occurs in the Canadian federation. I feel further that if the Governor has power to veto a Bill and the President has power to disallow a Bill, it will act as a potential check on disruptive legislative tendencies.

Prof. Shibban Lal Saksena said I couldn't agree with the amendment proposed by Dr. Ambedkar. In the original proviso to this Article, the Governor could send a Bill back with a message only when there was one House of the Legislature, but here in the new proviso even if there are two Houses, the Governor is given the power to return a Bill with his message. Suppose a Bill is passed by the Assembly. Then it will go to the Upper House. It takes some time to be sent to the Upper House and then it takes about two months in the Upper House. The Bill may be amended there. Thereafter, the amended Bill comes back to the Assembly; the Assembly will then discuss it. A month may be taken over this. Then again it is sent back to the Council and there it will be considered again for about a month, so that on the whole it will take about six months after it first becomes law. Now, power is given to the Governor to return the Bill with a message. No time limit is given; how long he will take to return the Bill is not mentioned. So, if this proviso is accepted, what it will mean is this: that any contentious legislation will again go to Assembly and then to Council and it may take another six months in all that and so the legislation may be held back, if the Governor is not inclined to help. I think that the original proviso is much better.

In those Provinces where there is only one House, where the safeguard of a Second chamber is not there, we may give the Governor the power to

return a Bill but where there is already a Council where the Bill has been again discussed threadbare when every aspect of it has been examined thoroughly, the Governor should not have the power to send back a Bill. I think this is very reactionary and no quick legislation will be possible under this proviso. I therefore think that the original proviso to article 175 is much better than the one, which has now been moved. I completely disagree with my Friend, M. Brajeshwar Prasad, who seems to favour everything, which gives power to the Governor and the Council. He wants that the Governor should have power to hold up any legislation.

Shri Brajeshwar Prasad said I think it is wrong. The Governor is not an outsider. He is the representative of the Government of India. His views should prevail either over the Lower House or over any other authority in the Province. Prof. Shibban Lal Saksena said I know he is the nominee of the President, but it is quite possible that the party in power in the Province may not be the same as the party in power in the Centre and the President may not be persona grata with that party.<sup>37</sup> I, therefore, think that it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the council. I think that the original proviso should remain and the Governor should have power to send back a Bill only where there is no Second Chamber.

Shri T.T. Krishnamachari said Dr. Ambedkar drew pointed attention that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. The Governor is no longer vested with any discretion. If the Governor sends a Bill back for further consideration, he does so

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<sup>37</sup> Id. at 61.

expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in Article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill, which has been accepted by the Upper House which the ministry thereafter finds has to be modified. Then, they will use this procedure; they will use the Governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message. If my Honourable Friend understands that the Governor cannot act on his own, he can, only at on the advice of the ministry and then, the whole picture will fall clearly in its proper place before him. It may happen that the whole procedure envisaged in Article 172 also goes through and then again something might have to be done in the manner laid down by this particular proviso but it is perhaps unlikely. It is a saving clause and vests power in the hands of the ministry to remedy a hasty action. And the amendment of Dr. B.R. Ambedkar was adopted and amended proviso added to the Article 175 of the constitution.

Shri T.T. Krishnamachari moved his amendment, that to Article 175 the following Proviso be added; "Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which, that court is by this Constitution designed to fill."<sup>38</sup> He said the High Courts happen to be, so far as appointment and jurisdiction and all that is concerned, a mater exclusively of Central competence. But there are matters in which the Provinces also can interfere and this Proviso is

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<sup>38</sup> Vol. X, CAD, dated 17<sup>th</sup> October 1949, p. 392.

intended to protect any hasty action by a Province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President.

Shri H.V. Kamath requested to Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced, which might endanger the position. First of all, if such Bills were going to be introduced would it not be ultra virus of the Legislature at its very inception, ab-initio? Will not the introduction of the Bill be prevented by the Constitution? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbrous. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position ... and all that, will it not be enough to say' so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the Article clearly. I do not see any necessity for this cumbrous verbiage towards the end of the amendment.

Dr. B.R. Ambedkar said the clause moved by my friend Mr. Krishnamachari is of old standing. It occurs in the instrument of instructions issued to the Governor of the Provinces under the Government of India Act, 1935. On my recommendation the House came to the conclusion that particular part of the proposed Instrument of Instructions, Paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these: The High Court is placed under the Centre as well as the Provinces. So far as the organization and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under

the Centre and the Province have no power either to alter the organization of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the entries contained in List II, for instance, debt cancellation or any such matter it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive and that the High Court should have no jurisdiction in that matter at all. It seems to me that any such Act would amount to derogation from the authority of the High Court, which this constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution, which has been created by the Constitution. That is the purpose for which this amendment

is being introduced. Dr. B.R. Ambedkar said Mr. President; I will now put it to vote;

That to Article 175 the following Proviso be added; "Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill."<sup>39</sup> The amendment was adopted.

#### **4.8 Emergency Provisions:**

Article 275 deals with the emergency provisions. Dr. Ambedkar proposed the amendments to Article 275. The amended Article 275(1) provides that if the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect. And Article 275(3) provides that "a Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof." Dr. Ambedkar said this Article is virtually the old Article 275 as it stands in the Draft Constitution and the changes, which are made by this amendment, are very few. The amended Article stands part of the constitution.<sup>40</sup>

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<sup>39</sup> Id. at 394.

<sup>40</sup> Vol. IX, CAD, 2<sup>nd</sup> August 1949, pp. 103-127.

Dr. Ambedkar propose to delete Article 188<sup>41</sup> which confers discretionary powers on the Governor and introduces new Articles 277-A, 278, 278-A.

Article 277-A provides that It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

Article 278(1) provides that If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation;

- (a) assume to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler as the case may be, or any body or authority in the State other than the Legislature of the State;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, Including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court or to

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<sup>41</sup> Id. 3<sup>rd</sup> August 1949, p. 131.

suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

Article 278-A provides that where by a Proclamation issued under clause (1) of Article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent ;

- (a) for Parliament to delegate the power to make laws for the State, to the President or any other authority specified by him in that behalf;<sup>42</sup>
- (b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India.

Dr. Ambedkar said that in the original scheme, it was proposed that if the Governor of the Province feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself and on the report made by the Governor under the original Article 188, the President could act under Article 278.

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<sup>42</sup> Id. at 132.

It is now felt that no useful purpose could be served, if there is a real emergency by which 'the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the Provincial Emergency in order to sustain the Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that Article 188 is a futility and is not required at all. That is the reason why I have proposed that Article 188 be deleted."

About the Article 277-A Dr. Ambedkar said our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it.<sup>43</sup> In other words, barring the provisions, which permit the Centre to override any legislation that may be passed by the Provinces; the Provinces have a plenary authority to make any law for the peace, order and good government of that Province.

Now, when once the Constitution makes the Provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the Province, really speaking, the intervention of the Centre or any

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<sup>43</sup> Id. at 133.

other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the Province. That is a fundamental proposition, which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of Articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion, which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that Articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the Province, we, propose to introduce Article 277-A. As Members will see, Article 277-A says that it shall be the duty of the Union to protect every unit and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone, which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion.

With regard to Articles 278 and 278-A, although they appear as two separate clauses, they are merely divisions of the original Article 278. With regard to Article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original Article 188 merely provided that the President should act on the report made by the Governor. The word

"otherwise" was not there.<sup>44</sup> Now it is felt that in view of the fact that Article 277-A, which precedes Article 278, imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfillment of the duty, to the report made by the Governor of the Province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that big intervention is necessary and imminent. I think as a necessary consequence to the introduction of Article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks, he ought to act in the fulfillment of his duty.

The second change which Article 278 makes is this: that originally the authority and powers of the Legislature were, exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and de-facto possession of legislative powers of the Provincial Legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the Provinces whose Legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise under certain conditions and terms and restraints some other authority to carry on the legislation.

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<sup>44</sup> Id. at 134.

Then, I come to Article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one. Sub-clause (b) of the Article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of Article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Shri H. V. Kamath moved the amendment in the Article 278 that in clause (1) of the proposed Article 278, the words 'or otherwise' be deleted and after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquility of the State and that' be added." In case my amendment is accepted by the House, Article 278 (1) would read as follows: "If the President, on receipt of a report from the Governor or Ruler of a State, is satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State and that government of the State cannot be carried on in accordance with the provisions of this Constitution, he may, etc., etc."

Shri H. V. Kamath invites the attention of Dr. Ambedkar and the House to certain observations made in the course of the debate on Article 143 relating to the deletion of the provision concerning the Governor's discretionary powers. Replying to the debate on that occasion on behalf of the Drafting Committee, Dr. Ambedkar said that the amendment in principle was welcome to him, but that there were certain difficulties with regard to the incorporation of the

amendment in the Constitution. He said then that so long as Articles 188 and 175 were not finalized, it would be difficult for him or the House to make up their minds finally about the amendments moved by me seeking to divest the Governor of discretionary powers conferred upon him by the Draft Constitution. May I remind him of what he said on that occasion? I am quoting from the official records of the Assembly. He said that Article 143 would have to be read in conjunction with such other Articles, which specifically reserve the power to the Governor. It seems to me there are three ways by which this matter of discretionary powers could be settled. One way is to, on the words suggested by Pandit Kunzru and others from Article 143 and such Articles as 188 or 175 or such other provisions which the House may hereafter introduce vesting the Governor with discretionary powers, saying, notwithstanding Article 143 the Governor shall have this or that power.<sup>45</sup>

The other way, Dr. Ambedkar said, "would be to say in Article 143 that except as provided in Articles so and so, specifically mention Articles 175 and 188. I would be quite willing to amend the last portion of Article 143 if I knew at this stage what other provisions the Constituent Assembly proposes to make with regard to vesting the Governor with discretionary powers. My difficulty is that we have not come yet to Articles 278 and 188 nor have we exhausted all possibilities of other provisions vesting the Governor with discretionary powers". If I knew that, he said, "I would agree to amend Article 143, but that cannot be done now."

The point of reference on an earlier occasion was this: That point was raised by me in an amendment which was hotly debated in this House and Dr. Ambedkar promised to reconsider the matter after Articles 175 and 188 had been

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<sup>45</sup> Id. at 137.

disposed of by this House. The time has come now for him to reconsider the matter. We have disposed of Article 175(2), which divests the Governor of discretionary powers in regard to legislation and we are seeking to delete Article 188, which seeks to specifically confer discretionary powers on the Governor. It is high time now for the House to revert to what both Dr. Ambedkar and Shri T. Krishnamachari said on that occasion. They said that after we disposed of this Article we could come back and amend Article 143 suitably.

Therefore, Sir, this consequential amendment is necessary to Article 143 and I hope Dr. Ambedkar will bear in mind this fact and amend the Article suitably, when the time comes for him to do so. That disposes of the amendment moved by Dr. Ambedkar for the deletion of Article 188. I support it with the proviso that Article 143 be amended suitably.

Now coming to Article 278, I would appeal to the House to listen closely and carefully if they are so minded. This Article 278 now before the House seeks to confer more powers upon the President than was envisaged in Article 278 of the Draft Constitution. Firstly, the President is empowered to act under Article 278 not merely if he gets a report from the Governor or the Ruler of the State but also otherwise. What that "otherwise" is, God only knows. We here representatives of a democracy, just liberated from foreign slavery, sitting in solemnity and dignity to frame the Constitution of our motherland, we are adopting subterfuges to nullify and set at naught, certain Articles of certain provisions which we have already adopted. To my mind this is not the way to go about business. It may be all right if we said that "if the President receives a report from the Governor or the Ruler of a

State", well and good. After all we have already decided that the Governor shall be the nominee of the President. If that be so, cannot the President have confidence in his own nominees? If he cannot have this trust and confidence in his own nominees, let us wind up our government and go home; let us wind up this Assembly and go home. This is not the place for us; let us go to the market place and, let us go into the streets; let us go wherever we like, but not here in this Assembly. In that case government should be wound up and it will have no right to function. I am using strong words, hard words, but I believe no occasions, such as this and if I am hard today the House will pardon me. I have therefore, Sir moved my amendment seeking to delete the words "or otherwise". I want that the President should be empowered to act only in case the Governor or the Ruler of a State informs him that a situation has arisen or that an emergency has arisen, but not otherwise. What is this 'otherwise'? Do you mean to say that the President, even granting that he is to act upon the advice of the Council of his Ministers, can intervene solely on the strength of his own judgment? I shall pray to God that He may grant sufficient wisdom to this House to see the folly, the stupidity, the criminal nature of this transaction.

Shri L. Krishnaswami Bharathi interrupted Criminal? What is the crime? Shri H. V. Kamath: It is a constitutional crime to empower the President to interfere not merely on the report of the Governor or Ruler of a State, but otherwise. 'Otherwise' is a mischievous word. It is a diabolical word in this context and I pray to God that this will be deleted from this Article. If God does not intervene today, I

am sure at no distant date He will intervene when things will take a more serious turn and the eyes of every one of us will be more awake than they are today.<sup>46</sup>

I was saying that the President should be empowered to act only on the receipt of a report from the Governor or Ruler of a State. I would say here that we have deliberately altered the language as it stood in relation to Article 188 and made it far more elastic. The original draft Article 278 stated that on receipt of a Proclamation, issued by the Governor of a State under Article 188, if the President is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution etc., let us turn to Article 188 and see what it stated. It is now sought to be deleted and I hope it will be deleted.

He said about 278-A, I have no amendment as such but I would only say that Proclamation under Article 278 is issued only on rare occasions i.e. when the President is satisfied on receipt of report from Governor or ruler of a State. 'Or otherwise' should go. Otherwise the Ruler or Governor will be a mere sham and a mockery. Secondly, the report must satisfy the President not merely that the government of the State cannot be carried on in accordance with the provisions of this Constitution, but also it should satisfy him that there is grave danger to the peace and tranquility of the State. Only in that eventuality should the President be clothed with this power to intervene in the affairs of a constituent State and not otherwise. Summing up, regarding Article 143 the discretionary power of the Governor must go, now that we have disposed of Articles 175 and 188. Perhaps the

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<sup>46</sup> Id. at 140.

House has forgotten that Dr. Ambedkar gave an assurance that after Articles 175 and 188 this matter will be taken up. We have already passed Article 159 for deletion of discretionary power to summon or dissolve the Assembly. The only other Articles that remained were 175 and 188. 188 we have deleted and as for 175 we have there divested the Governor of discretionary power. So 143 must be amended. I moved at that time an amendment, which has now full force, which now comes into play and I hope that that amendment will be suitably incorporated by the Drafting Committee finally.<sup>47</sup>

Prof. Shibban Lal Saksena said I personally feel happy that Article 188 is being deleted. But with this deletion Article 278 has been made more sweeping. In fact, Article 188 had said that if at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquility of a State, then alone he was empowered to issue a Proclamation and Article 278 was only to conform to that declaration. But the new draft does not take this fact into consideration. It says that if "the President on receipt of a report from the Governor or otherwise is satisfied", he can take action under this Article. This gives very sweeping powers to the President. There need not be any grave emergency. If only the President is satisfied that the government cannot be carried on in accordance with this Constitution and then he can issue a Proclamation under Article 278.

Article 277-A puts upon Parliament the responsibility of protecting every unit of the Union against external aggression and internal disturbance, here also, it is only external aggression and internal disturbance is too wide term. The

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<sup>47</sup> Id. at 142.

Article does not say chaos or even grave emergency. Personally, I feel that the powers given in Article 278 are far too sweeping. I am glad that the ultimate authority lies with the Parliament. The President also cannot do anything without putting the matter before Parliament, although he has two months time in which he can have his own way. I therefore think that I cannot condemn the Article as strongly as my Friend Mr. Kamath has done. But I felt that by these Articles we are reducing the autonomy of the States to a farce. These Articles will reduce the State Governments to great subservience to the Central Government. They cannot have any independence whatsoever. I do not want the State to pull in one direction and the Centre in another, still there must be some autonomy for the States and I say Articles 277-A and 278 take away this autonomy.<sup>48</sup> I feel that even if these Articles are omitted, there are articles 275 and 276 and these two Articles give the executive all the powers necessary to deal with an emergency. If there is an emergency, you can issue a Proclamation under Article 275 and by 276 you can legislate on matters relating to the Provinces. So, Articles 275 and 276 are quite sufficient. The introduction of Articles 277-A and 278 is not desirable and these Articles, in fact, lay us open to the charge that we are reducing provincial autonomy to a farce. I should have been much happier if these particular Articles were not there. Even if you must put in these two Articles I would strongly plead that at least the word "otherwise" be taken away. There is no justification for the President to interfere with a State until at least the Governor who is his own nominee has reported to him.

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<sup>48</sup> Id. at 143.

Shri Brajeshwar Prasad: Sir, I would like to have elucidation on one point. If the Governor of a Province is forcibly arrested by some people, then how can he ever inform the Centre?

Prof Shibban Lal Saksena said if such a situation arises, then Article 275 is there under which the Proclamation can be issued. But here, there is not even consultation with the Governor. You do not proceed on his report, but the President proceeds on his own whims. I feel also that even if you put these two Articles on the Statute Book, no President will dare to act upon them, because it will create chaos. The people will rise and ask him, "Why should you interfere, even when the Governor himself does not think that it is necessary?" so he cannot take action under this Article. So, I appeal to the Drafting Committee that the word "otherwise" should be removed.

Prof. Shibban Lal Saksena said we have adopted this federal constitution with autonomous States. I would, therefore, suggest that you must modify this Article 278.<sup>49</sup> Under this, you have given the power that Parliament can confirm the Proclamation after every six months and thus for three years the Proclamation could be continued. What happens during these three years? Take for instance my own province of the United Provinces. Suppose the President decided I do not know on what grounds, may be on information from the C.I.D. to proclaim a State, of emergency, divested the ministry and the Governor and the Legislature of all power and took all powers to himself and to the Parliament, and then he might put some nominee of his own to rule that Province. Now, for three years he can go on in this manner and after every six months he can get the Proclamation passed.

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<sup>49</sup> Id. at 144.

But what happens after three years? After three years, when his powers are exhausted, will that same legislature and the same ministry come in? Suppose you commenced this process after six months of the commencement of the legislature and you carry on for three years. So three and a half years are over. Then one and a half years remain and afterwards the same Governor will come in and the same ministry will come in. After having been divested of power for three years, do they become abler and wiser then? I think there is a very grave lacuna in this Constitution. We are just seeing the trouble in West Bengal; we are hoping that new elections will be held there and a new ministry formed. Therefore, I want that the President should be authorized to dissolve the legislature, to have new elections held and to have a new ministry formed there, so that after eight months at least that Province might have a better and new ministry. The same legislature, the same ministry, which was supposed to be incompetent for three years, whose powers have been taken over by the President, will it be able to govern the Province for a single day? If it is not, where is the power to dissolve the legislature or put in another ministry? There is no such power. There is a grave omission in this Article and it should be rectified. I therefore suggest an amendment by adding a proviso to clause (4) which says: -

"Provided that the President may if he so thinks fit, order at any time during this period, dissolution of the State Legislature followed by a fresh general election and the Proclamation shall cease to have effect from the day on which the newly elected Legislature meets in session."

What happens is this. The President has taken over authority to himself because either he has found a grave emergency in the State or some disturbance, which the ministry is not able to quell or therefore, his intervention is necessary. If that ministry was competent he then restores it after the emergency, but if he feels that it is not competent then what he does is that he orders dissolution of the legislature and holds a new election.

Dr. P. S. Deshmukh said We have concentrated all emergency powers in the hands of the President and the Parliament of India and have made the Governor merely a reporting authority so far as emergency and its Proclamation are concerned, Now this, I have no hesitation in saying, is a very radical change and a change which is neither in conformity with federation nor is likely to be administratively beneficial or even practicable.<sup>50</sup> There are at least two arguments, which have been suggested by the Honourable Dr. Ambedkar himself in his speech, which support my contention. The one is that the spirit of this change is against the idea of federation and secondly we would be over-burdened in the Parliament with responsibilities, which naturally should be delegated to another authority. Some of my friends will probably say that when I am in favour of a unitary government, why I not like the President or the Parliament having larger and larger powers. My answer to that is that this is neither fish nor fowl; it is neither a unitary government nor a federal government. Governor is a person considered to be fit and competent and qualified by the President in his discretion, and that being so, it is all the more reason why before his tact and ability are exhausted the President should not act. Even if the powers that were originally supposed to be exercised by the Governor

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<sup>50</sup> Id. at 146.

were to last only for a fortnight, even that was necessary because that would mean giving chance to the man on the spot for doing his best to improve the situation, of which he has a far more intimate knowledge than the President or the Parliament is likely to have.

If the Governor is not clothed with this emergency power, all that, he will do, is that, he will report to the President that an emergency has arisen and a Proclamation should be issued. After that, the responsibility falls not merely on the President but the Parliament also and as soon as a body like the Parliament, consisting of hundreds of members, comes into play, one can imagine the state of affairs that is likely to result. So I think it is hopelessly unwise. I think it is not fair either to the Governor or to the Provincial Governments or to the ministers, for the President to jump in all at once without exhausting the talent and the ability that is possessed in the Province either by the Governor or his advisers. Sir, this Article 278 comes in only because we are clothing the President with powers for overriding at his own sweet will the provisions of the Constitution itself.<sup>51</sup> If it was not necessary to give these powers to the President and if we were content with retaining the powers which the Governor has been enjoying in virtue of section 93 of the Act of 1935 and on which really the original Article 188 was based, there would have been no necessity to make this change and to bring in Article 278.

I, therefore, suggest that it is far better that we retain the powers of the Governor and give him such powers as we consider necessary and as were given by section 93 of Government of India Act, 1935, although this section has now been deleted from the adaptation which governs us. I think that it is absolutely essential that

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<sup>51</sup> Id. at 147.

we should not impose this burden on the President. Supposing more than one State is in this condition, supposing more than half a dozen States in India are in this condition, what will the President and the Parliament do? Will they be doing their normal duties or dealing with these States? I think it would be far better to reconsider the whole matter and to leave the whole power of acting in an emergency in the first instance to the Governor. In case the situation deteriorates still further and there is no alternative left for the Parliament and the President but to interfere, then alone should the Centre intervene?

Shri K. Santhanam said Sir, Articles 278 and 278-A are in some respects the most important Articles of this Constitution. There is no doubt that at first sight they look rather unpleasant, as they appear to be a re-entry of the old and hated section 93 of The Government of India Act, 1935. I would like to point out that the essence of section 93 was three-fold. Firstly, the powers are to be exercised by the Governor, in his discretion. Secondly, when the Governor is acting in his discretion, he was not responsible to any authority, any party or any representative from the Province in question. Thirdly, he was responsible or accountable to any authority in India at all. Therefore, if we are to confuse this with section 93, we must examine it in the light of these three tests. Is there any authority, which has the right to supersede a Provincial Constitution in its discretion? In the old Draft of Article 188 for two weeks the Governor was given the power to supersede it in his discretion. I think it was a very wrong provision and it is very fortunate that the old Article 188 is being deleted. Otherwise, an erratic Governor who is reckless of consequences may upset the Constitution before either the people of the Province or

the Parliament of India can come to their rescue. It is rather from the scope of the Article that they have to be properly scrutinized because Articles 278 and 278-A come into operation when the government of the State cannot be carried on in accordance with the provisions of the Constitution. Now, let us broadly analyse the circumstances in which these Articles can come into operation. There may be a physical breakdown of the government in the State, as for instance, when there is widespread internal disturbance or external aggression or for some reason or other, law and order cannot be maintained, in that case, it is obvious that there is no provincial authority which can function and the only authority which can function is the Central Government and in that contingency these Articles are not only unobjectionable but absolutely essential and without it the whole thing will be in chaos. Then, there may be political breakdown.<sup>52</sup> This is a point, which requires careful analysis. A political breakdown can happen when no ministry can be formed or the ministries that can be formed are so unstable that the government actually breaks down. Normally according to the Constitution when there is great instability of a ministry, the proper procedure will be to dissolve the Lower House and reconstitute it. If after dissolution also, the same factions are reproduced in the local legislatures and they make a ministry impossible, it will then be inevitable for the Centre to step in according to the provisions of Articles 278 and 278-A. In this, it is necessary to evolve proper conventions. For instance, it is necessary to evolve the convention that before these Articles are resorted to on account of political breakdown, there should intervene a dissolution of the Lower House of the State

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<sup>52</sup> Id. at 153.

Legislature. Without a dissolution the Centre should not step in and that should be one of the conventions which we shall have to evolve; but it is not wise to put it in the article itself, because there may be extraordinary circumstances in which even the local elections may have to be conducted by the Centre and temporarily the Centre may have to take charge. Then there is the third contingency of economic breakdown.<sup>53</sup> Suppose for instance in a State, the ministry is all right but it wants to make itself popular by reducing or canceling all taxes and running its administration on a bankrupt basis. Suppose the government servants are not paid and the obligations are not met and the State goes on accumulating its deficits. Of course this also is a difficult case. The Centre will have to be very careful and indulgent; it will have to give the longest possible rope but at some time or other in the case of economic breakdown also the Centre will have to step in. because ultimately it is responsible for the financial solvency of the whole country and if a big Province like the United Provinces goes into bankruptcy it will mean the bankruptcy of the whole country.

Therefore, this contingency also will have to be dealt with under Articles 278 and 278-A. Therefore, the objection to Articles 278 and 278-A relates really to the possibility of proper conventions not being evolved. In themselves, they are unobjectionable and they are essential. But, of course, if the Centre acts upon the strict letter of the law, anything may be deemed to constitute a breakdown of the Constitution and it is possible that interference of the Centre may be frequent and objectionable. After all, when we are constituting the Parliament on the basis on

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<sup>53</sup> Id. at 154.

which it is being constituted, we may trust to the Popular House elected on adult franchise and the Second Chamber based on delegation from the legislatures to see that the State autonomy is not interfered with, of course, a difficult case may happen when some States are governed by political parties which are different from the political party which is governing at the Centre and the majority of the other States. Then, it is possible through political prejudice some unnecessary or intolerant action may be taken under Articles 278 and 278-A. The only remedy is through the growth of healthy conventions. If there is peace and democracy is allowed to grow in this country, I have no doubt whatsoever that these conventions will grow and all these articles will be utilized for the legitimate purposes for which they are intended.

Pandit Hirday Nath Kunzru said Sir, I am really very glad that the framers of the Constitution have at last accepted the view that Article 188 should not find a place in our Constitution. That Article was inconsistent with the establishment of responsible government in the Provinces. It is satisfactory that this has at last been recognised and that the Governor is not going to be invested with the power that Article 188 proposed to confer on him. It is, however, now proposed Articles achieve the purpose of Article 188. We have today to direct our attention not merely to Articles 278 and 278-A, but also to Article 277-A. This article lays down that it will be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of this Constitution. It does not merely authorise the Central Government to protect the State against external aggression or internal Commotion; it goes much further and casts on it the duty of

seeing that the government of a Province is carried on in accordance with the provision of this Constitution.

I think, Sir, that it will be desirable in this connection to consider Articles 275 and 276. Article 275 says that, when the President is satisfied that a grave emergency exists threatening the security of India or of any part of India, and then he may make a declaration to that effect. So long as the Proclamation operates, under Article 276, the Central Government will be empowered to issue directions to the government of any Province as regards the manner in which its executive authority should be exercised and the Central Parliament will be empowered to make laws with regard to any matter even though it may not be included in the Union List. Now the effect of these two Articles is to enable the Central Government to intervene when owing to external or internal causes the peace and tranquility of India or any part of it is threatened.

Further, if misgovernment in a Province creates so much dissatisfaction as to endanger the public peace, the Government of India will have sufficient power, under these Articles to deal with the situation. What more is needed then in order to enable the Central Government to see that the government of a Province is carried on in a proper manner. It is obvious that the framers of the Constitution are thinking not of the peace and tranquility of the country or the maintenance of law and order but of good government in Provinces.<sup>54</sup>

If there is mismanagement or inefficiency or corruption in a Province, I take it that under Articles 277-A, 278 and 278-A taken together the

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<sup>54</sup> Id. at 155.

Central Government will have the power. Sir, if there is a multiplicity of parties in any Province we may not welcome it, but is that fact by itself sufficient to warrant the Central Government's interference in provincial administration? It may be a matter of regret, if too many parties exist in a Province and they are not able to work together or arrive at an agreement on important matters in the interests of their Province; but however regrettable this may be, it will not justify in my opinion, the Central Government in intervening and making itself jointly with Parliament responsible for the government of the Province concerned. We hear serious complaints against the governments of many Provinces at present, but it has not been suggested so far that it will be in the ultimate interests of the Country and the Provinces concerned that the Central Government should set aside the provincial governments and practically administer the provinces concerned, as if they were centrally administered area. Therefore, Sir, that the Articles that we are discussing are not needed. Articles 275 and 276 give the Central Executive and Parliament all the power that can reasonably be conferred on them in order to enable them to see that law and order do not break down in the country, or that misgovernment in any part of India is not carried to such lengths as to jeopardise the maintenance of law and order.

Shri L. Krishnaswami Bharathi said Sir, I felt impelled by a sense of duty to place a certain point of view before the House or else I would not have come before the mike. I feel the need for a brief speech. I accord my wholehearted support to the new Articles moved by Dr. Ambedkar, but I am not at all convinced of the wisdom of the Drafting Committee in deleting Article 188. It is this point of

view, which I want to emphasize, that Article has a history behind it. There was a full-dress debate on it for two days when eminent Premiers participated in it. We must understand what Article 188 is for. It is not for normal conditions.<sup>55</sup> It is in a state of grave emergency that a Governor was, under this Article, invested with some powers. I may remind the House of the debate, where it was Mr. Munshi's amendment which ultimately formed part of Article 188. In moving the amendment Dr. Ambedkar said that no useful purpose would be served by allowing the Governor to suspend the Constitution and that the President must come into the picture even earlier. Article 188 provides for such a possibility. It merely says that when the Governor is satisfied that there is such a grave menace to peace and tranquility lie, can suspend the Constitution. It is totally wrong to imagine that he was given the power to suspend the Constitution for duration of two weeks. Clause (3) provides that it is his duty to forthwith communicate his proclamation to the President and the President will become seized of the matter under Article 188. That is an important point, which seems lost sight of. The Governor has to immediately communicate his proclamation.

This Article was necessitated because it was convincingly put forward by certain Premiers. There may be a possibility that it is not at all possible to contact the President. Do you rule out the possibility of a state of inability to contact the Central Government? Time is of the essence of the matter. By the time you contact and get the permission, many things would have happened and the delay would have defeated the very Purpose before us.

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<sup>55</sup> Id. at 158.

Mr. Kher said that it is not necessary to keep this Article because we have all sorts of communications available. In Bombay, I know of instances, where we have not been able to contact the Governor for not less than twenty four hours. The Governor of Madras says there is a danger to peace and tranquility. Assuming for a moment that the communications are all right, the President cannot act. He has to convene the Cabinet; the members of the Cabinet may not be readily available and by the time he convenes the Cabinet and gets their consent the purpose of the Article would be defeated. Therefore, it was only with a view to see in such a contingency where the Governor finds that delay will defeat the very objective, which Article 188 was provided for. I see no reason why the Drafting Committee in their wisdom ruled out such a possibility. It is no doubt true that the Article was framed two years ago, but since those two years many things have happened that show that there is urgent need for the man on the spot to decide and act quickly so that a catastrophe may be prevented. Today there is an open defiance of authority everywhere and that defiance is well organised. Before the act, they cut off the telephone wires, as they did in the Calcutta Exchange. That is what is happening in many parts of the country. It is only to provide for this possibility that the Governor is given these powers. I do not think there will be any fool of a Governor who will, if there is time, fail to inform the President. I would like to have an explanation as to why this foolproof arrangement has been changed and why we have become suspicious that the Governor will act in a wrong manner. According to the provision, he has to forthwith communicate to the President and the President may say, "Well, I am not convinced; cancel it".

Besides, I would like to have an explanation as to why the Drafting Committee goes out of the way to delete the provision, which was considered and accepted by the House previously. In my view it is improper because the House had decided it. If we appoint a Drafting Committee, we direct them to draft on the basis of the decisions taken by us. Is this the way in which they should draft? Their duty was to scrutinize the decisions already arrived at and then draft on that basis. Therefore, I would like to have an explanation a convincing explanation as to what happened within these two years which has made the members of the Drafting Committee delete this wholesome, healthy and useful provision.<sup>56</sup>

Mr. Naziruddin Ahmad said Sir; I think that the amendments moved by Dr. Ambedkar constitute startling and revolutionary changes in the Constitution. I submit, a radical departure has been made from our own decisions. We took important decisions in this House as to the principles of the Constitution and we adopted certain definite principles and resolutions and the Draft Constitution was prepared in accordance with them. Now, everything has to be given up. Not only the Draft Constitution has been given up, but the official amendments which were submitted by Members of the House within the prescribed period which are printed in the official blue book have also been given up. During the last recess some additional amendments to those amendments were printed and circulated. Those have also been given up. I beg to point out that all the amendments and amendments to amendments, which have been moved today, are to be found for the first time only on the amendment lists for this week which has been circulated only

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<sup>56</sup> Id. at 159.

within a day or two from today. So, serious and radical changes should not have been introduced at the last minute when there is not sufficient time for slow people like us to see what is happening and whether these changes really fit in with our original decisions and with other parts of the Constitution as a whole.

I submit that the Drafting Committee has been drifting from our original decisions, from the Draft Constitution and from our original amendments. It would perhaps be more fitting to call the Drafting Committee, "the Drifting Committee". I submit that the deletion of Article 188 is a very important and serious departure from principles, which the House solemnly accepted before. Some honourable Members who usually take the business of the House seriously have attempted to support these changes on the ground that some emergency powers are highly necessary. I agree with them that emergency powers are necessary and I also agree that serious forces of disorder are working in a systematic manner in the country and drastic powers are necessary. But what I fail to appreciate is the attempt to take away the normal power of the Governor or the Ruler of a State to intervene and pass emergency orders. It is that which the most serious change is. In fact, originally the Governor was to be elected on adult suffrage of the Province, but now we have made a serious departure that the Governor is now to be appointed by the President.<sup>57</sup> This is the first blow to Provincial Autonomy. Again, we have deprived the Upper Houses in the States of real powers; not merely have we taken away all effective powers from Upper Houses in the Provinces, but also made it impossible for them to function properly and effectively. We are now going to take away the

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<sup>57</sup> Id. at 160.

right of the ministers of a State and the Members of the Legislatures and especially the people at large from solving their own problems. As soon as we deprive the Governor or a Ruler of his right to interfere in grave emergency at once we deprive the elected representatives and the ministers from having any say in the matter. As soon as the right to initiate emergency measures is vested exclusively in the President, from that moment you absolve the ministers and Members of the local legislatures entirely from any responsibility. It is the aspect of the problem to which I wish to draw the attention of the House.

This aspect of the matter, I submit, has not received sufficient or adequate consideration in this House. If there is trouble in a State, the initial responsibility for quelling it, must rest with the ministers. If they fail, then the right to initiate emergency measures must lie initially with the Governor or the Ruler. If you do not allow this, the result would be that the local legislature and the ministers would have responsibility of maintaining law and order without any powers. That would easily and inevitably develop a kind of irresponsibility. Any outside interference with the right of a State to give and ensure their own good government, will not only receive no sympathy from the ministers and the members, but the action of the President will be jeered at, tabooed and boycotted by the people of the State, the members of the Legislature and the ministers themselves.

Mr. Naziruddin Ahmad said, I am not satisfied that the President should proceed exclusively on a proclamation of emergency by the Governor. That is due to faulty and hasty drafting. I submit, therefore, that Article 188 should not be deleted. If we interfere with the ultimate right of States to deal with emergencies,

it will reduce Provincial Autonomy to a farce. I think there has been enough encroachment on provincial rights.<sup>58</sup> I think we are drifting, perhaps unconsciously, towards a dictatorship. Democracy will flourish only in a democratic atmosphere and under democratic conditions. Let people commit mistakes and learn by experience. Experience is a great tutor. The arguments to the contrary which we have heard today were the old discarded arguments of the British bureaucracy. I submit, therefore, that too much interference by the Centre will create unpleasant reactions in the States, if you abolish provincial autonomy altogether that would be logical. But to make them responsible while making them powerless would be not a proper thing to do.

Then, Sir, Article 277-A has been described by the honourable Dr. Ambedkar as a thing which is not a pious wish. I think Dr. Ambedkar was repelling the suggestion which naturally arose in his own mind. I believe that Article 277-A is a record of pious wishes. At least it lacks clarity. It enables the Centre to interfere on the slightest pretexts and it may enable the Centre to refuse to interfere on the gravest occasion. So, carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the Drafting Committee for its vagueness and evasions. The Article says: "It shall be the duty of the Union to protect every State against external aggression." Of course it is so. But it is expressed in a pious form. It says: "It shall be the duty. . . . ." Instead of that we should have expected some machinery provided and the occasions clearly stated on which that machinery should come into operation. Then again, they say in the Article, "and to ensure that

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<sup>58</sup> Id. at 161.

the government of the State is carried on in accordance with the provisions of this Constitution". This is also equally vague. I think if an Article is inserted to the effect that "the Union Government will have the power to interfere with the day-to-day administration of the Provinces to see that they are carried on properly," it would have been better. I think if an Article was enacted to the effect that the Union Government should have the power to see that domestic economy of each family is carried on in accordance with certain principles it would have been equally good. This Article 277-A is of the vaguest description<sup>59</sup> and I submit that there is want of clarity or probably deliberate avoidance of clarity in order to get an excuse for interference in Provincial and States matters. This again will create bitterness and dissatisfaction and the popularity of the Union Government which has been built up with long sacrifices. I, therefore, submit that excuses should not be deliberately provided through vagueness of language to interfere with the domestic management of the Provinces. In fact, if it is the desire to interfere on certain grounds, the grounds should be stated precisely and the occasion for the exercise of those powers should be clearly defined and laid down and not kept vague. As I understand it, this will be used by the enemies of the Central Government as propaganda against the Central Government. This Article should have been introduced to the detriment of the Central Government at the instance of their enemies, the Communists. That would have been more appropriate. For the Central Government to resort to this vagueness of language where precision is possible is highly dangerous.

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<sup>59</sup> Id. at 162.

Then I come to Article 278. Here the word 'otherwise' has been objected. My Friend Pandit Thakur Das Bhargava rightly pointed out the difficulty of acting on anything like the provision in Article 278, where it is said that the President may act on a report or otherwise. I submit, the whole thing is wrong. He should act not only on information but also on proclamation of emergency. I think this wording in the Article should not be taken advantage of just to corner a speaker who objects to it. I object to the wording and the conception of the Article. I submit that the word 'otherwise' in the context would make it extremely vague. The least excuse will be taken to make the act of the Union Government unpopular. If that is the intention, it may be justified. But the Article will be rightly objected to on account of the phraseology in which the Idea is embedded.

Then, I come to the proviso to clause (1) of Article 278. It safeguards against the rights of the High Court in dealing with matters within their special jurisdiction. A proclamation of emergency will not deprive the High Court of its jurisdiction. That is the effect of this proviso. But it conveniently forgets the existence of the Supreme Court. While it takes care to guarantee the rights of the High Courts against the proclamation, the rights of the Supreme Court are not guaranteed. I only express the hope that the absence of any mention of the Supreme Court in the proviso will not affect the powers of that Court.

Mr. Naziruddin Ahmad said in Article 278-A, instead of allowing the Provincial Legislatures to have their say on the emergency legislation and thereby giving the Provincial Assemblies an opportunity to assess the guilt or innocence of the ministers or other person or to give a verdict, the responsibility is

thrown on the Parliament. If we do not allow the Provincial Assemblies to sit in judgment over them, the result would be that guilty or innocent persons, lawbreakers and law-abiding persons, good or bad people in the State should all be combined. The result would be that those for whose misdeeds the emergency powers would be necessary would be made so many heroes; they would be lionized and the object of teaching them a lesson would be frustrated.<sup>60</sup> The Centre would be unpopular on the ground that it is poking its nose unnecessarily and mischievously into their domestic affairs.

Then, Sir, in sub-clause (c) of clause (1) of this Article 278-A, the President is expected to authorize and sanction the budget as the head of the Parliament. This would be an encroachment on the domestic budget of the Provinces and the States. That would be regarded with a great deal of disfavour. It would have been better to allow the Governor or the Ruler to function and allow their own budget to be managed in their own way.

He said the most important consequence of this encroachment on the States sphere would be that we would be helping the communist techniques. Their technique is that by creating trouble in a Province or a State, they would partially paralyze the administration and thereby force the emergency powers. Then, they will try to make those drastic powers unpopular. What is more, they will make the guilty ministers and guilty officers heroes. The Legislature of the State would, as I have submitted, be deprived of the right of discussion. If the President takes upon himself the responsibility of emergency powers, then his action, I suppose, cannot

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<sup>60</sup> Vol. IX, CAD, 4<sup>th</sup> August 1949, p. 165.

be discussed in the States Legislatures. The only way of ventilating Provincial and States grievances is to allow the Provinces and the States to find out the guilty persons and hold them up to ridicule and contempt and that would be entirely lost.

This would have the effect of bringing all sorts of people good and bad, law-breaking and law-abiding persons into one congregation. The Centre will be unpopular and the guilty States would be regarded as so many martyrs and the Centre would be flouted and would be forced to use more and more emergency powers and would be caught in a vicious circle. Then, the States will gradually get dissatisfied and they will show centrifugal tendencies and this will be reflected in the general elections to the House of the People at the Centre. The result would be that very soon these very drastic powers calculated to strengthen the hands of the Centre would be rather a source of weakness in no distant time. I have a fear, which is not based without sufficient consideration and thought that we are gradually but perhaps unconsciously, drifting towards dictatorship. It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts. The fear of the Communists is at the back of these emergency powers being centralized.

This was the very reason, which led Hitler to establish his dictatorship. In fact, his object was to get rid of the Communists in Germany. Having successfully suppressed the Legislature and successfully suppressed expression of public opinion, Hitler produced a big fighting machine and then, he

felt the desire to have territorial expansion, which led to the last war, which led to his downfall. There is a feeling in the House, especially among the younger sections that dictatorship of some kind is a great necessity in India. I submit that though that is a very natural feeling, dictatorships have only one end and that is failure.

The best thing is to allow the natural democratic forces to work. As everyone knows, even here, newspapers are not free and there is a feeling amongst the newspapers that they cannot freely publish facts if they go against the government or in any way put the government in an unfavorable light. I think these are bad signs. I hope that every law abiding citizen, every man who has faith in the Constitution and in democratic method should rise and oppose this tendency. In fact, this is a Symptom of a deep seated disease namely, to acquire power and to concentrate power in the hands of the Centre. As I have submitted, this will react on the very persons who want dictatorship. The best thing is to allow free scope for public opinion.

Pandit Thakur Das Bhargava said Sir, it is very easy to criticise any proposal, which comes from the Drafting Committee. If the Drafting Committee had kept Article 188 intact, I have no doubt that the very Members who have now criticised would have come forward in no less strong language to criticise the keeping intact of 188 also.<sup>61</sup> What we have to see is whether on a balance of advantages and disadvantages the present position is better or not. From this point of view my humble submission is that the retention of 188 would have been a great mistake. I, after all this taking away of 188 and substitution thereof by Articles 278 and 277-A predicate that the Governor will have no emergency powers and instead

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<sup>61</sup> Id. at 167.

of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet etc.. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.

In regard to 278 and 278-A, some criticism has been made. The first criticism that I wish to dispose is about the word 'otherwise'. There was a complaint to start with when the Governor's post was declared to be non-elected and he must be appointed by the Centre. Then there was a complaint that this was a retrograde measure. Now those who oppose this Article say that the report of the Governor is the sole thing, which ought to be considered. If the Governor is not independent and is only an agent of the Central Government, what is the use of his report? When you confess that the Governor is an individual person and he does not represent the people of the Province, how can you rely on his report? The words 'on report or otherwise' do denote a state of things in which the Governor may not be doing his duties or may give a wrong report.

Suppose, there is a conflict between the Governor and the ministers and the Houses pass a resolution to the effect that the Centre should intervene and there is conspiracy and the whole State is seething with strife and this state is not reported by the Governor, what would happen? Under these circumstances it is fair that the words 'or otherwise' should be there. Now what is the failure of machinery is the question of questions. Supposing the constitutional machinery does not work well, it works 2 per cent well and 98 per cent wrong or it works 98 per cent well

and 2 percent wrong, the question of questions is, if there is a deadlock in a very small particular, can it be said that the Constitution is not carried on as it ought to be? But I do not think that any person will contend that on an occasion like this, the Centre will take up the responsibility, which is a responsibility very hard to discharge. After all, no Central Government would like that; there should be conflict between the Centre and the State. The Centre will not send thousands of persons to administer the State and function differently from before. We can imagine what will take place in such a situation. In India, there are many Provinces, which have been working democracy for a very long time. There are many States, in which these democratic institutions are being planted today. For centuries, they have been under a feudal system. Therefore, my submission is that unless you make provision like this, the Centre will not be doing its duty. It is the duty of the Centre to see that the Constitution is worked rightly and well.

I know the criticism has been expressed that Articles 277-A and 278 take away the powers of the State and they will, therefore, reduce them to subservience. Some critics have in fact said that provincial autonomy will be a mere farce and that the proper action, which under those circumstances ought to have been undertaken by the Provincial Governor would not be taken by the Central Government.<sup>62</sup> But this is not the case. These critics seem to have failed to see that no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted.

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<sup>62</sup> Id. at 169.

In my humble opinion as soon as such a situation arises, the first duty that the Governor will perform will be to dissolve the House. Unless and until every attempt has been made and unless he finds that even the ordinary liberties cannot be enjoyed by the people he will not come to the conclusion that the Constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law to arrange in such a way that the Constitution is worked. When the entire thing has failed, then there is nothing but confusion and chaos. At that time what is the choice? Mr. Nizamuddin Ahmad said that in that case, the Centre takes up the whole administration in its own hands and so there will be confusion. But I say that it is just to avoid such confusion and chaos that the Centre takes on the administration. Are we to continue that confusion and chaos which have resulted from the failure of the constitutional machinery of the two, I am sure every one will admit the better thing is for the Centre to interfere and take over the administration?

Shri Brajeshwar Prasad supported the Article 278 as moved by Dr. Ambedkar and said that there are certain provisions in this Article to which I would like to raise some objections. I am not in favour of the provision that the President can exercise legislative powers on behalf of the State only if Parliament so agrees. I am not in favour of this, because of two reasons. Firstly, it will mean delay. If the President wants a particular legislation to be passed at once, under this provision, he will be handicapped because it will take time for the measure to go through Parliament. Secondly, I am opposed to this because of another reason. Suppose Parliament refuses to pass a law, which the President considers to be necessary to

meet the exigencies of the hour. In that situation, what will happen? There will be difficulty. Therefore, I am in favour of the President having all legislative powers.

Shri Algu Rai Sastri said that the Articles 188 and 275 should be retained as they are in the Draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration, I may make mention of the difficult situation existing in Bengal and Madras today. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this Article, by proclamation take the constitutional machinery of the Province in their own hands.

Article 275 relates to the emergency power vested in the President of Indian Union.<sup>63</sup> The situations in which a Governor and the President may exercise the emergency powers vested in them may be quite different. When the last world war broke out, the then Government of India found it necessary to proclaim an emergency. Such situation or emergency is caused by a problem that concerns the whole world. On account of such a situation the whole country may be threatened with disaster. In the circumstances the President of the Indian Union has to exercise his own discretion and declare an emergency. But the State Governors may be faced with a situation that concerns only their State and under such circumstances, they will have to exercise their own discretion and issue a proclamation of emergency. We, therefore, must vest them with emergency powers. Articles 188, 275, 276 and

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<sup>63</sup> Id. at 172.

278 of the Draft Constitution are exactly on the lines of Section 93 of the Government of India Act 1935.<sup>64</sup> They are essential and imperative.

Keeping in view the fact that the Provincial Governments may have to face the internal disturbances, Governors of the States are vested with emergency powers under Article 188 and no doubt it is a proper provision. Freedom brings in its wake various problems and difficulties which have to be faced by a nation. Anti-social elements are very active in Bengal today. They want to uproot the government of the Province. The same thing is happening in Madras. Hyderabad too has been the scene of these activities. All these disturbances that we are witnessing today are no doubt local in character but they may create a grave situation necessitating immediate intervention. Now the question arises as to who should intervene immediately. Naturally the man on the spot must be trusted as was observed by the late Lala Lajpat Rai. Distrust begets distrust and trust begets trust. We must trust the authority on the spot. We have provided for a Governor for each Province. We are going to pay him a very high salary and provide him with all material comforts, we are going to give him a supreme status in the Constitutional structure of the States but despite all this, if we do not vest in him the emergency powers, is in reality making him only a nominal figurehead. In that case we should not call him a Governor, rather make a little change in his designation and put it as GOBAR NAR a dummy. It would be better not to appoint them at all. It is better, if the huge amount to be incurred on account of their salary and other allowances is saved and utilised for the benefit of the poor people. You are going to appoint him

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<sup>64</sup> Id. at 173.

as Governor and ruler of a Province, but you are not prepared to vest in him the power of exercising his own discretion at a time when a grave situation has arisen.

Dr. Ambedkar thinks that the Drafting Committee is being charged with not being firm in its ideas. We have great respect for Dr. Ambedkar. We all praise the wisdom of the Drafting Committee. These Articles have been drafted by the Drafting Committee. We have had no hand in preparing these Articles. We beg to request him to retain Articles 188 and 275 as contained in the Draft Constitution and submit that they are complete and would amply serve the purpose. Article 277-A is intended to point out to the Union Government their responsibility in respect of maintaining the governmental machinery in the States. Their responsibility in this respect is self-evident; it is implicit. Under Article 188 the Governor of a State may declare that a grave emergency has arisen. After issuing such a declaration he is bound, under this Article, to communicate the declaration to the Union Government. This information is given so that the necessary action consequential to the information may be taken. Steps may be taken to maintain regional tranquility and order. After this, the duty of the Centre regarding regional order under Article 278 read with Article 188 is over.

I would congratulate Dr. Ambedkar for his imagining a contingency when the whole of the Cabinet and the Governor of our border Province of East Punjab may form a clique and possibly line tip with Pakistan or possibly some other country. Assam may join Burma and in this way strange things may happen. A ruler must be suspicious, for it is written that a ruler should be suspicious even of his wife and son. On the basis of that principle, this idea of strengthening the Centre

can arise and from this point of view the new amendments being moved. But we should also see the other side of the case. These Governors are also the strong pillars of the Centre. It is improper to distrust them. I would, therefore, say that though I have not come forward to oppose strongly these amendments, I do not think that I am wiser than Dr. Ambedkar and the Drafting Committee, yet I would humbly submit that Dr. Ambedkar and the Drafting Committee should seriously consider whether our original Draft cannot serve the purpose, so that you may withdraw your fresh amendments and the other Members may also do likewise.

Dr. B. R. Ambedkar said Sir, although these Articles have given rise to a debate, which has lasted for nearly five hours, I do not think that there is anything, which has emerged from this debate, which requires me to modify my attitude towards the principles that are embodied in these Articles. I will, therefore, not detain the House much longer with a detailed reply of any kind.<sup>65</sup>

About the points raised by Pandit Kunzru he said the first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the Article contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the constitution must be maintained in accordance with the provisions contained in this constitution, we practically mean what the American Constitution means, namely that the form of the constitution

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<sup>65</sup> Id. at 175.

prescribed in this constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that the Articles 278 and 278-A were unnecessary in view of the fact that there are already in the constitution Articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions of underlie Article 275 and the present Article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of Article 276, because under that Article the Centre gets the power, once the proclamation is issued to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in Articles 275 and 276 or in Articles 278 and 278-A. I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of Articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different.

For instance, when a proclamation of war has been issued under Article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The Legislature will continue to function and possess the powers, which the constitution gives it; the executive will retain its executive power and continue to administer the Province in

accordance with the law of the Province. All that happens under Article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under Article 276. But when Article 278 comes into operation, the situation would be totally different. There will be no Legislature in the Province because the Legislature would have been suspended. There will be practically no executive authority in the Province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation, which we have made by component words of Article 275 and Article 278. I think mixing the two things would cause a great deal of confusion.

Pandit Hirday Nath Kunzru said is it the purpose of Articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the Provinces? The Honourable Dr. B. R. Ambedkar said no, no. The Centre is not given that authority.<sup>66</sup> Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces.

Pandit Hirday Nath Kunzru said what is the meaning exactly of "the provisions of the Constitution" taken as a whole? The House is entitled to know from the honourable Member, what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution'. The Honorable Dr. B. R. Ambedkar said it would take me very long now to go into a detailed examination of the whole thing and referring to each Articles, say, this is the print which is established in it and say, if any government or House of a Province does not act in

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<sup>66</sup> Id. at 176.

accordance with it, that would act as a failure of machinery. The expression "failure of machinery", I find has been used in the Government of India Act, 1935. Everybody must be quite familiar, therefore, with its de-facto and de-jure meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath said what about the other amendments moved by Professor Saksena and myself? Is not Dr. Ambedkar replying to them? The Honourable Dr. B. R. Ambedkar said I do not accept them. I was only replying or referring to those amendments, which I thought had any substance in them. I cannot go on discussing every amendment moved. Dr. B. R. Ambedkar said In regard to the general debate which has taken place in which it has been suggested that these Articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these Articles being abused or employed for political purposes. But that objection applies to every part of the constitution, which gives power to the Centre to override the Provinces.<sup>67</sup> In fact, I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the Provinces. I hope the first thing he will do would be to issue a mere warning to a Province that has erred, that things were not happening, in the way in which they were intended to happen in the constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people

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<sup>67</sup> Id. at 177.

of the Province to settle matters by themselves. It is only when these two remedies fail that he would resort to this Article. It is only in those circumstances he would resort to this Article. I do not think we could then say that these Articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath said is Dr. Ambedkar in a position to assure the House that Article 143 will now be suitably amended? The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and Article 143 will be suitably amended if necessary. Mr. President: I will now put the amendment to vote one after another. The question is that Article 188 be deleted. The motion was adopted. Article 188 was deleted from the constitution. Mr. President: Then I will take up Article 277-A" that for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted.' The amendment was negatived. Mr. President: The question is that after Article 277 the following new Article 277-A be inserted that "it shall be the duty of the Union to protect States against external disturbance. It shall be the duty of the Union to protect every State against external, aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution." The motion was adopted and Article 277-A was added to the Constitution. Mr. President: The question is: that in clause (1) of the proposed Article 278 the words 'or otherwise' be deleted." The amendment was negatived.

Mr. President: The question is: "That for Article 278, the following Articles be substituted Article 278; in case of failure of constitutional machinery in

States. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the government of the State and all or any, of the powers vested in or exercisable by I the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :<sup>68</sup>

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

Article 278-A provides that where, by a Proclamation issued under clause (1) of Article 278 of this constitution, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent;

(a) For Parliament to delegate the power to make laws for the State, to the President or any other authority specified by him in, that behalf;

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<sup>68</sup> Id. at 179.

(b) For Parliament or for the President or other authority to whom the power to make laws is delegated under sun-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India. The amendment was adopted and the proposed Articles 278 and 278-A stand part of the Constitution.

#### **4.9 To Sum Up:**

Governor has an important role in the state administration. He has certain duties to perform and for the well performance of these duties and to maintain the unity of India, he is empowered to do certain functions under his discretion. According to the members, 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 of take their due share in the public life and government of the State.

So, Governor is not merely a figure head. Discussion on the discretionary powers shows that members of the Constituent Assembly wanted to make him an essential and powerful personality in the State Administration.